



In the Matter of:

HAROLD JOINER,

ARB CASE NO. 09-106

COMPLAINANT,

ALJ CASE NO. 2008-STA-034

v.

DATE: July 29, 2009

**TFE LOGISTICS/INTERNATIONAL
MANAGEMENT SERVICES CO.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

William B. Ryan, Esq., *Donati Law Firm, LLP*, Memphis Tennessee; Paul O. Taylor, Esq., *Truckers Justice Center*, Burnsville, Minnesota

For the Respondent:

Nicholas E. Bragorgos, Esq., *McNabb, Bragorgos & Burgess, PLLC*, Memphis, Tennessee

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

Harold Joiner complained that TFE Logistics/International Management Company (TFE) violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),¹ and its implementing regulations,² when

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,

it terminated his employment for what Joiner claims is retaliation for refusing to violate Department of Transportation hours of service requirements. Following an investigation of this complaint, the Occupational Safety and Health Administration (OSHA) concluded that there was no reasonable cause to believe that TFE violated the STAA when it terminated Joiner's employment. Accordingly, OSHA dismissed the complaint.

Joiner objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).³ The ALJ assigned to the case scheduled a hearing, but before the hearing took place, the parties reached a settlement agreement. The parties submitted the settlement agreement to the ALJ, and he issued an order recommending approval of the settlement agreement and dismissing the case on June 16, 2009.

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. Neither party filed a brief with the Board.

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 Joiner's STAA complaint.

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 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. Therefore, we approve only the terms of the agreement pertaining to Joiner's current STAA case.⁸

Finally, the Agreement provides that the parties shall keep the terms of the settlement confidential.⁹ The Board notes that the parties' submissions, including the Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552 (West 2007). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹⁰ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.¹¹

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

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

WAYNE C. BEYER
Chief Administrative Appeals Judge

⁷ Complete and Permanent Release at 1.

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

⁹ Complete and Permanent Release at 2.

¹⁰ *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, -006, slip op. at 2 (ARB June 24, 1996).

¹¹ 29 C.F.R. § 70 *et seq.* (2007).