



In the Matter of:

C. D. BENNETT,

ARB CASE NO. 07-103

COMPLAINANT,

ALJ CASE NO. 2007-STA-015

v.

DATE: August 31, 2007

YELLOW TRANSPORTATION, INC.,

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 July 30, 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 August 10, 2007. Neither party responded to the Board’s Notice.

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. Therefore, we approve only the terms of the Agreement pertaining to Bennett’s STAA claim ARB No. 07-103, 2007-STA-00015.⁸

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).¹⁰ FOIA requires Federal agencies to disclose requested records unless

³ 29 C.F.R. § 1978.111(d)(2).

⁴ *See id.*

⁵ 5 U.S.C.A. § 557(b) (West 2007).

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

⁷ *See, e.g.*, paras. 3, 5, and 6 of the Settlement Agreement and General Release.

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

⁹ Settlement Agreement and General Release, para. 9.

¹⁰ 5 U.S.C.A. § 552 (West 2006).

they are exempt from disclosure under the Act.¹¹ Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information.¹²

The parties have agreed to settle Bennett'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

Administrative Appeals Judge

¹¹ *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).

¹² 29 C.F.R. § 70 *et seq.* (2006).