



In the Matter of:

**JACK TRUCKER,
f.k.a. JOHN BALSIS,**

COMPLAINANT,

v.

**ST. CLOUD MEAT & PROVISIONS, INC.,
d.b.a. GOLD COUNTRY TRUCKING,**

RESPONDENT.

ARB CASE NO. 08-080

ALJ CASE NO. 2008-STA-023

DATE: May 30, 2008

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**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 1982 (STAA)¹ and its implementing regulations.² On January 16, 2007, the Complainant, Jack Trucker, filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Respondent, St. Cloud Meat & Provisions, Inc., violated the STAA.³

¹ 49 U.S.C.A. § 31105 (West 2008).

² 29 C.F.R. Part 1978 (2007).

³ The STAA has been amended since Trucker filed his complaint. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). We need not decide here whether the amendments are applicable to this complaint because even if the amendments applied to this complaint, they are not implicated by the settlement at issue here and thus would not affect our decision.

OSHA denied Trucker's complaint on November 28, 2007, and he timely requested a hearing pursuant to 29 C.F.R. § 1978.105.

Prior to the scheduled hearing, the parties negotiated and executed a Settlement Agreement and Release of Claims, which both Trucker and R. James Swenson, president of St. Cloud, signed. The settlement agreement was filed with the Administrative Law Judge (ALJ) along with Trucker's Motion to Approve Settlement and Dismiss Complaint with Prejudice.

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 [ARB] . . . or the ALJ." 29 C.F.R. § 1978.111(d)(2).

When the parties reached a settlement the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On April 4, 2008, the ALJ issued a Recommended Order Approving Settlement Agreement and dismissing Trucker's complaint. The ALJ determined that the settlement agreement constituted a fair, adequate, and reasonable settlement of Trucker's STAA complaint and was "in the public interest." Order at 1.

The case is now before the ARB pursuant to the STAA's automatic review provisions.⁴ The ARB "shall issue the final decision and order based on the record and the decision and order of the administrative law judge."⁵

The ARB 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. Neither party responded to the ARB's notice. We therefore deem the settlement unopposed under its terms.

The ARB agrees with the ALJ's determination that the parties' settlement agreement constitutes a fair, adequate, and reasonable settlement of Trucker's STAA complaint and none of the parties alleges otherwise. However, the agreement releases St. Cloud "from all claims of any kind whatsoever now existing." See Settlement Agreement at 3, paragraph C. Because the ARB's authority over settlement agreements is limited to the statutes that are within its jurisdiction and is defined by the applicable statute, we approve only the terms of the agreement pertaining to Trucker's STAA claim.⁶

⁴ See 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1).

⁵ 29 C.F.R. § 1978.109(c); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050 (ARB Sept. 26, 2001).

⁶ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

Additionally, the agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions. Settlement Agreement at 4, paragraph G. The parties' submissions, including the agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA).⁷ FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.⁸ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.⁹

Finally, paragraph N provides that the agreement shall be governed and construed under the laws of the state of Minnesota. 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.

The parties have certified that the agreement constitutes the entire settlement with respect to Trucker's STAA claim. Accordingly, we **APPROVE** the ALJ's order and **DISMISS** the complaint with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

⁷ 5 U.S.C.A. § 552 (West 2007).

⁸ *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, 6, slip op. at 2 (ARB June 24, 1996).

⁹ 29 C.F.R. § 70 *et seq.* (2007).