



In the Matter of:

JOHN J. MCLEAN III,

ARB CASE NO. 09-111

COMPLAINANT,

ALJ CASE NO. 2008-STA-056

v.

DATE: August 18, 2009

**CALEX EXPRESS, INC., CALEX
LOGISTICS, and BLUE HEN LINES,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

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

For the Respondent:

**Jarrett J. Ferentino, Esq., *Pugliese, Finnegan, & Shaffer, LLC*, Kingston,
Pennsylvania**

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

John McLean complained that Calex Express, Calex Logistics, and Blue Hen Lines (Calex) violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),¹ and its implementing regulations,² when it terminated

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.

his employment and blacklisted him from subsequent employment because he protested that Calex engaged in practices that violated federal safety regulations. Following an investigation of this complaint, the Occupational Safety and Health Administration (OSHA) concluded that McLean's complaint was untimely as it was filed more than 180 days after his termination.³ Accordingly, OSHA dismissed the complaint.

McLean objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).⁴ 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 24, 2009.

The case is now before the 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 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]"⁷ Accordingly, we review the settlement to determine whether the settlement agreement constitutes a fair, adequate, and reasonable settlement of McLean's STAA complaint.

Initially we note that the settlement agreement may encompass the settlement of matters under laws other than the STAA.⁸ The Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by

² 29 C.F.R. Part 1978 (2007).

³ 49 U.S.C.A. § 31105(b)(1).

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. § 1978.111(d)(2).

⁸ Settlement Agreement and Release of Claims, paras. A, B.

the applicable statute. Therefore, we approve only the terms of the agreement pertaining to McLean's current STAA case.⁹

Additionally, the Agreement provides that the parties shall keep the terms of the settlement confidential.¹⁰ 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).¹¹ FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹² Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.¹³

Finally, we construe paragraph M, the governing 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.¹⁴

As construed, we find the agreement to be a fair, adequate, and reasonable settlement of McLean'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

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

¹⁰ Settlement Agreement and Release of Claims, para. G.

¹¹ 5 U.S.C.A. § 552 (West 2007).

¹² *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).

¹³ 29 C.F.R. § 70 *et seq.* (2007).

¹⁴ *See Phillips v. Citizens Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).