



In the Matter of:

JERALD KNOWLES,
COMPLAINANT,

v.

BARRILLEAUX, INC.,
RESPONDENT.

ARB CASE NO. 09-138

ALJ CASE NO. 2009-STA-037

DATE: November 25, 2009

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Ellen Cook Sacco, Esq., *Hulse Stucki PLLC*, Irving, Texas

For the Respondent:

Amanda J. Flanagan, Esq., *Sheehy, Ware & Pappas, P.C.*, Houston, Texas

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

Jerald “Jerry” Knowles alleged that Barrilleaux, Inc. violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA)¹ and its implementing

¹ 49 U.S.C.A. § 31105 (Thomson/West 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.

regulations,² when it terminated his employment after he refused to drive a vehicle hauling industrial waste material without the proper permits.³

After investigating the complaint, the Occupational Safety and Health Administration (OSHA) found that a preponderance of the evidence indicated that Knowles's protected activity was not a contributing factor in his termination.⁴ OSHA concluded that Barrilleaux terminated Knowles's employment because 1) he continually refused to drill mud in spite of evidence demonstrating that it was not hazardous, 2) he refused to drill mud in spite of evidence that there were no permitting or placarding requirements, and 3) he engaged in unacceptable behavior by spraying a co-worker with a pressurized water hose.⁵ Accordingly, OSHA dismissed Knowles's complaint.⁶

Knowles objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).⁷ The ALJ scheduled the case for hearing, but on August 5, 2009, the parties informed the ALJ that they had reached a Settlement Agreement in the matter. The parties forwarded a fully executed Settlement Agreement to the ALJ for his review and approval.

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.

Upon review, the ALJ noted that the settlement may encompass matters under laws other than the STAA. He also noted that while the Agreement provides that the settlement terms would be confidential, the Agreement would become part of the record, and therefore would be "subject to the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552 (West 2007)."⁹ Ultimately, the ALJ found that the agreement "constitutes a fair, adequate and reasonable

² 29 C.F.R. Part 1978 (2009).

³ Complaint, Exhibit A, at 1 (Oct. 31, 2008).

⁴ Secretary's Findings at 1 and 3 (Mar. 24, 2009).

⁵ *Id.* at 2.

⁶ *Id.* at 3.

⁷ *See* 29 C.F.R. § 1978.105.

⁸ 29 C.F.R. § 1978.111(d)(2).

⁹ R. D. & O. at 2.

settlement of the complaint and is in the public interest,”¹⁰ and he issued a Recommended Decision and Order (R. D. & O.) dismissing the complaint.

The case is now before the ARB pursuant to the STAA’s automatic review provisions.¹¹ The ARB “shall issue a 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 each party to submit a brief in support of or in opposition to the ALJ’s order. Neither party submitted a brief in this matter. We therefore deem the settlement unopposed under its terms.

As an initial matter, and as noted by the ALJ, the settlement agreement may encompass the settlement of matters under laws other than the STAA.¹³ However, 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 Knowles’s current STAA case.¹⁴ We also concur in the ALJ’s statement regarding the applicability of the FOIA to the settlement agreement.¹⁵ Finally, we construe paragraph 10, 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.¹⁶

The ALJ found that the parties’ settlement agreement constitutes a fair, adequate, and reasonable settlement of Knowles’s STAA complaint.¹⁷ The parties have agreed that the

¹⁰ R. D. & O. at 2.

¹¹ 49 U.S.C.A. § 31105(b)(2)(C), 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).

¹³ Settlement Agreement and Release 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 *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).

¹⁶ *See Phillips v. Citizens Ass’n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec’y Nov. 4, 1991).

¹⁷ 29 C.F.R. §1978.111(d)(2); *see also Poulos v. Ambassador Fuel Oil Co.*, 1986-CAA-001, (Sec’y Nov. 2, 1987) in which the 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.

Settlement Agreement contains the entire agreement between them.¹⁸ After reviewing the record, the ALJ's recommended decision and order, and the Settlement Agreement, we agree with the ALJ that the agreement is a fair, adequate, and reasonable settlement of Knowles's STAA complaint. Accordingly, as construed, we accept the ALJ's recommendation to **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

WAYNE C. BEYER
Chief Administrative Appeals Judge

¹⁸ Settlement Agreement para. 13.