



Issue Date: 22 January 2016

Case Nos.: 2013-STA-00018
2015-STA-00041
2015-STA-00042
2015-STA-00067

In the Matter of:

SAMUEL J. BUCALO,
Complainant,

v.

UNITED PARCEL SERVICE, INC.,
Respondent.

Appearances:

Samuel J. Bucalo, *pro se*
Cincinnati, Ohio
For the Complainant

Jennifer R. Asbrock, *Esq.*
Frost Brown Todd, LLC
Louisville, Kentucky
For the Respondent

BEFORE: JOHN P. SELLERS, III
Administrative Law Judge

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT
AND DISMISSING COMPLAINTS WITH PREJUDICE**

This proceeding arises under § 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. By Order dated June 3, 2015, Case Numbers 2013-STA-00018, 2015-STA-00041, and 2015-STA-00042 were consolidated. Thereafter, by Order dated July 27, 2015, Case Number 2015-STA-00067 was consolidated with the three aforementioned cases.

Pursuant to Orders dated June 24, 2015, and January 6, 2016, I granted the parties’ joint motion for appointment to a mediator. On January 6, 2016, Chief Administrative Law Judge Stephen R. Henley issued a Supplemental Order Concluding Mediation and returned the above-

captioned cases to the undersigned. By e-mail dated January 12, 2016, the parties filed with the undersigned a Settlement Agreement and General Release. The document was executed on December 21, 2015, initialed and signed by the Complainant, Samuel Bucalo, on December 21, 2015, and initialed and signed by Joseph Mullikin, on behalf of the Respondent, on December 22, 2015.

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 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.”¹ 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.”² 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.³

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.⁴ Here, the parties have submitted a complete release of claims, specifically releasing United Postal Service, and other parties as specified, from liability under the four above-captioned STAA claims, as well as a general release of claims and unknown claims. Although the agreement encompasses 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 approve only the terms of the settlement agreement pertaining to the Complainant’s STAA claims.⁵

Section 3(i) 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: “[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). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.”⁶ 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.⁷ 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

¹ 29 C.F.R. §1978.111(d)(2).

² *Id.*

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

⁴ *See Bidy v. Alyeska Pipeline Serv. Co.*, ARB Nos. 96-109, 97-015, ALJ No. 95-TSC-7, slip op. at 3 (ARB Dec. 3, 1996).

⁵ *See Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 00- STA-56 (ARB Apr. 30, 2003).

⁶ *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).

⁷ *See* 29 C.F.R. Part 70.

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 General Release and have determined that it is in the public interest. While I note that an attorney does not represent Mr. Bucalo, I nonetheless find the Agreement to be fair, adequate, and reasonable. Accordingly, it is hereby **ORDERED** that the Settlement Agreement and General Release is **APPROVED**, and the complaints that gave rise to this litigation are **DISMISSED** with prejudice.

JOHN P. SELLERS, III
Administrative Law Judge