



In the Matter of:

CAMERON L. MCCOY,

ARB CASE NO. 09-045

COMPLAINANT,

ALJ CASE NO. 2008-STA-031

v.

DATE: March 19, 2009

ACI MOTOR FREIGHT, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Paul O. Taylor, Esq., *Truckers Justice Center*, Burnsville, Minnesota.

For the Respondent:

Terry J. Torline, Esq., *Martin, Pringle, Oliver, Wallcae & Bauer LLP*, Wichita, Kansas

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

Cameron L. McCoy complained that ACI Motor Freight, Inc. violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),¹ and its implementing regulations,² when it terminated his employment in

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

retaliation for his efforts to enforce Department of Transportation regulations dealing with random drug testing. Following an investigation of this complaint, the Occupational Safety and Health Administration (OSHA) concluded that there was no reasonable cause to believe that ACI violated the STAA when it terminated McCoy's employment. Accordingly, OSHA dismissed the complaint.

McCoy objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).³ The ALJ conducted a hearing and ultimately concluded that McCoy carried his burden of proving that ACI terminated his employment in retaliation for McCoy's protected activity. Accordingly, the ALJ ordered ACI to remove from his employment file any reference to his protected activity and discharge, to reinstate McCoy to his former position, to compensate McCoy for his loss of wages and auto expenses, to pay punitive and emotional damages, to pay interest on back wages, and to post a copy of his decision and order at all of ACI's terminals for ninety days.

The case is now before the ARB pursuant to the STAA's automatic review provisions.⁴ The ARB "shall issue the final decision and order based on the record and the decision and order of the administrative law judge."⁵

The ARB issued a Notice of Review and Briefing Schedule reminding the parties of their right to submit briefs in support of or in opposition to the ALJ's order. On February 27, 2009, McCoy filed a settlement agreement signed by the parties and Complainant's Motion to Approve Settlement Agreement.

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]"⁶ Accordingly, we review the settlement to determine whether the settlement agreement constitutes a fair, adequate, and reasonable settlement of McCoy's STAA complaint.

report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules.

² 29 C.F.R. Part 1978 (2007).

³ See 29 C.F.R. § 1978.105.

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

⁵ 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).

⁶ 29 C.F.R. § 1978.111(d)(2).

Initially we note that the settlement 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. Furthermore, it is limited to cases over which we have jurisdiction. Therefore, we approve only the terms of the agreement pertaining to McCoy's current STAA case.⁸

With this reservation limiting our approval to the settlement of McCoy's STAA claim, we find the agreement to be a fair, adequate, and reasonable settlement of McCoy's STAA complaint. Accordingly, we **APPROVE** the settlement and **DISMISS** the complaint with prejudice.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁷ Confidential Settlement Agreement and Release of Claims, para. B.

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