



**Issue Date: 09 November 2015**

Case No.: 2015-STA-00052

In the Matter of

**JOSEPH AYALA,**  
Complainant

v.

**SCHWAN'S CONSUMER BRANDS, INC.**  
Respondent

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

This proceeding arises from a complaint filed Joseph Ayala ("Complainant") against Schwan's Consumer Brands, Inc. ("Respondent" or "Schwan's") under the Surface Transportation Assistance Act, 49 U.S.C. § 31105 ("STAA" or "Act"), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, and the regulations promulgated thereunder at 29 C.F.R. Part 1978. The STAA prohibits covered employers from discharging or otherwise discriminating against covered employees who have engaged in certain protected activities with regard to their terms and conditions of employment.

In the complaint filed with the Occupational Safety and Health Administration ("OSHA") on June 27, 2014, Complainant alleged that Respondent terminated his employment on June 17, 2014 in retaliation for his filing a complaint with its management about an alleged federal-hours-of-service violation. OSHA issued the Secretary's Findings in a letter dated April 13, 2015, dismissing the complaint. By fax dated April 20, 2015, Complainant filed his objections to the Secretary's Findings and requested a hearing before the Office of Administrative Law Judges ("OALJ").

The case was subsequently forwarded to this office and a Notice of Hearing and Pre-Hearing Order was issued on June 9, 2015.

With a cover letter dated October 27, 2015, counsel for Respondent enclosed for filing a "Stipulation of Dismissal with Prejudice" dated October 2, 2015 and signed by Complainant, Joseph Ayala, who is self-represented, and counsel for Respondent.

On my direction, my law clerk, R. Colin Power, contacted Respondent's counsel on November 3, 2015 to ascertain if the parties had reached a settlement in this matter and if so, to

inform counsel that the applicable regulations require that such a settlement be submitted for approval by the Administrative Law Judge. Mr. Power was advised that the parties had reached a settlement and that the signed settlement agreement would be provided to this office via email attachment to him.<sup>1</sup> Mr. Power received a document entitled “Confidential Settlement Agreement And General Release” (referred to herein as “Settlement Agreement”) as a pdf attachment via email from Respondent’s counsel on November 3, 2015.

The Settlement Agreement is incorporated by reference and made a part of this Order approving it. The Settlement Agreement was signed by the Complainant and Scott Summers, Managing Attorney, Schwan’s Shared Services, LLC.

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 the settlement is approved by the ALJ or by the ARB.” 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. *Tankersly v. TripleCrown Services, Inc.*, 1992-STA-(Sec’y Feb. 18, 1993). Consistent with that required review, the regulations direct the parties to file a copy of the settlement agreement “with the ALJ or the Administrative Review Board as the case may be.” *Id.*

The Administrative Review 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 Biddyv. Alyeska Pipeline Serv. Co.*, ARB Nos. 96-109, 97-015, ALJ No. 95-TSC-7, slip op. 3 (ARB Dec. 3, 1996). Here, the parties have properly submitted a Settlement Agreement, specifically releasing Schwan’s Consumer Brands, Inc. from liability under STAA claim, as well as precluding any and all claims arising out of the incident at issue.

The Settlement Agreement encompasses the settlement of matters under laws other than the STAA. The authority of the OALJ over settlement agreements is limited to the statutes within its jurisdiction and is defined by the applicable statute. Therefore, this Order may only approve terms of the Settlement 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).

The Settlement Agreement includes the word “Confidential” in its title and paragraph 1.h. of the Settlement Agreement provides that Complainant is to keep the Settlement Agreement’s “existence, terms and conditions” confidential, with certain specified exceptions. It must be noted that “[t]he 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).

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<sup>1</sup> The parties are reminded that electronic filings with the DOL Office of Administrative Law Judges are generally not allowed but an exception was made in the instance for expediency.

FOIA requires Federal agencies to disclose requested records unless such records are exempt from disclosure under the [FOIA].” *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.<sup>2</sup>

Based on careful review, it is determined that the Settlement Agreement constitutes a fair, adequate, and reasonable settlement of the complaint.

### **ORDER**

The Settlement Agreement is **APPROVED** and the complaint is **DISMISSED** with prejudice. The pre-hearing conference scheduled for **December 17, 2015** and the hearing scheduled for **January 12, 2016** are CANCELED.

SO ORDERED.

**LYSTRA A. HARRIS**  
Administrative Law Judge

Cherry Hill, New Jersey

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<sup>2</sup> Pursuant to 29 C.F.R. §70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and the requester files a suit to compel disclosure, the submitter will be notified, 29 C.F.R. §70.26(h). *Coffman*, slip op. at 2, n.2. In this matter, no party has sought the designation of the Settlement Agreement as “confidential commercial information” under 29 C.F.R. Part 70.