

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Washington, DC

Issue Date: 02 August 2023 *In the Matter of:*

DAVID NELSON,
Claimant,

v.

MOELLER TRUCKING, INC.
Respondents.

Case No. 2023-STA-00026
OSHA Case No.: 301004905

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT
AND DISMISSING COMPLAINT WITH PREJUDICE**

This proceeding arises under the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31105 (STAA or the Act) and the regulations promulgated thereunder at 29 C.F.R. Part 1978 and 20 C.F.R. Part 24. Complainant requested a hearing to object to the Secretary’s findings in OSHA Case Number 301004905. The parties subsequently participated in a mediation and reached a tentative settlement of all claims.

On July 31, 2023, Complainant David Nelson, by his attorney, moved this tribunal to approve the parties’ settlement agreement and to dismiss these proceedings with prejudice and without fees or costs to other parties. Complainant submitted the signed settlement agreement with their motion (“Settlement Agreement”).¹ The Settlement Agreement includes a general release of all claims resolving all matters arising under the STAA and potentially arising under laws other than STAA. The undersigned’s authority over settlement agreements is limited to the statutes that are within the jurisdiction of the Office of Administrative Law Judges (OALJ).

Review and approval of the Settlement Agreement has been restricted to ascertaining whether its terms fairly, adequately, and reasonably settle this STAA case. Approval of the Settlement Agreement should not be construed as approving the resolution of any claims brought under any other federal statute or under state law.

I am required to review the terms and conditions of the Settlement Agreement to determine whether the terms are fair, adequate, and reasonable, and do not contravene the public interest.² A thorough review of the terms of the

¹ “A copy of the settlement must be filed with the ALJ or the Board . . . as the case may be.” 29 C.F.R. § 1978.111(d)(2).

² See *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7, slip op. at 3 & n. 8 (Jan. 31, 2011), *Carcierno v. Sodexo*

Settlement Agreement was undertaken. The terms of the Settlement Agreement fairly, adequately, and reasonably settle the Complainant's allegations against Respondent under STAA.³

The settlement is fair, adequate, and reasonable, and does not contravene the public interest. Accordingly, I **APPROVE** the Settlement Agreement and **DISMISS** this matter and the Complaint with prejudice.

SO ORDERED.

WILLIAM P. FARLEY
Administrative Law Judge
Washington, D.C.

Alliance, S.A., ARB No. 09-067, ALJ No. 2008-SOX-012, slip op. at 2 (ARB Sept. 30, 2010).

³ The regulations provide guidance for Adjudicatory settlements at the OALJ. "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." *Id.*

STANDING ORDER CONCERNING THE VIDEO HEARING

The parties are hereby notified of the following requirements regarding video hearings. Failure to comply fully with this order may result in sanctions including, but not limited to, the following: the exclusion of evidence, the dismissal of the claim, the entry of a default judgment, or the removal of the offending representative from the case. *See* 29 C.F.R. §§ 18.12(b), 18.35(c), 18.57 and 18.87.

Introduction

Purpose. The Office of Administrative Law Judges schedules video hearings to reduce risks currently associated with travel and public gatherings.

Remote Access Technology. Video hearings are conducted by the presiding judge using Microsoft TEAMS. Counsel, the parties, and witnesses must appear by webcam. The presiding judge schedules the hearing and issues “invitations” to all participants by e-mail. These invitations include a link for joining the hearing. Each participant’s invitation is the only means by which that participant is permitted to access the video hearing.

Public Hearings. The hearing is a public proceeding, and members of the public may ask to observe the hearing by contacting the presiding judge. The presiding judge also sends invitations to any members of the public who ask to observe the hearing.

Decorum. Video hearings are real hearings conducted by remote access technology. The expectations of courtroom behavior, dress, and decorum apply.

Prior to the Hearing

Email Address. At least fourteen days before the hearing, parties must provide to the presiding judge an email address for each participant (including parties, counsel, and witnesses) for receipt of the Microsoft TEAMS invitation to the video hearing.

Phone Number. At least fourteen days before the hearing, parties must provide to the presiding judge a telephone number for each participant (including parties, counsel, and witnesses). The participant must be available at that telephone number during the hearing to permit the presiding judge to contact the participant in the event of technical difficulties.

