U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

WENDELL SELLERS, **ARB CASE NO. 07-075**

COMPLAINANT, **ALJ CASE NO. 2006-STA-00044**

v. **DATE: July 31, 2007**

SOURCE INTERLINK COMPANIES,

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 of 1982 (STAA)[1] and its implementing regulations.[2] The Administrative Law Judge (ALJ) below issued a Recommended Decision and Order Approving Settlement Agreement and Dismissing Complaint (R. D. & O.) on May 15, 2007.

Under the regulations implementing the STAA, the parties may settle a case at any time after filing objections to the Assistant Secretary's preliminary findings, and before those findings become final, "if the participating parties agree to a settlement and such settlement is approved

[1] 49 U.S.C.A. § 31105 (West 2007).

[2] 29 C.F.R. Part 1978 (2006).

by the Administrative Review Board [Board] . . . or the ALJ."[3] The regulations direct the parties to file a copy of the settlement with the ALJ, the Board, or United States Department of Labor.[4]

Pursuant to 29 C.F.R. § 1978.109(c)(1), the Board "shall issue a final decision and order based on the record and the decision and order of the administrative law judge." In reviewing the ALJ's legal conclusions, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision . . .."[5] Therefore, the Board reviews the ALJ's legal conclusions de novo.[6]

The Board received the R. D. & O. 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 May 30, 2007. Neither the Complainant, Wendell Sellers, nor the Respondent, Source Interlink, filed a brief with the Board.

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.[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. 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.

---

[3] 29 C.F.R. § 1978.111(d)(2).

[4] *See id.* We note that when the ALJ's record was forwarded to the Board, it did not contain a copy of the parties' settlement agreement. Believing that the settlement had been inadvertently omitted from the record when the record was forwarded to the Board, we requested the ALJ to forward a copy of the settlement for our review. We received a copy of the settlement with a note explaining that the ALJ to whom the case had originally been assigned had died on May 10, 2007, and the case was reassigned to another ALJ who issued the R. D. & O. on May 10, 2007. The note further stated that the settlement agreement had not been received prior to the Board's request and the ALJ requested the parties to submit the settlement on July 20, 2007. Although the ALJ was required to review the settlement before approving it, we consider this to be harmless error because the Board reviews the ALJ's legal conclusions de novo, no party has objected to the ALJ's failure to review the settlement and the Board is required to issue the final decision in this case.

[5] 5 U.S.C.A. § 557(b) (West 1996).

[6] *See Roadway Express, Inc. v. Dole,* 929 F.2d 1060, 1066 (5th Cir. 1991).

[7] *See, e.g.*, para. 4 of the Agreement.

Therefore, we approve only the terms of the Agreement pertaining to Sellers' STAA claim ARB No. 07-075, 2006-STA-00044.[8]

Furthermore, if the provisions in paragraphs 8, 9, 10, or 12 of the Settlement Agreement and Release were to preclude Sellers from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable "gag" provisions.[9]

Additionally, we construe paragraph 16, 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.[10]

The parties have agreed to settle Sellers's STAA claim. Accordingly, with the reservations noted above, 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] *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56, slip op. at 2 (ARB Apr. 30, 2003).

[9] *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-33, 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).

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