



In the Matter of:

JOHN H. ATKINS,

ARB CASE NO. 09-086

COMPLAINANT,

ALJ CASE NO. 2008-STA-063

v.

DATE: June 30, 2009

CAN-2 TRUCKING,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

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

John Atkins originally filed a complaint with the State of Oregon Bureau of Labor & Industries (BOLI) alleging that the Respondent, Can-2 Trucking discharged him because he voiced concerns about Can-2's violation of Department of Transportation safety regulations. Concluding that it did not have jurisdiction of Atkins's complaint, BOLI referred his complaint to the United States Department of Labor's Occupational Safety and Health Administration (OSHA) for adjudication under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA)¹ and its implementing regulations,² OSHA dismissed the complaint after its investigator's attempt to interview Atkins regarding his complaint was unsuccessful.³

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.

² 29 C.F.R. Part 1978 (2007).

Atkins objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).⁴ While the case was pending before the ALJ, the parties submitted a Release and Settlement Agreement. The ALJ issued an order recommending approval of the settlement agreement and dismissing the case on April 17, 2009.

The case is now before the Administrative Review Board (ARB) pursuant to the STAA's automatic review provisions.⁵ The ARB "shall issue the final decision and order based on the record and the decision and order of the administrative law judge."⁶

The STAA's implementing regulations establish the briefing schedule for briefs in support of or in opposition to an administrative law judge's recommended decision and order.⁷ According to the regulations the parties may file briefs with the Board within thirty days of the date of the judge's decision.⁸ Atkins filed a Brief in Support of [the ALJ's] Recommendation. Can-2 did not file a brief with the Board. We therefore deem the settlement unopposed under its terms.

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"⁹ Accordingly, we review the settlement to determine whether the settlement agreement constitutes a fair, adequate, and reasonable settlement of Atkins's STAA complaint.

Initially we note that the settlement agreement may encompass the settlement of matters under laws other than the STAA.¹⁰ The Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by

³ Secretary's Findings at 1 (July 31, 2008).

⁴ See 29 C.F.R. § 1978.105.

⁵ 49 U.S.C.A. § 31105(b)(2)(C); see 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, slip op. at 2 (ARB Sept. 26, 2001).

⁷ 29 C.F.R. § 1978.109(c)(2).

⁸ *Id.*

⁹ 29 C.F.R. § 1978.111(d)(2).

¹⁰ Release and Settlement Agreement, para. 2.

the applicable statute. Therefore, we approve only the terms of the agreement pertaining to Atkins's current STAA case.¹¹

With this reservation limiting our approval to the settlement of Atkins's STAA claim, we find the agreement to be a fair, adequate, and reasonable settlement of that 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

¹¹ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).