

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 16 November 2020

ALJ NO.: 2019-STA-00001

In the Matter of:

THOMAS SMITH,
Complainant,

v.

**CRYOGENIC TRANSPORTATION AND
KENAN ADVANTAGE GROUP,**
Respondents.

**DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING CLAIM**

This proceeding arises from a complaint of discrimination filed under employee protection provisions of Section 405 of the Surface Transportation Assistance Act (“STAA”), as amended, 49 U.S.C.A. § 31105 and the procedural regulations found at 29 C.F.R. Part 1978 (2012).

On November 2, 2020, the parties filed a Settlement and General Release Agreement (hereinafter the “Settlement”) for my review and approval pursuant to 29 C.F.R. §§ 1978.111(c) & (d)(2). The Settlement resolves all issues raised in the complaint, has been signed by Complainant and Respondent, and is incorporated herein by reference.

After careful consideration of the Settlement, I find the terms and conditions of the agreement to be fair, adequate, and reasonable under the STAA, and that the terms adequately

protect Complainant. Furthermore, I believe it is in the public interest to approve the Settlement as a basis for administrative disposition of this case, and I, therefore, approve the Settlement pursuant to 29 C.F.R. § 1978.111(d)(2), subject to the below comments.

With regard to confidentiality of the Settlement, the parties are advised that notwithstanding the confidential nature of the Settlement, all of their filings, including the Settlement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act (“FOIA”), 5 U.S.C.A. § 552 *et seq.* The Administrative Review Board has noted that:

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.

Seater v. S. Cal. Edison Co., ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB Mar. 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

Paragraph 9 of the Settlement provides that the terms of the agreement shall be governed by the laws of the State of Ohio. This choice of law provision is construed as not limiting the authority of the Secretary of Labor and any Federal court. *See Phillips v. Citizens. Assoc. for Sound Energy*, No. 91-ERA-25, slip op. at 2 (Sec’y Nov. 4, 1991).

Finally, I note that my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Settlement pertaining to Complainant’s STAA claim Case No. 2019-STA-00001. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-00007 (ARB Jan. 31, 2011).

ORDER

It is hereby **ORDERED** that the Settlement submitted by the parties is **APPROVED**. The complaint is **DISMISSED WITH PREJUDICE**. In accordance with the regulations, the

Settlement constitutes the final order of the Secretary of Labor¹ and may be enforced under 29 C.F.R. § 1978.113.

SO ORDERED.

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts

¹ 29 C.F.R. § 1978.111(e).