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Issue Date: 10 June 2022

CASE NO.: 2021-STA-00021

In the Matter of:

ROBERT KREWALD,
Complainant

v.

CLIMATE EXPRESS, INC.,
Respondent

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

This proceeding arises under the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31105 ("STAA") and the regulations promulgated thereunder at 29 C.F.R. Part 1978 and 20 C.F.R. Part 24. The Complainant requested a hearing based upon the Secretary's finding January 11, 2021. The case was assigned to the undersigned on June 15, 2021, and pursuant to a Notice of Hearing, a hearing was originally scheduled to commence on March 8, 2022. At the parties' request, the hearing was continued. A subsequent hearing in the above-captioned matter was scheduled to begin on May 23, 2022, and continuing, as necessary, on May 24, 2022.

On April 13, 2022, Respondent submitted a Motion *in Limine*, and a Motion for Summary Decision, contending that Complainant did not engage in protected activity under the Act on May 15, 2020. On April 27, 2022, Complainant responded to the Motion for Summary Decision, arguing that he engaged in protected activity on May 15, 2020, by refusing to operate the commercial vehicle due to fatigue and illness. On May 9, 2022, I issued an Order Granting Respondent's Motion for Summary Decision. I found that Respondent established that there is no genuine dispute of material fact as to whether Complainant engaged in protected activity on May 15, 2020. However, the hearing on Complainant's complaint that he engaged in protected activity on July 15, 2020, was to proceed as scheduled. On May 13, 2022, I issued an Order Denying Respondent's Motion *in Limine*.

On May 17, 2022, the undersigned's office contacted the parties via email requesting an update about whether they anticipated moving for an in-person hearing, or if the parties were proceeding with the videoconference hearing, as scheduled. On May 17, 2022, the parties replied via email and submitted a joint Notice of Settlement. The parties expressed reaching a settlement in principle, pending a written agreement, and implied that a hearing is no longer required. The May 23, 2022 hearing did not occur.

On June 9, 2022, I received Complainant's Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice, as well as the parties' executed Settlement Agreement ("Settlement Agreement"). In the motion, Complainant requested the above-captioned claim be dismissed with prejudice, pursuant to the Settlement Agreement.

Pursuant to STAA, Section 31105(b)(2)(C), "[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." Under regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Secretary's findings "if the participating parties agree to a settlement and the settlement is approved by the ALJ" so long as the case is before the ALJ. 29 C.F.R. § 1978.l l l(d)(2). A settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, reasonable, and in the public interest. *Tankersly v. Triple Crown Services, Inc*., 1992-STA-8 (Sec'y Feb. 18, 1993).

The Settlement Agreement includes a general release of claims resolving a wide range of matters, including matters potentially arising under laws other than STAA. The undersigned's authority over settlement agreements is limited to the statutes that are within OALJ's jurisdiction, and I have restricted my review of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle the issues under the STAA claim. *See Anderson v. Schering Corp.*, ARB No. 10- 070, ALJ No. 2010-SOX-7, slip op. at 3 (ARB Jan. 31, 2011).

In reviewing the terms of the Settlement Agreement, I find the terms fairly, adequately, and reasonably settle the Complainant's allegations against Respondent under STAA. *See* 29 C.F.R. § 1978.111(c). I find that the settlement agreement complies with the required standard, and that the parties have averred that they have completed all terms of the agreement. Therefore, the settlement agreement is **APPROVED**. *See id*; *Carciero v. Sodexho Alliance*, S.A. ARB No. 09-067, ALJ No. 2008-SOX-012, slip op. at 2 (ARB Sept. 30. 2010).

The parties have agreed to keep the specific terms of the agreement confidential, subject to applicable laws. To effectuate such confidentiality, I will have the settlement agreement sealed. However, notwithstanding the parties' agreement, 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(a). This clause does not bind the U.S. Department of Labor ("DOL") or prohibit disclosures made by DOL pursuant to FOIA, which requires federal agencies to disclose requested documents unless they are exempt from disclosure. 5 U.S.C. § 552; *Faust v. Chemical Leaman Tank Lines, Inc.,* Case Nos. 92-SWD-2 and 93-STA-15 (ARB March 31, 1998); *Jordan v. Sprint Nextel Corp*., ARB No. 06-105, Case No. 2006-SOX-41, slip op. at 12 (ARB June 19, 2008)(noting that there is "no authority permitting the sealing of a record in a whistleblower case because the case file is a government record subject to disclosure pursuant to [FOIA] unless the record qualifies for an exemption to such disclosure"). *See also Jessup v. Luther*, 277 F.3d 926 (7th Cir. 2002)(settlement agreement approved by federal judge was presumptively a public document that should not have been sealed). Thus, if a FOIA request is made for the settlement agreement, the DOL will have to respond and decide whether to exercise its discretion to claim any applicable exemption.

I further construe the parties' request for confidentiality as a request for pre-disclosure notification rights in accordance with 29 C.F.R. §70.26.[1] In the event that public disclosure is required, the parties will be afforded the opportunity to redact the financial terms of the Agreement from disclosure to the public. Accordingly, the parties may submit a revised Agreement with the redaction of the financial terms, which will be maintained in a separate folder, and marked **"SETTLEMENT AGREEMENT – REDACTED FOR PUBLIC DISCLOSURE"**. An unredacted version of the Agreement will be maintained separately and marked **"UNREDACTED AGREEMENT – NOT FOR PUBLIC DISCLOSURE."** Consequently, before any disclosure of the settlement, whether redacted or unredacted, 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).

Accordingly, the Parties' Settlement Agreement is hereby **APPROVED.** Therefore, the above-captioned matter is **DISMISSED with prejudice**.

SO ORDERED.

SEAN M. RAMALEY
Administrative Law Judge

[1] The 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 pre-disclosure notification if a FOIA request is received seeking the release of that information.