

Issue Date: 02 August 2022 U.S. Department of Labor

Office of Administrative Law  
Judges

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OALJ CASE NO. 2022-STA-00007  
OSHA NO. 9-2400-21-072

*In the Matter of:*

ADAMA COULIBALY,  
Complainant

v.

MAGNOLIA LOGISTICS, INC.,  
THE WAKEFERN FOOD CORPORATION,  
PETER DURNING AND JOHN DOE  
Respondents

**ORDER APPROVING SETTLEMENT AND  
DISMISSING COMPLAINT WITH PREJUDICE**

This matter arises from a complaint filed under the employee protection provisions of the Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105, as amended by Pub. L. No. 110-53 and its implementing regulations at 29 C.F.R. Part 1978. The claim was referred to the Office of Administrative Law Judges for formal hearing upon the filing of Objections to the Findings and Dismissal of the Secretary of Labor's, Occupational Safety and Health Administration (OSHA).

The matter is presently scheduled for a formal hearing to be held before the undersigned via telephone or videoconference on September 13, 2022 and continuing on consecutive days thereafter as needed. On July 1, 2022, Chief Administrative Law Judge Stephen R. Henley issued a Supplemental Order Concluding Mediation, informing that parties have reached a settlement, returning the matter to this tribunal, and directing parties to reduce their agreement to writing and send it to the undersigned for approval within fourteen (14) days.

On July 19, 2022, Respondent's counsel submitted the *Settlement Agreement and General Release* (hereinafter the Settlement Agreement) along with an unopposed Motion to approve the Settlement Agreement and to dismiss the claim with prejudice. The Settlement Agreement resolves all issues raised in the complaint, has been signed by the Complainant,

Complainant's counsel, and Respondent's counsel. The Parties agreed to keep the terms of the Settlement Agreement confidential, but acknowledged that the confidentiality provision "binds only the Complainant and his representatives and affiliates," and that it "does not bind the Department of Labor or prohibit disclosures made by the Department of Labor pursuant to the Freedom of Information Act" (Settlement Agreement at 5). My review of the Settlement Agreement reveals that confidential and financial information appears in the Settlement Agreement, within the meaning of Section 70.2(b) of Title 29, Code of Federal Regulations.

Pursuant to 29 C.F.R. § 1978.111(d)(2), I must approve the Settlement Agreement. In reviewing the Settlement Agreement, the ALJ must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant's allegations that Respondent violated the STAA and are not against public policy. *See, Edmisten v. Ray Thomas Petroleum*, No. 10-020, 2009 WL 5178504 (ARB Dec. 16, 2009). Once the 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).

I have carefully reviewed the terms of the Settlement Agreement which encompass settlement and release of matters arising under the Act, as well as other federal, state, and local statutes, principles of contract, and common law. It should be noted that my authority extends only to approving matters properly before the U.S. Department of Labor, Office of Administrative Law Judges, i.e., the STA case, and therefore my review is limited to those matters over which I have proper jurisdiction. *See Poulos v. Ambassador Fuel Oil Co., Inc.*, 86-CAA-1, slip op. at 2 (Sec'y Nov. 2, 1987).

I have reviewed the administrative record and the Settlement Agreement executed by the parties. Based on my review, I have determined that it constitutes a fair, reasonable, and adequate settlement of the complaint and that it is in the public interest. Thus, the Settlement Agreement complies with the standards required under the STAA and is **APPROVED** subject to the following comments.

In light of the confidentiality provisions of the Settlement Agreement and noting the generally sensitive nature of the financial terms of the Agreement, I have decided to seal the Settlement Agreement from full disclosure to the public. In the event of required public disclosure, I have decided to redact the financial terms of the Agreement from disclosure to the public. Accordingly, the Settlement Agreement with redaction of the financial terms will be maintained and marked "**SETTLEMENT AGREEMENT REDACTED FOR PUBLIC DISCLOSURE**". An unredacted version will be maintained separately and marked "**UNREDACTED AGREEMENT – NOT FOR PUBLIC DISCLOSURE.**"

With regard to confidentiality of the Settlement Agreement, the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, all of their filings, including the Settlement Agreement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C.A. § 552 *et seq.* The Administrative Review Board has noted that:

If an exemption is applicable to the record in this case or any specific document

in it, the Department of Labor would determine *at the time a request is made* whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

*Seater v. S. Cal. Edison Co.*, ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added).

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.

### **ORDER**

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Settlement Agreement and General Release is **APPROVED**;
2. The hearing scheduled for **September 13, 2022** is **CANCELED**; and
3. The Complaint is hereby **DISMISSED WITH PREJUDICE**.

**PATRICIA J. DAUM**  
Administrative Law Judge