



Issue Date: 19 December 2018

Case No.: **2017-STA-00091**  
OSHA No.: **5-1260-16-158**

*In the Matter of:*

**FEDOR KOLESNIKOV,**  
*Complainant,*

v.

**YRC FREIGHT**  
*Respondent.*

**DECISION AND ORDER APPROVING THE SETTLEMENT AGREEMENT  
AND ORDER DISMISSING THE COMPLAINT WITH PREJUDICE**

This proceeding arises under the Surface Transportation Assistance Act, 49 U.S.C. § 31105 (“STAA” or “Act”), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, and the regulations promulgated thereunder at 29 C.F.R. Part 1978. The STAA prohibits covered employers from discharging or otherwise discriminating against covered employees who have engaged in certain protected activities with regard to their terms and conditions of employment.

On December 18, 2018, counsel for Complainant filed *Complainant’s Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice* (hereinafter “Settlement Agreement”) which is incorporated by reference and made a part of the Order approving the Settlement Agreement. The Settlement Agreement was signed by Complainant, Complainant’s attorney, and a representative of the Respondent.

Pursuant to § 31105(b)(2)(C) of the STAA, “[b]efore the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation.” Under regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Assistant Secretary’s findings “if the participating parties agree to a settlement and the settlement is approved by the ALJ . . . or by the ARB.” 29 C.F.R. § 1978.111(d)(2). Under the STAA, a settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable. *Tankersly v. Triple Crown Services, Inc.*, 1992-STA-(Sec’y Feb. 18, 1993). Consistent with that required review, the regulations direct the parties to file a copy of the settlement agreement “with the ALJ or the Administrative Review Board as the case may be.” *Id.*

It is noted that the Settlement Agreement encompasses the settlement of matters under laws other than the STAA. The Court's authority over settlement agreements is limited to such statutes as are within the Court's jurisdiction and is defined by the applicable statute. Therefore, I may only approve terms of the agreement pertaining to Complainant's STAA claim. *See Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 00- STA-56 (ARB Apr. 30, 2003).

Additionally, the Settlement Agreement provides that Complainant shall keep the terms of the settlement confidential, with certain specified exceptions. I emphasize that the Parties understand that this provision binds only Kolesnikov and his representatives and affiliates and does not bind the Department of Labor or prohibit disclosures made by the Department of Labor pursuant to the Freedom of Information Act." *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. *See* 29 C.F.R. Part 70.<sup>1</sup>

I have carefully reviewed the parties' settlement documents and have determined that they constitute a fair, adequate, and reasonable settlement of the complaint.

### **ORDER**

Accordingly, **IT IS HEREBY ORDERED** that the parties' Settlement Agreement is **APPROVED**. **IT IS FURTHER ORDERED** that the complaint is **DISMISSED** with prejudice.

LARRY S. MERCK  
Administrative Law Judge

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<sup>1</sup> "Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h)." *Coffman*, slip op. at 2, n.2.