



**Issue Date: 19 October 2020**

Case No.: 2020-STA-00022

In the Matter of

**PATRICK BUSH**

Complainant

v.

**SWIFT TRANSPORTATION CO OF ARIZONA LLC and DON BENTZ**

Respondent

**DISMISSAL ORDER APPROVING SETTLEMENT**

This proceeding arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982, as amended and re-codified, 49 U.S.C. § 31105 (hereinafter the “STAA”) 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.

The parties participated in mediation offered by the Office of Administrative Law Judges (“OALJ”) and on October 8, 2020, Complainant submitted its “Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice.”<sup>1</sup> The Motion states Respondents’ counsel had been conferred with and do not oppose the action sought. Complainant also submitted a Confidential Settlement Agreement and General Release (“Settlement Agreement”), signed by Complainant and counsel for Respondents.

Pursuant to 29 C.F.R. § 1978.111(d)(2) and 29 C.F.R. § 18.71, the Settlement Agreement must be reviewed for the undersigned’s approval. In reviewing the Settlement Agreement for approval, it must be determined if its terms fairly, adequately and reasonably settle a complainant’s allegations that Respondent violated the STAA and are not against public policy. *See, for e.g., Edmisten v. Ray Thomas Petroleum*, No. 10-020, 2009 WL 5178504 (ARB Dec. 16, 2009). Once a 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).

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<sup>1</sup> 29 C.F.R. § 1978.111 allows for cases to be settled if the parties agree to a settlement and if the ALJ approves such settlement.

The undersigned has carefully reviewed the Settlement Agreement and finds that is fair adequate, and reasonable. The undersigned APPROVES the Settlement Agreement with some caveats.

First, the language in the Settlement Agreement purports to release claims other than those covered under STAA at issue in this matter. *See* Settlement Agreement, Paragraphs 4 and 20. The undersigned's review and approval of the Settlement Agreement is limited to the whistleblower claims as presented under the STAA which are within the jurisdiction of the OALJ. Consequently, the undersigned's approval of the Settlement Agreement should not be construed as approving the resolution of any claims brought under any other federal statute or under state law.

Second, language in the Settlement Agreement provides that it shall be governed by the laws of the state of Illinois. *See* Settlement Agreement, Paragraph 21. Per 29 CFR § 1978.111(e), the appropriate United States District Court will have jurisdiction of any civil enforcement action related to this Order.<sup>2</sup> This provision of the Settlement Agreement is interpreted as to not limit the authority of the Secretary of Labor or any Federal court, which will be governed in all respects by the laws and regulations of the United States. To the extent that Paragraph 21 is inconsistent with STAA's implementing regulations, it is void and unenforceable.

Finally, notwithstanding any provision in the Settlement Agreement, the parties' submissions, including the Settlement Agreement itself, become part of the record of the case and are subject to disclosure pursuant to the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552(a).

Based on the foregoing, the following is ordered:

1. Complainant's Unopposed Motion is **GRANTED** and the Settlement Agreement is **APPROVED** and may be enforced pursuant to 29 C.F.R. § 1978.111(e);
2. This matter is **DISMISSED** with prejudice before the OALJ.

**SO ORDERED.**

**LYSTRA A. HARRIS**  
Administrative Law Judge

Cherry Hill New Jersey

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<sup>2</sup> The regulations provide that: "[a]ny settlement approved by the Assistant Secretary, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced in *United States district court* pursuant to 49 U.S.C. 31105(e)." 29 CFR § 1978.111(e) (emphasis added).