



In the Matter of:

ALLEN DELOACH,

ARB CASE NO. 06-139

COMPLAINANT,

ALJ CASE NO. 2005-STA-0057

v.

DATE: February 27, 2007

**KANSAS CITY SOUTHERN
RAILWAY COMPANY,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**FINAL DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT WITH PREJUDICE**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act (STAA) of 1982.¹ On August 10, 2006, the parties submitted a Confidential Settlement Agreement and Release of All Claims signed by the Complainant, Allen DeLoach, and the Respondent, Kansas City Southern Railway Company (KCSR), to a Department of Labor Administrative Law Judge (ALJ). Under the regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Assistant Secretary's preliminary findings "if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board . . . or the ALJ."² The regulations direct the parties to file a copy of the settlement "with the ALJ or the Administrative Review Board, United States Department of Labor, as the case may be."³

¹ 49 U.S.C.A. § 31105 (West 2006).

² 29 C.F.R. § 1978.111(d)(2) (2006).

³ *Id.*

When the parties reached a settlement the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On August 16, 2006, the ALJ issued a Recommended Decision and Order Approving Settlement Agreement. According to the STAA's implementing regulations, the Administrative Review Board (ARB or Board) issues the final decision and order in this case.⁴

The Board issued a Notice of Review and Briefing Schedule apprising the parties of their right to submit briefs supporting or opposing the ALJ's recommended decision on August 25, 2006.⁵ Both DeLoach and KCSR replied, separately, on September 18, 2006, via letter, indicating their intention to not file briefs with the Board. We therefore deem settlement unopposed under the terms of the Recommended Decision and Order Approving Settlement Agreement.

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the STAA⁶ and reference cases other than ARB No. 06-139, 2005-STA-0057, the case currently before the Board.⁷ The Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by the applicable statute. Furthermore, it is limited to cases over which we have jurisdiction. Therefore, we approve only the terms of the agreement pertaining to the Complainant's STAA claim ARB No. 06-139, 2005-STA-0057.⁸

Additionally, the agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions.⁹ The Board notes that the parties' submissions, including the agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552 (West 1996). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹⁰ Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of

⁴ 29 C.F.R. § 1978.109(c)(2); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 00-STA-50 (ARB Sept. 26, 2001); *Cook v. Shaffer Trucking Inc.*, ARB No. 01-051, ALJ No. 00-STA-17 (ARB May 30, 2001).

⁵ 29 C.F.R. § 1978.109(c)(2).

⁶ Confidential Settlement Agreement and Release of All Claims para. B.

⁷ Confidential Settlement Agreement and Release of All Claims paras. B, C.

⁸ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56, slip op. at 2 (ARB Apr. 30, 2003).

⁹ Confidential Settlement Agreement and Release of All Claims para. F.

¹⁰ *Coffman v. Alyeska Pipeline Serv. Co. and Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996).

such requests, and for protecting the interests of submitters of confidential commercial information.¹¹

Furthermore, if the provisions in paragraph K of the Settlement Agreement were to preclude DeLoach from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable “gag” provisions.¹²

Finally, paragraph M provides that the agreement shall be governed and construed under the laws of the state of Missouri. We construe this choice of law provision as not limiting the authority of the Secretary of Labor and any Federal court, which shall be governed in all respects by the laws and regulations of the United States.¹³

The Board finds that the settlement is fair, adequate, and reasonable. Accordingly, with the reservations noted above limiting our approval to the settlement of DeLoach’s STAA claim, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

DAVID G. DYE
Administrative Appeals Judge

¹¹ 29 C.F.R. § 70 *et seq.* (2006).

¹² *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-33, slip op. at 6 (ARB Nov. 10, 1997); *Connecticut Light & Power Co. v. Secretary, United States. Dep’t of Labor*, 85 F.3d 89, 95-96 (2d Cir. 1996) (employer engaged in unlawful discrimination by restricting complainant’s ability to provide regulatory agencies with information; improper “gag” provision constituted adverse employment action).

¹³ *See Phillips v. Citizens’ Ass’n for Sound Energy*, 1991-ERA-25, slip op. at 2 (Sec’y Nov. 4, 1991).