



Issue Date: 28 June 2005

Case No. 2005-STA-11

In the Matter of

CLARENCE E. FRALEY,
Complainant,

v.

TRANSERVICE LOGISTICS, INC.,
Respondent.

DECISION AND ORDER RECOMMENDING APPROVAL
OF
SETTLEMENT AGREEMENT

The above-captioned matter is pending before the undersigned. On June 14, 2005, the Complainant notified this office, in writing, that he had reached a settlement agreement and wished to withdraw his objections, which I take to mean his objections to the findings of the Assistant Secretary of Labor. Thereafter, the parties submitted a copy of their settlement agreement.

I have reviewed the agreement of the parties and I find that it is fair and equitable and that it effectuates the purposes of the Surface Transportation Assistance Act. Accordingly, I recommend¹ that it be approved by the Administrative Review Board (ARB).

¹The implementing regulations at 1978.111(d) (2) provide:

Adjudicatory settlement. At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board, United States Department of Labor, or the ALJ. A copy of the settlement shall be filed with the ALJ

or the Administrative Review Board, United States Department of Labor as the case may be.*Id.*

Despite the plain language of the regulation, the ARB in *Ass't Sec'y & Boyd v. Palmentere Brothers Cartage Service, Inc.*, ARB No. 04-135, ALJ No. 2003-STA-40 (ARB Oct. 27, 2004), *Foley v. J.B. Hunt Transportation, Inc.*, ARB No. 04-080, ALJ No. 2004-STA-14 (ARB Oct. 27, 2004) and *Pavon v. United Parcel Service*, ARB No. 04-127, ALJ No. 2003-STA-46 (ARB Oct. 27, 2004), cases which are devoid of any authority or reasoning, the ARB found that the Administrative Law Judge's orders were subject to the automatic review provisions of 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c)(1) (with the exception of reference to Secretary's Order 1-2002, 67 Fed. Reg. 65,272 (Oct. 17, 2002) which upon review does not give the ARB any additional express authority on this matter). In these cases the complainants filed written notices of withdrawal and the Administrative Law Judges dismissed the complaints pursuant to 29 C.F.R. § 1978.111(c).

The ARB's holding that there is automatic review by it of a voluntary withdrawal before an Administrative Law Judge in STAA cases appears to overrule, *sub silentio* the Secretary of Labor's holdings in *Shown v. Wilson Truck Corp.*, 1992-STA-6 (Sec'y Apr. 30, 1992) and *Creech v. Salem Carriers, Inc.*, 1988-STA-29 (Sec'y Sept. 27, 1988). In *Creech*, the Secretary held that where the Administrative Law Judge enters an order allowing the complainant to withdraw objections to the Secretary's preliminary findings and order "the [Administrative Law Judge's] order becomes the final administrative order in the case, and there is no need for review of the [Administrative Law Judge's] order by the Secretary." In *Shown*, the Secretary, in a footnote, criticized the Administrative Law Judge for not following the *Creech* procedure.

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DANIEL J. ROKETENETZ
Administrative Law Judge

NOTICE: This Recommended Order Approving Settlement and the administrative file in this matter will be forwarded to the Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, N.W., Washington, D.C. 20210, for entry of a Final Order. See 29 C.F.R. § 1978.109(a) and 1978.109(c). The parties may file with the Administrative Review Board briefs in support of or in opposition to Recommended Order Approving Settlement within thirty days of the issuance of this Recommended Decision unless the Administrative Review Board, upon notice to the parties, establishes a different briefing schedule. 29 C.F.R. § 1978.109(c).