



In the Matter of:

JOSEPH R. HILDEBRAND,

ARB CASE NO. 11-030

COMPLAINANT,

ALJ CASE NO. 2010-STA-056

v.

DATE: September 26, 2011

H. H. WILLIAMS TRUCKING, LLC,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Paul O. Taylor, Esq.; Truckers Justice Center, Burnsville, Minnesota

For the Respondent:

Michelle R. Magruder, Esq.; Nemechek & Magruder, LLC; Denver, Colorado

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**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982¹ and its implementing regulations.² Joseph R. Hildebrand filed a complaint with the Department of Labor’s Occupational Safety and Health Administration (OSHA) alleging that H. H. Williams Trucking, LLC violated the STAA’s employee protection provisions when it terminated his employment on December 8, 2008. OSHA denied Hildebrand’s complaint, and he timely requested a hearing before a Department of Labor Administrative Law Judge (ALJ).³

The ALJ issued a Decision and Order on February 11, 2011, which primarily found in Hildebrand’s favor.⁴ H. H. Williams petitioned the Administrative Review Board for review of the Decision & Order.⁵ The parties subsequently filed their Stipulated Motion to Approve Confidential Settlement and Dismiss Proceedings with Prejudice and Mutual Confidential Settlement Agreement and General Release of All Claims.

Under the STAA’s implementing regulations, the parties may settle a case at any time after filing objections to the Assistant Secretary’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 [Board]”⁶

The parties “represent that the settlement is fair, adequate and reasonable”⁷ and upon review of the settlement agreement, we agree. But we note that the Agreement may encompass the settlement of matters under laws other than the STAA.⁸ 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. Our approval is limited to this case, and

¹ 49 U.S.C.A. § 31105 (Thomson/West Supp. 2011)(STAA).

² 29 C.F.R. Part 1978, 75 Fed. Reg. 53544 (Aug. 31, 2010).

³ See 29 C.F.R. § 1978.106.

⁴ *Hildebrand v. H. H. Williams Trucking, LLC*, 2010-STA-056 (Feb. 11, 2011) (D. & O.).

⁵ See 29 C.F.R. § 1978.110(a).

⁶ 29 C.F.R. § 1978.111(d)(2).

⁷ Stipulated Motion to Approve Confidential Settlement and Dismiss Proceedings with Prejudice at 1.

⁸ See, e.g., Settlement Agreement, pg. 2, & paras. 4, 5, 8.

we understand the settlement terms relating to release of STAA claims as pertaining only to the facts and circumstances giving rise to this case.

Furthermore, under the agreement, Hildebrand releases H. H. Williams from, essentially, any claims or causes of action arising out of or connected with his employment at H. H. Williams.⁹ Thus, we interpret this portion of the agreement as limiting Hildebrand's right to sue on claims or causes of action arising only out of facts, or any set of facts, occurring before the date of the settlement agreement. Hildebrand does not waive claims or causes of action that may accrue after the signing of the agreement.¹⁰ Accordingly, we approve only the terms of the Settlement Agreement pertaining to Hildebrand's STAA claim, ARB No. 11-030, 2010-STA-056.¹¹

Paragraph 18 of the Settlement Agreement provides that the Agreement shall in all aspects be interpreted, enforced, and governed by the laws of the State of Colorado. We interpret this "choice of law" provision as not limiting the authority of the Secretary of Labor and any Federal courts, which shall be governed in all respects by the laws and regulations of the United States.¹²

Finally, the Settlement Agreement provides that the parties shall keep the terms of the settlement confidential and requests that the Board designate the Settlement Agreement as "'confidential commercial information' under 29 C.F.R. Section 70.26."¹³ The Board notes that the parties' submissions, including the Settlement Agreement, become part of the record of the case and are subject to the Freedom of Information Act¹⁴ (FOIA). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹⁵ Department of Labor regulations provide

⁹ Settlement Agreement, para. 4.

¹⁰ See *Doucette v. Lily Transp. Co.*, ARB No. 08-046, ALJ No. 2008-STA-018, slip op. at 3 (ARB May 30, 2008); *Bittner v. Fuel Economy Contracting Co.*, No. 1988-ERA-022, slip op. at 2 (Sec'y June 28, 1990); *Johnson v. Transco Prods., Inc.*, 1985-ERA-007 (Sec'y Aug. 8, 1985).

¹¹ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

¹² See *Phillips v. Citizens' Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).

¹³ Settlement Agreement at para. 6.

¹⁴ (Thomson/West 1996 & Supp. 2011).

¹⁵ *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, -006; slip op. at 2 (ARB June 24, 1996).

specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.¹⁶

The parties have certified that the Settlement Agreement constitutes the entire settlement with respect to Hildebrand's STAA claim.¹⁷ Accordingly, we **APPROVE** the Mutual Confidential Settlement Agreement and General Release of All Claims and **DISMISS** Hildebrand's STAA complaint with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

¹⁶ 29 C.F.R. § 70 *et seq.* (2011).

¹⁷ *See* paras. 9, 14.