



In the Matter of:

TONYA M. FORD,

ARB CASE NO. 10-041

COMPLAINANT,

ALJ CASE NO. 2009-STA-053

v.

DATE: February 4, 2010

**U.S. XPRESS ENTERPRISES,
INCORPORATED,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**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)¹ and its implementing regulations.² On March 7, 2008, Tonya Ford filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that her employer, U.S. Xpress Enterprises, Incorporated, fired her in violation of the STAA. On June 19, 2009, OSHA found that Xpress violated the STAA and ordered reinstatement and payment of back wages and attorneys' fees. Xpress and Ford filed objections to this decision and timely requested a hearing.³

Prior to the scheduled hearing, the parties negotiated and executed a Confidential Settlement Agreement and General Release, which Ford and an attorney representing Xpress signed in November 2009. The parties filed the settlement agreement with the

¹ 49 U.S.C.A. § 31105 (Thomson/West 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.

² 29 C.F.R. Part 1978 (2009).

³ See 29 C.F.R. § 1978.105.

Administrative Law Judge (ALJ) along with Ford's Unopposed Motion to Approve Settlement and Dismiss Proceeding.

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."⁴

When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On December 30, 2009, the ALJ issued a Recommended Order Approving Settlement and Dismissing Case. The ALJ determined that the settlement agreement constituted a fair, adequate, and reasonable settlement of Ford's STAA complaint.⁵

The case is now before the ARB pursuant to the STAA's automatic review provisions.⁶ The ARB "shall issue the final decision and order based on the record and the decision and order of the administrative law judge."⁷ The ARB 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. Neither party responded. 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 Ford'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 STAA⁸. 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 Ford's current STAA case, ARB No. 10-041, 2009-STA-053.⁹

⁴ 29 C.F.R. § 1978.111(d)(2).

⁵ Recommended Order Approving Settlement and Dismissing Case at 1.

⁶ 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1).

⁷ 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).

⁸ Confidential Settlement Agreement and General Release, para. 5.

⁹ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

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 law¹⁰. 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).¹¹ FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹² Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests¹³. Furthermore, if the confidentiality agreement were interpreted to preclude Ford 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.¹⁴

Finally, the settlement provides that the agreement shall be governed and construed under the laws of the state of Tennessee.¹⁵ 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.¹⁶

The parties have indicated that the agreement constitutes the entire settlement with respect to Ford's STAA claim. Accordingly, as construed, we **APPROVE** the ALJ's recommended order and **DISMISS** Ford's complaint with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Administrative Appeals Judge

¹⁰ Confidential Settlement Agreement and General Release, para. 10.

¹¹ 5 U.S.C.A. § 552 (West 1996).

¹² *Norton v. Uni-Group, Inc.*, ARB No. 08-079, ALJ No. 2007-STA-036, slip op. at 3 (ARB May 30, 2008).

¹³ *Id.*

¹⁴ *Kingsbury v. Gordon Express, Inc.*, ARB No. 07-047, ALJ No. 2006-STA-024, slip op. at 2-3 (ARB Aug. 31, 2007).

¹⁵ Confidential Settlement Agreement and General Release, para. 11.

¹⁶ *Trucker v. St. Cloud Meat & Provisions, Inc.*, ARB No. 08-080, ALJ No. 2008-STA-023, slip op. at 3 (ARB May 30, 2008).