

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

Issue Date: 24 April 2023

OALJ No.: 2023-STA-00001

OWCP No.: 4-2950-21-152

In the Matter of:

JULIO SANTIAGO,
Complainant,

v.

PALLET CONSULTANTS CORP.,
Respondent,

and

EDDIE DYESS,
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, as amended. On April 3, 2023, the Complainant filed an Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice along with a Settlement Agreement and Waiver and Release of Claims (Settlement Agreement) 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.

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.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 Respondent shall make a payment to the Complainant of the amount agreed upon, among other consideration. And, it provides that the Complainant shall dismiss his claim against Respondents with prejudice.

On April 4, 2023, I issued a Notice of Intent to Strike a Term from the Settlement Agreement. The Notice states that:

[I]t is my intent to find unenforceable and strike paragraph no. 11 of the Settlement Agreement, approve the remainder of the Settlement Agreement, and dismiss Complainant's claim with prejudice after 14 days from the date of this Notice. Any party opposing this intended course of action must file an objection within 14 days from the date of this Order.³

¹ 29 C.F.R. § 1978.111(e).

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

³ The Notice further provides:

Section 31105(a) provides:

(1) A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because-

(A)(i) **the employee, or another person at the employee's request, has filed a complaint or begun a proceeding** related to a violation of a commercial motor vehicle safety or security regulation, standard, or order, or has testified or will testify in such a proceeding;

The time to file an objection to the Notice has passed and no party has filed an objection. Hence, I will strike paragraph no. 11 of the Settlement Agreement and approve the Settlement Agreement without the offending paragraph.

Complainant has agreed that he will not disclose, among other things, the terms or existence of the Settlement Agreement and acknowledges 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).⁴ FOIA requires federal agencies to disclose requested documents unless they are exempt from disclosure.⁵ 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.⁶ 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 Complainant 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 that Complainant has 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**

(Emphasis added). Further, Section 31105(b) states: "The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment."

Paragraph no. 11 of the Settlement Agreement states: "Complainant agrees that he will not voluntarily assist or participate with others in bringing any type of claim against Respondents and/or any of the Releasees." In light of Section 31105(a)(1)(A)(i) and (g), it appears that paragraph no. 11 of the Settlement Agreement is violative of Section 31105 or of the public policy served by Section 31105. Further, read broadly, paragraph no. 11 effectively precludes Complainant from bringing his own claim against any Respondent or Releasee arising in the future, which I believe is unenforceable.

⁴ 5 U.S.C. § 552, *et seq.*

⁵ *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.

⁶ 29 C.F.R. § 70.26(b).

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.⁷

Having been advised of the settlement terms by reviewing the Settlement Agreement, and noting that the parties are represented by counsel, I find the terms of the Settlement Agreement, except paragraph no. 11 thereof, 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 herein. 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.

Accordingly, it is ORDERED that paragraph no. 11 of the Settlement Agreement filed on April 3, 2023, is STRICKEN; the remainder of 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

⁷ See 29 C.F.R. § 70.26.