

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 29 March 2024

ALJ NO.: 2022-STA-00054

In the Matter of:

MICHAEL O’ROURKE,
Complainant,

v.

PREMIER METAL GROUP,
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING CLAIM

This matter arises from a complaint of discrimination filed under the employee protection provisions of the Surface Transportation Assistance Act, 49 U.S.C. § 31105 (“STAA”) and the procedural regulations found at 29 C.F.R. Part 1978. On March 22, 2024, Complainant submitted an Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice (“Motion”), seeking approval of the parties’ Settlement Agreement and General Release (“Settlement”) and requesting dismissal of the case with prejudice pursuant to 29 C.F.R. §§ 1978.111(c) & (d)(2). The settlement resolves all issues raised in the complaint and is incorporated herein by reference.

The parties initially filed a copy of the Settlement with the financial terms of the settlement redacted, and upon my request, they subsequently filed an unredacted version for my review and approval. The parties moved to maintain the unredacted copy of the Settlement under seal. I find that the unredacted Settlement contains financial and business information that is privileged or confidential within the meaning of 5 U.S.C. § 552(b)(4). Therefore, good cause exists for restricted access and the unredacted Settlement will be sealed. *See* 29 C.F.R. §§ 18.85, 70.26.

The parties are advised that notwithstanding the confidential nature of the Settlement, all of their filings, including the unredacted copy of the Settlement, 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 Mar. 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

After careful consideration of the Settlement, I find the terms and conditions of the agreement to be fair, adequate, and reasonable under the STAA, and that the terms adequately protect Complainant. Furthermore, I believe it is in the public interest to approve the Settlement as a basis for administrative disposition of this case, and I, therefore, approve the Settlement pursuant to 29 C.F.R. § 1978.111(d)(2).

Paragraph 12 of the Settlement provides that the terms of the agreement shall be governed by the laws of the state of New York. This choice of law provision is construed as not limiting the authority of the Secretary of Labor and any Federal court. *See Phillips v. Citizens Assoc. for Sound Energy*, No. 1991-ERA-00025, slip op. at 2 (Sec’y Nov. 4, 1991).

I further note that my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Settlement pertaining to Complainant’s STAA claim, Case No. 2022-STA-00054. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-00007 (ARB Jan. 31, 2011).

ORDER

Accordingly, it is **ORDERED** that:

- (1) The parties’ Settlement is **APPROVED**. The Settlement constitutes the final order¹ of the Secretary of Labor and may be enforced under 49 U.S.C. § 31105(e); and

¹ 29 C.F.R. § 1978.111(e).

(2) The complaint of Michael O'Rourke is **DISMISSED WITH PREJUDICE.**

SO ORDERED.

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts