



In the Matter of:

VICTOR W. HURSH,

ARB CASE NO. 10-080

COMPLAINANT,

ALJ CASE NO. 2009-STA-028

v.

DATE: August 24, 2010

FRONTIER EXPRESS, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

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

The Complainant, Victor Hursh, alleged that Frontier Express, Inc. violated the employee protection provisions of the Surface Transportation Assistance Act (STAA or Act) of 1982, as amended and re-codified, and its implementing regulations, when Frontier Express terminated his employment in retaliation for protected activities.¹ Following an investigation of the complaint, the Occupational Safety and Health Administration (OSHA) found that a preponderance of the evidence indicated that Hursh's protected activity was not a motivating factor in his discharge and dismissed his complaint.²

Hursh objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).³ The ALJ ultimately concluded that Hursh had established by a preponderance of the evidence that Frontier Express terminated his employment

¹ 49 U.S.C.A. § 31105 (Thomson/West Supp. 2010); 29 C.F.R. Part 1978 (2009).

² Sec'y Findings at 2.

³ See 29 C.F.R. § 1978.105.

in retaliation for Hursh's protected activity and entered a recommended order awarding back pay.⁴

The case is now before the Administrative Review Board pursuant to the STAA's automatic review provisions⁵. The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge."⁶

On July 21, 2010, the parties filed a Notice of Settlement, Stipulation of Dismissal with Prejudice, and Request to Close the Case. The Notice stated that the parties had settled Hursh's STAA complaint, that the terms of the settlement are to remain confidential and "the parties ask that the case be dismissed with prejudice, closed, and that except for entering an order of dismissal, that no further actions be taken by the administrative law judge [sic] in the case."

To the extent the parties' request to take no further action was intended to be directed to the Board, we denied it. 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 . . . or the ALJ.**"⁷ Because the parties did not provide the Board with a copy of the settlement in this case, we did not have the opportunity to determine whether the parties' settlement agreement constitutes a fair, adequate, and reasonable settlement of Hursh's STAA complaint.⁸ Accordingly, the Board ordered the parties to submit a copy of the fully executed settlement agreement to the Board for review or to show cause why the Board should not consider the settlement disapproved and enter a final Decision and Order affirming the R. D. & O.

In response to the Board's order, the parties have now provided a copy of the settlement agreement. We note that while the settlement agreement encompasses the settlement of matters under statutes other than the STAA,⁹ 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.

⁴ Recommended Decision and Order (R. D. & O.) at 34.

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

⁶ 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).

⁷ 29 C.F.R. § 1978.111(d)(2)(emphasis added).

⁸ 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) (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).

⁹ Release and Confidential Settlement Agreement at para. 3.

Therefore, we only approve the terms of the agreement pertaining to Hursh's current STAA case.¹⁰

We also note that while the Release and Confidential Settlement Agreement provides that the settlement terms will be confidential,¹¹ the parties' submissions, including the Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA).¹² FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹³ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.¹⁴

Finally, the Release and Confidential Settlement Agreement provides that the release shall be construed in accordance with the laws of the State of Oklahoma. 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 States¹⁵.

We have carefully reviewed the parties' Release and Confidential Settlement Agreement and find that it constitutes a fair, adequate, and reasonable settlement of Hursh's STAA complaint and is not contrary to the public interest. Accordingly, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge

¹⁰ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

¹¹ Release and Confidential Settlement Agreement at para. 9.

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

¹³ *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).

¹⁴ 29 C.F.R. § 70 *et seq.* (2009).

¹⁵ *Trucker v. St. Cloud Meat & Provisions, Inc.*, ARB No. 08-080, ALJ No. 2008-STA-023, slip op. at 3 (ARB May 30, 2008).