



In the Matter of:

JODIE K. COOGLER II,

ARB CASE NO. 09-133

COMPLAINANT,

ALJ CASE NO. 2009-STA-023

v.

DATE: July 30, 2010

SCHNEIDER NATIONAL CARRIERS, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

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

The Complainant, Jodie Coogler, alleged that Schneider National Carriers, 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 Schneider terminated his employment in retaliation for protected activities. 49 U.S.C.A. § 31105 (Thomson/West Supp. 2010); 29 C.F.R. Part 1978 (2009).

Following an investigation of the complaint, the Occupational Safety and Health Administration (OSHA) found that a preponderance of the evidence indicated that Schneider terminated Coogler's employment because he failed to return to work and not as a result of any STAA-protected activity. OSHA Findings (Feb. 4, 2009).

Coogler objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ). *See* 29 C.F.R. § 1978.105. The ALJ scheduled the case for hearing, but on August 11, 2009, Coogler filed a Motion to Withdraw. The motion stated that the matter had been stayed before the ALJ pending the outcome of a settlement conference and that the parties had reached an amicable resolution of their disputes. Coogler

requested that the ALJ issue an order permitting him “to withdraw his objections and appeal with prejudice and to order that the Secretary’s Findings of February 4, 2009 now stand.”

The ALJ issued a Recommended Decision and Order (R. D. & O.) granting Coogler’s motion to withdraw objections. R. D. & O. at 1. The STAA’s implementing regulations provide that 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)(emphasis added). Nevertheless, the ALJ neither requested nor reviewed the parties’ settlement agreement.

The case is now before the ARB pursuant to the STAA’s automatic review provisions. 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1). The ARB “shall issue a final decision and order based on the record and the decision and order of the administrative law judge.” 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).

Upon review of the record it became apparent that the parties had not submitted their settlement agreement for approval pursuant to 29 C.F.R. § 1978.111(d)(2). Accordingly, the Board ordered the parties to submit their settlement agreements for review. The parties submitted a Confidential Settlement Agreement and Release to the Board on July 16, 2010.

We review the settlement to determine whether it is fair, adequate, and reasonable. *See Poulos v. Ambassador Fuel Oil Co.*, 1986-CAA-001, slip op. at 2 (Sec’y Order 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).

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 Coogler’s current STAA case, ARB No. 09-133, ALJ No. 2009-STA-023. *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

We also note that while the Confidential Settlement Agreement and Release provides that the settlement terms will be confidential, 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 (Thomson/West 1996 & Supp. 2010). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act. *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). Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests. 29 C.F.R. § 70 *et seq.* (2009).

Furthermore, if the confidentiality agreement were interpreted to preclude Coogler from communicating with federal or state enforcement agencies concerning alleged violations of law, it would violate public policy and therefore constitute an unacceptable “gag” provision. *Conn. Light & Power Co. v. Sec’y, U.S. Dep’t of Labor*, 85 F.3d 89, 95-96 (2d Cir. 1996) (employer engaged in unlawful discrimination by restricting complainant’s ability to provide regulatory agencies with information; improper “gag” provision constituted adverse employment action); *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-033, slip op. at 6 (ARB Nov. 10, 1997).

Finally, the Confidential Settlement Agreement and Release provides that the release shall be construed in accordance with the laws of the State of Illinois. 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. *Trucker v. St. Cloud Meat & Provisions, Inc.*, ARB No. 08-080, ALJ No. 2008-STA-023, slip op. at 3 (ARB May 30, 2008).

We have carefully reviewed the parties’ settlement agreement and find that it constitutes a fair, adequate, and reasonable settlement of Coogler’s STAA complaint and is not contrary to the public interest. 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