U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 01 March 2017

Case No.: 2014-STA-00081

In the Matter of
DARRYL S. HARRINGTON,
Complainant,

v.

SHRED-IT USA, INC.,
Respondent.

Appearances:

Darryl Harrington, *Pro Se*
Pittsburgh, PA
For the Complainant

Philip J. Campisi, Jr., Esq,
Uniondale, NY
For the Respondent

BEFORE: Peter B. Silvain, Jr.
Administrative Law Judge

DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND DISMISSING COMPLAINT WITH PREJUDICE

This proceeding arises under the employee-protection provisions of the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31101 *et seq.* [1] ("STAA") and the regulations published at 29 C.F.R. Part 1978. Procedurally, this hearing will be conducted based upon the rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges at 29 C.F.R. Part 18.

[1]The Act was most recently amended by Section 1536 of the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. No. 110-053, 121 Stat. 266 (Aug. 3, 2007) (the "9/11 Commission Act"). The 9/11 Commission Act broadened the definition of employees to be covered by the STAA; added to the list of protected activities; adopted the legal burdens of proof found in Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121; provided for awards of special damages, and punitive damages not to exceed $250,000; and, provided for *de novo* review by a U.S. District Court if the Secretary of Labor does not issue a final decision on the complaint within 210 days of its filing.

On February 21, 2017, the parties filed with the undersigned a Settlement and Release Agreement ("Settlement"). The Settlement resolves the controversy arising from the complaint of Darryl Harrington (the Complainant) against Shred-It USA, LLC, and its parent, Stericycle, Inc. (the Respondent). This Settlement is signed by the Complainant, as well as, Philip Campisi, Jr., Counsel for the Respondent. The Settlement provides that the Complainant will release the Respondent from claims arising under the STAA as well as other various federal and/or state statues. This Order, however, is limited to whether the terms of the Settlement are a fair, adequate and reasonable settlement of the Complainant's allegations that the Respondent violated the STAA. As was stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987) "[t]he Secretary's authority over the settlement agreement is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute."[2]

I have therefore limited my review of the Settlement to determining whether the terms thereof are a fair, adequate and reasonable settlement of the Complainant's allegation that the Respondent had violated the STAA.[3] Under regulations implementing the STAA, the participating parties may settle a case at any time after filing objections to the Assistant Secretary's findings and/or order, if they "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."[4] Consistent with those requirements, the regulations direct the parties to file a copy of the settlement "with the ALJ or the ARB, as the case may be."[5]

The Board requires all parties requesting settlement approval to 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.[6] Here, the parties have submitted a complete release of claims, specifically releasing Shred-It USA, LLC, and its parent, Stericycle, Inc., from liability under the above-captioned STAA claim.

Section 4 of the Settlement Agreement and General Release provides that the parties agree to keep the terms of the agreement confidential, with certain specified exceptions. While recognizing the parties' requirement of confidentiality, I emphasize the following: "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."[7] 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 those who submit

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[2] See *Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. 86-CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncomb County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

[3] *Tankersly v. Triple Crown Services, Inc.*, 1992-STA-8 (Sec'y Feb. 18, 1993).

[4] 29 C.F.R. §1978.111(d)(2).

[5] *Id*.

[6] *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).

[7] *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).

confidential commercial information.[8] The records in this case are agency records, which must be made available for public inspection and copying under FOIA. Section 3(i) of the Settlement Agreement and General Release expressly states that the confidentiality requirement does not apply where necessary to legally enforce the settlement agreement or where disclosure is legally required. Therefore, I find that the confidentiality requirement does not violate public policy.

I have carefully reviewed the Settlement Agreement and have determined that it is in the public interest. I find the agreement to be fair, adequate, and reasonable. Accordingly, it is hereby **ORDERED** that the Settlement Agreement is **APPROVED,** and the complaints that gave rise to this litigation are **DISMISSED** with prejudice.

Digitally signed by PETER SILVAIN JR.
DN: CN=PETER SILVAIN JR., OU=ADMINISTRATIVE LAW JUDGE, O=US DOL Office of Administrative Law Judges, L=Cincinnati, S=OH, C=US
Location: Cincinnati OH

PETER B. SILVAIN, JR.
Administrative Law Judge

[8] *See* 29 C.F.R. Part 70.