



**In the Matter of:**

**SCOTT PLATT,**

**ARB CASE NO. 10-032**

**COMPLAINANT,**

**ALJ CASE NO. 2009-STA-046**

**v.**

**DATE: January 13, 2010**

**BRUNDAGE BONE CONCRETE PUMPING,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

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

Scott Platt complained that Brundage Bone Concrete Pumping (Brundage) violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),<sup>1</sup> and its implementing regulations,<sup>2</sup> when it terminated his employment because he refused to drive unsafe vehicles. Following an investigation of this complaint, the Occupational Safety and Health Administration (OSHA) concluded that there was no reasonable cause to believe that Brundage violated the STAA when it terminated Platt's employment. Accordingly, OSHA dismissed the complaint.

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<sup>1</sup> 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.

<sup>2</sup> 29 C.F.R. Part 1978 (2009).

Platt objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).<sup>3</sup> The ALJ assigned to the case scheduled a hearing, but before the hearing took place, the parties reached a settlement agreement. The parties submitted the settlement agreement to the ALJ, and he issued an order recommending approval of the settlement agreement and dismissing the case on December 2, 2009.

The case is now before the ARB pursuant to the STAA's automatic review provisions.<sup>4</sup> The ARB "shall issue the final decision and order based on the record and the decision and order of the administrative law judge."<sup>5</sup>

The ARB issued a Notice of Review and Briefing Schedule reminding the parties of their right to submit briefs in support of or in opposition to the ALJ's order. Both parties filed letters indicating they would not be filing briefs.

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] . . . ."<sup>6</sup> Accordingly, we review the settlement to determine whether the settlement agreement constitutes a fair, adequate, and reasonable settlement of Platt's STAA complaint.

Initially we note that the settlement agreement may encompass the settlement of matters under laws other than the STAA.<sup>7</sup> 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 Platt's current STAA case.<sup>8</sup>

The Agreement provides that the parties shall keep the terms of the settlement confidential.<sup>9</sup> The Board notes that the parties' submissions, including the Agreement,

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<sup>3</sup> See 29 C.F.R. § 1978.105.

<sup>4</sup> 49 U.S.C.A. § 31105(b)(2)(C); see 29 C.F.R. § 1978.109(c)(1).

<sup>5</sup> 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).

<sup>6</sup> 29 C.F.R. § 1978.111(d)(2).

<sup>7</sup> See, e.g., Settlement Agreement and Final Release para. 3.

<sup>8</sup> *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

<sup>9</sup> Settlement Agreement and Final Release para. 7.

become part of the record of the case and are subject to the Freedom of Information Act (FOIA).<sup>10</sup> FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.<sup>11</sup> Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.<sup>12</sup>

Finally, we construe paragraph 12, the governing 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.<sup>13</sup>

As so construed, we find the agreement to be a fair, adequate, and reasonable settlement of Platt's STAA complaint. Accordingly, we **APPROVE** the settlement and **DISMISS** the complaint with prejudice.

**SO ORDERED.**

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

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

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<sup>10</sup> 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2008).

<sup>11</sup> *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, -006, slip op. at 2 (ARB June 24, 1996).

<sup>12</sup> 29 C.F.R. § 70 *et seq.* (2009).

<sup>13</sup> *See Phillips v. Citizens Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).