



Issue Date: 29 March 2011

CASE NO.: 2011-STA-19

IN THE MATTER OF

CEDRIC BRADLEY
Complainant

v.

THE GROCER'S SUPPLY CO., INC.
Respondent

**ORDER DISMISSING PROCEEDING AND COMPELLING
COMPLAINANT TO ARBITRATE COMPLAINT**

Background

Respondent is a wholesale grocery company based in Houston, Texas. In place of providing workers' compensation insurance coverage to its employees, Respondent established an Occupational Injury Benefits Plan (the Plan) under the Federal Employee Retirement Income Security Act of 1974 (ERISA). Employees wishing to participate in the Plan are required to accept the terms of Mutual Agreement to Arbitrate Occupational Injury and Disease Claims (the Agreement).

On July 16, 2008, Mr. Bradley (Complainant) signed and agreed to the terms of the Agreement with Respondent. On April 2, 2010, Complainant filed suit in the County Court at Law No. 1 of Dallas County, Texas, alleging that Respondent negligently caused his November 24, 2008 on-the-job injury in which he allegedly fell from a side door of a trailer after unloading frozen food products from the trailer. Pursuant to the Agreement, the parties abated the state action and initiated an arbitration proceeding.

Meanwhile, on October 8, 2010, while the arbitration proceeding was still pending, Complainant filed a complaint with the Occupational Safety and Health Administration of the Department of Labor (OSHA), alleging that he was suspended in retaliation for making complaints in violation of the whistleblower protection provisions of the Surface Transportation Assistance Act (STAA).

On December 8, 2010, the Department of Labor issued a finding that Respondent had not violated the STAA. Complainant then requested a hearing before an administrative law judge (ALJ) pursuant to 49 U.S.C. § 31105(b)(2)(B). However, Respondent argues that the Agreement precludes Complainant from pursuing his STAA claim in this venue because it, along with the claims already brought before the arbitrator, is covered by the Agreement, and Complainant has raised (and is conducting discover on) his STAA claim in the arbitration proceeding. Complainant has chosen to file no response in defense of Respondent's argument.

Discussion

Federal law strongly favors arbitration, and a presumption exists in favor of agreements to arbitrate under the FAA that requires courts to resolve any doubts about an arbitration agreement's scope in favor of arbitration. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). Arbitration must be compelled when (1) an arbitration agreement exists under the FAA, and (2) the claims at issue fall within the scope of the arbitration agreement. *Walton v. Rose Mobile Homes, LLC*, 298 F.3d 470, 473 (5th Cir. 2002).

In this case, an arbitration agreement clearly exists between the parties. Complainant has already recognized the existence of this agreement by submitting his other claims to the arbitration process. As to the matter of scope, I find Complainant's STAA whistleblower claim is covered by the Agreement. The Agreement states in relevant part:

Without limitation, a Covered Claim specifically includes any claim or cause of action brought by a Claimant against the Company alleging that negligence by the Company (or its employee or agent) was a cause of loss or damage suffered by Employee as a result of an incident that occurred in the Course and Scope of Employment.

This broad language evidence's the parties' intent to include every claim, including an STAA claim. Moreover, courts have held that "[w]here there is a broad arbitration clause..., in the absence of any express provision excluding a particular grievance from arbitration, only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail." *Mar-Len of Louisiana, Inc. v. Parsons-Gilbane*, 773 F.2d 633, 636 (5th Cir. 1985) (quoting *United Steelworkers of America v. Warrior & Gulf Navigational Co.*, 363 U.S. 574, 584-85 (1960)).

ORDER

Based on this guidance, and the language of the Agreement itself, I find Complainant's STAA claim is covered by the Agreement, and thus, Complainant should be compelled to arbitrate the claim. Accordingly, Complainant's STAA claim before this office is **DISMISSED**, and the hearing scheduled for April 12, 2011, in Dallas, Texas, in hereby cancelled.

So **ORDERED** this 29th day of March, 2011, at Covington, Louisiana.

A

C. RICHARD AVERY
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you

object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(a). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues

an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1978.110(a) and (b).