



Issue Date: 14 November 2017

CASE NO.: 2017-STA-00041

In the Matter of:

JASON MILLER,
Complainant,

v.

ALLIED WASTE SERVICES, INC.,
Dba REPUBLIC SERVICE OF OHIO HAULING,
Respondent.

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

This proceeding arises from a claim of whistleblower protection under the Surface Transportation Assistance Act (“the STAA”), as amended.¹ On or about February 12, 2016, the Complainant filed a complaint alleging that Respondent violated the STAA. On November 13, 2017, Respondent filed an Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice, with an attached Confidential Settlement Agreement and General Release (hereafter “the Agreement”), which resolves all issues raised in the Complaint, for my review and approval. The Agreement is attached hereto and is incorporated herein by reference. The Agreement has been signed by the parties. I have the authority to approve the Agreement pursuant to 29 C.F.R. § 1978.111(d)(2).

My review of the Agreement is limited to a determination of whether its terms are fair, adequate and reasonable. The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to public interest. I note the Agreement encompasses settlement of matters under laws other than the STAA, however, I approve only those terms of the Agreement pertaining to the Complainant’s claim under the STAA.

¹ 49 U.S.C. § 31105 (2013).

I also note that certain language in the Agreement could be construed as a waiver by the Complainant of causes of action that may arise in the future. Specifically, the last sentence of paragraph 9 of the Agreement states that “[t]o the extent permitted by law, Miller agrees that if such an administrative claim is made, he shall not be entitled to recover any individual monetary relief or other individual remedies.” Paragraph 11 can also be construed to preclude monetary relief or other remedies resulting from claims that may arise in the future. Because a waiver of Complainant’s rights based on future employer actions would be contrary to public policy, I interpret these provisions as limited to a waiver of the right to pursue and receive monetary relief or other remedies only for claims or causes of actions arising out of facts occurring before the date of the Agreement. *See Phillips v. Citizens Assoc. for Sound Energy*, 91-ERA-25 (Sec’y Nov. 4, 1991).

Paragraph 16 of the Agreement regarding governing law and venue states that the Agreement will be governed by the laws of the State of Ohio and that any action relating to the Agreement must be instituted in Logan County, Ohio. I interpret this provision as not limiting the authority of the Secretary of Labor or any federal court, which shall be governed in all respects by the laws and regulations of the United States. *See Seater v. Southern California Edison Co.*, ARB No. 97-072, ALJ No. 1995-ERA-13 (ARB Mar. 27, 1997).

Paragraph 13 of the Agreement provides that the parties will keep the terms of the Agreement confidential, with certain specified exceptions. 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 Agreement, become a part of the record in this case and are subject to the Freedom of Information Act (“FOIA”).² 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). Accordingly, to protect the parties from improper disclosure of confidential information to the extent permitted by law, the Agreement will be sealed in a separate envelope and identified as being “CONFIDENTIAL COMMERCIAL INFORMATION,” pursuant to 29 C.F.R. § 70.26(b). The sealed envelope will also be identified as being “PERSONAL PRIVATE INFORMATION,” indicating that it may contain information exempt from FOIA pursuant to Exemptions 4 and/or 6.³

After consideration of the Agreement, I find that the terms and conditions are fair, adequate and reasonable under the Act, and that the terms adequately protect the Complainant. Furthermore, I believe it is in the public interest to approve the Agreement as a basis for administrative disposition of this case, and I therefore approve the Agreement as set forth above.

² 5 U.S.C. § 552..

³ 5 U.S.C. § 552(b)(4) and (6).

IT IS THEREFORE ORDERED that the Agreement is **APPROVED**. In accordance with the terms of the Agreement, the Complaint is hereby **DISMISSED WITH PREJUDICE**. In accordance with the regulations, the settlement constitutes the final order of the Secretary of Labor and may be enforced pursuant to 29 C.F.R. §1978.111 (e).

IT IS FURTHER ORDERED that the Agreement is to be kept under seal and designated as “**PERSONAL PRIVATE INFORMATION**,” and “**CONFIDENTIAL COMMERCIAL INFORMATION**” under 29 C.F.R. § 70.26, and shall be afforded the protections thereunder.

LARRY A. TEMIN
ADMINISTRATIVE LAW JUDGE