



In the Matter of:

STEPHEN GOULET,

ARB CASE NO. 10-067

COMPLAINANT,

ALJ CASE NO. 2009-STA-056

v.

DATE: February 28, 2011

TRI-TECH,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Paul M. Igasaki, *Chief Administrative Appeals Judge* and Joanne Royce, *Administrative Appeals Judge*

**FINAL DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING APPEAL**

This case arose when the Complainant, Stephen Goulet, filed a complaint under the whistleblower protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and re-codified.¹ On March 1, 2010, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) dismissing Goulet's whistleblower complaint.

The Secretary of Labor has delegated her authority to issue final administrative decisions in STAA cases to the Administrative Review Board.² The ALJ forwarded the

¹ 49 U.S.C.A. § 31105 (Thomson/West 2007).

² Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(c).

case to the Board pursuant to the STAA's automatic review provisions.³ In response, the Board issued a Notice of Review and Briefing Schedule. Both the Complainant and the Respondent filed briefs in response to the ARB's order.

On December 8, 2010, the Board received a Notice of Withdrawal of Appeal from Goulet giving the Board notice of his intent to withdraw his appeal. The STAA's implementing regulations, applicable to this case, provide two options for terminating a case pending at the Board prior to final adjudication.⁴ First, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the Board. In that case the findings or order becomes the final order of the Secretary.⁵ Second, the parties may enter into an adjudicatory settlement.⁶ If the parties enter into a settlement, the regulations require the parties to file a copy of the settlement with the Board for its review.⁷

Goulet did not state in his letter requesting withdrawal, under which of these two options he was proceeding. Therefore we ordered Goulet to notify the Board upon which provision he was relying. In response Goulet filed a Notice of Withdrawal of Appeal and attached a copy of the settlement agreement upon which the withdrawal is predicated.

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] . . ."⁸ Accordingly, we will review the settlement to determine whether it constitutes a fair, adequate, and reasonable settlement of Goulet's STAA complaint.⁹

Initially, we note that while the Agreement may encompass the settlement of

³ 29 C.F.R. § 1978.109(a).

⁴ 29 C.F.R. § 1978.111(c), (d)(2).

⁵ 29 C.F.R. § 1978.111(c).

⁶ 29 C.F.R. § 1978.111(d)(2).

⁷ *Id.*

⁸ 29 C.F.R. § 1978.111(d)(2).

⁹ See *Poulos v. Ambassador Fuel Oil Co.*, 1986-CAA-001 (Sec'y Nov. 2, 1987) (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).

matters under statutes other than the STAA,¹⁰ 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 only approve the terms of the Agreement pertaining to Goulet's current STAA case.¹¹

Additionally, the Separation Agreement contains confidentiality and non-disparagement clauses.¹² The ARB notes that the parties' submissions, including the Settlement Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA).¹³ FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹⁴ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.¹⁵ Further, if the confidentiality and non-disparagement clauses were interpreted to preclude Goulet from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore constitute unacceptable "gag" provisions.¹⁶

Finally, the Separation Agreement provides that it shall be governed by and construed in conformance with the laws of the State of Florida.¹⁷ 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.¹⁸

¹⁰ Confidential Settlement Agreement and General Release at para. 2(a).

¹¹ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

¹² Confidential Settlement Agreement and General Release at paras. 4, 6.

¹³ 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2010).

¹⁴ *Norton v. Uni.-Group, Inc.*, ARB No. 08-079, ALJ Nos. 2007-STA-035, -036, slip op. at 3 (ARB May 30, 2008) (citing *Coffman v. Alyeska Pipeline Serv. Co. & Artic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, -006, slip op. at 2 (ARB June 24, 1996)).

¹⁵ 29 C.F.R. § 70 *et seq.* (2010).

¹⁶ *Kingsbury v. Gordon Express, Inc.*, ARB No. 07-047, ALJ No. 2006-STA-024, slip op. at 2-3 (ARB Aug. 31, 2007).

¹⁷ Confidential Settlement Agreement and General Release at para. 8.

¹⁸ *Trucker v. St. Cloud Meat & Provisions, Inc.*, ARB No. 08-080, ALJ No. 2008-STA-023, slip op. at 3 (ARB May 30, 2008).

The parties have certified that the Settlement Agreement constitutes the entire understanding between Goulet and Tri-Tech.¹⁹ The Board finds that the agreement is a fair, adequate, and reasonable settlement of Goulet's STAA complaint. Accordingly, we **APPROVE** the agreement and **DISMISS** his appeal as requested.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

¹⁹ Confidential Settlement Agreement and General Release at para. 11.