



[Editor's note: On Feb. 3, 2012, the ARB issued an Erratum stating that the correct ARB docket number for this case was 10-140 rather than 09-038 as shown on the original Jan. 27, 2012 decision. However, the reissued decision still had the 09-038 number on the caption.]

In the Matter of:

DWAN STALWORTH,

ARB CASE NO. 09-038

COMPLAINANT,

ALJ CASE NO. 2009-STA-001

v.

DATE: January 27, 2012

JUSTIN DAVIS ENTERPRISES, INC.,

REISSUED: February 3, 2012

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Dwan Stalworth, *pro se*, Gordon, Georgia

For the Respondent:

W. Kerry Howell, Esq., *Lumley & Howell, LLP*, Macon, Georgia

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*, E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*, and Joanne Royce, *Administrative Appeals Judge*

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

The Complainant, Dwan Stalworth, alleged that Justin Davis Enterprises, Inc., 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

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

when the company terminated his employment in retaliation for engaging in a STAA-protected activity.

While the case was before the ALJ, on August 20, 2010, the parties filed a joint “Consent Motion to Approve Mutual Settlement Agreement and to Withdraw Objection and Dismiss Case with Prejudice.” 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.²

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.”³ 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.⁴

The case is now before the ARB pursuant to the STAA’s automatic review provisions.⁵ The ARB “shall issue a final decision and order based on the record and the decision and order of the administrative law judge.”⁶ 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.

² R. D. & O. at 3.

³ 29 C.F.R. § 1978.111(d)(2).

⁴ 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).

⁵ 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1). The regulations have been amended since this case was filed such that appeals are no longer automatic. Under the new regulation at 29 C.F.R. § 1978.110 (2011), any party seeking review of an ALJ decision must file a written petition for review with the Board.

⁶ 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).

We note that while the Agreement may encompass the settlement of matters under statutes other than the STAA,⁷ 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 Stalworth's current STAA case.⁸

We have carefully reviewed the parties' Agreement and agree with the ALJ that it constitutes a fair, adequate, and reasonable settlement of Stalworth's STAA complaint.⁹ 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

JOANNE ROYCE
Administrative Appeals Judge

⁷ Mutual Settlement Agreement, para. 3 (The parties agreed "that this is the full and final compromise of any and all claims that the Complainant may have or had against the Respondent arising from or related to Complainant's discharge from Respondent . . .").

⁸ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

⁹ We note that the ALJ stated in the R. D. & O.:

This tribunal has considered the provisions relating to Complainant's waiver of any right to reinstatement, employment recall, rehire or re-employment of Complainant by Respondent or any of Respondent's subsidiaries, affiliates, divisions, successors or assigns and has concluded that they are not unfair or unreasonable under the particular circumstances of this case.

R. D. & O. at 3. The Settlement Agreement the parties signed included no such provisions. Accordingly, we do not approve these provisions as they are not included in the parties' settlement agreement.