



In the Matter of:

RAY GRAHAM,

ARB CASE NO. 10-084

COMPLAINANT,

ALJ CASE NO. 2009-STA-006

v.

DATE: July 9, 2010

ASPLUNDH TREE EXPERT COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge* and E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*

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

The Complainant, Ray Graham, alleged that Asplundh Tree Expert Company (ATE), 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 ATE terminated his employment in retaliation for protected activities. 49 U.S.C.A. § 31105 (Thomson/West Supp. 2009); 29 C.F.R. Part 1978 (2009).

Following an investigation of the complaint, the Occupational Safety and Health Administration (OSHA) found that based on the complaint and ATE's uncontested response, Graham failed to establish a prima facie allegation of a violation of the STAA and dismissed the complaint. OSHA Findings (Oct. 3, 2008).

Graham objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ). See 29 C.F.R. § 1978.105. The ALJ scheduled the case for hearing, but on March 23, 2010, the parties submitted a Joint Motion for Approval of

Settlement and Agreement to the ALJ. The parties had executed a Settlement Agreement and General Release, and they submitted it to the ALJ with the Joint Motion. After carefully reviewing the terms of the agreement, the ALJ issued an Order Approving Settlement (Order). Order at 2.

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." 29 C.F.R. § 1978.111(d)(2). When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement.

The case is now before the ARB pursuant to the STAA's automatic review provisions. 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1). The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge." 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).

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, neither party submitted a brief. We therefore deem the settlement unopposed under its terms.

The ALJ issued an Order Approving Settlement dismissing the complaint, finding that the agreement constituted a fair, adequate, and reasonable settlement of the complaint and was in the public interest. 28 C.F.R. § 1978.111(d)(2); *see also 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).

The ALJ noted that the settlement agreement provides that it is governed by the laws of the State of Florida. The ALJ properly stated that this provision must be limited to the claims other than the STAA claims and should not be construed as limiting the authority of the Secretary or the United States District Court to act with respect to the STAA claims. *Phillips v. Citizens Assoc. for Sound Energy*, 1991-ERA-025 (Sec'y Nov. 4, 1991).

Additionally, while the settlement agreement encompasses the settlement of matters under statutes other than the STAA, 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 Graham's current STAA case. *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

We also note that while the General Release provides that the settlement terms will be confidential, the Settlement Agreement and General Release shall become part of the record, and therefore will be subject to the Freedom of Information Act (FOIA). 5 U.S.C.A. § 552 (West 2007).

We have carefully reviewed the parties' Settlement Agreement and General Release and agree with the ALJ that it constitutes a fair, adequate, and reasonable settlement of Graham's STAA complaint and is in the public interest. Accordingly, we **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