



In the Matter of:

ROBERT WHITE,

ARB CASE NO. 07-023

COMPLAINANT,

ALJ CASE NO. 2006-STA-00007

v.

DATE: January 31, 2007

MARICOPA READY MIX, LLC,

RESPONDENT,

and

**ASSISTANT SECRETARY OF LABOR
FOR OCCUPATIONAL SAFETY AND
HEALTH,**

INTERVENING PARTY.

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 of 1982 (STAA)¹ and implementing regulations.² The Administrative Law Judge (ALJ) below issued a Recommended Decision and Order Approving

¹ 49 U.S.C.A. § 31105 (West 2006).

² 29 C.F.R. Part 1978 (West 2006).

Settlement Agreement and Dismissing Complaint (R. D. & O.) approving the parties' settlement and release agreement and dismissing the complaint with prejudice on November 1, 2006.³

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 [hereinafter, the "Board"] . . . or the ALJ."⁴ The regulations direct the parties to file a copy of the settlement with the ALJ, the Board, or United States Department of Labor.⁵

Pursuant to 29 C.F.R. § 1978.109(c), the Board "shall issue the final decision and order based on the record and the decision and order of the administrative law judge." The Board received the ALJ Recommended Order and 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 November 15, 2006. The Complainant replied to the Board's notice on December 18, 2006, indicating that it would not file a brief with the Board. The Respondent did not respond to the Board's order.

The ARB concurs with the ALJ's determination that the parties' settlement agreement is fair, adequate and reasonable. But, we note that the agreement encompasses the settlement of matters under laws other than the STAA.⁶ 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. Our approval is limited to this case, and we understand the settlement terms relating to release of STAA claims as pertaining only to the facts and circumstances giving rise to this case. Therefore, we approve only the terms of the agreement pertaining to the Complainant's STAA claim ARB No. 07-023, 2006-STA-00007.⁷

³ The parties' settlement is composed of two settlement agreements, one between White and Maricopa Ready Mix (Settlement Agreement and Full Release) and the second between White, Maricopa Ready Mix, and the Assistant Secretary (Settlement Agreement). White also filed an Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice on October 30, 2006, in which he averred that neither the Assistant Secretary nor Maricopa Ready Mix opposed the motion.

⁴ 29 C.F.R. § 1978.111(d)(2).

⁵ *See id.*

⁶ *See, e.g.*, para. B of the Settlement Agreement and Full Release.

⁷ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56, slip op. at 2 (ARB Apr. 30, 2003).

Additionally, we concur with the ALJ and construe paragraph M of the Settlement Agreement and full Release, the governing 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.⁸

The parties have agreed to settle White's STAA claim. Accordingly, with the reservations noted above limiting our approval to the settlement of White'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

⁸ *Phillips v. Citizens' Ass'n for Sound Energy*, 1991-ERA-25, slip op. at 2 (Sec'y Nov. 4, 1991).