U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)

Issue Date: 18 April 2022

OALJ Case No: **2020-STA-00101**
OSHA Case No.: **5-1610-20-065**

In the Matter of:

DANIEL PAYNE,
Complainant,

v.

ATOMIC TRANSPORT, LLC and
CHRISTOPHER MALLOT,
Respondents.

DECISION AND ORDER APPROVING THE SETTLEMENT AGREEMENT AND DISMISSING THE COMPLAINT WITH PREJUDICE

This proceeding arises under the Surface Transportation Assistance Act, 49 U.S.C. § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 ("STAA" or "Act"), and the regulations promulgated thereunder at 29 C.F.R. Part 1978.

On April 12, 2022, Complainant's counsel filed *Complainant's Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice and* attached a *Confidential Settlement Agreement and General Release* ("*Settlement Agreement*"). The *Settlement Agreement* is incorporated by reference and made a part of this Order. The *Settlement Agreement* was signed by Complainant and a representative of Atomic Transport, LLC and stated, *inter alia*, that the parties desire to resolve all issues between them, including issues relating to the Complaint, and release all other claims or potential claims that either party has or may have against the other party (except those that cannot be waived) pursuant to the terms of the *Settlement Agreement*. *Settlement Agreement* at 1-4.

Pursuant to the Act, "[b]efore the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation." 49 U.S.C. § 31105(b)(2)(C). Under regulations implementing the STAA, the parties may settle a case at any time after filing objections to the Assistant Secretary's findings "if the participating parties agree to a settlement and the settlement is approved by the ALJ . . . or by the ARB." 29 C.F.R. § 1978.111(d)(2). Under the STAA, a settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable. *Tankersly v. Triple Crown Servs., Inc.*, 1992-STA-00008 (Sec'y Feb. 18, 1993).

Consistent with that required review, the regulations direct the parties to file a copy of the settlement agreement "with the ALJ or the Administrative Review Board as the case may be."[1] *Id*.

The Administrative Review Board ("Board") requires that all parties requesting settlement approval provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim or certify that the parties have not entered into other such settlement agreements. *See Biddy v. Alyeska Pipeline Serv. Co*., ARB Nos. 96-109, 97-015, ALJ No. 95-TSC-7, slip op. 3 (ARB Dec. 3, 1996). Here, the parties have properly submitted a *Settlement Agreement*, specifically releasing Atomic Transport, LLC *et al.,* from liability under the STAA, as well as precluding any and all claims arising out of the incident at issue.

The *Settlement Agreement* encompasses the settlement of matters under laws other than the STAA. The Court's authority over settlement agreements is limited to such statutes as are within the Court's jurisdiction and is defined by the applicable statute. Therefore, I may only approve terms of the agreement pertaining to Complainant's STAA claim. *See Fish v. H and R Transfer,* ARB No. 01-071, ALJ No. 00- STA-56 (ARB Apr. 30, 2003).

Paragraph 10 of the *Settlement Agreement* provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions. *Settlement Agreement* at 5. 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 (1988). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act. *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.,* ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. *See* 29 C.F.R. Part 70.[2]

I have carefully reviewed the parties' settlement documents, and have determined that they constitute a fair, adequate, and reasonable settlement of the complaint.

[1] After review of the settlement agreement, a case may be dismissed with prejudice, if appropriate. *See* 29 C.F.R. § 1978.111(d)(2) (stating that an approved settlement constitutes a "final order" that is enforceable in the United States District Courts); *Hopper v. Marten Transport, Ltd.*, No. 16-043, 2016 WL 3917344 (ARB June 29, 2016) (dismissing complaint after approving a settlement under 29 C.F.R. § 1978.111(d)(2)).

[2] "Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h)." *Coffman,* slip op. at 2 n.2.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that the parties' *Settlement Agreement* is **APPROVED. IT IS FURTHER ORDERED** that the complaint, which gave rise to this litigation, is **DISMISSED** with prejudice.

LARRY S. MERCK
Administrative Law Judge