U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

ASSISTANT SECRETARY OF LABOR FOR OCCUPATIONAL SAFETY AND HEALTH,	**ARB CASE NO. 10-019**
	ALJ CASE NO. 2009-STA-041
PROSECUTING PARTY,	**DATE: December 8, 2009**

and

SIGIFREDO CORONA,

COMPLAINANT,

v.

UNITED PARCEL SERVICE, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT WITH PREJUDICE

The Complainant, Sigifredo Corona, alleged that United Parcel Service, Inc. (UPS) 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 refused to drive a vehicle due to fatigue and illness.[3]

---

[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. The STAA has been

Following an investigation of the complaint, the Occupational Safety and Health Administration (OSHA) found that a preponderance of the evidence indicated that UPS violated the STAA when it terminated Corona's employment.[4] Accordingly, OSHA issued a preliminary order that UPS immediately reinstate Corona; pay Corona back wages, compensatory damages, punitive damages, and interest; expunge adverse references from Corona's personnel records relating to the discharge; refrain from making any future negative references about Corona relating to the discharge in any requests for employment references; and post an informational notice to all its employees acknowledging UPS's obligations under the STAA.[5]

UPS objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).[6] The ALJ scheduled the case for hearing, but on October 2, 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 her review and approval.

Under the STAA's implementing regulations, 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."[7] When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. The ALJ issued a Recommended Decision and Order (R. D. & O.) dismissing the complaint, finding that the agreement did not appear inadequate or procured by duress.[8]

---

amended since Corona filed his complaint. See Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). We need not decide here whether the amended provisions are applicable to this complaint because even if the amendments applied, they are not relevant to the settlement of STAA cases and thus would not affect our decision.

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

[3] OSHA Notice of Complaint at 1 (Nov. 21, 2006).

[4] Secretary's Findings at 2 (Apr. 7, 2009).

[5] *Id.* at 3.

[6] *See* 29 C.F.R. § 1978.105.

[7] 29 C.F.R. § 1978.111(d)(2).

[8] R. D. & O. at 1.

The case is now before the ARB pursuant to the STAA's automatic review provisions.[9] The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge."[10]

Although 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, none of the parties submitted briefs. We therefore deem the settlement unopposed under its terms.

The ALJ did not make a finding regarding whether the parties' settlement agreement constitutes a fair, adequate, and reasonable settlement of Corona's STAA complaint.[11] Accordingly, we review the settlement to determine whether it does so.

The parties have certified that the Agreement constitutes the entire settlement with respect to Corona's STAA claim.[12] They have agreed that by signing the Settlement Agreement each party states that he or she has read the Agreement, has had an opportunity to review it with his or her attorney, and has fully understood and agreed with its contents.[13]

We have carefully reviewed the parties' Settlement Agreement and determined that it constitutes a fair, adequate and reasonable settlement of Corona's STAA complaint and is in the public interest. Accordingly, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

---

[9] 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1).

[10] 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).

[11] 28 C.F.R. §1978.111(d)(2); *see also Poulos v. Ambassador Fuel Oil Co.*, 1986-CAA-001, (Sec'y Order 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.

[12] Settlement Agreement and Release, para. 8.

[13] Settlement Agreement and Release, para. 7.