



In the Matter of:

**ASSISTANT SECRETARY OF LABOR FOR
OCCUPATIONAL SAFETY AND HEALTH,
UNITED STATES DEPARTMENT OF LABOR,**

ARB CASE NO. 10-042

ALJ CASE NO. 2009-STA-072

PROSECUTING PARTY,

DATE: March 16, 2010

and

DONALD NILAND

COMPLAINANT,

v.

WESTERN MARYLAND TRANSPORT, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

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

The Complainant, Donald Niland, alleged that Western Maryland Transport, Inc., (WMT), violated the employee protection provisions of the Surface Transportation Assistance

Act of 1982 (STAA),¹ and its implementing regulations,² when it terminated his employment for refusing to drive one of WMT's trucks in unsafe weather conditions.³ The Occupational Safety and Health Administration (OSHA) investigated the complaint and found that there was reasonable cause to believe that WMT violated the Act.⁴ OSHA found that the evidence gathered during the investigation supported Niland's position that hazardous conditions existed and that Niland made a reasonable decision to cease driving his vehicle, but was immediately fired for doing so.⁵

WMT objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).⁶ The ALJ scheduled the case for hearing, but on October 16, 2009, the Regional Solicitor informed the ALJ that the parties had settled the matter. The parties forwarded a fully executed Settlement Agreement to the ALJ for his review and approval.

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] . . . or the ALJ."⁷ When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement.

After carefully reviewing the settlement agreement, the ALJ issued a Recommended Decision and Order (R. D. & O.) approving the settlement and dismissing the complaint.⁸ He noted that the parties agreed that the Settlement Agreement was fair, adequate, reasonable, and in

¹ 49 U.S.C.A. § 31105 (Thomson/West Supp. 2009). 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 Secretary's Findings at 1 (Apr. 17, 2009).

⁴ *Id.*

⁵ *Id.* at 2.

⁶ *See* 29 C.F.R. § 1978.105.

⁷ 29 C.F.R. § 1978.111(d)(2).

⁸ R. D. & O. at 2.

the public interest, and upon review, he agreed that the settlement was fair, adequate, reasonable, and in the public interest.⁹

The case is now before the ARB pursuant to the STAA's automatic review provisions.¹⁰ The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge."¹¹

Although the ARB issued a Notice of Review and Briefing Schedule permitting each party to submit a brief in support of or in opposition to the ALJ's order, none of the parties submitted briefs. We therefore deem the settlement unopposed under its terms.

We have carefully reviewed the parties' Settlement Agreement and agree with the ALJ that it constitutes a fair, adequate, and reasonable settlement of Niland's STAA complaint and is in the public interest.¹²

Accordingly, we **AFFIRM** the ALJ's decision, **APPROVE** the agreement, and **DISMISS** the complaint with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

⁹ *Id.*

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

¹¹ 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).

¹² 28 C.F.R. § 1978.111(d)(2); *see also Poulos v. Ambassador Fuel Oil Co.*, 1986-CAA-001, (Sec'y Order Nov. 2, 1987) in which the Secretary limited review of a settlement agreement to whether the terms of the settlement are a fair, adequate, and reasonable settlement of the Complainant's allegations that the Respondent violated the STAA.