



Issue Date: 09 May 2018

Case No.: **2014STA00085**

In the Matter of:

ASSISTANT SECRETARY OF LABOR FOR
OCCUPATIONAL SAFETY AND HEALTH,
Prosecuting Party,

and

JEFFREY SZYMANSKI,
Complainant,

v.

ASPHALT SPECIALISTS, INC., and
DAN ISRAEL, individually,
Respondents.

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

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENTS
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.

¹The 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 March 30, 2018, the parties filed with the undersigned “Complainant’s Motion to Approve Settlement and Dismiss Proceedings with Prejudice” (“Motion to Dismiss”) along with a “Settlement Agreement as to Complainant Szymanski” and a “Confidential Settlement Agreement and General Release.” The terms of the Motion to Dismiss, Settlement Agreement as to Complainant Szymanski and Confidential Settlement Agreement and General Release (including any and all exhibits) are, by reference, fully incorporated herein. The Motion to Dismiss, Settlement Agreement as to Complainant Szymanski and Confidential Settlement Agreement and General Release resolve the controversies arising from the complaint of Jeffrey Szymanski (“Complainant”) and the Assistant Secretary of Labor for Occupational Safety and Health (“Prosecuting Party”) against Asphalt Specialists, Inc. and Dan Israel, individually (“Respondents”). The Settlement Agreement as to Complainant Szymanski is signed by Respondent Dan Israel, individually and as President of Respondent Asphalt Specialists, Inc. as well as the Counsel for the Prosecuting Party. The Confidential Settlement Agreement and General Release is signed by the Complainant, as well as, Respondent Dan Israel, individually and for Respondent Asphalt Specialists, Inc. Hereinafter the “Settlement Agreement as to Complainant Szymanski” and “Confidential Settlement Agreement and General Release” will be referred to jointly as the “Settlement Agreements.”

The Settlement Agreements provide that the Complainant and Prosecuting Party, in exchange for monetary and other considerations detailed therein, will release the Respondents from claims arising under the STAA as well as other various federal and/or state statutes. Further, the Settlement Agreements provide that Respondents will release the Complainant and Prosecuting party from all federal and/or state claims or counterclaims. This Order, however, is limited to whether the terms of the Settlement Agreements 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 Agreements 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

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.*

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 all parties from liability under the above-captioned STAA claim.

Section 13 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 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 13 of the Settlement Agreement and General Release also 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 Agreements and have determined that they are fair, adequate, and reasonable. Accordingly, it is hereby **ORDERED** that the Settlement Agreements are **APPROVED**, and the complaints that gave rise to this litigation are **DISMISSED** with prejudice.

PETER B. SILVAIN, JR.
Administrative Law Judge

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).

⁸ See 29 C.F.R. Part 70.