



In the Matter of:

BLAGOJ JOSIFOV,

ARB CASE NO. 10-127

COMPLAINANT,

ALJ CASE NO. 2010-STA-014

v.

DATE: September 14, 2010

CIMARRON EXPRESS, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge* and Joanne Royce, *Administrative Appeals Judge*

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

The Complainant, Blagoj Josifov, alleged that Cimarron Express, Inc., violated the employee protection provisions of the Surface Transportation Assistance Act (STAA or Act) of 1982, as amended and re-codified, and its implementing regulations, when Cimarron Express terminated his employment in retaliation for protected activities. 49 U.S.C.A. § 31105 (Thomson/West Supp. 2009); 29 C.F.R. Part 1978 (2009).

Following an investigation of the complaint, the Occupational Safety and Health Administration (OSHA) found that Josifov's alleged protected activity was not a factor in his termination and dismissed the complaint. OSHA Findings (Dec. 29, 2009).

Josifov objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ). See 29 C.F.R. § 1978.105. The ALJ scheduled the case for hearing, but on July 14, 2010, Josifov submitted an Unopposed Motion to Approve Settlement and Dismiss Complaint to the ALJ. The parties had executed a Settlement Agreement and Release of Claims, and Josifov submitted it to the ALJ. After reviewing the terms of the agreement, the ALJ issued an Order Approving Settlement Agreement. Order at 1.

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.

The case is now before the ARB pursuant to the STAA's automatic review provisions. 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1). The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge." 29 C.F.R. § 1978.109(c); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050, slip op. at 2 (ARB Sept. 26, 2001).

Although the ARB issued a Notice of Review and Briefing Schedule permitting each party to submit a brief in support of or in opposition to the ALJ's order, the parties both advised that they would not be submitting briefs in this matter. We therefore deem the settlement unopposed under its terms.

The ALJ issued a Recommended Decision and Order Approving Settlement dismissing the complaint with prejudice, finding that the agreement constituted a fair, adequate, and reasonable settlement of the complaint. 28 C.F.R. § 1978.111(d)(2); *see also Poulos v. Ambassador Fuel Oil Co.*, 1986-CAA-001 (Sec'y Nov. 2, 1987) (Secretary limited review of a settlement agreement to whether the terms of the settlement are a fair, adequate, and reasonable settlement of the complainant's allegations that the respondent violated the STAA).

We note that while the settlement agreement encompasses the settlement of matters under statutes other than the STAA, the Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by the applicable statute. Therefore, we only approve the terms of the agreement pertaining to Josifov's current STAA case. *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

We have carefully reviewed the parties' Settlement Agreement and General Release and agree with the ALJ that it constitutes a fair, adequate, and reasonable settlement of Josifov's STAA complaint and is not contrary to the public interest. Accordingly, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge