



In the Matter of:

DWIGHT TOLAND,

ARB CASE NO. 07-064

COMPLAINANT,

ALJ CASE NO. 2007-STA-007

v.

DATE: August 23, 2007

CAVALIER COACH CORP.,

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 March 30, 2007, the parties submitted a request for approval of their settlement and dismissal of the complaint to a Department of Labor Administrative Law Judge (ALJ). The settlement was signed by the Complainant, Dwight E. Toland, and the Respondent, Cavalier Coach Corporation. 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 2007).

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 April 2, 2007, the ALJ issued a Recommended Order Approving Settlement Agreement and Dismissing Complaint. According to the STAA's implementing regulations, the Administrative Review 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.⁵ Neither party responded to the Board's notice. We therefore deem settlement unopposed under the terms of the Recommended Order Approving Settlement Agreement and Dismissing Complaint.

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the STAA and reference cases other than ARB No. 07-064, 2007-STA-007, the case currently before the Board.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. 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. 07-064, 2007-STA-007.⁷

The Agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions.⁸ 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).⁹ 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

⁴ 29 C.F.R. § 1978.109(c)(2); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050 (ARB Sept. 26, 2001); *Cook v. Shaffer Trucking Inc.*, ARB No. 01-051, ALJ No. 2000-STA-017 (ARB May 30, 2001).

⁵ 29 C.F.R. § 1978.109(c)(2).

⁶ Settlement Agreement and Mutual Release §§ 2, 3, 5, 6.

⁷ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

⁸ Settlement Agreement and Mutual Release, § 9.

⁹ 5 U.S.C.A. § 552 (West 2006).

¹⁰ *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 96-TSC-005, 6, slip op. at 2 (ARB June 24, 1996).

requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information.¹¹

Furthermore, if the provisions in section 9 of the Settlement Agreement were to preclude Toland 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

As construed, the Board finds that the settlement is fair, adequate, reasonable, and in the public interest. Accordingly, with the reservations noted above limiting our approval to the settlement of Toland’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-033, slip op. at 6 (ARB Nov. 10, 1997); *Conn. Light & Power Co. v. Sec’y, U.S. 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).