



In the Matter of:

SUSAN YANOS,

ARB CASE NO. 09-037

COMPLAINANT,

ALJ CASE NO. 2008-STA-060

v.

DATE: August 27, 2009

KLEIN TRANSPORTATION,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Respondent:

Jill Sebest Welch, Esq., *Barley Snyder, LLC*, Lancaster, Pennsylvania

**FINAL DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT WITH PREJUDICE**

Susan Yanos alleged that Klein Transportation violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),¹ and its implementing

¹ 49 U.S.C.A. § 31105 (West 2008), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). Section 405 of the STAA provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules.

regulations,² when it terminated her employment because she complained about safety issues and alleged OSHA violations.

Following an investigation of the complaint, the Occupational Safety and Health Administration (OSHA) found that there was “clear and convincing’ evidence that the Complainant . . . was terminated by the Respondent . . . for her admitted dishonesty and not for any purported ‘complaints’ protected under Section 31105 of STAA.”³ Accordingly, it was recommended that the complaint be dismissed and that the Secretary make findings referencing the reason for dismissal as non-merit.⁴

Yanos objected to OSHA’s findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).⁵ The ALJ scheduled the case for hearing, but in a teleconference on November 3, 2008, the parties informed the ALJ that they had executed a Settlement Agreement and Joint Stipulation of Dismissal that they forwarded to her along with a copy of the settlement for her review and approval.

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 [ARB] . . . or the ALJ.”⁶ When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On December 15, 2008, the ALJ issued a Recommended Decision and Order (R. D. & O.) dismissing the complaint, finding that “the parties ha[d] settled this matter to their satisfaction.”⁷ The ALJ also found that the parties had stipulated to a dismissal of the matter, with prejudice, with each party to pay its own costs and fees.

The case is now before the ARB pursuant to the STAA’s automatic review provisions.⁸ The ARB “shall issue a final decision and order based on the record and the decision and order of the administrative law judge.”⁹

² 29 C.F.R. Part 1978 (2007).

³ Final Investigative Report, June 16, 2008.

⁴ *Id.*

⁵ *See* 29 C.F.R. § 1978.105.

⁶ 29 C.F.R. § 1978.111(d)(2).

⁷ R. D. & O. at 1.

⁸ 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1).

⁹ 29 C.F.R. § 1978.109(c); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050, slip op. at 2 (ARB Sept. 26, 2001).

On January 2, 2009, the ARB issued a Notice of Review and Briefing Schedule permitting each party to submit a brief in support of or in opposition to the ALJ's order. On January 14, 2009, the Respondent filed a brief in support of the ALJ's recommended order. The Complainant did not file a brief. We therefore deem the settlement unopposed under its terms.

The ALJ did not make a finding regarding whether the parties' settlement agreement constitutes a fair, adequate, and reasonable settlement of Yanos' STAA complaint.¹⁰ Accordingly, we review the settlement to determine whether it does so.

As an initial matter, we note that the settlement agreement may encompass the settlement of matters under laws other than the STAA.¹¹ 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. Therefore, we approve only the terms of the agreement pertaining to Yanos' current STAA case.¹²

The parties have certified that the Agreement constitutes the entire settlement with respect to Yanos' STAA claim.¹³ Accordingly, with the reservation noted above limiting our approval to the settlement of Yanos' STAA claim, we find the agreement to be a fair, adequate, and reasonable settlement of Yanos' STAA complaint. Accordingly, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

¹⁰ 28 C.F.R. §1978.111(d)(2); *see also Poulos v. Ambassador Fuel Oil Co.*, 1986-CAA-001, (Sec'y Order Nov. 2, 1987) in which the Secretary limited review of a settlement agreement to whether the terms of the settlement are a fair, adequate, and reasonable settlement of the complainant's allegations that the respondent violated the STAA.

¹¹ Settlement Agreement and Release para. 2.

¹² *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

¹³ Settlement Agreement and Release para. 8.