

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Cincinnati, Ohio District Office

Issue Date: 07 March 2023

Case No.: 2022-STA-00008¹
OSHA Case No.: 5-2700-20-021

In the Matter of:

MARK KETCHUM,
Complainant,

v.

**NORTH AMERICAN SPECIALIZED,
TRANSPORT,**
Respondent.

DECISION AND ORDER APPROVING THE SETTLEMENT AGREEMENT AND DISMISSING THE COMPLAINT

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 March 2, 2023, the parties filed Confidential Settlement and release Agreement (“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 North American Specialized Transport, and stated, inter alia, that the parties desire to resolve all issues between them, including issues relating to the Complaint, and to release all other claims or potential claims that either party has or may have against the other party (except those that cannot be waived). Settlement Agreement at 1-5.

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.

¹ The style and format of this Order have been changed to comply with Section 508 of the Rehabilitation Act, 29 U.S.C. § 794d.

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.”² *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 Bidy 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 North American Specialized Transport 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 4 of the Settlement Agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions. 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 70.³

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

² 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)).

³ “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