U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)

Issue Date: 26 January 2011

Case No. 2010-STA-00048

In the Matter of

MICHAEL E. HARRISON,

Complainant,

v.

SOCI PETROLEUM, INC.,

Respondent.

APPEARANCES:

Paul O. Taylor, Esq.
Trucker Justice Center
Burnsville, Minnesota
For the Complainant

R. Scott Harvey, Esq.
Millisor & Nobi
Cleveland, Ohio
For the Respondent

BEFORE: JOHN P. SELLERS, III
Administrative Law Judge

ORDER APPROVING SETTLEMENT AND DISMISSING

This proceeding arises under Section 405, of the employee protection provisions of the Surface Transportation Assistance Act of 1982 ("STAA"), 49 U.S.C. § 31101 *et seq.* and the implementing regulations published at 29 C.F.R. Part 1978. Pursuant to a Notice of Hearing and Prehearing Order, issued June 7, 2010, this matter was set for hearing on September 28-29, 2010, in Akron, Ohio.

On September 10, 2010, however, this Office received the Complainant's Motion to Vacate the Hearing and Stay Proceedings, stating that the parties wished to engage in mediation before a settlement judge. On September 14, 2010, I issued an Order cancelling the scheduled hearing and staying the proceedings to allow the parties to pursue resolution of this matter through the settlement-judge program.

On November 10, 2010, this Office received from Hon. Michael P. Lesniak, settlement judge, notice that the settlement-judge proceeding had been successfully concluded, and that the case was being returned to me as presiding judge in the matter. On November 22, 2010, I issued an Order for the parties to submit their signed settlement agreement and stipulation of dismissal.

On December 20, 2010, counsel for the Complainant submitted a Motion to Approve Settlement and Dismiss Proceeding with Prejudice. Accompanying the motion was a document entitled Settlement Agreement and General Release of Claims. The document was signed by the Complainant, Mr. Michael Harrison, and stated that SOCI was released from liability under any cause of action related to his termination, specifically including this STAA claim.

Pursuant to § 31105(b)(2)(C) of the STAA, "[b]efore the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation." Under regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Assistant Secretary's findings "if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board . . . or the ALJ." 29 C.F.R. §1978.111(d)(2). Under the STAA a settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. *Tankersly v. Triple Crown Services, Inc.*, 1992-STA-8 (Sec'y Feb. 18, 1993). Consistent with that required review, the regulations direct the parties to file a copy of the settlement "with the ALJ or the Administrative Review Board as the case may be." *Id*.

The Board requires that all parties requesting settlement approval provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or certify that the parties have not

entered into other such settlement agreements. *See Biddy v. Alyeska Pipeline Serv. Co*., ARB Nos. 96-109, 97-015, ALJ No. 95-TSC-7, slip op. at 3 (ARB Dec. 3, 1996). Here, the parties have properly submitted both a release of claims, specifically releasing SOCI Petroleum from liability under STAA claim, as well as settlement agreement and general release of claims, the terms of which preclude any and all claims, charges, complaints, and grievances, etc., "regarding any and all aspects of Harrison's employment with SOCI, his employment separation from SOCI, and any other event occurring prior to and including the effective date of this Agreement."

The agreement encompasses the settlement of matters under laws other than the STAA. Authority over settlement agreements is limited to such statutes as are within the forum's subject-matter jurisdiction and defined by the applicable statute. Therefore, I may consider approval only of the terms of the agreement pertaining to Complainant's STAA claim. *See Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 00- STA-56 (ARB Apr. 30, 2003).

Paragraph 4 of the Settlement Agreement and General Release of Claims provides that the parties shall keep the terms of the settlement agreement confidential, with certain specified exceptions. I emphasize that "[t]he parties' submissions, including the agreement become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552 (West 1996). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act." *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.,* ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. *See* 29 C.F.R. Part 70.[1]

I also noted that the confidentiality agreement expressly states that Mr. Harrison is not precluded from voluntarily communicating with federal, state, or local governmental authorities concerning his employment with SOCI or the terms of the settlement agreement. The confidentiality agreement therefore does not violate public policy.

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[1] "Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h)." *Coffman,* slip op. at 2, n.2.

I have carefully reviewed the parties' settlement document and have determined that it constitutes a fair, adequate, and reasonable settlement of the complaint and is in the public interest. I note in this regard that Mr. Harrison is represented by an experienced and zealous litigator under the STAA, who has represented on behalf of his client that in light of the inherent risks of litigation, and Mr. Harrison's recall to work, the settlement is fair, adequate and reasonable. In determining whether the settlement is fair, adequate, and reasonable, the opinion of the Complainant's counsel is given particular weight.

Formerly, pursuant to 29 C.F.R. § 1978.109(c), the Administrative Review Board was required to issue the final order of dismissal of a STAA complaint resolved by settlement. *See Howick v. Experience Hendrix, LLC*, ARB No. 02-049, ALJ No. 2000-STA-32 (ARB Sept. 26, 2002). However, the August 31, 2010 amendments to the STAA now provide that "[a]ny settlement approved by the Assistant Secretary, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced pursuant to § 1978.113." 29 C.F.R. § 1978.111(e).

Accordingly, it is hereby **ORDERED** that the settlement agreement is **APPROVED** and the complaint which gave rise to this litigation is **DISMISSED** with prejudice.

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JOHN P. SELLERS, III
Administrative Law Judge