



**In the Matter of:**

**HOWARD VINCENT KAROLY,**  
**COMPLAINANT,**

**v.**

**BRINK'S INCORPORATED,**  
**RESPONDENT.**

**ARB CASE NO. 09-088**

**ALJ CASE NO. 2005-STA-010**

**DATE: March 8, 2011**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Paul M. Igasaki, *Chief Administrative Appeals Judge* and Joanne Royce, *Administrative Appeals Judge***

**FINAL DECISION AND ORDER APPROVING SETTLEMENT  
AND DISMISSING APPEAL**

The Complainant, Howard Vincent Karoly, alleged that Brink's Inc., violated the employee protection provisions of the Surface Transportation Assistance Act (STAA or Act) of 1982, as amended and re-codified, and its implementing regulations, when Brink's terminated his employment in retaliation for protected activities.<sup>1</sup> Following an investigation of the complaint, the Occupational Safety and Health Administration (OSHA) dismissed Karoly's complaint.<sup>2</sup>

Karoly objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).<sup>3</sup> The ALJ scheduled the case for hearing, but dismissed the complaint on October 19, 2006, because the parties filed a notice of voluntary dismissal. The ALJ forwarded the case to the Board. We issued an order requiring the parties to submit a copy of the settlement agreement, on which the dismissal was based, signed by both

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<sup>1</sup> 49 U.S.C.A. § 31105 (Thomson/West Supp. 2009); 29 C.F.R. Part 1978 (2009).

<sup>2</sup> OSHA Findings (Nov. 17, 2004).

<sup>3</sup> See 29 C.F.R. § 1978.105

parties.<sup>4</sup> After the parties failed to submit the settlement agreement, we remanded for a hearing or completion of the settlement agreement.<sup>5</sup>

On remand, the ALJ received a copy of the parties' settlement agreement and reviewed it. The ALJ found that the parties' settlement agreement constitutes a fair, adequate, and reasonable settlement of Karoly's STAA complaint.<sup>6</sup>

The case is now before the ARB pursuant to the STAA's automatic review provisions.<sup>7</sup> The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge."<sup>8</sup>

The ALJ's decision and the record, including the settlement agreement have been reviewed. We note that while the settlement agreement encompasses the settlement of matters under statutes other than the STAA, 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 only approve the terms of the agreement pertaining to Karoly's current STAA case.<sup>9</sup>

Additionally, the Settlement Agreement contains confidentiality and non-disparagement clauses.<sup>10</sup> The ARB notes that the parties' submissions, including the Settlement Agreement, become part of the record of the case and are subject to the Freedom of Information Act

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<sup>4</sup> Under the STAA's implementing regulations, 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." 29 C.F.R. § 1978.111(d)(2).

<sup>5</sup> *Karoly v. Brink's Inc.*, ARB No. 07-019, ALJ No. 2005-STA-010 (ARB Sept. 29, 2008).

<sup>6</sup> 29 C.F.R. §1978.111(d)(2); *See also Poulos v. Ambassador Fuel Oil Co.*, 1986-CAA-001 (Sec'y Nov. 2, 1987) (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).

<sup>7</sup> 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1).

<sup>8</sup> 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).

<sup>9</sup> *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

<sup>10</sup> Settlement, Release, Covenant Not to Sue, Waiver, and Non-Disclosure Agreement at paras. 6, 7, 9.

(FOIA).<sup>11</sup> FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act.<sup>12</sup> Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.<sup>13</sup> Further, if the confidentiality and non-disparagement clauses were interpreted to preclude Karoly from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore constitute unacceptable “gag” provisions.<sup>14</sup>

Finally, the Settlement Agreement provides that it shall be governed by and construed in conformance with the laws of the State of California.<sup>15</sup> We construe 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.<sup>16</sup>

The parties have certified that the Settlement Agreement constitutes the entire understanding between Karoly and Brink’s.<sup>17</sup> After carefully reviewing the Settlement Agreement, we agree with the ALJ’s finding that it constitutes a fair, adequate, and reasonable settlement of Karoly’s STAA complaint. Accordingly, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

**SO ORDERED.**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**JOANNE ROYCE**  
**Administrative Appeals Judge**

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<sup>11</sup> 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2010).

<sup>12</sup> *Norton v. Uni.-Group, Inc.*, ARB No. 08-079, ALJ Nos. 2007-STA-035, -036, slip op. at 3 (ARB May 30, 2008) (citing *Coffman v. Alyeska Pipeline Serv. Co. & Artic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, -006, slip op. at 2 (ARB June 24, 1996)).

<sup>13</sup> 29 C.F.R. § 70 *et seq.* (2010).

<sup>14</sup> *Kingsbury v. Gordon Express, Inc.*, ARB No. 07-047, ALJ No. 2006-STA-024, slip op. at 2-3 (ARB Aug. 31, 2007).

<sup>15</sup> Settlement, Release, Covenant Not to Sue, Waiver, and Non-Disclosure Agreement at para. 15.

<sup>16</sup> *Trucker v. St. Cloud Meat & Provisions, Inc.*, ARB No. 08-080, ALJ No. 2008-STA-023, slip op. at 3 (ARB May 30, 2008).

<sup>17</sup> Settlement, Release, Covenant Not to Sue, Waiver, and Non-Disclosure Agreement at para. 14.