



Issue Date: 27 February 2008

Case No: 2007-STA-00013

IN THE MATTER OF:

FERNANDO WHITE,
Complainant,

v.

GEMINI TRAFFIC SALES,
Respondent.

RECOMMENDED ORDER APPROVING SETTLEMENT

This action arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. §31105, and the implementing regulations at 29 C.F.R. Part 1978 (2007). Complainant filed a complaint of discrimination against Gemini Traffic Sales on or about May 9, 2006. The complaint was investigated by the Occupational Safety and Health Administration (OSHA). After completing its investigation, OSHA determined on November 20, 2006, that the complaint was without merit. On December 14, 2006, Complainant appealed the findings, and the case was transferred to the Office of Administrative Law Judges for hearing.

Subsequent to the case being transferred for hearing, the parties negotiated and executed a Confidential Settlement Agreement and Release ("Agreement"), which purports to resolve all issues pending before this tribunal, and which has been filed on February 7, 2008, to this tribunal for approval, and, following approval, dismissal of the complaint. Pursuant to section 31105(b)(2)(C) of the STAA, "[b]efore the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation." Under regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Assistant Secretary's findings "if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board . . . or the ALJ." 29 C.F.R. §1978.111(d)(2). Under the STAA a settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. *Tankersly v. Triple Crown Services, Inc.*, 1992-STA-8 (Sec'y Feb. 18, 1993). Consistent with that required review, the regulations direct the parties to file a copy of the settlement "with the ALJ or the Administrative Review Board as the case may be." *Id.* 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. Attached to the Report and Motion was a copy of the parties' Settlement and Full and Final Release of All Claims ("Agreement"), the terms of which the Presiding Judge has carefully reviewed and finds to be a fair, 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.¹ The confidentiality provision and constraints against the Complainant are consistent with public policy.² The Agreement provides that it is intended to be the entire agreement between the parties, and that the terms of the Agreement are severable in the event that any portion of the Agreement is found to be unenforceable.

Pursuant to 29 C.F.R. § 1978.109(c), however, the Administrative Review Board must issue the final order of dismissal of a STAA complaint resolved by settlement. *See Howick v. Experience Hendrix, LLC*, ARB No. 02-049, ALJ No. 2000-STA-32 (ARB Sept. 26, 2002).

Accordingly, **IT IS RECOMMENDED** that the Administrative Review Board **APPROVE** the February 5, 2008, settlement agreement and **DISMISS** the complaint with prejudice.

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KENNETH A. KRANTZ
Administrative Law Judge

KAK/dlh

¹ Under the Act, the Presiding Judge's authority to approve the settlement is limited to terms and conditions that resolve issues that arose out of the employment relationship in the context of alleged violations of the Act. Accordingly, the Presiding Judge's review of the settlement in this case covers only those provisions over which the Presiding Judge has jurisdiction. *Ass't Sec'y & Zurenda v. Corporate Express Delivery Systems, Inc.*, ARB No. 00-041, ALJ No. 1999-STA-00030 (ARB March 31, 2000).

² Paragraph G requires confidentiality of the "amount of settlementshall be kept strictly confidential and shall not be disclosed to any person or entity" Paragraph D Complainant agreed not to "disparage or make negative comments about the Company to any person or entity." To the extent that these two provisions would restrict Complainant from voluntarily communicating with, and providing information to, any state or federal government agencies, they are void as against public policy and unenforceable. *Brown v. Holmes & Narver, Inc.*, Case No. 90-ERA-26, Sec. Order, May 11, 1994, slip op. 27, Sec. Order, May 11, 1994, slip op. at 3; *Coroner v. Bechtel Energy Corp.*, Case No. 88-ERA-9, Sec. Order, Feb. 9, 1994, slip op. at 6-8. Although, the parties consider Paragraph G to be a material part of this agreement, the parties also agreed in Paragraph J that if any part of the agreement is found unenforceable, then the validity of the remaining agreement shall not be affected. Paragraph D, therefore, is severed from the remainder of the agreement to the extent that it would prohibit Complainant from communicating to government authorities. *Brown*, slip op. at 4-5; *Anderson*, slip op. at 3; cf *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1155-56 (5th Cir. 1991) (Secretary may not eliminate "material terms" at proposed settlement without consent of other two parties.)

NOTICE: This Recommended Order Approving Settlement and the administrative file in this matter will be forwarded to the Administrative Review Board, U.S.Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for entry of a Final Order. *See* 29 C.F.R. § 1978.109(a) and 1978.109(c). The parties may file with the Administrative Review Board briefs in support of or in opposition to Recommended Order Approving Settlement 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).