

U.S. Department of Labor

Office of Administrative Law Judges
William S. Moorhead Federal Office Building
1000 Liberty Avenue, Suite 1800
Pittsburgh, PA 15222

(412) 644-5754
(412) 644-5005 (FAX)



Issue Date: 01 July 2019

CASE NO. 2019-STA-00006

In the Matter of:

ASSISTANT SECRETARY OF LABOR FOR
OCCUPATIONAL SAFETY AND HEALTH,
Prosecuting Party,

And

SPENCER BUSSELL,
Complainant

v.

WESTERN EXPRESS, INC.,
Respondent

**ORDER APPROVING SETTLEMENT AND
DISMISSING COMPLAINT WITH PREJUDICE**

This matter arises from a complaint filed under the employee protection provisions of the Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105, as amended by Pub. L. No. 110-53 and its implementing regulations at 29 C.F.R. Part 1978. The claim was referred to the Office of Administrative Law Judges for formal hearing upon the filing of Objections to the findings of the Secretary of Labor's, Occupational Safety and Health Administration (OSHA), that there was no reasonable cause to believe Respondent violated the STAA.

The matter is presently scheduled for a formal hearing to be held on August 12, 2019 in Nashville, Tennessee. On June 26, 2019, Complainant, by and through his counsel, filed an unopposed motion to approve the settlement reached and to dismiss the complaint with prejudice. A copy of the executed settlement agreement was attached to the motion.

Pursuant to 29 C.F.R. § 1978.111(d)(2), I must approve the settlement agreement. In reviewing the settlement agreement, the Administrative Law Judge (ALJ) must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant's allegations that Respondent violated the STAA and are not against public policy. *See, Edmisten v. Ray Thomas Petroleum*, No. 10-020, 2009 WL 5178504 (ARB Dec. 16, 2009). Once the settlement agreement is approved, it becomes the final action of the Secretary and may be enforced pursuant to 29 C.F.R. § 1978.111(e).

I have carefully reviewed the terms of the Agreement which encompass settlement and release of matters arising under the Act, as well as other federal, state, and local statutes and

principles of contract and common law. It should be noted that my authority extends only to approving matters properly before the U.S. Department of Labor, Office of Administrative Law Judges, i.e., the STA case, and therefore my review is limited to those matters over which I have proper jurisdiction. See *Poulos v. Ambassador Fuel Oil Co., Inc.*, 86-CAA-1, slip op. at 2 (Sec’y Nov. 2, 1987).

The Respondent has not asserted pre-disclosure notification rights in accordance with 29 C.F.R. §70.26.¹ Nor have the parties requested restricted access to the Agreement under 29 C.F.R. §18.85. However, the terms of the Agreement include a confidentiality provision limited only by disclosures required by law and to the Complainant’s wife, attorney, accountant/tax advisor and physicians, therapists or governmental entities (Agreement at Para. 14). It has been held in a number of cases with respect to confidentiality of settlement agreements that the Freedom of Information Act (FOIA),² requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, 92-SWD-2 and 93-STA-15 (ARB 1998). The records in this case are agency records which may be made available for public inspection and copying under the FOIA.

Pursuant to 29 C.F.R. §18.85 upon the motion of an interested person *or on the Judge’s own*, the Administrative Law Judge may seal a portion of the record to protect against undue disclosure of privileged, sensitive or classified material. However, 29 C.F.R. §18.85(b)(2) provides that notwithstanding the Judge’s Order, all parts of the record remain subject to statutes and regulations pertaining to public access to agency records.

In light of the confidentiality provision of the Agreement and noting the generally sensitive nature of the financial terms of the Agreement, I have decided to seal the Settlement Agreement from full disclosure to the public. Specifically, I have decided to redact the financial terms of the Agreement from disclosure to the public. Accordingly, the Agreement with the redaction of the financial terms will be placed in a separate sealed envelope and marked **“SETTLEMENT AGREEMENT REDACTED FOR PUBLIC DISCLOSURE”**. An unredacted version of the Agreement will be placed in a separate sealed envelope and marked **“UNREDACTED AGREEMENT – NOT FOR PUBLIC DISCLOSURE.”** Consequently, before any information in the unredacted file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. See 29 C.F.R. § 70.26 (2016).

I have reviewed the administrative record and the Settlement Agreement executed by the parties. Based on my review, I find the Settlement Agreement to be fair, reasonable and adequate and have determined that it constitutes a fair, adequate and reasonable settlement of the

¹The parties are afforded the right to request that information be treated as confidential business information. See 29 C.F.R. §70.26 (2016). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a FOIA request is received seeking release of that information. Accordingly, an unredacted copy of the Settlement Agreement in this matter will be placed in an envelope marked “PREDISCLOSURE NOTIFICATION MATERIALS.” Consequently, before any information in this unredacted file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. See 29 C.F.R. § 70.26 (2016).

² 5 U.S.C. §552, *et seq.* (1988).

complaint and is in the public interest. Thus, the Settlement Agreement complies with the standards required under the STAA and is **APPROVED**.

Accordingly, it is **ORDERED** that:

1. The Motion to Approve Settlement Agreement is **GRANTED** and the accompanying Settlement Agreement is **APPROVED**;
2. The hearing scheduled for **August 12, 2019** in Nashville, Tennessee is **CANCELED**; and
3. The Complaint is hereby **DISMISSED WITH PREJUDICE**.

PATRICIA J. DAUM
Administrative Law Judge