



**In the Matter of:**

**WESLEY CAGLE,**

**ARB CASE NO. 10-022**

**COMPLAINANT,**

**ALJ CASE NO. 2009-STA-064**

**v.**

**DATE: December 11, 2009**

**LVL, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**FINAL ORDER APPROVING SETTLEMENT  
AND DISMISSING COMPLAINT**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C.A. § 31105 (Thomson/West 1997 & Supp. 2008), and implementing regulations at 29 C.F.R. Part 1978 (2009). On October 22, 2008, Complainant Wesley Cagle filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that the Respondent violated the STAA. Thereafter, OSHA denied Cagle's STAA complaint on July 29, 2009, and Cagle timely requested a hearing pursuant to 29 C.F.R. § 1978.105. Prior to the scheduled hearing, the parties negotiated and executed a Settlement Agreement and Release of Claims, which both Cagle and the vice-president of the Respondent, whose name is not clearly discernable, signed. The Settlement Agreement was filed with the Administrative Law Judge (ALJ) on November 5, 2009, along with Complainant's Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice.

On November 6, 2009, the ALJ issued a Recommended Order Approving Settlement Agreement and Dismissing Complaint. The ALJ reviewed the parties'

settlement agreement and determined that it constitutes a fair, adequate, and reasonable settlement of Cagle's STAA complaint and is in the public interest.

The Administrative Review Board "shall issue the final decision and order based on the record and the decision and order of the administrative law judge." 29 C.F.R. § 1978.109(c); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050 (ARB Sept. 26, 2001). On November 17, 2009, the Board issued a Notice of Review and Briefing Schedule permitting either party to submit briefs in support of or in opposition to the ALJ's order. Both Cagle's and LVL's counsel responded, stating that they would not be filing a brief.

The ARB agrees with the ALJ's determination that the parties' Settlement Agreement constitutes a fair, adequate, and reasonable settlement of Cagle's STAA complaint and none of the parties allege otherwise. As the ALJ noted, however, the agreement releases Respondent "from any and all claims" and "any and all known and unknown claims" under a variety of statutes, in addition to the STAA. Settlement Agreement at 1, Statements of Fact, statement 2; Settlement Agreement at 2-4, Terms and Conditions, Sections 1, 3 – paragraph C. Because the Board's authority over settlement agreements is limited to such statutes as are within the Board's jurisdiction and is defined by the applicable statute, we approve only the terms of the agreement pertaining to Cagle's STAA claim. *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

Furthermore, as the ALJ noted, the agreement includes a confidentiality agreement. Settlement Agreement at 5, Terms and Conditions, Section 8. If the confidentiality agreement were interpreted to preclude Cagle 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. *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-033, slip op. at 6 (ARB Nov. 10, 1997); *Conn. Light & Power Co. v. Sec'y, U.S. Dep't of Labor*, 85 F.3d 89, 95-96 (2d Cir. 1996) (employer engaged in unlawful discrimination by restricting complainant's ability to provide regulatory agencies with information; improper "gag" provision constituted adverse employment action). Moreover, as the ALJ noted, the parties are on notice that the settlement agreement becomes part of the record of the case and is subject to the Freedom of Information Act (FOIA). 5 U.S.C.A. § 552 (West 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests. 29 C.F.R. Part 70 (2009).

Additionally, we construe Sections 12 and 13 of the settlement agreement's Terms and Conditions, the governing law and specified court provisions, 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. *Phillips v. Citizens' Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).

The parties have certified that the agreement constitutes the entire settlement with respect to Cagle's STAA claim. The ARB has reviewed the settlement agreement and finds it fair, adequate, and reasonable. Accordingly, as construed above and limiting our approval to the settlement of Cagle's STAA claim, we **APPROVE** the ALJ's order and **DISMISS** the complaint with prejudice.

**SO ORDERED.**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

**WAYNE C. BEYER**  
**Chief Administrative Appeals Judge**