

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
San Francisco, CA

Issue Date: 07 March 2023

CASE NO.: 2021-STA-00035
2022-STA-00021

In the Matter of:

MARIO D. CHAITA,
Complainant,

v.

FLUOR MARINE PROPULSION,
Respondent.

ORDER APPROVING SETTLEMENT AGREEMENT
AND DISMISSING CASE

This case arises under the Surface Transportation Assistance Act, 49 U.S.C. § 31105. On February 20, 2023, the parties notified this Office that they had settled. Soon thereafter, they submitted a document entitled, “Contingent Settlement Agreement and General Release.” Complainant signed the document on February 21, 2023, and Respondent signed on February 22, 2023.

The document was a proposed settlement agreement submitted for the ALJ’s review and approval. The contingency was that the agreement was not enforceable without the approval of “the government.” This contingency, however, did not concern the approval of the ALJ, which is required under 29 C.F.R. § 1978.111(d)(2). Rather, it concerned the approval of the U.S. Department of Energy. Respondent is a government contractor, which works for the Department of Energy and had an obligation to obtain approval from the DOE before it could enter into a binding settlement.

On March 1, 2023, I ordered the parties to submit a settlement agreement, by which I meant a final, non-contingent agreement. On the following day, March 2, 2023, the parties submitted a joint motion to dismiss. Through counsel, they represented to this Office that DOE had approved the settlement on February 23, 2023, thus removing the sole contingency and leaving only the ALJ’s approval to finalize the settlement process. On March 7, 2023, the parties submitted a revised settlement agreement to correct two typographical errors in the previous submission. It is that document that I address in this Order.

On the same day, March 7, 2023, I conducted a telephone conference to discuss the proposed settlement agreement. Both parties were represented by their respective counsel of record. The conference was taken down for the record, the transcript is available, and I incorporate it into this Order by reference. I therefore will not here repeat or summarize in detail the substance of the

conference. I state only that I asked the attorneys several questions and am satisfied that the settlement agreement may be approved.

Before approving the settlement agreement, I turn to several caveats:

First, some of the provisions in the settlement agreement extend to claims beyond the scope of the Surface Transportation Assistance Act. I limit my review to claims under that Act. This order does not concern the settlement or release of any claim other than those arising under Surface Transportation Assistance Act and based on conduct that occurred up to and including the date of the parties' agreement. I neither approve nor disapprove any other portion of the release included in the parties' agreement.

Second, regardless of any agreement the parties make concerning confidentiality, the Freedom of Information Act (FOIA) applies to this Office's records and will apply to the settlement agreement. If the Department of Labor receives a FOIA request that would extend to the settlement agreement, and if the Department determines that no FOIA exemption applies, the Department will provide the litigants with pre-disclosure notification and an opportunity to respond before any disclosure is made. *See* 29 C.F.R. § 70.26. The parties may include in their settlement agreement language (consistent with legal limits) that precludes the parties from making specified disclosures. But the parties cannot limit the Department's disclosures.

Third, the parties choose Idaho law to control any dispute between them concerning the settlement agreement. As I construe this provision, it is not intended to and does not limit the authority of any federal court or of the Secretary of Labor. It is an agreement between the parties, limited in its application to themselves. For the federal courts and the Secretary of Labor, the law and regulations of the United States control.¹

Fourth, the parties have characterized the monetary compensation that forms a part of the consideration given Complainant as a reimbursement of attorney's fees. The parties are free to characterize the payment as they choose. The ALJ neither approves nor disapproves the characterization; this Order does not adopt any characterization of the payment.

Fifth, this Order does not address or consider the parties' agreement on any matter concerning taxation.

That said, the proposed settlement agreement is fair and reasonable as to the claims under the Surface Transportation Assistance Act. It adequately protects Complainant. None of its terms is against public policy. The proposed settlement is therefore APPROVED, and the parties are ORDERED to comply with its terms. *See* 29 C.F.R. § 1978.111(d)(2). This Order constitutes the

//

//

¹ *See Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 3 (ARB Sept. 26, 2011).

final order of the Secretary and may be enforced in the United States district court under 29 U.S.C. § 31105(e). *See* 29 C.F.R. § 1978.111(e). This matter is DISMISSED.

SO ORDERED.

STEVEN B. BERLIN
Administrative Law Judge