

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

Issue Date: 21 September 2023

OALJ No.: 2023-STA-00059
OSHA No.: 3-0101724-6

In the Matter of:

KEVIN L. MURDOCK, JR.,
Claimant,

v.

DMK EXPRESS, INC.,
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 August 30, 2023, the Employer filed a Confidential Settlement and Release Agreement signed by Complainant and Respondent (Settlement Agreement)¹ for my review and approval.

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.

¹ The same date, Complainant filed a Confidential Settlement and Release Agreement with his signature affixed, but not that of Respondent. Further, Complainant's email filing does not indicate that he copied Respondent on the communication with this court. Accordingly, I will not consider the agreement or copy of the agreement signed by Complainant only.

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.²

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.*,³

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 Respondent. The Settlement Agreement is signed by the parties, includes adequate consideration, and provides that the Complainant shall dismiss his claim against Respondent with prejudice.

On August 31, 2023, I issued a Notice of Striking Terms from the Settlement Agreement. The Notice states that:

1. The following language is stricken from the Settlement Agreement solely as it relates to any statute or regulation over which the Secretary of Labor has jurisdiction:

- Employee shall not initiate any administrative, governmental or quasi-judicial proceeding or complaint arising from or relating to DMK or DMK Parties, and shall not participate or provide any response or information to any administrative, governmental or judicial proceeding absent an affirmative order of a court of competent jurisdiction requiring such disclosure.
- Employee agrees, in the event that he may be included in any administrative charge or investigation or may be a member of a class, to waive any right to monetary recovery should any administrative or governmental agency or any other person or entity, pursue any claims on his behalf against the persons or entities covered by the release of this Agreement.

² 29 C.F.R. § 1978.111(e).

³ Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987).

Further, the Notice gave the parties an opportunity to object to the court's modification of the Settlement Agreement or submit their own modified settlement agreement. The parties did neither.⁴

The parties have agreed that they will not disclose the terms or existence of the Settlement Agreement and acknowledge that such information 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).⁵ FOIA requires federal agencies to disclose requested documents unless they are exempt from disclosure.⁶ 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.⁷ The parties have not expressly requested to file the Settlement Agreement under seal or otherwise have the DOL treat the Settlement Agreement as confidential commercial information. Nonetheless, by virtue of the fact that the parties filed the Settlement Agreement through the Office of Administrative Law Judges' (OALJ) confidential filing system and agreed in the Settlement Agreement that certain information in the Settlement Agreement is confidential, I find they have adequately requested that the Settlement Agreement be maintained in confidence by the DOL.

Such request having been made, the DOL is required to take steps to preserve the confidentiality of the designated information, and must provide the parties with 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.⁸

Having been advised of the settlement terms by reviewing the Settlement Agreement, I find the terms of the Settlement Agreement, except the portions stricken by my August 31, 2023 Notice of Striking Terms from the Settlement Agreement, are fair, adequate, reasonable, and not contrary to public policy, and are therefore approved. Upon my approval, the parties shall implement the terms of the Settlement Agreement as modified by my August 31, 2023 Notice. This Decision and

⁴ Complainant filed a copy of the Settlement Agreement on September 5, 2023, but it appears to be a duplicate of the Settlement Agreement filed on August 30, 2023. In any event, the copy filed on September 5 includes the offending language stricken by my August 31 Notice.

⁵ 5 U.S.C. § 552, *et seq.*

⁶ *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.

⁷ 29 C.F.R. § 70.26(b).

⁸ *See* 29 C.F.R. § 70.26.

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 Respondent under the STAA.

Accordingly, it is ORDERED that the Settlement Agreement filed on August 30, 2023, as modified by my August 31, 2023 Notice of Striking Terms from 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