



In the Matter of:

JOHN HILL JR.,

ARB CASE NO. 10-063

COMPLAINANT,

ALJ CASE NO. 2009-STA-048

v.

DATE: March 17, 2010

**HERITAGE OPERATING, LP d/b/a
HERITAGE PROPNE, et al.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

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

The Complainant, John Hill, Jr., alleged that Heritage Propane 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 because he voiced safety concerns and refused to operate an unsafe vehicle.³

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 (June 10, 2009).

Following an investigation of the complaint, the Occupational Safety and Health Administration (OSHA) found that the preponderance of the evidence supported the Respondents' positions that Hill's protected activity was not a contributing factor in his termination.⁴

Hill objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).⁵ A hearing was held, but six days after the hearing ended, Hill's counsel submitted Complainant's Unopposed Motion to Approve Settlement and Dismiss Proceeding. 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."⁶ When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement.

The ALJ issued a Recommended Decision and Order (R. D. & O.) finding that the settlement was fair, adequate, and reasonable and dismissing the complaint.⁷

The case is now before the ARB pursuant to the STAA's automatic review provisions.⁸ The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge."⁹

The STAA's implementing regulations permit each party to submit a brief in support of or in opposition to the ALJ's order;¹⁰ however, neither party submitted a brief. We therefore deem the settlement unopposed under its terms.

The ALJ found that the parties' settlement agreement constitutes a fair, adequate, and reasonable settlement of Hill's STAA complaint after a two-day hearing and after having

⁴ *Id.* at 2.

⁵ *See* 29 C.F.R. § 1978.105.

⁶ 29 C.F.R. § 1978.111(d)(2).

⁷ R. D. & O. at 1.

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

⁹ 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).

¹⁰ 29 C.F.R. § 1978.109(c)(2).

reviewed the entire record, which consisted of the hearing transcript and numerous exhibits from each of the parties.¹¹

As an initial matter, we note that the settlement agreement may encompass the settlement of matters under laws other than the STAA.¹² 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 Hill's current STAA case.¹³

Further, we construe paragraph 11, 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.¹⁴

We have carefully reviewed the parties' Settlement Agreement and agree with the ALJ that it constitutes a fair, adequate, and reasonable settlement of Hill's STAA complaint and is in the public interest. Accordingly, as construed, we **AFFIRM** the ALJ's decision, **APPROVE** the agreement, and **DISMISS** the complaint with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

¹¹ 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.

¹² Confidential Settlement Agreement and General Release, at No. 5.

¹³ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

¹⁴ *See Phillips v. Citizens Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).