



**Issue Date: 18 August 2022**

CASE NO.: 2021-STA-00050

*In the Matter of:*

IDRIS KEMP,  
Complainant,

v.

A&A EXPRESS, INC.,  
Respondent.

**DECISION AND ORDER GRANTING MOTION TO SEAL,  
APPROVING SETTLEMENT,  
AND DISMISSING CASE WITH PREJUDICE**

This matter arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. § 31105, and the regulations published at 29 C.F.R. Part 1978. Complainant is self-represented. Attorney Donna Pryor of Husch Blackwell LLP represents Respondent. A hearing is scheduled for December 8 and 9, 2022.

**Background Information**

On August 15, 2022, Respondent submitted an Unopposed Motion for Leave to File Settlement Agreement Under Seal, along with a redacted version of the Confidential Settlement Agreement and General Release (“Settlement Agreement”) that resolved all issues in this matter.<sup>1</sup> *See* 29 C.F.R. § 1978.111(d)(2). Simultaneously, Respondent submitted under seal the unredacted version of the Settlement Agreement.

**Motion to Seal and Confidentiality**

Respondent moved to file the unredacted Settlement Agreement under seal, arguing that the Settlement Agreement contains a confidentiality provision. *See* 29 C.F.R. § 18.85(b) (sealing the record). Respondent submitted a redacted version of the Settlement Agreement that only redacted the settlement amount “to maintain the confidentiality of the Settlement Agreement.” *See* 29 C.F.R. §

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<sup>1</sup> On August 9, 2022, the parties submitted a joint motion to dismiss the case based upon settlement. The parties were notified that they needed to submit the actual settlement agreement for approval.

18.85(b)(1) (a party seeking to seal part of the record “must propose the fewest redactions possible that will protect the interest offered as the basis for the motion”).

When a judge seals material in the record, Section 18.85(b)(2) requires the judge to “state findings and explain why the reasons to seal adjudicatory records outweigh the presumption of public access.” The parties agreed to maintain the Settlement Agreement confidential and filed a minimally redacted version for the public file pursuant to Section 18.85 of this Office’s rules. I find that sealing the financial terms of the Settlement Agreement balances the parties’ interest in keeping the financial terms confidential and settling the case on the one hand, with the public’s interest in the adjudication of whistleblower cases on the other.

However, I note that “[n]otwithstanding the judge’s order, all parts of the record remain subject to statutes and regulations pertaining to public access to agency records.” 29 C.F.R. § 18.85(b)(2). OALJ proceedings are presumed to be open to the public, and OALJ files, including the submissions of the parties and this Settlement Agreement, are subject to disclosure under the provisions of the Freedom of Information Act (“FOIA”), unless an exemption applies. *See* 29 CFR 18.81; 5 U.S.C. § 552; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013). FOIA exemptions are determined at the time of the release of information is requested, and not at the time of the filing of the agreement. *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013). Department of Labor regulations set out the procedures for responding to FOIA requests and for appeals by requestors from denials of such requests. *See* 29 C.F.R. Part 70.

I construe the confidentiality agreement by the parties and the motion to seal to mean they object to any disclosure under FOIA. The unredacted Settlement Agreement shall be sealed and maintained in the designated OALJ non-public electronic system. Should disclosure of the settlement agreement be requested under FOIA, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

## **Settlement Agreement**

### **1. General Release and Governing Law**

The Settlement Agreement includes a general release of liability, which resolves matters and potential matters under a multitude of state and federal laws other than the STAA. My authority over settlement agreements is limited to the statutes that are within my jurisdiction, and I have restricted my review of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this STAA case. *Mann v. Schwan’s Food Company*, ARB No. 09-017, ALJ No. 2008-STA-00027, slip op. at 4 (ARB Dec. 31, 2008).

The Settlement Agreement also provides that it shall be governed by the laws of the State of Colorado. This provision does not limit the authority of the Secretary of Labor or any federal court regarding any issue arising under STAA, which authority shall be governed in all respects by the laws and regulations of the United States. *Muenzberg v. APL Maritime, LTD.*, ARB No. 2021-0070, ALJ No. 2018-SPA-00001, slip op. at 3 (ARB May 13, 2022).

## 2. Terms Approved

The Settlement Agreement is appropriate in form and substance and details the respective duties and obligations of the parties pursuant to the agreement. As construed, and after considering the terms of the Settlement Agreement, I find that the terms and conditions are fair, adequate, and reasonable. I further find that the Settlement Agreement is not contrary to the public interest. *See Carciero v. Sodexo Alliance, S.A.*, ARB No. 09-067, ALJ No. 2008-SOX-012, slip op. at 3 (ARB Sept. 30, 2010). The terms and conditions of the Settlement Agreement are adopted and incorporated by reference into this Decision and Order. The Settlement Agreement is hereby approved.

The Settlement Agreement is the final order of the Secretary and may be enforced pursuant to 29 C.F.R. § 1978.111(e) and 29 C.F.R. 1978.113.

The complaint is dismissed with prejudice. All dates are vacated.

SO ORDERED.

RICHARD CLARK  
Administrative Law Judge