



In the Matter of:

JASON MYRICK,

ARB CASE NO. 10-012

COMPLAINANT,

ALJ CASE NO. 2009-STA-057

v.

DATE: January 13, 2010

**BOISE PACKAGING & NEWSPRINT,
BOISE, INC., BOISE CASCADE, LLC,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Erica Birch, Esq., *Strindbeg & Scholnick, LLC*, Boise, Idaho

For the Respondents:

Robert R. Ball, Esq., *Boise, Inc. Legal Department*, Boise, Idaho

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

The Complainant, Jason Myrick, alleged that the Respondent, Boise Cascade, LLC, d/b/a Boise, Inc., 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 and blacklisted him after he raised safety concerns.³

¹ 49 U.S.C.A. § 31105 (Thomson/West 2007 & Supp. 2008). Section 405 of the STAA provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules.

² 29 C.F.R. Part 1978 (2009).

³ Complaint at 1 (Dec. 12, 2008).

After investigating the complaint, the Regional Administrator, Seattle, Washington, Occupational Safety and Health Administration (OSHA) determined that a preponderance of the evidence supports the Respondent's position that Myrick's protected activity was not a contributing factor in the decision to terminate his employment.⁴ OSHA concluded that the Respondent terminated Myrick's employment because 1) he was dishonest with the Respondent, 2) the Respondent had warned him about the consequences of being dishonest, and 3) Myrick was dishonest again. OSHA determined that Myrick had "acknowledged that he was dishonest, but later in his interview with OSHA, he denied being dishonest. [Myrick's] conduct in this regard unfortunately damages his credibility."⁵ Accordingly, OSHA dismissed Myrick's complaint.⁶

Myrick 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 a November 4, 2009 hearing, but on October 7, 2009, the parties informed the ALJ that they had reached a Settlement Agreement in the matter. The parties forwarded a fully executed "Settlement Agreement and General Release" to the ALJ for his review and approval.⁸

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."⁹ When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement.

On October 21, 2009, the ALJ issued a Recommended Decision and Order Dismissing Complaint (R. D. & O.). Upon review, the ALJ found the settlement to be "fair, reasonable, and adequate."¹⁰ Thus, the ALJ determined that the settlement

⁴ Secretary's Findings at 4 (June 4, 2009).

⁵ *Id.*

⁶ *Id.*

⁷ See 29 C.F.R. § 1978.105; Request for Hearing dated July 6, 2009.

⁸ Settlement Agreement and General Release dated October 5, 2009 (settlement agreement).

⁹ 29 C.F.R. § 1978.111(d)(2).

¹⁰ R. D. & O. at 2.

“constitutes a fair, adequate and reasonable settlement of the complaint and is in the public interest.”¹¹

The case is now before the ARB pursuant to the STAA’s automatic review provisions.¹² The ARB “shall issue a final decision and order based on the record and the decision and order of the administrative law judge.”¹³

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.¹⁴ Neither party submitted a brief in this matter. We therefore deem the settlement unopposed under its terms.

Review of the settlement agreement reveals that it may encompass the settlement of matters under laws other than the STAA.¹⁵ The Board’s authority over settlement agreements is limited to the statutes that are within its jurisdiction as defined by the applicable statute. Therefore, we approve only the terms of the agreement pertaining to Myrick’s current STAA case.¹⁶

Additionally, the agreement contains a confidentiality clause providing that the parties shall keep the terms of the settlement confidential, except as required by process of law.¹⁷ The ARB 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).¹⁸ FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹⁹ Department of Labor regulations provide specific procedures

¹¹ *Id.*

¹² 49 U.S.C.A. § 31105(b)(2)(C), 29 C.F.R. § 1978.109(c)(1).

¹³ 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).

¹⁴ ARB’s November 3, 2009 Notice of Review and Briefing Schedule.

¹⁵ Settlement Agreement at 1-2 para. 3.

¹⁶ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

¹⁷ Settlement Agreement at 3 para. 8.

¹⁸ 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2008).

¹⁹ *Norton v. Uni. Group, Inc.*, ARB No. 08-079, ALJ No. 2007-STA-036, slip op. at 3 (ARB May 30, 2008.).

for responding to FOIA requests and for appeals by requestors from denials of such requests.²⁰ If the confidentially agreement were interpreted to preclude Myrick 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.²¹

Finally, we construe paragraph 22, 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.²²

The parties have agreed that the Settlement Agreement constitutes the entire agreement between them.²³ 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 Myrick’s STAA complaint.²⁴ None of the parties alleges otherwise. Accordingly, as construed, we accept the ALJ’s recommendation to **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

²⁰ *Id.*

²¹ *Kingsbury v. Gordon Express, Inc.*, ARB No. 07-047, ALJ No. 2006-STA-024, slip op. at 2-3 (ARB Aug. 31, 2007).

²² *Trucker v. St. Cloud Meat & Provisions, Inc.*, ARB No. 08-080, ALJ No. 2008-STA-023, slip op. at 3 (ARB May 30, 2008).

²³ Settlement Agreement at 6 para. 20.

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