



Issue Date: 25 July 2018

CASE NO.: 2018-STA-00024
OSHA NO: 5-2700-17-001

In the Matter of:

TONYA DAVIS,
Complainant,

v.

GARDA CL GREAT LAKES, INC.,
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 October 6, 2016, the Complainant filed a complaint alleging that Respondent violated the STAA. The Occupational Safety and Health Administration (OSHA) dismissed the Complaint on or about December 1, 2017. The Complainant requested a hearing before an administrative law judge and this case was subsequently assigned to me. On July 20, 2018, the parties filed an Agreed Motion for Approval of Confidential Settlement Agreement. The proposed agreement was submitted for my review and approval as Exhibit 1 to the motion and is titled Confidential Settlement Agreement and General Release of Claims (hereinafter referred to as “the Agreement”). 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 note that Section 5 of the Agreement, titled “No Further Actions,” contains language that could be construed as a waiver by the Complainant of causes of action that may arise in the future.² The Acknowledgment by the Complainant at the bottom of page 6 of the Agreement (in bold type) also contains language that could be construed as a waiver of causes of action that may arise in the future.³ 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).

Section 14 of the Agreement regarding governing law states that the Agreement will be governed by the laws of the State of Michigan. 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).

Section 4 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 matter, including the Agreement, become a part of the record in this case, and are subject to the Freedom of Information Act (“FOIA”).⁴ 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 6.⁵

After consideration of the Agreement, I find that the terms and conditions of the Agreement that are within the scope of my authority 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 Specifically, the last sentence of Section 5, which begins: “Davis will not file any other complaints, claims, lawsuits, actions, except ...”

³ Specifically, the language at the end of the paragraph indicating that the Complainant intends “to waive, settle and release all claims I have or might have against Garda and the releases.”

⁴ 5 U.S.C. § 552..

⁵ 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