



Issue Date: 09 February 2015

Case Number: 2014-STA-00020

In the Matter of:

**DAVID D. KOLVE, JR.,
Complainant,**

v.

**MURRAY LIVESTOCK TRANSPORT and
DANIEL MURRAY
Respondents.**

Appearances: Paul O. Taylor, Esq.
Burnsville, Minnesota
For the Complainant

Kevin J. Visser, Esq.
Cedar Rapids, Iowa
For the Respondents

Before: Stephen R. Henley
Administrative Law Judge

DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT AND
DISMISSING COMPLAINT WITH PREJUDICE

This case arises under the whistleblower protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and recodified, 49 U.S.C. § 31105 (hereinafter the "STAA" or "Act") and the regulations promulgated thereunder at 29 CFR Part 1978. Section 405 of the STAA protects employees from discharge, discipline and other forms of retaliation for engaging in protected activity, such as reporting violations of commercial motor vehicle safety rules or refusing to operate a vehicle when the operation would violate these rules or cause serious injury.

A *de novo* formal hearing in this matter was held in Milwaukee, Wisconsin on July 24, 2014. Post-hearing briefs were due December 9, 2014. The parties subsequently informed the

undersigned that the matter had settled,¹ submitting an executed Agreement and Release (Settlement) for my review and requesting the case be dismissed with prejudice.²

The STAA and implementing regulations provide that proceedings may be terminated on the basis of a settlement if either the Secretary or the Administrative Law Judge approves the settlement. 49 U.S.C. § 31105(b)(2)(C); 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. *Edmisten v. Ray Thomas Petroleum*, ARB No. 10-020, ALJ No. 2009-STA-00036 (ARB Dec. 16, 2009). Consistent with this required review, the regulations direct the parties to file a copy of the settlement “with the ALJ or the Administrative Review Board, United States Department of Labor, as the case may be.” 29 C.F.R. 1978.111(d)(2). Any settlement approved by the Assistant Secretary, the ALJ or the ARB constitutes the final order of the Secretary and may be enforced pursuant to § 1978.113. 29 C.F.R. § 1978.111(e).

Having reviewed the settlement agreement and its provisions, which includes dismissal of the complaint with prejudice, I find the terms, obligations, and conditions fair, adequate and reasonable, and in the public interest. I also find Claimant and Employer were ably represented by counsel and that the settlement was not procured through duress. Accordingly, I approve the parties’ settlement and dismissal of the complaint with prejudice.³ The parties shall implement the terms of the approved settlement as specifically stated in their agreement.

ORDER

The settlement agreement is APPROVED and this matter is DISMISSED with prejudice.

SO ORDERED:

STEPHEN R. HENLEY
Administrative Law Judge

¹ 29 C.F.R. § 1982.111(d)(1) states that at any time after the filing of objections to the Assistant Secretary’s findings and preliminary order, the case may be settled, and, if the case is before an administrative law judge, the settlement is contingent upon the approval of the administrative law judge. Any settlement approved by the administrative law judge becomes the final order of the Secretary. 29 C.F.R. § 1982.111(e).

² The parties have agreed that the terms of the settlement will be treated as confidential. The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily. 20 C.F.R. § 70.26(b) (2001). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a FOIA request is received seeking release of that information. Accordingly, the Settlement in this matter will be placed in an envelope marked “PREDIS CLOSURE NOTIFICATION MATERIALS.” Consequently, before any information in this file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. *See* 29 C.F.R. § 70.26 (2001). Furthermore, the undersigned will refrain from discussing specific terms or dollar amounts contained in the Settlement.

³ This approval applies only to the STAA complaint over which the Office of Administrative Law Judges has jurisdiction.