

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 29 June 2005

In the Matter of:

JEAN-PERRIE F. CARPENTIER,
Complainant,

CASE NO: 2005STA25

v.

ACE WORLD WIDE AIR FREIGHT CO., INC.
Respondent.

Appearances: Paul O. Taylor, Esquire
Richard Westley, Esquire
For the Complainant

Alan E. Seneczko, Esquire
For the Respondent

Before: Edward Terhune Miller
Administrative Law Judge

**RECOMMENDED DECISION AND ORDER APPROVING
SETTLEMENT AND DISMISSING COMPLAINT**

This case involves a claim under the Surface Transportation Assistance Act of 1982, (49 U.S.C. §2301 *et seq.*)(STAA), §31105, which was investigated by the Occupational Safety and Health Administration (OSHA) and referred on February 23, 2004, by OSHA at Complainant's timely request of March 9, 2005, to the Office of Administrative Law Judges, and assigned to the undersigned for *de novo* hearing pursuant to the implementing regulations at 29 CFR Part 1978. Complainant formally waived without objection the otherwise applicable time restrictions under the STAA and regulations on March 15, 2005. After a hearing was scheduled, the parties negotiated and have executed a Settlement and Release Agreement ("Agreement"), which purports to resolve all issues pending before this tribunal, and which has been filed on June 28, 2005, to this tribunal for approval, and, following approval, dismissal of the complaint with prejudice. This tribunal is required to determine that the terms of the Agreement as submitted represent a fair, adequate, and reasonable settlement of the complaint. 29 CFR §1978.111(d)(2).

Examination of the Agreement establishes that the terms of the Agreement constitute a fair, equitable, adequate, and reasonable settlement of the complaint. The Agreement incorporates certain reasonable payment provisions, and a comprehensive and unrestricted

release of the parties, each to the other, of all claims deriving from acts or omissions which occurred prior to the effective date of the Settlement agreement. The confidentiality provision, and constraints against the Complainant, are consistent with public policy. The Agreement provides that it is intended to be the entire agreement between the parties, that a breach of any provision of the Agreement by either party will constitute a breach of the entire Agreement, and that the terms of the Agreement are severable in the event that any portion of the Agreement is found to be unenforceable. The provision for an attorney's fee for Claimant's attorneys out of the settlement proceeds is deemed to be fair and reasonable. Wherefore, it is

ORDERED that the Agreement executed by the parties as of June 17, 2005, be approved, its terms be effectuated, and the case be dismissed with prejudice.

A
EDWARD TERHUNE MILLER
Administrative Law Judge

NOTICE: This Recommended Decision and Order and the administrative file in this matter will be forwarded for review by the Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210. 29 C.F.R. § 1978.109(a). The parties may file with the Administrative Review Board briefs in support of or in opposition to Recommended Decision and Order within thirty days of the issuance of this Recommended Decision unless the Administrative Review Board, upon notice to the parties, establishes a different briefing schedule. 29 C.F.R. § 1978.109(c).