U.S. Department of Labor

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

In the Matter of:

MICHAEL DOUCETTE,

COMPLAINANT,

v.

LILY TRANSPORTATION CORP.,

RESPONDENTS.

ARB CASE NO. 08-046

ALJ CASE NO. 2008-STA-018

DATE: May 30, 2008

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 Order Approving Settlement Agreement and Cancelling Hearing (R. D. & O.) on January 25, 2008.

---

[1] 49 U.S.C.A. § 31105 (West 2008). The STAA has been amended since Doucette filed his complaint. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). We need not decide here whether the amendments are applicable to this complaint because even if the amendments applied to this complaint, they are not implicated by the settlement at issue here and thus would not affect our decision.

[2] 29 C.F.R. Part 1978 (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 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 the 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 February 7, 2008. Neither the Complainant, Michael Doucette, nor the Respondent, Lily Transportation Corp., 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 may encompass 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 Doucette's STAA claim, ARB No. 08-046, 2008-STA-018.[8]

Furthermore, if the provisions in paragraph 5 of the Settlement Agreement and Release were to preclude Doucette from communicating with federal or state enforcement agencies

---

3 29 C.F.R. § 1978.111(d)(2).

4 *See id.*

5 5 U.S.C.A. § 557(b) (West 2008).

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

7 *See, e.g.*, paras. 3 & 4 of the Settlement Agreement.

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

concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable "gag" provisions.[9]

Under the agreement, Doucette releases Lily Transportation from, essentially, any claims or causes of action arising out of or connected with his employment at Lily Transportation.[10] Thus, we interpret this portion of the agreement as limiting Doucette's right to sue on claims or causes of action arising only out of facts, or any set of facts, occurring before the date of the settlement agreement. Doucette does not waive claims or causes of action that may accrue after the signing of the agreement.[11]

Additionally, we construe paragraph 7(c), the "Enforcement and Applicable 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.[12]

The parties have agreed to settle Doucette'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

---

[9] *Conn. Light & Power Co. v. Sec'y, 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); *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-033, slip op. at 6 (ARB Nov. 10, 1997).

[10] Settlement Agreement, para. 4.

[11] *See Bittner v. Fuel Economy Contracting Co.,* No. 1988-ERA-022, slip op. at 2 (Sec'y June 28, 1990); *Johnson v. Transco Prods., Inc.*, 1985-ERA-007 (Sec'y Aug. 8, 1985).

[12] *See Phillips v. Citizens Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).