



In the Matter of:

J. KEITH EDMISTEN,

ARB CASE NO. 10-020

COMPLAINANT,

ALJ CASE NO. 2009-STA-036

v.

DATE: December 16, 2009

RAY THOMAS PETROLEUM,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

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

The Complainant, J. Keith Edmisten, alleged that Ray Thomas Petroleum (RTP) 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 violate the Federal Motor Carrier Safety Regulations (FMCSR) hours of service rules.³

Following an investigation of the complaint, the Occupational Safety and Health Administration (OSHA) found that there was no reasonable cause to believe that RTP violated

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 or who refuse to operate a vehicle when such operation would violate those rules.

² 29 C.F.R. Part 1978 (2009).

³ Secretary's Findings at 1 (April 17, 2009).

the Act.⁴ OSHA found that there were a considerable number of evidentiary and credibility problems regarding Edmisten's allegations and in his statements.⁵ OSHA stated that Edmisten, among other things, failed to take a mandatory break, intentionally violated proper logging procedures on two days, and inaccurately recorded his start time on one occasion, which would have given Edmisten more pay for breakdown time than the amount to which he was entitled.⁶ Because of the significant credibility issues associated with Edmisten's complaint, OSHA dismissed it.⁷

Edmisten objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).⁸ The ALJ scheduled the case for hearing, but on August 25, 2009, Edmisten informed the ALJ that the parties had settled 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."⁹ 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 contain any provisions that were contrary to law or against public policy.¹⁰ He found that since Edmisten was represented by very able counsel, it was reasonable to presume that the agreement was in Edmisten's best interests.¹¹ He stated that he had no basis to determine whether the agreement was fair or adequate because he had not heard the case.

⁴ *Id.*

⁵ *Id.* at 3.

⁶ *Id.*

⁷ *Id.*

⁸ *See* 29 C.F.R. § 1978.105.

⁹ 29 C.F.R. § 1978.111(d)(2).

¹⁰ R. D. & O. at 1.

¹¹ *Id.*

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

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, neither party submitted a brief. 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 Edmisten's STAA complaint.¹⁴ Accordingly, we review the settlement to determine whether it does so.

As an initial matter, we note that the settlement agreement 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 the Board's jurisdiction as defined by the applicable statute. Therefore, we approve only the terms of the agreement pertaining to Edmisten's current STAA case.¹⁶

The parties acknowledged and agreed that they consulted with attorneys of their own choosing before entering into the Agreement and were given a reasonable period of time within which to consider the Agreement.¹⁷ Additionally, Edmisten's counsel, an experienced litigator under the STAA, represented that the settlement was fair, adequate, and reasonable.

We have carefully reviewed the parties' Settlement Agreement and determined that it constitutes a fair, adequate, and reasonable settlement of Edmisten's STAA complaint and is in

¹² 49 U.S.C.A. § 31105(b)(2)(C); *see* 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 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.

¹⁵ Settlement Agreement and Release, section B.

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 and Release, section K.

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