

**UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
COVINGTON, LA DISTRICT OFFICE**

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**Issue Date: 29 June 2023**

*In the Matter of:*

**JOHN KILGORE,**  
*Complainant,*

v.

**AER EXPRESS, INC., ET AL.,**  
*Respondents.*

**CASE NO.: 2022-STA-00059**

**OSHA NO.: 4-1760-22-112**

**JOHN M. HERKE**  
Administrative Law Judge

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

This proceeding arises under the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31105 (STAA or the Act) and the regulations promulgated thereunder at 29 C.F.R. Part 1978 and 20 C.F.R. Part 24. Complainant requested a hearing on May 31, 2022 to object to the Secretary’s findings in OSHA matter 4-1760-22-112. The parties subsequently participated in a mediation and reached a tentative settlement of all claims.

On June 8, 2022, Complainant submitted a motion to approve the parties’ Confidential Settlement Agreement and General Release (“Settlement Agreement”), to which motion was attached a signed copy of the Settlement Agreement.<sup>1</sup> The Settlement Agreement includes a general release of claims resolving all matters arising under the STAA and potentially arising under laws other than STAA. The undersigned’s authority over settlement agreements is limited to the statutes that are within the jurisdiction of the Office of Administrative Law Judges (OALJ). Review and approval of the Settlement Agreement has been restricted to ascertaining whether its terms fairly, adequately, and reasonably settle this STAA case.<sup>2</sup> Approval of the Settlement Agreement should not be construed as approving the resolution of any claims brought under any other federal statute or under state law.

In reviewing the terms of the Settlement Agreement, the undersigned assessed whether the terms fairly, adequately, and reasonably settle the Complainant’s allegations against

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<sup>1</sup> Complainant confirmed by follow-up email that the settlement is considered confidential as between the parties, but that it was not submitted with any request to seal the record.

<sup>2</sup> See *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7, slip op. at 3 (ARB Jan. 31, 2011).

Respondent under STAA.<sup>3</sup> The Settlement Agreement complies with the required standard and is **APPROVED**.<sup>4</sup>

The parties are cautioned that their agreement to keep the Settlement Agreement confidential between themselves does not bind the U.S. Department of Labor (DOL) or prohibit disclosures made by DOL pursuant to the Freedom of Information Act (FOIA), which requires federal agencies to disclose requested documents unless they are exempt from disclosure.<sup>5</sup>

Accordingly, with the reservations noted above and limiting the approval to the complaints brought under the STAA, **IT IS ORDERED** that the parties' Settlement Agreement is **APPROVED**.<sup>6</sup> The Complaint is **DISMISSED** with prejudice.

So **ORDERED** this day at Covington, Louisiana.

**JOHN M. HERKE**  
**Administrative Law Judge**

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<sup>3</sup> See 29 C.F.R. § 1978.111(c).

<sup>4</sup> See *id*; see also *Carciero v. Sodexo Alliance, S.A.* ARB No. 09-067, ALJ No. 2008-SOX-012, slip op. at 2 (ARB Sept. 30, 2010).

<sup>5</sup> 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 (7<sup>th</sup> Cir. 2002) (settlement agreement approved by federal judge was presumptively a public document that should not have been sealed).

<sup>6</sup> See 29 C.F.R. § 1978.111(c).