

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

Issue Date: 31 July 2023

OALJ Case No.: 2022-STA-00015
OSHA Case No.: 7-4120-21-106

In the Matter of:

AVERY WILSON,
Complainant,

v.

CTW TRANSPORTATION SERVICES, INC.,
Respondent,

and

COLBY HARLOW,
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING CLAIM

This claim arises under the employee-protection provisions of the Surface Transportation & Assistance Act (STAA), 49 U.S.C. § 31105. On July 29, 2023, Respondents filed a Confidential Settlement Agreement (Settlement Agreement) and Stipulation of Dismissal with Prejudice (Stipulation).

Pursuant to 29 C.F.R. § 1978.111(d)(2), Complainant's claim may not be settled without the approval of the administrative law judge (ALJ). Section 1978.111(d)(2) provides:

At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ or by the ARB, if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as the case may be.

The parties complied with this section by filing the Settlement Agreement for my approval. Any settlement approved by the administrative law judge becomes the final order of the Secretary and may be enforced in United States district court.¹

This Order is limited to whether the terms of the Settlement Agreement are a fair, adequate and reasonable settlement of Complainant's allegations that the Respondents violated the STAA. As was stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*,²

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. See *Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. 86-CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncomb County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

The Settlement Agreement resolves the controversy arising from Complainant's claim against the Respondents. The Settlement Agreement is signed by the parties. The Settlement Agreement provides that the Complainant will release the Respondents from his claim arising under the STAA. The Settlement Agreement provides that the Complainant and the Respondents will provide consideration to one another as agreed to therein. And, it provides that the Complainant shall dismiss his claim against Respondents with prejudice.

The parties have agreed that the Settlement Agreement is confidential. However, the parties' submissions, including the Settlement Agreement become part of the record of the case and may be subject to disclosure under the Freedom of Information Act (FOIA).³ FOIA requires federal agencies to disclose requested documents unless they are exempt from disclosure.⁴ The records in this case are agency records, which must be made available for public inspection and copying under FOIA. If a FOIA request is made for the Settlement Agreement, the United States Department of Labor (DOL) will have to respond and decide whether to exercise its discretion to claim any applicable exemption.

The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily.⁵ As stated above, the parties have agreed that the Settlement Agreement is confidential. Hence, the Settlement Agreement will be maintained as confidential by the Office of Administrative Law Judges (OALJ), subject to FOIA's disclosure requirements. The DOL is required to take steps to preserve the confidentiality of the designated information, and must provide the parties with

¹ 29 C.F.R. § 1978.111(e).

² Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987).

³ 5 U.S.C. § 552, *et seq.*

⁴ *Faust v. Chemical Leaman Tank Lines, Inc.*, Case Nos. 92-SWD-2 and 93-STA-15, ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998.

⁵ 29 C.F.R. § 70.26(b).

pre-disclosure notification if a FOIA request is received seeking release of such information. Accordingly, **the Settlement Agreement in this matter will be maintained in OALJ's confidential filing system.** Before the Settlement Agreement, or any part thereof, is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objection to disclosure.⁶

Having been advised of the settlement terms by reviewing the Settlement Agreement, I find the terms of the Settlement Agreement are fair, adequate, reasonable, and not contrary to public policy, and are therefore approved. The parties shall implement the terms of the Settlement Agreement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits. Again, it is noted that my authority only extends to approving settlement of Complainant's claim against the Respondents under the STAA.

Further, it is noted that this court has no jurisdiction over Complainant's STAA action against Respondents pending in United States district court. So my approval of the Settlement Agreement is further limited to approving the settlement of the STAA claim in this proceeding.

Accordingly, it is ORDERED that the Settlement Agreement is APPROVED and thereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. § 1978.113. This claim is DISMISSED WITH PREJUDICE.

SO ORDERED.

Jason A. Golden
Administrative Law Judge

⁶ See 29 C.F.R. § 70.26.