U.S. Department of Labor   Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

DUANE BOHN,   ARB CASE NO. 10-006

          COMPLAINANT,   ALJ CASE NO. 2009-STA-008

      v.   DATE: November 20, 2009

PLAINS MARKETING, LP,

          RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT WITH PREJUDICE

        Duane Bohn complained that Plains Marketing LP violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),[1] and its implementing regulations,[2] when it terminated his employment because he reported violations of Department of Transportation regulations concerning the transport of hazardous substances. Following an investigation of this complaint, the Occupational Safety and Health Administration (OSHA) concluded that there was no reasonable cause

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[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.

[2]   29 C.F.R. Part 1978 (2009).

to believe that Plains Marketing violated the STAA when it terminated Bohn's employment. Accordingly, OSHA dismissed the complaint.

Bohn 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 October 6, 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. Plains Marketing filed a letter indicating it would not file a brief.

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 Bohn's STAA complaint.

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 Bohn's current STAA case.[8]

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[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).

[7]   Settlement Agreement and Release paras. 1, 2.

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

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.[9]

As so construed, we find the agreement to be a fair, adequate, and reasonable settlement of Bohn's STAA complaint. Accordingly, we **APPROVE** the settlement and **DISMISS** the complaint with prejudice.

     SO ORDERED.

                              WAYNE C. BEYER
                              Chief Administrative Appeals Judge

                              OLIVER M. TRANSUE
                              Administrative Appeals Judge

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