U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

ASSISTANT SECRETARY OF LABOR FOR OCCUPATIONAL SAFETY AND HEALTH,

PROSECUTING PARTY,

and

WILLIAM ZURENDA,

COMPLAINANT,

v.

CORPORATE EXPRESS DELIVERY SYSTEMS, INC.,

RESPONDENT.

ARB CASE NO. 00-041

ALJ CASE NO. 99-STA-30

DATE: March 31, 2000

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:
For the Complainant:
William Zurenda, *pro se, Binghamton, New York*

For the Prosecuting Party:
Mark J. Lerner, Esq. *U.S. Department of Labor, Washington D.C.*

For the Respondent:
Ronald G. Dunn, Esq. *Gleason, Dunn, Walsh & O'Shea, Albany, New York*

FINAL ORDER APPROVING WITHDRAWAL OF COMPLAINT AND SETTLEMENT

William Zurenda filed a complaint alleging that Corporate Express Delivery Systems, Inc. violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified, 49 U.S.C. §31105 (1994), and the implementing regulations at 29 C.F.R. Part 1978. The parties seek approval of their settlement agreement and withdrawal of the complaint.

BACKGROUND

On January 14, 2000, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order finding that Corporate Express violated the STAA when it terminated Zurenda for engaging in protected activity. Zurenda had refused to drive a truck without a mechanic's certification that a blower malfunction had been repaired or that the vehicle could be safely operated without repair. The ALJ ordered Corporate Express to reinstate Zurenda to his former position, pay him back pay with interest and expunge from its personnel records the January 29, 1999 Written Warning and the February 8, 1999 Employment Termination Record and any other adverse or derogatory reference to Zurenda's protected activities on January 29, 1999, and February 5-6, 1999. On March 20, 2000, the parties submitted a Settlement Agreement and Release to the Administrative Review Board.

DISCUSSION

Pursuant to STAA §31105(b)(2)(C), "[b]efore the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation." Under regulations implementing the STAA, the parties may settle a case 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 Recommended Decision and forwarded the case to this Board. Therefore, we are the appropriate body to review the agreement.

We find the overall settlement terms to be reasonable, but clarify our interpretation of several of the provisions. Review of the agreement reveals that it may encompass the settlement of matters under laws other than the STAA. See Settlement Agreement ¶¶ 4, 5, 6. Our authority to review this settlement agreement is limited to the statutes within our jurisdiction and is defined by the applicable statute. *Accord Webb v. Numanco, L.L.C.*, ARB Case No. 98-149; ALJ Case Nos. 98-ERA-27, 98-ERA-27, 28; Fin. Ord. Approv. Settle., Dis. Complnt. & Vac. Ord. of ALJ (Jan. 29, 1999). We have therefore restricted our review of the settlement agreement to ascertaining only whether the terms of the agreement fairly, adequately and reasonably settle Zurenda's allegations that Corporate Express violated the STAA.

Paragraph 3 of the agreement could be construed as a waiver by Zurenda of future causes of action that he may have should he apply to Corporate Express for re-employment. Such a

provision must be interpreted as limited to the right to sue in the future on claims or causes of action arising out of facts occurring before the date of the settlement. *Accord Webb v. Numanco, L.L.C.,* slip op. at 3. *See also Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51-52 (1974); *Rogers v. General Electric Co.*, 781 F.2d 452, 454 (5th Cir. 1986).

Paragraph 12 of the agreement provides that the agreement will be governed by the laws of the state of New York and that any proceeding between the parties relating to the agreement shall be held in a court of competent jurisdiction in the State of New York. We construe this provision to except the authority of the Secretary of Labor and any Federal court which shall be governed in all respects by the law and regulations of the United States. *Accord Nason v. Maine Yankee Atomic Power Co.*, ARB Case No. 98-091, ALJ Case No. 97-ERA-37, Fin. Ord. Apprv. Settle. & Dis. Complnt. (Mar. 20, 1998).[1/]

CONCLUSION

We find that the agreement, as so construed, is a fair, adequate, and reasonable settlement of the complaint. Accordingly, we **APPROVE** the agreement and withdrawal of the complaint.

SO ORDERED.

PAUL GREENBERG
Chair

E. COOPER BROWN
Member

CYNTHIA L. ATTWOOD
Member

[1/] The paragraph also provides that if the Board holds any provision of the agreement to be invalid or unenforceable for any reason, this determination shall not affect the remainder of the agreement.