



In the Matter of:

ROBERT PHILLIPS,

ARB CASE NO. 10-135

COMPLAINANT,

ALJ CASE NO. 2010-STA-025

v.

DATE: January 24, 2011

BURGH EXPRESS/ARL TRANSPORT/TSL, LTD.,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*, and Joanne Royce, *Administrative Appeals Judge*

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

The Complainant, Robert Phillips, alleged that Burgh Express/ARL Transport/TSL, Ltd., 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 it terminated his employment in retaliation for engaging in protected activities. 49 U.S.C.A. § 31105 (Thomson/West Supp. 2010); 29 C.F.R. Part 1978 (2009).

The Occupational Safety and Health Administration (OSHA) investigated the complaint and found that Phillips's protected activity was not a contributing factor to his termination and that Phillips voluntarily terminated his employment. OSHA Findings at 2 (Jan. 14, 2010).

Phillips 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 August 9, 2010, the parties entered into a settlement agreement and

submitted it to the ALJ. After reviewing the terms of the agreement, the ALJ issued an Order approving the settlement agreement.¹

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).

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, the parties advised that they would not be submitting briefs in this matter.

The ALJ issued an R. D. & O. dismissing the complaint against Burgh with prejudice, finding that the agreement constituted a fair, adequate, and reasonable settlement of the complaint. We also review the settlement agreement with ARL and TSL under the same standard. 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).

We note that while the settlement agreements of Burgh, ARL, and TSL encompass 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 agreements pertaining to Phillips'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).

Furthermore, if the provisions in either of the settlement agreements were to preclude Phillips from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable "gag" provisions. *See Conn. Light & Power Co. v. Sec'y, U.S. Dep't of Labor*, 85 F.3d 89, 95-96 (2d Cir. 1996) (employer engaged in unlawful discrimination by restricting complainant's ability to provide

¹ Recommended Decision and Order Approving Settlement (R. D. & O.) at 1. The ALJ's R. D. & O. only mentioned the settlement between Burgh and Phillips. Phillips also reached a settlement with ARL and TSL, which was presented to the Board. Accordingly, this Final Decision and Order Approving Settlement and Dismissing Complaint with Prejudice covers Burgh, ARL, and TSL as respondents.

regulatory agencies with information); *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-033, slip op. at 6 (ARB Nov. 10, 1997).

Finally, we construe the governing law provisions, paragraph 12 of the Burgh settlement and paragraph 10 of the ARL/TSL agreement, 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. *See Phillips v. Citizens Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).

We have carefully reviewed the parties' releases and find that they constitute fair, adequate, and reasonable settlements of Phillips's STAA complaint. Accordingly, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge