U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB Nos. 14-0266
and 14-0266A

RANDALL STOVALL)
)
Claimant-Petitioner)
Cross-Respondent)
)
v.)
) DATE ISSUED: Feb. 27, 2015
TOTAL TERMINALS INTERNATIONAL,)
LLC)
)
and)
)
SIGNAL MUTUAL INDEMNITY)
ASSOCIATION)
)
Employer/Carrier-)
Respondents)
Cross-Petitioners)
)
SSA MARINE TERMINALS, LLC/)
HOMEPORT INSURANCE COMPANY)
)
Employer/Carrier)
)
METROPOLITAN STEVEDORE)
COMPANY/SIGNAL MUTUAL)
INDEMNITY ASSOCIATION)
)
Employer/Carrier)
)
MARINE TERMINALS)
CORPORATION/PORTS INSURANCE)
COMPANY)
)
Employer/Carrier)
)
TRANS PACIFIC CONTAINER)
SERVICE/SIGNAL MUTUAL INDEMNITY)

ASSOCIATION	)	
	)	
Employer/Carrier	)	
	)	
PORTS AMERICA OUTER HARBOR TERMINAL, INCORPORATED/PORTS INSURANCE COMPANY	)	
	)	
Employer/Carrier	)	
	)	
EAGLE MARINE SERVICES	)	
	)	
Self-Insured Employer	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	
Cross-Respondent	)	DECISION and ORDER

Appeals of the Order Rejecting Settlement as to Total Terminals Without Prejudice of Steven B. Berlin, Administrative Law Judge, United States Department of Labor.

Eric A. Dupree and Paul R. Myers (Dupree Law, APLC), Coronado, California, for claimant.

Michael W. Thomas and Nora Devine (Thomas, Quinn & Krieger, LLP), San Francisco, California, for Total Terminals International, LLC and Signal Mutual Indemnity Association.

Kathleen H. Kim (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Acting Chief Administrative Appeals Judge, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, and Total Terminals International (TTI) cross-appeals, the Order Rejecting Settlement as to Total Terminals Without Prejudice (2012-LHC-01872, 2014-LHC-00476) of Administrative Law Judge Steven B. Berlin rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We review the administrative law judge's order disapproving a settlement under an abuse of discretion standard. *Richardson v. Huntington Ingalls, Inc.*, 48 BRBS 23 (2014).

Claimant is a longshoreman who continues to work on the waterfront out of a hiring hall. Claimant filed claims for back injuries occurring on May 21, 2010 and August 18, 2013, the second being a cumulative injury. Claimant named Metropolitan Stevedore as the responsible employer; however, a dispute arose over which of claimant's employers is liable for his claims.[1] As a result, all of the employers for which claimant worked between May 2010 and October 2013, including TTI, were joined as parties to the claim.

On March 24, 2014, claimant and TTI presented the administrative law judge with a Section 8(i), 33 U.S.C. §908(i), settlement agreement. The settlement agreement provided for TTI to pay claimant a lump sum of $1,500, with $750 allocated to disability benefits and $750 allocated to future medical care; TTI agreed to pay claimant's attorney an additional $500 for his attorney's fee. In exchange, TTI would be discharged of "liability for all past and future compensation, all past and future medical benefits and any other benefit to which he may be entitled under the [Act] relating to or as a consequence of his low back injury." Settlement Agreement at 5.

The administrative law judge disapproved the settlement agreement without prejudice. Order Rejecting Settlement at 2. Relying on 20 C.F.R. §702.242(a) and the Board's decision in *M.K. [Kellstrom] v. California United Terminals*, 43 BRBS 1, *aff'd on recon.*, 43 BRBS 115 (2009), the administrative law judge found the agreement was "deficient in that it does not include the signatures of all parties," i.e., all the potentially

[1] Metropolitan Stevedore accepted the 2010 injury and provided medical care. Claimant did not lose time from work initially; however, his condition worsened and required back surgery in September 2012 when he lost six days from work. Metropolitan Stevedore contended it was not liable for temporary total disability benefits during those six days because SSA Marine Terminals (SSA) was claimant's last maritime employer. Metropolitan Stevedore moved to join SSA as a party to the case in March 2013, and the motion was granted. After claimant notified the parties of an August 18, 2013 cumulative injury, SSA moved to join five other employers, including TTI. As SSA's motion was unopposed and there was evidence of a cumulative injury, the administrative law judge granted SSA's motion.

liable employers. *Id.* Claimant and TTI both appeal the administrative law judge's disapproval of the settlement. The Director, Office of Workers' Compensation Programs, responds, agreeing with the parties that the administrative law judge erred in disapproving the settlement agreement. For the reasons that follow, we vacate the administrative law judge's Order Rejecting Settlement and we remand the case for the administrative law judge to consider the parties' settlement agreement.

Section 8(i) of the Act, 33 U.S.C. §908(i), provides that the parties may settle "any claim for compensation under this chapter." Where a claimant seeks to terminate his compensation claim for a sum of money, the Section 8(i) settlement procedures, as delineated in the Act's implementing regulations, must be followed.[2] *See*, *e.g.*, *Henson v. Arcwel*, 27 BRBS 212 (1993); 20 C.F.R. §§702.241-702.243. The administrative law judge "shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress[,]" 33 U.S.C. §908(i)(1),[3] and the regulations insure that he has the information necessary to make the determination as to the settlement's adequacy. *See Richardson,* 43 BRBS 23; *McPherson v. National Steel & Shipbuilding Co.*, 26 BRBS 71 (1992), *aff'g on recon. en banc* 24 BRBS 224 (1991). Once approved, the effect of a Section 8(i) settlement is to completely discharge the employer's liability for the

[2] Section 8(i), 33 U.S.C. §908(i), is the only means for compromising an employer's obligation to pay benefits under the Act, creating an exception to Section 15(b), 33 U.S.C. §915(b) ("No agreement by an employee to waive his right to compensation under this chapter shall be valid"), and to Section 16, 33 U.S.C. §916 (no assignment, release, or commutation of compensation and benefits is valid except as provided in the Act).

[3] Section 8(i)(1) provides:

> Whenever the parties to any claim for compensation under this chapter, including survivors benefits, agree to a settlement, the [district director] or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress. Such settlement may include future medical benefits if the parties so agree. No liability of any employer, carrier, or both for medical, disability, or death benefits shall be discharged unless the application for settlement is approved by the [district director] or administrative law judge. If the parties to the settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within thirty days after submission for approval.

claimant's injuries that are the subject of the settlement.[4] 33 U.S.C. §908(i)(3); 20 C.F.R. §702.243(b); *see*, *e.g.*, *Diggles v. Bethlehem Steel Corp.*, 32 BRBS 79 (1998).

We agree that the administrative law judge's rationale for disapproving the settlement agreement in this case is erroneous. Although several potentially liable employers have been joined in the proceeding, *see generally Metropolitan Stevedore Co. v. Crescent Wharf & Warehouse Co. [Price]*, 339 F.3d 1102, 37 BRBS 89(CRT) (9th Cir. 2003), *cert. denied*, 543 U.S. 940 (2004); *Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71(CRT) (9th Cir. 1991), any potentially liable employer may opt to settle separately with claimant. In *Alexander v. Director, OWCP*, 297 F.3d 805, 36 BRBS 25(CRT) (9th Cir. 2002) the United States Court of Appeals for the Ninth Circuit, within whose jurisdiction this cases arises, held that the employer found liable to claimant is not entitled to a credit for the amount claimant received in settlements with other potentially liable employers. The court stated that the claimant's individual settlements with three of the four potentially liable employers were alternative to an entire award against any one of them had it been found to be the responsible employer. *Id.,* 297 F.3d at 809, 36 BRBS at 27(CRT); *see also New Orleans Stevedores v. Ibos*, 317 F.3d 480, 36 BRBS 93(CRT) (5th Cir. 2003), *cert. denied*, 540 U.S. 1141 (2004); *Sears v. Norquest Seafoods, Inc.*, 40 BRBS 51 (2006) (holding the responsible employer is fully liable to the claimant notwithstanding claimant's recovery in settlement from another potentially liable employer).

In this case, claimant and TTI seek to settle only the claim against TTI. Although Section 702.242(a) of the implementing regulations requires that a "complete" Section 8(i) settlement application "be in the form of a stipulation signed by all parties," the "parties" to which this section refers are those to the individual claim addressed in the settlement application. 20 C.F.R. §702.242; *see also Alexander*, 297 F.3d 805, 36 BRBS 25(CRT); *Sears*, 40 BRBS 51. The administrative law judge's reliance on *Kellstrom,* 43 BRBS 1, therefore is misplaced. *Kellstrom* held only that a Section 17, 33 U.S.C. §917, lienholder, who timely intervened to protect its lien against claimant's recovery, is a party to a Section 8(i) settlement between the claimant and the employer, and therefore must sign the agreement. 43 BRBS at 5. By contrast, here, there is no intervenor or other entity seeking reimbursement of medical expenses, nor is the Special Fund's liability at issue. *See generally Byrd v. Alabama Dry Dock & Shipbuilding Corp.,* 27 BRBS 253 (1993). Thus, there are no financial interests other than those of claimant and TTI at

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[4] The parties may settle only claims in existence. 20 C.F.R. §702.241(g). An employer's liability "is not discharged until the settlement is specifically approved by a compensation order. . . ." If the parties are represented by counsel, however, "the settlement shall be deemed approved unless specifically disapproved within thirty days." 20 C.F.R. §702.243(b); *see also* 33 U.S.C. §908(i)(1), (3).

stake. As the proposed settlement agreement involves only claimant's claim against TTI, and does not affect the rights or obligations of any other potentially liable employer, claimant and TTI are the only parties who must sign the application in this case. *See Alexander,* 297 F.3d 805, 36 BRBS 25(CRT); *Sears*, 40 BRBS 51. We therefore vacate the administrative law judge's disapproval of the settlement agreement for lack of signatures of other parties. We remand the case for the administrative law judge to consider the parties' settlement application consistent with law. 33 U.S.C. §908(i); 20 C.F.R. §§702.241-243;

Accordingly, the administrative law judge's Order Rejecting Settlement as to Total Terminals Without Prejudice is vacated, and the case is remanded for the administrative law judge to address the merits of the parties' settlement application.

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge