



Issue Date: 11 September 2013

Case No.: 2013-STA-00019

In the Matter of:

EMMETT TOLBERT,

Complainant,

v.

TRIMAC DRY BULK GROUP, INC.,

Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT
AND
ORDER DISMISSING COMPLAINT WITH PREJUDICE**

This proceeding arises from a complaint filed under the provisions of Section 31105 of the Surface Transportation Assistance Act of 1982, U.S. Code, Title 49, §31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (“STAA”) and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 1978 and Part 18. The claim was referred to the Office of Administrative Law Judges for formal hearing upon appeal by Complainant of the January 2, 2013 Occupational Safety and Health Administration determination that there was no reasonable cause to believe that Respondent violated the STAA.

Formal hearing in this case was deferred for settlement judge proceedings pursuant to 29 CFR §18.9(e). Settlement judge proceedings pursuant to 29 CFR §18.9(e) were requested on May 9, 2013 and concluded on August 13, 2013. On September 3, 2013, the Parties filed their “Settlement Agreement and Accord and Satisfaction” (Settlement Agreement) with this office. The Settlement Agreement provided for a seven day period for revocation which expired on August 27, 2013.

Implementing Federal regulations at 29 CFR §1978.111(d)(2) provides that “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 judge, or by the ARB if the ARB has accepted the case for review. A copy of

the settlement agreement must be filed with the administrative law judge or the ARB, as the case may be.” In reviewing the Settlement Agreement, the Administrative Law Judge must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant’s allegations that the Respondent violated the STAA. See - *Edmisten v. Ray Thomas Petroleum*, ARB No. 10-020, ALJ No. 2009-STA-36 (ARB Dec. 16, 2009); *Thompson v. G&W Transportation Co., Inc.*, 90-STA-25 (Sec’y Oct.24, 1990) Once the settlement agreement is approved, it becomes the final action of the Secretary, 29 CFR §1978.111(e).

The STAA provides that pursuit of rights and remedies under the STAA does not diminish or affect any right available under other federal or state laws designed to redress the employee’s discharge or other discriminatory action taken by the employer against the employee. 49 U.S.C. §31105(f) and (g) However, when evaluating the appropriateness of actions under the STAA, any prior actions taken under other redress for the same events and course of conduct, including a collective bargaining agreement, must “be equitably structured such that it is offset by any arbitration award ordered for the same relief to avoid duplicative recovery.” see *Lucia, Abernathy and Cowles v. American Airlines, Inc.*, ARB Case Nos. 10-014 / 015 / 016, at page 8 (Sep. 16, 2011); ALJ Case Nos. 2009-AIR-017 / 016 / 015 (Oct. 15, 1009)

After review of the Settlement Agreement and the administrative record, this Administrative Law Judge finds that the Settlement Agreement complies with the standard required under the STAA and is approved.

Accordingly, it is **ORDERED** that –

1. The Settlement Agreement is **APPROVED**; and,
2. The Complaint is hereby **DISMISSED WITH PREJUDICE**.

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia