



Issue Date: 26 February 2019

Case No.: 2018-STA-00048

In the Matter of

VICTOR ALVARADO

Complainant

v.

TOMRA METRO, LLC

Respondent

FINAL ORDER APPROVING SETTLEMENT AND DISMISSING CASE

This matter arises under the “whistleblower” employee protection provisions of Section 405 of the Surface Transportation Assistance Act of 1982 (the Act), as amended, 49 U.S.C. § 31105 (formerly 49 U.S.C. § 2305), and its implementing regulations, 29 C.F.R. part 1978, pursuant to a complaint which was filed with the Occupational Safety and Health Administration (“OSHA”) on November 7, 2017 by Complainant, Victor Alvarado, against Respondent, Tomar Metro LLC. OSHA issued notice of its completed investigation along with the Secretary’s Findings in a letter dated March 12, 2018, dismissing the complaint. On April 10, 2018, Complainant, through counsel, submitted his objection to OSHA’s dismissal and requested a hearing before the Office of Administrative Law Judges (“OALJ”). The case was then referred to the OALJ and assigned to the undersigned.

At the hearing scheduled for January 22, 2019 in New York, NY, the parties advised the undersigned that they had reached a settlement in this matter. The parties were directed to submit their written settlement agreement or status report on their settlement efforts for receipt by no later than February 22, 2019.

By facsimile transmission dated February 21, 2019, this office received from Respondent’s counsel a document entitled “Confidential Negotiated Settlement Agreement and Release” (referred to herein as “Settlement Agreement”).

The Settlement Agreement includes a confidentiality provision limiting certain disclosures of its terms by the parties. Nonetheless, the records in this proceeding are subject to disclosure under the Freedom of Information Act (“FOIA”). *See* 5 U.S.C. § 552; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013). The Department of Labor will follow appropriate pre-disclosure notification procedures

to address any assertion that an exemption to FOIA applies.¹ Beyond that, nothing about the parties' characterization of the Settlement Agreement changes the public nature of the records which OALJ maintains in this case.

The Agreement also includes a general release of liability, which resolves matters under various laws other than the STAA. The authority of the undersigned is limited to the statutes that are within the jurisdiction of the OALJ. Therefore, the Settlement Agreement has only been reviewed to ascertain if its terms fairly, adequately, and reasonably settle this STAA matter currently before the OALJ. *See e.g., Mann v. Schwan's Food Company*, ARB No. 09-017, ALJ No. 2008-STA-00027, slip op. at 4 (ARB Dec. 31, 2008).

As to the STAA claim of unlawful retaliation at issue in this matter, the Settlement Agreement is deemed to adequately protect Complainant, and none of its terms appear to contravene the general public interest.

The terms of the parties' Settlement Agreement have been reviewed and determined to constitute a fair, adequate, and reasonable settlement of the complaint.

Accordingly, it is hereby ORDERED that the Settlement Agreement be APPROVED and the complaint be DISMISSED with prejudice.

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey

¹ *See Seater v. Southern California Edison Co.*, 1995-ERA-13 (ARB March 27, 1997) (“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.”)