



In the Matter of:

**ASSISTANT SECRETARY OF LABOR
FOR OCCUPATIONAL SAFETY &
HEALTH ADMINISTRATION,**

PROSECUTING PARTY,

and

DAVID M. SEXTON,

COMPLAINANT,

v.

**FRONTIER EQUIPMENT RENTALS and
ROBERT K. SPERL,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ARB CASE NO. 08-094

ALJ CASE NO. 2008-STA-029

DATE: July 31, 2008

**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

¹ 49 U.S.C.A. § 31105 (West 2008). The STAA has been amended since Sexton filed his complaint. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). Even if the amendments were applicable to this complaint, they would not affect our decision.

Continued . . .

Administrative Law Judge (ALJ) below issued a Recommended Order Granting Motion to Approve Settlement and Recommending Dismissal (R. O.) on May 16, 2008.

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 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. 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 June 4, 2008. Neither party filed a brief. We therefore deem the settlement unopposed under the terms of the Adjudicatory Settlement and Motion to Approve.

The ARB concurs with the ALJ's determination that the parties' settlement agreement is fair, adequate and reasonable. 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 Sexton's STAA claim ARB No. 08-094, 2008-STA-029.⁷

² 29 C.F.R. Part 1978 (2007).

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

The parties have agreed to settle Sexton's STAA claim. Accordingly, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge