



In the Matter of:

DAVID J. BUREAU,

ARB CASE NO. 10-039

COMPLAINANT,

ALJ CASE NO. 2009-STA-017

v.

DATE: February 16, 2010

J.J. TAYLOR COMPANIES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

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

David Bureau complained that J.J. Taylor Companies violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),¹ and its implementing regulations,² when it denied him a promotion because he reported safety violations. Following an investigation of this complaint, the Occupational Safety and Health Administration (OSHA) concluded that there was no reasonable cause to believe that J.J. Taylor violated the STAA when it denied Bureau a promotion. Accordingly, OSHA dismissed the complaint.

Bureau objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).³ 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 17, 2009.

The case is now before the ARB pursuant to the STAA's automatic review provisions. The ARB "shall issue the final decision and order based on the record and

¹ 49 U.S.C.A. § 31105 (Thomson/West Supp. 2008).

² 29 C.F.R. Part 1978 (2009).

³ See 29 C.F.R. § 1978.105.

the decision and order of the administrative law judge.”⁴ 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. Neither party filed a brief.

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]”⁵ Accordingly, we review the settlement to determine whether the settlement agreement constitutes a fair, adequate, and reasonable settlement of Bureau’s STAA complaint.

Initially we note that the settlement agreement may encompass the settlement of matters under laws other than the STAA.⁶ 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 Bureau’s current STAA case.⁷

The agreement provides that the parties shall keep the terms of the settlement confidential.⁸ The Board 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).⁹ FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹⁰ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.¹¹

⁴ 29 C.F.R. § 1978.109(c)(1); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050, slip op. at 2 (ARB Sept. 26, 2001).

⁵ 29 C.F.R. § 1978.111(d)(2).

⁶ *See, e.g.*, Settlement Agreement Waiver and Release para. 2.

⁷ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

⁸ Settlement Agreement Waiver and Release para. 6.

⁹ 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp.2008).

¹⁰ *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).

¹¹ 29 C.F.R. § 70 *et seq.* (2007).

With these reservations, we find the agreement to be a fair, adequate, and reasonable settlement of Bureau's STAA complaint. Accordingly, we **APPROVE** the settlement and **DISMISS** the complaint with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge