



In the Matter of:

JOHN J. CLEMONS,

ARB CASE NO. 10-145

COMPLAINANT,

ALJ CASE NO. 2009-STA-076

v.

DATE: November 24, 2010

FIRST STUDENT, 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, John J. Clemons, alleged that First Student, 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 when First Student retaliated against him 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 Clemons' protected activity was not a contributing factor in adverse action taken against him. OSHA Findings (Aug. 26, 2009). OSHA found that more likely than not, First Student would have taken the same actions against Clemons absent the alleged protected activity. Accordingly, OSHA dismissed the complaint.

Clemons 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. A hearing was held on June 2, 2010, at which the parties reached a settlement. On August 2, 2010, the parties submitted to the ALJ a Settlement Agreement that they had executed.

Under the STAA's implementing regulations, 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 August 3, 2010, the ALJ issued a Recommended Order Approving Settlement Agreement and Dismissing Case.

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 an 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) (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).

The ALJ noted that the settlement agreement incorporates certain confidentiality provisions. The ALJ properly stated that regardless of the confidentiality provision, the settlement shall become part of the record, and therefore will be subject to the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552 (West 2007). Furthermore, the Separation Agreement and General Release provides that the release shall be construed in accordance with the laws of the State of Minnesota. Settlement Agreement para. 5. We interpret 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.¹

¹ *Trucker v. St. Cloud Meat & Provisions, Inc.*, ARB No. 08-080, ALJ No. 2008-STA-023, slip op. at 3 (ARB May 30, 2008).

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