

UNITED STATES DEPARTMENT OF LABOR
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Issue Date: 14 December 2022

CASE NOS.: 2022-STA-00005
2022-STA-00006

OSHA CASE NOS.: 5-0004-21-019
5-0004-21-067

In the Matters of:

MARION GRANT,
Complainant,

and

CYNTHIA TAYLOR,
Complainant,

v.

MERCER TRANSPORTATION COMPANY, INC.,
and KEITH TUCKER,
Respondents.

DECISION AND ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINTS¹

These matters arise under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (“STAA”), 49 U.S.C. § 31105, and the regulations promulgated at 29 C.F.R. Part 1978. On March 1, 2021, and March 10, 2021, respectively, Marion Grant and Cynthia Taylor (collectively the “Complainants”) filed complaints against Mercer Transportation Company, Inc., and Keith Tucker (collectively the “Respondents”) alleging

¹ This document has been formatted to substantially comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), as amended (“Section 508”). Section 508 requires electronic and information technology procured, developed, maintained, and used by Federal departments and agencies to be accessible to and usable by people with disabilities, unless an exception applies.

retaliation in violation of the STAA. On September 24, 2021, the Occupational Safety and Health Administration's Regional Administrator issued the Secretary's Findings dismissing the complaints. By letter originally dated October 20, 2021, and corrected on October 26, 2021, the Complainants filed objections and requested hearings pursuant to 29 C.F.R. § 1978.106.

On December 15, 2021, these cases were assigned to me. On August 19, 2022, I issued an Order in both cases granting the parties joint request for the appointment of a mediator. On December 13, 2022, counsel for the Complainants filed an unopposed motion to approve the settlement agreement reached by the parties in this matter.² That same day, the Complainants' counsel filed a signed copy of the Settlement Agreement and General Release ("Settlement").³

The Settlement resolves the controversy arising from the Complainants' complaints under the STAA. The Complainants and the Respondents signed the Settlement. Moreover, the Settlement provides that the Complainants will release the Respondents from claims arising under the STAA and a simultaneously filed civil complaint. However, this Decision and Order is limited to whether the terms of the Settlement fairly, adequately, and reasonably settle the Complainants' allegations under the STAA.⁴

The Settlement provides that the Respondents shall make a payment to the Complainants in the agreed-upon amounts and that the Complainants will effectuate the dismissal of these matters. Having reviewed the Settlement in full and noting that both parties are represented by

² 29 C.F.R. § 1978.111 provides that a case may be settled after objections to the Secretary's Findings are issued "if the participating parties agree to a settlement and the settlement is approved by the ALJ[.]" Furthermore, it provides that a "copy of the settlement must be filed with the ALJ or the ARB, as the case may be." 29 C.F.R. § 1978.111(c)(2).

³ The parties have agreed that the terms of the Settlement are confidential. Consistent with 20 C.F.R. § 70.26 (2017) and Executive Order 12,600, "Predisclosure Notification Procedures for Confidential Commercial Information" (Exec. Or. 12,600, 52 Fed. Reg. 23781, 3 C.F.R., 1988 Comp., 235), the materials contained in the Settlement will be placed in a sealed envelope marked "Confidential Settlement Materials – Confidential Commercial Information. See 20 C.F.R. § 70.26." Moreover, in this Decision and Order, the undersigned has refrained from referencing any specific terms or dollar amounts contained in the Settlement. In general, confidential commercial information will be disclosed under the Freedom of Information Act ("FOIA") only in accordance with 20 C.F.R. § 70.26 and Executive Order 12,600. Pursuant to 20 C.F.R. § 70.26(a), a submitter of confidential commercial information must use good-faith efforts to designate any portions of its submission that it considers to be protected from disclosure under Exemption 4. The Department of Labor ("Department") will provide a submitter with prompt written notice of a FOIA request that seeks its confidential commercial information whenever required under 20 C.F.R. § 70.26(d), except as provided in 20 C.F.R. § 70.26(g), in order to give the submitter an opportunity to object in writing to disclosure of any specified portion of that information under paragraph 20 C.F.R. § 70.26(e). See 20 C.F.R. § 70.26.

⁴ As stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order (Nov. 2, 1987), "the Secretary's authority over the settlement agreement is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute." Consequently, my review of the Settlement is limited to determining whether its terms are a fair, adequate, and reasonable settlement of the Complainant's complaint under STAA.

counsel, I find that the Settlement's terms are fair, adequate, reasonable, and consistent with public policy. Therefore, I hereby approve the Settlement. Upon issuance of this Decision and Order, the parties shall implement the terms of the Settlement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits and may be enforced pursuant to 29 C.F.R. § 1978.113.

Accordingly, it is hereby **ORDERED** that the Settlement Agreement and General Release, filed on December 13, 2022, is **APPROVED** and thereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §1978.113. These complaints are **DISMISSED WITH PREJUDICE**.

SO ORDERED.

JOSEPH E. KANE
ADMINISTRATIVE LAW JUDGE