



In the Matter of:

DAVID A. SPEARS,

ARB CASE NO. 10-112

COMPLAINANT,

ALJ CASE NO. 2009-STA-009

v.

DATE: November 18, 2010

AMERICAN LOGISTICS SERVICES,

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, David A. Spears, alleged that American Logistics Services (ALS), 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 ALS terminated his employment in retaliation for protected activities. 49 U.S.C.A. § 31105 (Thomson/West Supp. 2010); 29 C.F.R. Part 1978 (2010).

Following an investigation of the complaint, the Occupational Safety and Health Administration (OSHA) found that a preponderance of the evidence indicated that Spears did not engage in protected activity and dismissed the complaint. OSHA Findings (Dec. 15, 2009).

Spears 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 April 19, 2010, the parties submitted a notice of settlement to the ALJ. On June 7, 2010, the parties submitted a Settlement Agreement Release of Claims executed by the parties to the ALJ.

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. On June 9, 2010, the ALJ issued a Recommended Decision and Order – Approval of Settlement Agreement and Dismissal of Case with Prejudice.

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 recommended order approving the settlement and dismissing the complaint, finding that the agreement constituted a fair, adequate, and reasonable settlement of the complaint. 28 C.F.R. § 1978.111(d)(2); *see also Poulos v. Ambassador Fuel Oil Co.*, 1986-CAA-001 (Sec'y Nov. 2, 1987) in which 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.

Upon reviewing the settlement agreement, initially we note that 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 Spears' 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 have carefully reviewed the parties' Settlement Agreement and General Release of Claims and agree with the ALJ that it constitutes a fair, adequate, and reasonable settlement of Spears' 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