



Issue Date: 31 January 2018

Case No.: 2017-STA-00087

In the Matter of:

ANTHONY CUNNINGHAM,
Complainant,

v.

REPUBLIC SERVICES, INC.,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT
AND DISMISSING CASE**

The matter arises under the whistleblower protection provisions of the Surface Transportation Assistance Act of 1982 (“STAA”), 49 U.S.C. § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, and the corresponding regulations found at 29 C.F.R. Part 1978. It was scheduled for hearing in Philadelphia, Pennsylvania on February 6, 2018, but cancelled by order issued on January 23, 2018 upon receipt of advice that the parties had reached a settlement. On January 25, 2018, Respondent submitted an *Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice*, with a *Confidential Settlement and Release Agreement* (“Settlement Agreement”) signed by both parties.

Proceedings under the STAA may be terminated on the basis of an adjudicatory settlement agreement if approved by the appropriate tribunal. 49 U.S.C. § 31105(b)(2)(C); 29 C.F.R. § 1978.111(d). The STAA’s implementing 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). If the parties reach a settlement after commencement of proceedings before OALJ, the settlement agreement does not become effective until the administrative law judge has reviewed the terms of the agreement and determined them to be fair, adequate and reasonable, and in the public interest. *Edmisten v. Ray Thomas Petroleum*, ARB No. 10-020, ALJ No. 2009-STA-036 (ARB Dec. 16, 2009). Any settlement approved by the Assistant Secretary, the ALJ, or the ARB constitutes the final order of the Secretary and may be subject to judicial enforcement under § 1978.113. 29 C.F.R. § 1978.111(e).

Having reviewed the provisions of the Settlement Agreement, which includes dismissal of the underlying complaint with prejudice,¹ I find the terms, obligations, and conditions fair, adequate and reasonable, and in the public interest.² I also find that the Settlement Agreement was not procured through duress.³ Accordingly, I approve the parties' Settlement Agreement and dismiss this case with prejudice.⁴ To the extent that they have not already done so, the parties shall implement the terms of the approved settlement as specifically stated in the agreement.

Order

Based on the foregoing, Respondent's *Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice* is GRANTED, and the parties' *Confidential Settlement and Release Agreement* is APPROVED. This case is hereby DISMISSED with prejudice.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

¹ I note that the Settlement Agreement provides for dismissal of the underlying case with prejudice and "without costs or fees." It further states that Complainant is solely responsible for paying any attorney's fees and costs he has incurred, and that neither he nor his attorney will seek an award of fees from Respondent. However, the Settlement Agreement also provides an agreed-on monetary amount payable to Complainant's attorney in satisfaction of Complainant's claim for costs and attorney's fees. To the extent that these provisions conflict, I construe the provision of dismissal without fees and costs as boilerplate language. Thus, I find the meaning of these provisions to be that Complainant is not entitled to payment of his attorney's fees and costs beyond the amount that Respondent agrees to pay to his attorney. However, if my interpretation of this provision is contrary to the parties' intent, the parties shall have ten (10) days from the date of this Order to notify the Court accordingly and request appropriate relief.

² The parties have agreed that the terms of the settlement will be treated as confidential by Complainant. The parties are afforded the right to request that information be treated as confidential commercial information under Exemption 4 of the Freedom of Information Act ("FOIA"). 29 C.F.R. § 70.26. The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a FOIA request is received seeking release of that information. Accordingly, the Settlement in this matter will be placed in an envelope marked "PREDISCLURE NOTIFICATION MATERIALS." Consequently, before any information in this file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. *See id.* § 70.26 (c)-(e). Furthermore, the undersigned will refrain from discussing specific terms or dollar amounts contained in the Settlement.

³ I find that Complainant and Respondents were ably represented by counsel.

⁴ This Order applies only to the STAA complaint over which the Office of Administrative Law Judges has jurisdiction.