



**Issue Date: 22 January 2016**

**OALJ No.: 2015-STA-00064**  
**OSHA No.: 3-3500-14-017**

*In the Matter of:*

**MATTHEW DANNER,**  
*Complainant,*

v.

**ROSE TRANSPORTATION, ET AL.,**  
*Respondent.*

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

The above-captioned matter 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.

*Procedural background*

Matthew Danner (“Complainant”) filed a complaint with the Office of Safety and Health Administration (“OSHA”) alleging that he was retaliated against in violation of the STAA when Rose Transportation (“Respondent”) terminated his employment on or about November 4, 2013. After conducting its investigation, OSHA issued the preliminary findings and order of the Secretary by letter dated July 7, 2015, dismissing the complaint. Complainant timely filed his objection to those findings and requested a hearing for the Office of Administrative Law Judges (“OALJ”). The matter was then referred to the OALJ and assigned to the undersigned on July 21, 2105.

Pursuant to a formal notice, a hearing date of January 21-22, 2016 was set for this case in Cherry Hill, NJ. By Order issued on December 1, 2015, Complainant’s unopposed motion to vacate the hearing date was granted based on the notice included with that motion that the parties had reached a settlement.

Enclosed with a letter from Complainant's counsel dated January 11, 2016 received on January 19, 2016, was Complainant's Unopposed Motion To Approve Settlement ("Unopposed Motion") along with a document entitled "Confidential Settlement Agreement And General Release Of Claims" ("Settlement Agreement"). In Complainant's Unopposed Motion, Complainant requests that the Settlement Agreement be approved and the complaint be dismissed with prejudice and without costs awarded to either party.

### *Findings and analysis*

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).<sup>1</sup> 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.

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.

The Settlement Agreement resolves the controversy arising from the OSHA complaint of Complainant against Respondent. The Settlement Agreement is signed by Complainant, as well as Respondent's President. The Settlement Agreement provides that Complainant will release Respondent from claims arising under the STAA as well as various other laws. This Order, however, is limited to whether the terms of the Settlement Agreement are a fair, adequate and reasonable settlement of Complainant's allegations that Respondent violated the STAA.<sup>2</sup>

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<sup>1</sup> Twenty-nine C.F.R. § 1978.111(d)(2) 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. § 1978.111(e).

<sup>2</sup> As stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987), "the 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." Therefore review of the Settlement Agreement is limited to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegation that Respondent had violated the STAA.

*Conclusion*

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 the Settlement Agreement was not procured through duress. The parties shall implement the terms of the approved Settlement Agreement as specifically stated therein. Complainant's Unopposed Motion is **GRANTED**.

**ORDER**

**IT IS ORDERED** that the Settlement Agreement is **APPROVED**, and thereby becomes the final order of the Secretary. **IT FURTHER ORDERED** that the complaint filed in this matter is **DISMISSED WITH PREJUDICE AND WITHOUT COSTS AWARDED TO EITHER PARTY**.

SO ORDERED.

**LYSTRA A. HARRIS**  
Administrative Law Judge

Cherry Hill, New Jersey