Joining a Video Hearing

Quiet Locations. Participants must join the video hearing from a quiet location. Headphones may be necessary if joining from a large space that causes an echo. Virtual backgrounds are not permitted. Participants must mute their microphones when not speaking to reduce distractions and to ensure the court reporter can create a clear record. Observers must mute their microphones and keep their webcams turned off throughout the hearing.

Testing. Microphones, webcams, headphones, and Microsoft TEAMS software are to be tested and working before joining a video hearing. (In Microsoft TEAMS, click on your profile and go to “Settings” to test audio and video.) Please address firewall and security settings before the hearing. Ensure sufficient internet coverage in your location and fully charge any device to be used during the video hearing. If you have a weak wireless signal move closer to the router. If that does not work, you may need to connect your computer by use of a cable to the back of your router. Each party is responsible for ensuring that they and their witnesses have sufficient bandwidth to support video streaming.

When to Connect. Participants must join the video hearing at least fifteen minutes before the scheduled start time to address any technical issues. Counsel should anticipate being allowed to enter the video call immediately. Witnesses and the public should expect initially to be placed in a “waiting area.” This means that the presiding judge must affirmatively allow you access to the video hearing. Participants should mute their microphones before the presiding judge calls the video hearing to order.

Control of the Hearing. The presiding judge is in control of the hearing. Features of the Microsoft TEAMS software other than simple webcam video and audio may be disabled. Parties wishing to use such additional features may do so only with the permission of the presiding judge obtained in advance of the hearing.

Recording Prohibited. The Department of Labor will produce an official written transcript of the proceedings as in “live” hearings, through use of a court reporter. No other person may record all or any part of any video hearing in anyway. This prohibition extends to screen shots or other audio or visual copying of a video hearing.

Witnesses

Copy to Witnesses. As soon as a party decides to call any non-party witness, the party must provide that witness with a copy of this Order. The presiding judge’s staff will need an email address to send the invitation to the witness.

Invitation. Prior to the video hearing, or at the beginning of the hearing, the presiding judge will set the time for the appearance of each non-party witness. Non-party witnesses will receive e- mailed invitations to join the hearing at that time.

Oath. The presiding judge will place all witnesses under oath before they testify. They will be under the same legal obligation to tell the truth as if they were appearing in person in a courtroom. The witness should be alone when testifying.

Documents. Any person questioning any witness about a particular document must confer with opposing counsel and must ensure the witness has a complete and correct copy of that document at the time the witness testifies. A witness shall not refer to any document (or other electronic device such as another monitor or cell phone) at their location other than those identified by the parties and the presiding judge during the hearing. The parties may present exhibits electronically to a witness with approval of the presiding judge and after providing an electronic copy to the opposing party and the presiding judge.

Electronic Devices. All electronic devices must be silenced during the hearing. Witnesses shall refrain from exchanging any electronic messages or other communication during their testimony. Witnesses may not communicate with anyone by any means during their examination other than the examining attorney, the presiding judge, or the court reporter.

Technical Issues

Software. To obtain a copy of Microsoft TEAMS for a computer or mobile device, visit www.microsoft.com. Numerous free tutorial materials are available on-line about video conferencing with Microsoft TEAMS.

Hardware. Most modern laptops have a built-in camera and speaker. Familiarize yourself with how to adjust the camera and speaker volume prior to joining the hearing. If you have a desktop, you will need a separate camera. These cameras normally mount on the top of the monitor and plug in to a computer via a USB port.

Mobile Devices. Mobile devices, such as smartphones and tablets, use a less-capable version of Microsoft TEAMS, and accordingly are not recommended. But they are acceptable if a desktop or laptop computer is not available, and you obtain the approval of the judge prior to the hearing.

Headsets. To improve audio quality and to prevent audio “feedback,” parties, counsel, and witnesses may wish to wear headsets, particularly with laptop computers and mobile devices.

Notification for Record. If any participant becomes aware or suspects that counsel of record for any party, the court reporter, or the presiding judge may have been disconnected from the video hearing, the participant shall promptly state so on the record, and testimony shall cease to avoid inadvertent questioning without the participation of the presiding judge, counsel, or court reporter.

Interruptions. In case of unforeseen and unavoidable technological issues, the

presiding judge may temporarily adjourn the video hearing to address those issues. If communication is lost with the video hearing, the person affected must immediately try to reestablish communications using the original link provided. If that is not possible, they shall contact the party which called them to testify and to report the issue.

SO ORDERED.