U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 10 December 2014

Case No.: 2014-STA-00056

In the Matter of:

DAVID DYAS,
Complainant,

v.

AIRGAS, INC.,
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT AND DISMISSING THE COMPLAINT

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, issued August 3, 2014, this matter was set for hearing on December 2, 2014, in Cincinnati, Ohio. In an Order Cancelling Hearing issued on November 12, 2014, the hearing was cancelled after the parties advised that they had reached a basis for settlement.

On December 8, 2014, counsel for the Respondent submitted by letter to the undersigned a joint request to approve settlement. The letter enclosed a document entitled, *Settlement Agreement and General Release of All Claims* ("settlement agreement"), which is incorporated herein and made part of the Decision and Order Approving Settlement. The settlement agreement was signed by the Complainant, Mr. David Dyas, and a representative of Airgas, Inc. and stated that Airgas, Inc. ("Airgas") 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 as part of the settlement agreement a release of claims, specifically releasing Airgas from liability under the STAA claim, as well as a settlement agreement and general release of claims, the terms of which preclude any and all claims, charges, complaints, and grievances, etc., regarding all claims which were actually asserted, or which could have been asserted, under federal, state, or local law, regulation, ordinance or common law by Complainant, that in any way relate to his employment with Respondent, termination of employment, retaliation with respect to employment or any other cause of action arising out of his employment with Respondent.

It is noted that 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).

Section III of the Settlement Agreement and General Release of All Claims provides that the parties shall keep the terms of the settlement agreement confidential, with certain specified exceptions, such as where such disclosure is required pursuant to legal process. The confidentiality agreement therefore does not violate public policy. However, I emphasize the following caveat: "The 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. § 552 (1988). 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.

The records in this case are agency records which must be made available for public inspection and copying under FOIA. However, the respondent employer will be provided a pre-disclosure notification giving Respondent the opportunity to challenge any such potential disclosure. The Settlement Agreement itself is not appended and will be separately maintained and marked:

"PREDISCLOSURE NOTIFICATION MATERIALS'

I have carefully reviewed the parties' settlement agreement and all its provisions. I also note in this regard that Mr. Dyas is not represented by an attorney, but was represented by an officer of his local union in this matter. However, I have determined that the settlement is fair, adequate, reasonable and is in the public interest. Therefore, it will be approved.

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.

Digitally signed by JOSEPH KANE
DN: CN=JOSEPH KANE,
OU=ADMINISTRATIVE LAW JUDGE,
O=Office of Administrative Law Judges,
L=Cincinnati, S=OH, C=US
Location: Cincinnati OH

JOSEPH E. KANE
Administrative Law Judge