



**In the Matter of:**

**CHRISTI SIMON,**

**ARB CASE NO. 10-104**

**COMPLAINANT,**

**ALJ CASE NO. 2009-STA-010**

**v.**

**DATE: December 16, 2010**

**APET, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge* and Luis A. Corchado, *Administrative Appeals Judge***

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

The Complainant, Christi Simon, filed a complaint alleging that Apet, Inc. violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA or Act), as amended and re-codified, and its implementing regulations when Apet terminated her employment in retaliation for reporting safety hazards on tractor/trailers.<sup>1</sup>

The Occupational Safety and Health Administration (OSHA) investigated the complaint. Following the investigation, OSHA determined, on October 28, 2008, that it was undisputed that Simon engaged in protected activity and that she suffered an adverse action. OSHA also determined, however, that a preponderance of the evidence supports a

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<sup>1</sup> 49 U.S.C.A. § 31105 (Thomson/West Supp. 2010); 29 C.F.R. Part 1978 (2010); Complaint dated July 22, 2008.

finding that Simon's protected activity was not a contributing factor in Apet's decision to terminate her employment. Accordingly, OSHA dismissed Simon's complaint.<sup>2</sup>

Simon objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).<sup>3</sup> Before the ALJ scheduled the hearing, the parties informed him that they had settled the case. In April 2010, the parties filed a joint Stipulation to Dismiss, requesting that the ALJ dismiss the proceeding with prejudice. In May 2010, Apet submitted to the ALJ the parties' Confidential Settlement Agreement and Mutual Reciprocal Release for his review and approval.<sup>4</sup>

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."<sup>5</sup> When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the Settlement Agreement.

On May 27, 2010, the ALJ issued a Recommended Order Approving Settlement and Dismissing Case (R. O.). Upon review, the ALJ determined that the Settlement Agreement "constitutes a fair, adequate and reasonable settlement of the complaint." Accordingly, the ALJ recommended that Settlement Agreement be approved and Simon's complaint be dismissed with prejudice.<sup>6</sup>

The case is now before the ARB pursuant to the STAA's automatic review provisions.<sup>7</sup> The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge."<sup>8</sup>

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<sup>2</sup> Secretary's Findings at 2 (Oct. 28, 2008).

<sup>3</sup> See 29 C.F.R. § 1978.105; Complainant's Notice of Objections and Request for Hearing dated Dec. 16, 2008.

<sup>4</sup> Confidential Settlement Agreement and Mutual Reciprocal Release (Settlement Agreement).

<sup>5</sup> 29 C.F.R. § 1978.111(d)(2).

<sup>6</sup> R. O. at 1, 2.

<sup>7</sup> 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1).

<sup>8</sup> *Id.*; *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050, slip op. at 2 (ARB Sept. 26, 2001).

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.<sup>9</sup> Neither party submitted a brief in this matter. We therefore deem the settlement unopposed under its terms.

In reviewing the Settlement Agreement, we note that it includes the settlement of matters under laws other than the STAA.<sup>10</sup> The Board's authority over settlement agreements is limited to the statutes that are within its jurisdiction as defined by the applicable statute. Therefore, we approve only the terms of the agreement pertaining to Simon's current STAA case ARB No. 10-104, ALJ No. 2009-STA-010.<sup>11</sup>

Additionally, the Settlement Agreement contains a confidentiality clause providing that the parties shall keep the terms of the settlement confidential, except as required by process of law.<sup>12</sup> 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).<sup>13</sup> FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act.<sup>14</sup> Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.<sup>15</sup> If the confidentiality clause were interpreted to preclude Simon from communicating with federal or state enforcement agencies concerning alleged violations of law, it would violate public policy and therefore constitute an unacceptable "gag" provision.<sup>16</sup>

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<sup>9</sup> ARB's June 15, 2010 Notice of Review and Briefing Schedule.

<sup>10</sup> Settlement Agreement at 2-3 para. 3.

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

<sup>12</sup> Settlement Agreement at 4 para. 5.

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

<sup>14</sup> *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)).

<sup>15</sup> 29 C.F.R. § 70 *et seq.* (2010).

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

Finally, the Settlement Agreement provides that it shall be governed by and construed in conformance with the laws of the State of Illinois.<sup>17</sup> 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.<sup>18</sup>

The parties have agreed that the Settlement Agreement constitutes the settlement of all claims between them.<sup>19</sup> After reviewing the record, the ALJ's recommended order, and the Settlement Agreement, we find that the Settlement Agreement constitutes a fair, adequate, and reasonable settlement of Simon's STAA complaint. Accordingly, as construed, 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**

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<sup>17</sup> Settlement Agreement at 5 para. 12.

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

<sup>19</sup> Settlement Agreement at 1.