



In the Matter of:

**WILLIAM J. BETTNER,**

**ARB CASE NO. 98-124**

**COMPLAINANT,**

**ALJ CASE NO. 97-STA-23**

**v.**

**DATE: August 10, 1998**

**DAYMARK FOODS, INC.,**

**RESPONDENT.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**FINAL ORDER APPROVING SETTLEMENT  
AND DISMISSING COMPLAINT**

Complainant, William J. Bettner (Bettner), alleged that Respondent, Daymark Foods, Inc. (Daymark), violated the employee protection provision of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C.A. §31105 (West 1995). The parties seek approval of their settlement agreement.

**BACKGROUND**

In January 1997, Bettner filed a complaint with Department of Labor alleging that his employer, Daymark, had discharged him from his position as a truck driver because he refused to drive excess hours in violation of Department of Transportation regulations. After a hearing, the Administrative Law Judge (ALJ) issued a Recommended Decision and Order (RD) in which he found that Daymark violated the STAA and ordered reinstatement and back pay. In a supplemental recommended decision (Supp. RD), the ALJ ordered Daymark to pay attorney fees and costs. The ALJ forwarded the case to this Board for a final decision.

While the ALJ's Recommended Decision and Supplement Decision were pending before this Board, the parties independently agreed to settle the case and have submitted to us a Stipulated Motion to Approve Settlement detailing the terms of the settlement agreement (Agreement).

**DISCUSSION**

Under rules implementing the STAA, a case may be settled at any time after the filing of objections to the Assistant Secretary's findings "if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board . . . or the ALJ." 29 U.S.C.

§1978.111(2). The regulations direct the parties to file a copy of the settlement “with the ALJ or the Administrative Review Board as the case may be.” *Id.* In this case, at the time the parties reached a settlement agreement, the ALJ had issued the RD and forwarded the case to this Board. Therefore, the case is before the Board, and we are the appropriate body to review the Agreement.

We find the overall settlement terms to be reasonable, but clarify our interpretation of two of the provisions. Paragraph 12 provides that the parties agree to keep the terms of the settlement confidential and acknowledges that the parties may be compelled to provide information pursuant to legal process. We have held in a number of cases with respect to confidentiality provisions in settlement agreements that the Freedom of Information Act, 5 U.S.C. §552 (1988) (FOIA) requires agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, Case Nos. 92-SWD-2 and 93-STA-15, ARB Final Order Approving Settlement and Dismissing Complaint, Mar. 31, 1998, slip op. at 2.

The records in this case are agency records which must be made available for public inspection and copying under the FOIA. In the event a member of the public makes a request for inspection and copying of the record in this case, the request must respond to the request as provided in the FOIA. If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption were applicable, the document would have to be disclosed. Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requesters from denials of such requests, and for protecting the interests of submitters of confidential commercial information. 29 C.F.R. Part 70 (1997).<sup>1/</sup>

There also is a conflict or ambiguity between two paragraphs of the Agreement. Paragraph 11 of the Agreement provides that the ALJ’s RD and Supp. RD shall become final. Paragraph 9 provides that the parties have settled the damage and attorney fee portion of the Complainant’s claims “notwithstanding the Recommended Decisions and Orders.” We find that Paragraph 9 is controlling and that Daymark shall pay to Bettner and to his attorney the amounts stated in the Agreement, rather than the amounts stated in the RD and Supp. RD.<sup>2/</sup>

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<sup>1/</sup> Pursuant to 29 C.F.R. §70.26(b), submitters may designate specific information as confidential commercial information. When FOIA requests are received for such information, the Department of Labor shall notify the submitter promptly, the submitter will be given a reasonable period of time to state its objections to disclosure, and the submitter will be notified if a decision is made to disclose the information. 29 C.F.R. §70.26(e), (f). If the information is withheld and the requester files suit to compel disclosure, the submitter will be notified. 29 C.F.R. §70.26(h).

<sup>2/</sup> In any event, this Order supersedes the RD and Supp. RD.

We find that the Agreement as construed is a fair, adequate, and reasonable settlement of the allegation that Daymark violated the STAA. We **APPROVE** the settlement agreement and **DISMISS** the complaint.

**SO ORDERED.**

**KARL J. SANDSTROM**  
Chair

**PAUL GREENBERG**  
Member

**CYNTHIA L. ATTWOOD**  
Acting Member