



In the Matter of:

JAMES PEGG,

ARB CASE NO. 08-129

COMPLAINANT,

ALJ CASE NO. 2008-STA-049

v.

DATE: November 4, 2008

**CREST FOAM COMPANY, INC. and
LEGGET & PLATT, INC.,**

RESPONDENTS.

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 James Pegg filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Crest Foam Company, Inc. and Leggett & Platt, Incorporated violated the STAA. OSHA denied Pegg's complaint, and he timely requested a hearing before an Administrative Law Judge pursuant to 29 C.F.R. § 1978.105.

¹ 49 U.S.C.A. § 31105 (West 2008).

² 29 C.F.R. Part 1978 (2007).

While the case was pending before the ALJ, the parties negotiated and executed a Settlement Agreement and General Release of Claims (Agreement), which Pegg and Leggett & Platt signed.³

Under the regulations implementing the STAA, the parties may settle a case at any time after filing objections to OSHA'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." 29 C.F.R. § 1978.111(d)(2).

When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On August 26, 2008, the ALJ issued a Recommended Order Approving Settlement Agreement and Dismissing Complaint (R. D. & O). The ALJ determined that the Agreement constituted a fair, adequate, and reasonable settlement of Pegg's STAA complaint.⁴

The case is now before the Board pursuant to the STAA's automatic review provisions.⁵ The Board "shall issue the final decision and order based on the record and the decision and order of the administrative law judge."⁶ The Board issued a Notice of Review and Briefing Schedule permitting either party to submit briefs in support of or in opposition to the ALJ's order. Neither party submitted a brief pursuant to the Board's notice. We therefore deem the settlement unopposed under its terms.

The Board 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

³ The ALJ states that "[a]t the August 7, 2008 hearing, Respondent's counsel indicated Crest Foam Incorporated's business was purchased by Leggett & Platt, Inc." R. D. & O. at 1.

⁴ R. D. & O. at 4.

⁵ See 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1).

⁶ 29 C.F.R. § 1978.109(c); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050 (ARB Sept. 26, 2001).

⁷ See Agreement, paras. 2, 6.

terms of the Agreement pertaining to Pegg's STAA claim, ARB No. 08-129, 2008-STA-049.⁸

Furthermore, if the provisions in paragraph 7 and 9 of the Agreement were to preclude Pegg 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

Paragraph 16 of the Agreement provides that the Agreement shall be construed and governed by the laws of the Commonwealth of Massachusetts. We interpret this "choice of 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

Finally, the Agreement provides that the parties shall keep the terms of the settlement confidential.¹¹ 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), 5 U.S.C.A. § 552 (West 2007). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹² Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.¹³

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

⁹ *Connecticut 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); *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-033, slip op. at 6 (ARB Nov. 10, 1997).

¹⁰ See *Phillips v. Citizens' Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).

¹¹ Agreement, paras. 7, 8, 10.

¹² *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, -006, slip op. at 2 (ARB June 24, 1996).

¹³ 29 C.F.R. § 70 *et seq.* (2007).

The parties have certified that the Agreement constitutes the entire settlement with respect to Pegg's STAA claim.¹⁴ Accordingly, we **APPROVE** the ALJ's order and **DISMISS** the complaint with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

¹⁴ Agreement, para. 17.