



**In the Matter of:**

**BRANDON T. HOPPER,**

**ARB CASE NO. 16-043**

**COMPLAINANT,**

**ALJ CASE NO. 2014-STA-069**

**v.**

**DATE: June 29, 2016**

**MARTEN TRANSPORT, LTD.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**Paul O. Taylor, Esq.; Taylor & Associates, Ltd.; Burnsville, Minnesota**

*For the Respondents:*

**Carolyn B. Witherspoon, Esq. and J. E. Jess Sweere, Esq.; Cross, Gunter,  
Witherspoon & Galchus, P.C.; Little Rock, Arkansas**

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

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

The Complainant, Brandon T. Hopper, filed a complaint under the Surface Transportation Assistance Act of 1982<sup>1</sup> alleging that his employer, Marten Transport, Ltd., violated the STAA's whistleblower protection provisions by terminating his employment because he engaged in

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<sup>1</sup> 49 U.S.C.A. § 31105 (Thomson/West 2007 & Supp. 2015 (STAA), as implemented by federal regulations at 29 C.F.R. Part 1978 (2015).

protected activity. On February 22, 2016, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) concluding that Marten violated the STAA's employee protection provisions and awarding damages.<sup>2</sup>

Marten timely petitioned the Administrative Review Board for review of the ALJ's D. & O.<sup>3</sup> But shortly after Marten filed the petition, the parties jointly requested a remand to the Office of Administrative Law Judges so that they could engage in mediation. The Board granted the motion and remanded the case for mediation. On June 21 2016, Marten filed Respondent's Unopposed Motion for Approval of Settlement, Dismissal of Appeal and Vacation of ALJ Decision and a Settlement Agreement and Release of Claims (Agreement) for the Board's review and approval.

The STAA's implementing regulations provide that at any time after a party has filed objections to the Assistant Secretary's findings or order, the case may be settled if the participating parties agree to a settlement and if the Board has accepted the case for review, the Board approves the settlement agreement.<sup>4</sup>

Review of the Agreement reveals that it may encompass the settlement of matters under laws other than the STAA. Agreement, ¶¶ I, IV. The Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by the applicable delegation of authority. Therefore, we have restricted our review of the Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this STAA case over which we have jurisdiction.<sup>5</sup>

Paragraph IV of the Agreement requests the Board to vacate the ALJ's D. & O., but provides that the Board's refusal to do so will not alter the parties' obligations under the Agreement. It is not our practice to vacate underlying Administrative Law Judge decisions when considering whether to approve a settlement under the whistleblower acts, and we do not do so in this case.<sup>6</sup>

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<sup>2</sup> *Hopper v. Marten Transp. Ltd.*, ALJ No. 2014-STA-069 (Feb. 22, 2016).

<sup>3</sup> See Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1978.110(a).

<sup>4</sup> 29 C.F.R. § 1978.111(d)(2).

<sup>5</sup> *Accord Carter v. Marten Transp. Inc.*, ARB No. 13-050, ALJ No. 2009-STA-031, slip op. at 4 (ARB July 24, 2013); *Bhat v. District of Columbia Water & Sewer Auth.*, ARB No. 06-014, ALJ No. 2003-CAA-017, slip op. at 2 (ARB May 30, 2006).

<sup>6</sup> *Accord Kirk v. Rooney Trucking, Inc.*, ARB No. 14-035, ALJ No. 2013-STA-042, slip op. at 2 (ARB Mar. 24, 2016).

Paragraph XII of the Agreement provides that the Agreement shall be construed and interpreted in accordance with the laws of the state of Arkansas. 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.<sup>7</sup>

The parties have certified that the Agreement constitutes the entire settlement with respect to Hopper’s STAA complaint. Agreement, ¶ XV. Accordingly, consistent with the settlement provisions, as construed,<sup>8</sup> we find that the Settlement Agreement and Release of Claims is fair, adequate, and reasonable, and we **APPROVE** the Agreement and **DISMISS** Hopper’s STAA complaint.

**SO ORDERED.**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**E. COOPER BROWN**  
**Administrative Appeals Judge**

**JOANNE ROYCE**  
**Administrative Appeals Judge**

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<sup>7</sup> See *Carter*, ARB No. 13-050, slip op. at 3.

<sup>8</sup> See ¶ XII (Severability provision).