



In the Matter of:

LORI DICKEY,

ARB CASE NO. 09-093

COMPLAINANT,

ALJ CASE NO. 2006-STA-027

v.

DATE: June 18, 2009

WEST SIDE TRANSPORT, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

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

The Complainant, Lori Dickey, alleged that the Respondent, West Side Transport, Inc., violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),¹ and its implementing regulations,² when it terminated her employment because she complained that dangerous fumes were leaking into her truck. Following an investigation, the Regional Administrator for the Occupational Safety and Health Administration (OSHA) dismissed the complaint.³ Dickey objected to

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).

³ *Dickey v. West Side Transp., Inc.*, 2006-STA-027, slip op. at 1 (Sept. 15, 2006)(R. D. & O. I).

OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).⁴

The ALJ found in Dickey's favor and forwarded the case to the Administrative Review Board for review pursuant to the STAA's automatic review provisions.⁵ The Board remanded the case to the ALJ to further consider the issue of damages.⁶ Upon remand, the parties filed a Settlement and Release Agreement with the ALJ for his review and recommended approval.⁷

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."⁸ When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On May 1, 2009, the ALJ issued a Recommended Order Approving Settlement Agreement.⁹ The ALJ determined that the settlement agreement constituted a fair, adequate, and reasonable settlement of Dickey's STAA complaint.¹⁰

The case is now before the ARB once again pursuant to the STAA's automatic review provisions.¹¹ The ARB "shall issue the final decision and order based on the record and the decision and order of the administrative law judge."¹² The ARB 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. Both parties indicated that they did not wish to file briefs. We therefore deem the settlement unopposed under its terms.

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 *Dickey v. West Side Transp.*, ARB No. 06-150, ALJ No. 2006-STA-027 (May 29, 2008)(R. D. & O. II).

⁷ R. D. & O. II at 1.

⁸ 29 C.F.R. § 1978.111(d)(2).

⁹ R. D. & O. II at 1.

¹⁰ *Id.*

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

¹² 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).

The ARB agrees with the ALJ's determination that the parties' settlement agreement constitutes a fair, adequate, and reasonable settlement of Dickey's STAA complaint and none of the parties alleges otherwise. However, review of the agreement reveals that it may encompass the settlement of matters under laws other than the STAA.¹³ 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 Dickey's current STAA case.¹⁴

The parties have certified that the Agreement constitutes the entire settlement with respect to Dickey's STAA claim.¹⁵ Accordingly, with the reservation noted above limiting our approval to the settlement of Dickey's STAA claim, 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

¹³ Settlement and Release Agreement, para. 2.

¹⁴ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

¹⁵ Settlement and Release Agreement, para. 11.