



Issue Date: 07 June 2017

Case No.: **2016-STA-00044**
OSHA Case No.: 6-2320-15-177

In the Matter of:

KEVIN GANN,
Complainant,

v.

PREWETT ENTERPRISES, INC., d/b/a
B&P ENTERPRISES, TIM LEHMAN and BEAU BILLECK,
Respondents.

DECISION AND ORDER APPROVING SETTLEMENT
AGREEMENT AND DISMISSING COMPLAINT

This proceeding arises from a complaint of discrimination filed under the employee protection provisions of Section 405 of the Surface Transportation Assistance Act (“STAA”), as amended, 49 U.S.C.A. § 31105 and the procedural regulations found at 29 C.F.R. Part 1978. On April 2, 2017, the Complainant filed an Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice, along with a copy of the Settlement Agreement.

After consideration of the terms and conditions of the Settlement Agreement, I find that the Settlement Agreement does not contain any provisions that are contrary to law or against public policy. Both the Complainant and the Respondent have been ably represented by counsel, and I find it reasonable to presume that the terms of the Settlement Agreement adequately protect the Complainant. Furthermore, I believe it is in the public interest to approve the Settlement Agreement as a basis for administrative disposition of this case. Accordingly, based on the record as a whole and upon review of the Settlement Agreement, I find that the terms of the Settlement Agreement are fair, adequate, and reasonable, and it is hereby APPROVED pursuant to 29 C.F.R. § 1978.111(d)(2), subject to the below comments.

The parties have asserted that the Settlement Agreement will remain confidential, though they recognize that the Agreement does not prohibit disclosures made by the Department of Labor pursuant to the Freedom of Information Act (“FOIA”). Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties’ submissions in this case, including the Settlement Agreement, become a part of the record in this case, and are subject to FOIA. 5 U.S.C. § 552 *et seq.* FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *See, e.g., Fish v. H and R*

Transfer, ARB No. 01-071, ALJ Case No. 2000-STA-56, slip op. at 2 (ARB April 30, 2003). Furthermore, I recognize that the Settlement Agreement contains financial information and business information that is privileged or confidential within the meaning of 29 C.F.R. § 70.2(j), as well as personal information relating to the Complainant. To protect the parties from improper disclosure of this confidential information to the furthest extent permitted by law, I will construe the parties' confidentiality clause as an assertion of pre-disclosure notification rights in accordance with 29 C.F.R. § 70.26.

With regard to the resulting confidentiality of the Settlement Agreement, the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, the Settlement Agreement may nonetheless be subject to disclosure as a responsive document to a FOIA request. The Administrative Review Board has noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

Seater v. S. Cal. Edison Co., ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

I note that my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Settlement Agreement pertaining to Complainant's STAA claim, Case No. 2017-STA-00044. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

Accordingly, it is hereby **ORDERED** that:

- (1) The Complainant's Unopposed Motion is **GRANTED**;
- (2) The Settlement Agreement is **APPROVED**;
- (3) The Settlement Agreement shall be deemed confidential commercial information, subject to the procedures requiring disclosure under FOIA; and
- (4) The Complaint of Kevin Gann is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

CARRIE BLAND
Administrative Law Judge

Washington, D.C.