

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

Issue Date: 07 May 2024

OALJ Case No.: 2023-STA-00076

OSHA Case No.: 7-5580-23-036

In the Matter of:

NAPOLEON BACON, JR.,
Complainant,

v.

UNITED PARCEL SERVICE,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND DISMISSING COMPLAINT,
ORDER CANCELING HEARING**

This matter arises 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 May 2, 2024, the parties filed Separation Agreement and General Release (“Settlement Agreement” or “Agreement”). The Agreement did not state that Complainant wished to withdraw their complaint and it provided that Complainant could revoke their agreement within seven days of signing. *Settlement Agreement* at Section 1(a), Section 3(b). I thus issued an Order Regarding the Parties’ Settlement Agreement which ordered Complainant to file a formal, signed statement on May 7, 2024 stating whether they wished to withdraw this claim and whether they had revoked their agreement.¹ I also ordered that the parties meet to confer and determine whether they wished to include the statements required by 29 C.F.R. § 18.71(b)((1) and (2).

On May 7, 2024, the parties submitted a Joint Agreement which states that Complainant wishes to withdraw their complaint and asks that the case be dismissed. It also states that the parties’ agreement has the same effect as an order issued after a full hearing and that the statement

¹ The Order stated that Complainant signed the agreement on April 27, 2024, and thus had until May 6, 2024 to revoke their agreement. This was untrue. Complainant signed the agreement on **March 27, 2024**. The Agreement was thus final on April 3, 2024. This Tribunal misread the agreement and the error was not caught before issuing the Order Regarding the Parties’ Settlement Agreement. I apologize to the parties.

upon which the order is based upon the record that began this proceeding, which is Complainant's complaint in this matter, as it may have been amended, and the parties' Agreement.

The STAA and implementing regulations provide that proceedings may be terminated on the basis of a settlement, provided that the settlement is approved. 49 U.S.C. § 31105(b)(2)(C); 29 C.F.R. § 1978.111(d)(2). If a case is pending before an Administrative Law Judge, the administrative law Judge may approve it. *Id.*

Under the STAA, a settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. *Edmisten v. Ray Thomas Petroleum*, ARB No. 10-020, ALJ No. 2009-STA-00036 (ARB Dec. 16, 2009). Consistent with this required review, the regulations direct the parties to file a copy of the settlement "with the ALJ or the Administrative Review Board, United States Department of Labor, as the case may be." 29 C.F.R. § 1978.111(d)(2). I have reviewed the Settlement Agreement and its provisions, as supplemented by the parties May 7, 2024 Joint Agreement. I find the terms, obligations, and conditions related to the settlement are fair, adequate and reasonable, and in the public interest. I also find that the settlement was not procured through duress.

I note that the Agreement discusses matters related to Complainant's separation and matters under laws other than the Surface Transportation Assistance Act. My authority to approve settlements is limited to the above-captioned STAA matter, as it is the only matter before me. Therefore, I approve only the terms of the Settlement Agreement pertaining to the Complainant's STAA claim.² *Carnahan v. Arnold Transportation Services, Inc.*, ARB CASE NO. 10-025 , 2009 WL 5178507 (Dec. 22, 2009); *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003)..

Accordingly, I approve the parties' Settlement Agreement. To the extent not otherwise done so, the parties shall implement the terms as specifically stated therein. This order shall have the same force and effect as one made after a full hearing on the merits.

ORDER

The parties' Settlement Agreement is **APPROVED**. It hereby becomes the final order of the Secretary and the STAA portions of the agreement may be enforced pursuant to 29 C.F.R. § 1978.113.

IT IS FURTHER ORDERED that, upon payment of the amount set forth in the Settlement Agreement, Complainant's complaint is **DISMISSED** with prejudice.

² I also note that the STAA contains a "no preemption" provision. 49 U.S.C 31105(f). I do not approve any portion of the Settlement Agreement violative of the no preemption provision.

It is **SO ORDERED**.

WILLOW EDEN FORT
Administrative Law Judge