



In the Matter of:

JOHN ARTIS JENKINS, III,

ARB CASE NO. 10-030

COMPLAINANT,

ALJ CASE NO. 2009-STA-016

v.

DATE: December 31, 2009

4-D TRUCKING, INCORPORATED,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Ann Gamboe Hall, Esq., *Pathfinder Legal Services, P.L.C.*, Owosso, Michigan.

For the Respondent:

Kevin J. Roragen, Esq., *Loomis, Ewert, Parsley, Davis & Gotting*, Lansing, Michigan.

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

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 2007 & Supp. 2008), and implementing regulations at 29 C.F.R. Part 1978 (2009).

On December 22, 2008, John Artis Jenkins, III, filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Respondent, 4-D Trucking, Incorporated, forced him to quit his job after refusing to repair his assigned truck in violation of the STAA. OSHA denied Jenkins's complaint on January

8, 2009. He filed objections to the denial and timely requested a hearing pursuant to 29 C.F.R. § 1978.105.

Prior to the scheduled hearing on June 3, 2009, the parties negotiated and executed a Settlement Agreement and Mutual Release, which Jenkins and the president of 4-D Trucking signed on November 10, 2009. The settlement agreement was filed with the Administrative Law Judge (ALJ) along with 4-D's unopposed Stipulation for Settlement.

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." 29 C.F.R. § 1978.111(d)(2); *see* 49 U.S.C.A. § 31105(b)(2)(C).

When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On November 23, 2009, the ALJ issued a Recommended Decision and Order Approving Settlement Agreement and dismissing the complaint with prejudice. The ALJ determined that the settlement agreement constituted a fair, adequate, and reasonable settlement of Jenkins's STAA complaint. Order at 2.

The case is now before the ARB pursuant to the STAA's automatic review provisions. 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1). The ARB "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, slip op. at 2 (ARB Sept. 26, 2001).

The ARB issued a Notice of Review and Briefing Schedule on December 3, 2009, permitting either party to submit briefs in support of or in opposition to the ALJ's order. Jenkins did not respond, and 4-D Trucking indicated that it would not file a brief but agreed with the ALJ's recommendation. We therefore deem the settlement unopposed under its terms.

The ARB agrees with the ALJ's determination that the parties' settlement agreement constitutes a fair, adequate, and reasonable settlement of Jenkins's STAA complaint, and none of the parties alleges otherwise. However, review of the agreement reveals that it may encompass the settlement of matters under laws other than the STAA.

The ARB's authority over settlement agreements is limited to the statutes that are within our jurisdiction as defined by the applicable statute and to cases over which we have jurisdiction. *Bettner v. Crete Carrier Corp.*, ARB No. 07-093, ALJ No. 2006-STA-033, slip op. at 2 (ARB Sept. 27, 2007). Therefore, we approve only the terms of the agreement pertaining to Jenkins's STAA claim, ARB No. 10-030, 2009-STA-016.

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. Agreement at 2. 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), 5 U.S.C.A. § 552 (West 1996 & Supp. 2008).

FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act. *Norton v. Uni Group, Inc.*, ARB No. 08-079, ALJ No. 2007-STA-036, slip op. at 3 (ARB May 30, 2008). Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests. *Id.* If the confidentiality agreement were interpreted to preclude Jenkins 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. *Kingsbury v. Gordon Express, Inc.*, ARB No. 07-047, ALJ No. 2006-STA-024, slip op. at 2-3 (ARB Aug. 31, 2007).

Finally, the settlement provides that the agreement shall be governed and construed under the laws of the state of Michigan. Agreement at 2. We construe this choice of 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. *Trucker v. St. Cloud Meat & Provisions, Inc.*, ARB No. 08-080, ALJ No. 2008-STA-023, slip op. at 3 (ARB May 30, 2008).

The parties have indicated that the agreement constitutes the entire settlement with respect to Jenkins's STAA claim. The ARB finds that the settlement is fair, adequate, and reasonable and in the public interest. Accordingly, with the reservations noted above, we **APPROVE** the ALJ's recommended order and **DISMISS** Jenkins's complaint with prejudice.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge