



Issue Date: 21 October 2010

CASE NO.: 2010-STA-00037

In the Matter of:

**JAMES CUTTING,
Complainant,**

v.

**ABCO TRANSPORTATION, INC.,
Respondent.**

DECISION AND ORDER APPROVING SETTLEMENT

This case arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982, as amended [STAA] (49 U.S.C. §31101 et seq., with implementing regulations appearing at 29 C.F.R. Part 1978). No hearing has been held, however, as the parties have reached a settlement. For the reasons set forth below, I have approved the settlement and this matter is dismissed.

On September 28, 2010, Respondent filed a Notice of Settlement and Request for Dismissal with Prejudice. The submission included a draft order of dismissal but did not include a copy of the settlement agreement. Although the Notice also asked that that Complainant be required to return the original signed copy of the settlement agreement to Respondent, Complainant indicated that he had done so by correspondence of September 21, 2010, filed on September 28, 2010. The regulations relating to STAA whistleblower cases require that an administrative law judge review the settlement prior to dismissing a case. 29 C.F.R. § 1978.111(d)(2). Compare *Hoffman v. Fuel Economy Contracting*, 1987-ERA-33 (Sec’y Aug. 4, 1989) (Order) (requiring that settlements in whistleblower cases brought under the Energy Reorganization Act be reviewed to determine whether they are fair, adequate and reasonable) with *Indiana Dept. of Workforce Development v. U.S. Dept. of Labor*, 1997-JTP-15 (Admin. Review Bd. Dec. 8, 1998) (holding ALJ has no authority to require submission of settlement agreement in Job Training Partnership case when parties have stipulated to dismissal under Rule 41(a)(1)(ii), FRCP, and contrasting ERA cases.) Accordingly, on October 5, 2010, I issued an Order Requiring Submission of Settlement Agreement.

Under cover letter of October 15, 2010, filed on October 20, 2010, counsel for Respondent submitted for my review and approval a Confidential Release and Settlement Agreement [hereafter “Settlement Agreement”] signed by Complainant and by Ivan Abernathy on behalf of Respondent.

The regulations relating to settlements of STAA cases, as amended in August 2010, provide, in pertinent part:

(2) Adjudicatory settlements. 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 the settlement is approved by the ALJ if the case is before the ALJ or by the ARB, if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB as the case may be.

29 C.F.R. § 1978.111(d)(2) (2010).

The Settlement Agreement references laws in addition to the STAA. To the extent that the Settlement Agreement may be deemed to relate to matters under laws other than the STAA, I have limited my review to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegations that the Respondents violated the STAA. *See Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-56 (ARB Apr. 30, 2003). *See also Poulos v. Ambassador Fuel Oil Co., Inc.*, 1986-CAA-1 (Sec'y Nov. 2, 1987).

The Settlement Agreement also contains a confidentiality provision. However, the parties are advised that records in whistleblower cases are agency records which the agency must make available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. §552, and the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA.

Having reviewed the terms of the proposed settlement, I find that the settlement is fair, reasonable, and adequate, and that it should be approved. This Decision and Order Approving Settlement constitutes the final order of the Secretary of Labor. 29 C.F.R. § 1978.111(e) (2010). Accordingly,

ORDER

IT IS HEREBY ORDERED, that the Settlement Agreement be, and hereby is **APPROVED**, and that this case be, and hereby is **DISMISSED WITH PREJUDICE**.

A

PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.