



Issue Date: 26 April 2017

Case No.: 2017-STA-00022

In the Matter of

ALLEN J. RUSSELL
Complainant

v.

**KOLLER CONCRETE, INC. and
RUDY PRICKLER**
Respondent

**ORDER APPROVING COMPLAINANT'S
UNOPPOSED MOTION TO APPROVE SETTLEMENT
AND DISMISS PROCEEDING WITH PREJUDICE**

The above-captioned matter 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

Allen Russell ("Complainant") filed a complaint with the Occupational Safety and Health Administration ("OSHA") alleging that he was retaliated against in violation of the STAA when Koller Concrete, Inc. and Rudy Prickler ("Respondent") terminated his employment on or about September 23, 2011. After conducting its investigation, OSHA issued the preliminary findings and order of the Secretary by letter dated December 20, 2016, finding the burden of establishing that Complainant was retaliated against in violation of STAA cannot be sustained. Complainant timely filed his objection to those findings and requested a hearing before the Office of Administrative Law Judges ("OALJ"). The matter was then referred to the OALJ and assigned to the undersigned on January 5, 2017.

An Initial Notice of Hearing and Pre-Hearing Order was issued by the undersigned on January 10, 2017 scheduling this matter for hearing on July 10, 2017. This notice informed the parties that OALJ offers two forms of court-sponsored alternative dispute resolution: settlement judges or mediation by a neutral. *See* 29 C.F.R. § 18.13 (settlement judge rule); Alternative Dispute Resolution Act of 1996, 5 U.S.C. §§ 572 and 573 (agency may appoint employee as a neutral to conduct mediation). The parties filed a joint motion for appointment of a mediator and, this motion was granted by Order dated January 23, 2017 signed by Chief Administrative Law Judge Stephen R. Henley.

On January 30, 2017, Respondent, with the consent of Complainant, moved for a limited stay of proceedings while the parties participated in mediation scheduled for March 8, 2017. An Order Granting Respondent's Uncontested Motion to Stay Proceedings was issued on February 7, 2017. On March 9, 2017, Chief Administrative Law Judge Stephen R. Henley, issued a Supplemental Order Concluding Mediation in this matter. Having reached a settlement, the case was returned to the undersigned and the parties were directed to reduce their agreement in writing and, forward it with any relevant motions to the undersigned within fourteen (14) days.

By letter dated March 9, 2017, and received in the Office of Administrative Law Judges, Cherry Hill, New Jersey on March 13, 2017, Complainant's counsel filed Complainant's Notice of Settlement and Unopposed Motion to Vacate Hearing Setting. An Order Granting Complainant's Unopposed Motion to Vacate Hearing Setting was issued on March 17, 2017 with the parties being directed to file their Stipulation of Settlement within 30 days of the date of the Order.

Enclosed with a letter from Complainant's counsel dated April 18, 2017 received on April 19, 2017, was Complainant's Unopposed Motion To Approve Settlement ("Unopposed Motion") along with a document entitled "Confidential Settlement Agreement And Release Of Claims" ("Settlement Agreement"). In Complainant's Unopposed Motion, Complainant requests that the Settlement Agreement be approved and to dismiss this proceeding with prejudice.

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); 29C.F.R. § 1978.111(d)(2).¹ 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

¹ 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).

be ” 29C.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. 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.²

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 IS FURTHER ORDERED** that the complaint filed in this matter is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey

² 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.

