



In the Matter of:

MYLES SCHREIBER,

ARB CASE NO. 10-108

COMPLAINANT,

ALJ CASE NO. 2010-STA-005

v.

DATE: December 20, 2010

RIMARC TRANSPORTATION,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

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

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

The Complainant, Myles Schreiber, alleged that Rimarc Transportation 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,¹ when the company terminated his employment in retaliation for engaging in a STAA-protected activity.

Following an investigation of the complaint, the Occupational Safety and Health Administration (OSHA) found that Schreiber's alleged protected activity was not a factor in his termination and dismissed the complaint.² Schreiber objected to OSHA's findings and requested

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

² OSHA Findings (December 9, 2009).

a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).³ The ALJ scheduled the case for hearing. On May 28, 2010, the parties submitted an executed Stipulation of Dismissal and Mutual Release and Settlement Agreement (Agreement). After reviewing the terms of the agreement, the ALJ issued a Recommended Decision and Order Approving Settlement Agreement (R. D. & O.), recommending dismissal of the complaint.⁴

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."⁵ When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. The ALJ found that the Agreement constituted a fair, adequate, and reasonable settlement of the complaint.⁶

The case is now before the ARB pursuant to the STAA's automatic review provisions.⁷ The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge."⁸ 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 in this matter. We therefore deem the settlement unopposed under its terms.

We note that while the Agreement may encompass the settlement of matters under statutes other than the STAA,⁹ the Board's authority over settlement agreements is limited to the

³ See 29 C.F.R. § 1978.105.

⁴ R. D. & O. at 1.

⁵ 29 C.F.R. § 1978.111(d)(2).

⁶ R. D. & O. at 2. See 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).

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

⁸ 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).

⁹ Mutual Release and Settlement Agreement, para. 2.

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 Schreiber's current STAA case.¹⁰

The Agreement provides that the parties shall keep the terms of the settlement confidential¹¹. 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

We also construe paragraph 14, stating that the agreement "is to be interpreted and enforced under the laws of the State of Oklahoma" 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.¹⁵

We have carefully reviewed the parties' Agreement and agree with the ALJ that it constitutes a fair, adequate, and reasonable settlement of Schreiber's STAA complaint. 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

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

¹¹ Mutual Release and Settlement Agreement, para. 4.

¹² 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2009).

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).