



In the Matter of:

LESLIE LOWENTHAL,

ARB CASE NO. 09-027

COMPLAINANT,

ALJ CASE NO. 2008-STA-014

v.

DATE: May 29, 2009

RISELING MOTOR EXPRESS, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C.A. § 31105 (West 1997), and implementing regulations at 29 C.F.R. Part 1978 (2008). On May 23, 2007, the Complainant, Leslie Lowenthal, filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that the Respondent, Riseling Motor Express, Inc., violated the STAA when it terminated his employment because he took himself out of service when he was ill.

OSHA initially denied Lowenthal's STAA complaint and Lowenthal timely requested a hearing pursuant to 29 C.F.R. § 1978.105. Prior to the scheduled hearing, the parties negotiated and executed a Settlement Agreement and General Release, which both Lowenthal and Michael E. Willman, Riseling's president, signed. The Settlement Agreement was filed with the Administrative Law Judge (ALJ), along with Lowenthal's Motion to Approve Settlement and Dismiss.

On November 21, 2008, the ALJ issued a Recommended Order Approving Settlement Agreement and Dismissing Complaint. The ALJ reviewed the parties'

settlement agreement and determined that it constituted a fair, adequate, and reasonable settlement of Lowenthal's STAA complaint and is in the public interest.

The Administrative Review Board "shall issue the final decision and order based on the record and the decision and order of the administrative law judge." 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). On December 2, 2008, 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. Lowenthal's counsel responded, stating that Lowenthal would not be filing a brief. Riseling did not file a response with the Board.

The ARB agrees with the ALJ's determination that the parties' Settlement Agreement constitutes a fair, adequate, and reasonable settlement of Lowenthal's STAA complaint and none of the parties allege otherwise. We note, however, the agreement releases Riseling "from any and all claims . . . of any nature whatsoever." See Settlement Agreement at 1, paragraph 2. Because the Board's authority over settlement agreements is limited to such statutes as are within the Board's jurisdiction and is defined by the applicable statute, we approve only the terms of the agreement pertaining to Lowenthal's STAA claim. *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 certified that the agreement constitutes the entire settlement with respect to Lowenthal's STAA claim. Accordingly, with the reservation noted above limiting our approval to the settlement of Lowenthal's STAA claim, we **APPROVE** the ALJ's order and **DISMISS** the complaint with prejudice.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

WAYNE C. BEYER
Chief Administrative Appeals Judge