

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 12 December 2017

ALJ NO.: 2017-STA-00080

In the Matter of:

JAMES DONNELLY,
Complainant,

v.

KELLER MARINE SERVICES, INC.,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING CLAIM**

This proceeding arises from a complaint of discrimination filed under employee protection provisions of Section 405 of the Surface Transportation Assistance Act (“STAA”), as amended, 49 U.S.C.A. § 31105 (West 2008) and the procedural regulations found at 29 C.F.R. Part 1978 (2012).

On December 4, 2017, the parties filed a joint motion to approve settlement and dismiss proceeding with prejudice, and attached the parties’ Settlement Agreement (hereinafter the “Settlement”) for my review and approval pursuant to 29 C.F.R. §§ 1978.111(c) & (d)(2). The Settlement resolves all issues raised in the complaint, has been signed by the Complainant and the Respondent, and is incorporated herein by reference.

After careful consideration of the Settlement, I find the terms and conditions of the agreement to be fair, adequate, and reasonable under the STAA, and that the terms adequately protect the Complainant. Furthermore, I believe it is in the public interest to approve the Settlement as a basis for administrative disposition of this case, and I therefore approve the Settlement pursuant to 29 C.F.R. § 1978.111(d)(2).

With regard to confidentiality of the Settlement, the parties are advised that notwithstanding the confidential nature of the Settlement, all of their filings, including the Settlement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act (“FOIA”), 5 U.S.C.A. § 552 *et seq.* 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.

The parties have also requested that the Settlement be placed under seal by the undersigned. I find good cause for such restricted access and the Settlement will be maintained in a sealed envelope. *See* 29 C.F.R. § 18.85.

Paragraph 17 of the Settlement provides that the terms of the agreement shall be governed by the laws of the State of New York. This choice of law provision is construed as not limiting the authority of the Secretary of Labor and any Federal court. *See Phillips v. Citizens. Assoc. for Sound Energy*, No. 91-ERA-25, slip op. at 2 (Sec’y Nov. 4, 1991).¹

Finally, 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 pertaining to Complainant’s STAA claim, Case No. 2017-STA-00080. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

ORDER

It is hereby **ORDERED** that the Settlement submitted by the parties is **APPROVED**. The complaint is **DISMISSED WITH PREJUDICE**. In accordance with the regulations, the Settlement constitutes the final order of the Secretary of Labor² and may be enforced under 29 C.F.R. § 1978.113.

SO ORDERED.

COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts

¹ In addition, during a conference call held with the parties on December 11, 2017, the parties agreed that Paragraph 7 of the Settlement shall not be construed as precluding the Complainant from assisting, participating, or cooperating in an investigation initiated by a federal or state agency.

² 29 C.F.R. § 1978.111(e).