



Issue Date: 23 January 2019

OALJ Case No.: 2018-STA-00030

In the Matter of:

DIANA NAVARRETO AND MARK DRAKE,
Complainants,

v.

**TEMPUS TRANSPORT, TOM WOLENKSI,
AND MICHAEL WOLENSKI,**
Respondents.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT,
CANCELLING HEARING AND DISMISSING CLAIM**

1. Nature of Request. This proceeding arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982, as amended and recodified, 49 U.S.C. § 31105 (hereinafter the “STAA” or “Act”) and the regulations promulgated thereunder at 29 C.F.R. Part 1978. Section 405 of the STAA protects employees from discharge, discipline and other forms of retaliation for engaging in protected activity. Pursuant to 29 C.F.R. § 1978.111, the parties submitted a proposed settlement agreement for the undersigned’s approval.

2. Case Procedural History and Settlement Agreement Review.

a. Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging Respondent committed prohibited retaliation under the STAA. Respondents filed an answer to the complaint in which they denied liability. The undersigned issued a Notice of Case Assignment and Prehearing Order on March 2, 2018.

b. On January 7, 2019, the parties filed a motion requesting the undersigned approve a “Confidential Settlement Agreement and General Release” (Settlement Agreement) prepared by counsel for the parties. The settlement agreement resolves this matter without the need for a formal hearing, and it was signed by each of the parties.

c. The Settlement Agreement contains confidential financial information pertaining to the terms of payment to Complainant; and as part of the motion, the parties specifically requested that the Settlement Agreement not be filed in the public record.

d. In particular, 29 C.F.R. § 1978.111(d)(1) states that at any time after the filing of a STAA complaint and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant, and the respondent agree to a settlement. 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 be.” 29 C.F.R. 1978.111(d)(2).

e. The undersigned reviewed the factual stipulations, legal issues and obligations imposed upon each party as specifically addressed in the Settlement Agreement. The undersigned concludes the terms and requirements of the Settlement Agreement are fair, adequate, reasonable, and not contrary to public policy.

3. Ruling and Order.

a. The Settlement Agreement is APPROVED and may be enforced pursuant to 29 C.F.R. § 1978.111(e). The parties shall implement the terms as stated in the Settlement Agreement to the extent not otherwise already accomplished. This Order has the same force and effect as one made after a full hearing on the merits.

b. The parties have agreed to keep the specific terms of the Settlement Agreement confidential pursuant to 29 C.F.R. § 70.26. Accordingly, the terms of the Settlement Agreement shall be sealed, remain confidential, and placed in a sealed envelope in the administrative file.

c. Notwithstanding the parties’ agreement, the parties’ submissions, including the Settlement Agreement, become part of the record of the case and are subject to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(a). If a FOIA request is made for the Settlement Agreement, the U.S. Department of Labor will respond and decide whether to exercise its discretion to claim any applicable exemption. The parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

d. The hearing scheduled for February 27, 2019 in Pensacola, Florida is CANCELLED.

e. This case is DISMISSED with prejudice.

SO ORDERED this day at Covington, Louisiana.

TRACY A. DALY
ADMINISTRATIVE LAW JUDGE