



In the Matter of:

JAMES “TK” WONG,

ARB CASE NO. 05-010

COMPLAINANT,

ALJ CASE NO. 03-STA-51

v.

DATE: February 28, 2005

COACH U.S.A.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C.A. § 31105 (West 1997), and implementing regulations at 29 C.F.R. Part 1978 (2004). Complainant James “TK” Wong filed a complaint with OSHA alleging that Coach U.S.A. wrongfully discharged him in violation of the STAA. The parties agreed to settle the case. On October 27, 2004, the Administrative Law Judge (ALJ) issued an Order approving the parties’ settlement agreement and dismissing the complaint with prejudice.

Pursuant to 29 C.F.R. § 1978.109(c), the Administrative Review Board “shall issue the final decision and order based on the record and the decision and order of the administrative law judge.” *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 00-STA-50 (ARB Sept. 26, 2001).

On November 3, 2004, the Board issued a Notice of Review and Briefing Schedule permitting either party to submit briefs in support of or in opposition to the ALJ’s order. Both parties responded stating that they would not be filing briefs in this matter.

The ARB concurs with the ALJ's determination that the parties' settlement agreement is fair, adequate and reasonable. However, we note that the agreement encompasses the settlement of matters under laws other than the STAA. See ¶ 3 of the Separation Agreement and Individual General Release. Because the Board's authority over settlement agreements is limited to such statutes as are within the Board's jurisdiction and is defined by the applicable statute, we approve only the terms of the agreement pertaining to Wong's STAA claim. *Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56, slip op. at 2 (ARB Apr. 30, 2003).

It is also noted that paragraph 14 provides that the agreement shall be governed and construed under the laws of California. We construe 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. See *Phillips v. Citizens' Ass'n for Sound Energy*, No. 91-ERA-25, slip op. at 2 (Sec'y Nov. 4, 1991).

The parties have certified that the agreement constitutes the entire settlement with respect to Wong's STAA claims. The ARB has reviewed the settlement agreement and finds it fair, adequate and reasonable. Accordingly, with the reservations noted above limiting our approval to the settlement of Wong's STAA claim and construing the choice of law provision we **APPROVE** the ALJ's order and **DISMISS** the complaint with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge