



**In the Matter of:**

**KELVIN JONES,**

**ARB CASE NO. 10-131**

**COMPLAINANT,**

**ALJ CASE NO. 2010-STA-033**

**v.**

**DATE: December 16, 2010**

**MINN-TEX EXPRESS, 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, Kelvin Jones, filed a complaint alleging that Minn-Tex Express, 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 Minn-Tex Express terminated his contract employment in retaliation for protected activities.<sup>1</sup>

Following an investigation of the complaint, the Area Director, Eau Claire, Wisconsin, Occupational Safety and Health Administration (OSHA) determined that a preponderance of the evidence indicates that Minn-Tex Express would have terminated

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<sup>1</sup> 49 U.S.C.A. § 31105 (Thomson/West Supp. 2010); 29 C.F.R. Part 1978 (2010); *see* Secretary's Findings at 1, 2 (Mar. 17, 2010).

the Contract Hauling Agreement it had with Jones regardless of any alleged protected activity.<sup>2</sup> Accordingly, OSHA dismissed the complaint.<sup>3</sup>

Jones objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).<sup>4</sup> The ALJ scheduled the case for a June 24, 2010 hearing, but on June 10, 2010, Jones informed the ALJ that the parties had reached a settlement in the matter. Accordingly, the ALJ cancelled the hearing. Jones then submitted to the ALJ Complainant's Unopposed Motion to Approve Settlement Agreement and to Dismiss Complaint with Prejudice, attaching the parties' "Confidential Settlement Agreement and General Release" for his review and approval.<sup>5</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>6</sup> When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the Settlement Agreement.

On July 23, 2010, the ALJ issued a Recommended Order Approving Settlement (R. O.). Upon review, the ALJ determined that the Settlement Agreement "constitutes a fair, adequate and reasonable settlement of the complaint" and is in the public interest.<sup>7</sup>

The case is now before the ARB pursuant to the STAA's automatic review provisions.<sup>8</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>9</sup> The ARB issued a Notice of Review and Briefing Schedule permitting each party to submit a brief in support of or in

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<sup>2</sup> Secretary's Findings at 2.

<sup>3</sup> *Id.*

<sup>4</sup> See 29 C.F.R. § 1978.105; Complainant's Objection to Preliminary Order, Request for Hearing and Waiver of Time Constraints dated Mar. 23, 2010.

<sup>5</sup> Confidential Settlement Agreement and General Release, signed in counterparts by Respondent (June 30, 2010) and Complainant (July 14, 2010) (Settlement Agreement).

<sup>6</sup> 29 C.F.R. § 1978.111(d)(2).

<sup>7</sup> R. O. at 2.

<sup>8</sup> 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1).

<sup>9</sup> *Id.*; *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050, slip op. at 2 (ARB Sept. 26, 2001).

opposition to the ALJ's order.<sup>10</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>11</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 Jones's current STAA case, ALJ No. 2010-STA-033, ARB No. 10-131.<sup>12</sup>

Additionally, the Settlement Agreement contains a confidentially clause providing that the parties shall keep the terms of the settlement confidential, except as required by process of law.<sup>13</sup> If the confidentially clause were interpreted to preclude Jones 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>14</sup>

Finally, the Settlement Agreement provides that it shall be governed and conformed in accordance with the laws of the State of Minnesota.<sup>15</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>16</sup>

The parties have agreed that the Settlement Agreement constitutes the entire agreement between them.<sup>17</sup> After reviewing the record, the ALJ's recommended order, and the Settlement Agreement, we find that the Settlement Agreement constitutes a fair,

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<sup>10</sup> ARB's Aug. 12, 2010 Notice of Review and Briefing Schedule.

<sup>11</sup> Settlement Agreement at 2-3 para. 5.

<sup>12</sup> *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

<sup>13</sup> Settlement Agreement at 5 para. 10.

<sup>14</sup> *Kingsbury v. Gordon Express, Inc.*, ARB No. 07-047, ALJ No. 2006-STA-024, slip op. at 2-3 (ARB Aug. 31, 2007).

<sup>15</sup> Settlement Agreement at 5 para. 11.

<sup>16</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>17</sup> Settlement Agreement at 6 para. 14.

adequate, and reasonable settlement of Jones's STAA complaint and is not contrary to the public interest. 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**