



In the Matter of:

THERON K. CARTER,

ARB CASE NO. 13-050

COMPLAINANT,

ALJ CASE NO. 2009-STA-031

v.

DATE: July 24, 2013

MARTEN TRANSPORT, LTD.,

and

**USIS COMMERCIAL SERVICES,
INC.,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Theron Carter, *pro se*, Middleville, Michigan

For the Respondent, Marten Transport, Ltd:

Stephen A. Di Tullio, Esq.; *DeWitt Ross & Stevens S.C.*, Madison, Wisconsin

For the Respondent, USIS Commercial Services, Inc.:

Larry D. Henry, Esq.; *Rhodes Hieronymus*, Tulsa, Oklahoma

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Luis A. Corchado, *Administrative Appeals Judge*; and Joanne Royce, *Administrative Appeals Judge*

FINAL DECISION AND ORDER

The Complainant, Theron Carter, alleged that Respondents Marten Transport, Ltd. and USIS Commercial Services, Inc., violated the employee protection provisions of

the Surface Transportation Assistance Act (STAA) of 1982 and its implementing regulations, by blacklisting him in violation of the STAA's anti-retaliation provisions.¹

On March 11, 2013, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order on Remand – Dismissal of Complaints.² Carter petitioned the Administrative Review Board to review the ALJ's D. & O.³ The ARB accepted the case for review and established a briefing schedule. After granting Carter an enlargement of time until May 23, 2013, to file his opening brief, Carter filed a document with the ARB entitled "Regards to Settlement" on May 22, 2013. This document states, "I am informing the Administrative Review Board that I am accepting a settlement in this case that will dismiss this Case." The Complainant did not file an opening brief as ordered.

To the extent that Carter's filing was intended to be a motion to dismiss his appeal on the grounds that he had accepted a settlement, the Board denied it. 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 . . . or the ALJ."⁴ Because the parties had not provided the Board with a copy of the settlement, the Board had not had the opportunity to determine whether the parties' settlement agreement constituted a fair, adequate, and reasonable settlement of Carter's STAA complaint.⁵

The Board notified the parties that if they wished to settle their case and have it dismissed on that basis, the Board must review and approve the settlement. We ordered the parties to submit a copy of the fully executed settlement agreement to the Board for review or to show cause why we should not continue with our adjudication of this case.

¹ 49 U.S.C.A. § 31105 (Thomson/West Supp. 2012); 29 C.F.R. Part 1978 (2012).

² *Carter v. Marten Transp., Ltd.*, ALJ No. 2009-STA-031 (D. & O.).

³ The Secretary of Labor has delegated to the ARB the authority to issue final agency decisions under the STAA and its implementing regulations at 29 C.F.R. Part 1978. Secretary's Order No. 2-2012, Delegation of Authority and Assignment of Responsibility to the Administrative Review Board, 77 Fed. Reg. 69378 (Nov. 16, 2012); 29 C.F.R. § 1978.110(a).

⁴ 29 C.F.R. § 1978.111(d)(2).

⁵ 28 C.F.R. § 1978.111(d)(2); *see also See Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 2 (ARB Sept. 26, 2011).

The Board received a copy of the settlement agreement, but upon review noted that even if approved, the settlement only purports to settle Carter’s complaint against one of the two Respondents, USIS Commercial Services, Inc. Further, on June 19, 2013, Marten Transport, Ltd., the remaining Respondent, notified the Board that it had not agreed to a settlement with Complainant Carter. Thus the briefing schedule, as it applied to Carter’s complaint against Marten, was still in force when Carter failed to timely file his opening brief. Accordingly, the Board ordered Carter to show cause why we should not dismiss his appeal against Marten Transport because he failed to timely file his opening brief.

On July 8, 2013, the Board received Carter’s response to the Order to Show Cause. In it he stated that he wanted to settle his complaint against USIS by the settlement he provided to the Board, but that Marten Transport was not a party to that settlement. He further averred that Marten Transport “did not blacklist me in this Appeal.”⁶

1. Review of Settlement between Carter and USIS

As indicated above, under the STAA’s implementing regulations, the parties may settle a case “if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board. . . .”⁷

Upon review of the Confidential Settlement Agreement and General Release of All Claims that USIS and Carter submitted to the Board, 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 Secretary of Labor’s Delegation of Authority and applicable regulations. Further, our approval is limited to this case, and we understand the settlement terms relating to release of STAA claims as pertaining only to the facts and circumstances giving rise to this case.

Paragraph 11 of the Settlement Agreement provides that the Agreement shall in all aspects be interpreted, enforced, and governed by the laws of the State of Oklahoma. 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.⁹

⁶ Response of Theron K. Carter, Complainant to the Order to Show Cause at 3.

⁷ 29 C.F.R. § 1978.111(d)(2).

⁸ *See, e.g.*, Settlement Agreement, para. 2.

⁹ *See Hildebrand*, ARB No. 11-030, slip op. at 3.

USIS and Carter have certified that the Settlement Agreement constitutes the entire settlement with respect to Carter's STAA claim.¹⁰ Accordingly, finding that the settlement is fair, adequate, and reasonable, we **APPROVE** the Confidential Settlement Agreement and General Release of All Claims and **DISMISS** Carter's STAA complaint against USIS.

2. Dismissal of Complaint Against Marten Transport

We understand Carter's responses to the Board as a request to withdraw his petition for review as to Marten, not because of a settlement but because Marten Transport "did not blacklist me in this Appeal." Accordingly, we grant Carter's request and **DISMISS** Carter's STAA complaint against Marten.¹¹

SO ORDERED.

LUIS A. CORCHADO
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

¹⁰ See para. 7.

¹¹ See 29 C.F.R. § 1978.111(c).