



Issue Date: 25 May 2006

Case No.: 2005-SOX-00064

In the Matter of

LAURA MEARS

Complainant

v.

CERIDIAN CORPORATION

Respondent

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

This matter arises under the employee protection provision of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (Public Law 107-204), 18 U.S.C. § 1514A (hereinafter the Act), as implemented by 29 C.F.R. Part 1980.

Pursuant to a Notice of Hearing, dated August 5, 2005, I set a hearing date of February 7, 2006, in the Minneapolis/St. Paul, Minnesota area. By Order dated December 20, 2005, the case was rescheduled for April 4, 2006 and by Order dated March 13, 2006 the case was continued, following retention of new counsel, V. John Ella, by Complainant. By letter dated and sent by facsimile on April 7, 2006, the parties advised that they had reached a settlement, and on April 17, 2006, they submitted an executed Stipulation of Dismissal with Prejudice and requested the entry of an appropriate order. On April 27, 2006, the undersigned issued an Order requesting the parties to submit a copy of the settlement agreement for approval per 29 C.F.R. § 1980.111 (d)(2). On May 2, 2006, the parties submitted documents entitled, "Settlement Agreement" and "Stipulation of Dismissal with Prejudice and Order" (hereinafter the "Settlement Agreement"). The former was fully executed by Complainant and a representative of the Respondent and the latter was signed by counsel for the parties.

The terms of the Settlement Agreement have been carefully reviewed. The Settlement Agreement encompasses the settlement of matters arising under both the Act and state statutes. Paragraph 10 of the Agreement further provides that the Settlement Agreement shall be "construed and interpreted in accordance with laws of the State of Minnesota." Consistent with the Secretary's decision in *Phillips v. Citizens Assoc. for Sound Energy*, 91-ERA-25 (Nov. 4, 1991), I interpret Paragraph 10 as limited to the state claims the Settlement Agreement settles.

Paragraph 10 is not construed as a provision limiting the authority of the Secretary or the United States District Court to take such action with respect to this matter that they deem appropriate under the Act or the regulations promulgated and published by the Department of Labor to implement the Act. *See Milewski v. Kansas Gas and Electric Co.*, Case No. 85-ERA-0021, Sec. Order Approving Settlement Agreement and Dismissing Complaint (June 23, 1990).

Furthermore, the parties request that the Settlement Agreement remain confidential pursuant to 29 C.F.R. § 70.26. (See para. 5). This confidentiality provision does not run afoul of the requirements of law. *See generally, Connecticut Light & Power Co. v. Secretary of the U.S. Department of Labor*, 85 F. 3d 89 (2nd Cir. 1996); *Bragg v. Houston Lighting & Power Co.* 1994-ERA-38 (Sec'y June 19, 1995). To effectuate such confidentiality, I have sealed the Settlement Agreement. However, the parties are advised that records in whistleblower cases are agency records which the agency must make available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA. The Administrative Review Board noted:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

Seater v. Southern California Edison Co., 1995-ERA-13 (ARB March 27, 1997).

The parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

FINDINGS OF FACT

Under review of Settlement Agreement, I make the following findings:

1. The Settlement Agreement is fair, adequate, and reasonable on its face;
2. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits; and,
3. The Settlement Agreement is the entire and only settlement agreement between the parties arising from the factual circumstances that formed the basis for the claims under the Act.

ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. The Settlement Agreement is APPROVED, and the parties shall comply with the terms thereof;
2. This complaint is DISMISSED WITH PREJUDICE;
3. The terms of the Settlement Agreement shall not be disclosed by any party, either specifically or generally, pursuant to 29 C.F.R. § 70.26; and
4. The hearing, previously continued for St. Paul, Minnesota, is hereby CANCELLED.

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JOSEPH E. KANE
Administrative Law Judge