In the Matter of:

DAVID F. BOLT, **ARB CASE NO. 10-028**

COMPLAINANT, **ALJ CASE NO. 2009-STA-066**

v. **DATE: December 22, 2009**

J & R SCHUGEL TRUCKING, 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 May 7, 2009, Complainant David F. Bolt filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that the Respondent violated the STAA. Thereafter, OSHA denied Bolt's STAA complaint on August 5, 2009, and Bolt 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 Bolt and the Director of Human Resources of the Respondent, whose name is not clearly discernable, signed. The Settlement Agreement was filed with the Administrative Law Judge (ALJ) on November 17, 2009, along with Complainant's Unopposed Motion to Approve Settlement and Dismiss Proceeding.

On November 18, 2009, the ALJ issued a Recommended Order Approving Settlement. The ALJ reviewed the parties' settlement agreement and found the terms of the Settlement Agreement to be fair, adequate, and reasonable.

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 December 2, 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 Bolt's and the Respondent'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 Bolt's STAA complaint and none of the parties allege otherwise. As the ALJ noted, however, the agreement releases Respondent "from all claims of any kind whatsoever" under a variety of statutes, in addition to the STAA, as well as "common law" claims, "tort claims" and "claims for alleged breach of an expressed or implied contract or implied covenant of good faith and fair dealing." Settlement Agreement at 1-2, section B, Release of Claims by Bolt. 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 Bolt'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). Moreover, as the ALJ also stated, we interpret this portion of the agreement as limiting Bolt's right to sue on claims or causes of action arising only out of facts, or any set of facts, occurring before the date of the settlement agreement. Bolt does not waive claims or causes of action that may accrue after the signing of the agreement. *Bittner v. Fuel Economy Contracting Co.*, No. 1988-ERA-022, slip op. at 2 (Sec'y June 28, 1990); *Johnson v. Transco Prods., Inc*., 1985-ERA-007 (Sec'y Aug. 8, 1985).

Furthermore, as the ALJ noted, the agreement includes a confidentiality agreement. Settlement Agreement at 4, section H, Confidentiality. If the confidentiality agreement were interpreted to preclude Bolt 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 indicated, 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, as the ALJ also did, we construe section O of the Settlement Agreement, the "Applicable 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. *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 Bolt'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 Bolt'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