

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 30 December 2008**

Case No. 2008-STA-00064

In the Matter of:

CHARLES MILLER,  
Complainant,

v.

AMERICAN BRIDGE,  
Respondents

Appearances: Mark C. Miller, Esquire  
For the Complainant

Mary Ann DiIanni, Esquire  
For the Respondent

Before: Edward Terhune Miller  
Administrative Law Judge

**RECOMMENDED DECISION AND ORDER APPROVING SETTLEMENT**

This case involves Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982, 49 U.S.C.A. § 31105 (West 2003)(STAA), and the implementing regulations at 29 C.F.R. Part 1978 (2004). Complainant, Charles B. Miller, and Respondent, American Bridge Company, have filed as of December 9, 2008, a Settlement Agreement and Proposed Consent Order together with a General Release Agreement entered into on October 20, 2008, (Settlement Agreement) under cover of a letter from Mark C. Miller, Esquire, which, together with the Settlement Agreement and Proposed Consent Order, requests review and approval by the Administrative Review Board as submitted, and that the complaint be dismissed with prejudice. Under the applicable regulations, this tribunal, with which the petition for review and approval has been filed, makes the initial review and recommendation, and has done so. 29 C.F.R. § 1978.111(d)(2). Complainant has waived any further procedural steps before this tribunal, which, however, within the limits of its authority, has issued a recommended decision and order approving the settlement.

Pursuant to § 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.* The Settlement Agreement has been duly filed with the ALJ for review, and is incorporated herein by reference.

The Complainant and Respondent have been represented by counsel, and the General Release Agreement confirms that Claimant has been advised regarding the terms of the Settlement Agreement, including his limited right to revoke the release, and that Complainant understands all terms of the settlement. Respondent had denied and does not admit any violation of the STAA or related regulations upon which this action is based. There is no provision for payment of attorney's fees, which is permissive, not mandatory, under the regulations. The consideration for the General Release executed by the Complainant in addition to ten thousand dollars, subject to explicit adjustments, includes withdrawal with prejudice a specified unfair labor practice charged filed with the National Labor Relations Board ("NLRB"), and withdrawal with prejudice a specified appeal filed with the Occupational Safety & Health Administration ("OSHA") and release of claims related to those legal actions. The settlement amount to be paid to Complainant is fair and reasonable under the circumstances, is not inconsistent with the public interest, and is approved. This tribunal as ALJ has reviewed the parties' Settlement Agreement as required and has determined that it constitutes a fair, adequate and reasonable settlement of the complaint and is in the public interest. Pursuant to 29 C.F.R. § 1978.109(c), 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).

All parties requesting settlement approval have indicated that other settlement agreements between them relate to an unfair labor practice claim before the NLRB and the claim filed with OSHA in relation to this case. The disposition of the latter claim is subsumed into the claim before this tribunal. The parties have recited that any and all existing or potential claims arising from the same factual circumstances forming the basis of the pending STAA claim are being contemporaneously released and discharged. The parties have declared that the General Release constitutes the complete and entire agreement and understanding of the parties with respect to the Complainant's claims, and purports to resolve fully and finally any and all disputes between them..

To the extent that the Settlement Agreement encompasses the settlement of matters under laws other than the STAA, only the terms of the agreement pertaining to the Complainant's STAA claim have been approved, since authority of this tribunal and the Administrative Review

Board over settlement agreements is limited to such statutes as are within the Board's jurisdiction and as defined by the applicable statute. This tribunal has determined in this case that such settlements may constitute consideration for the execution of the Settlement Agreement and General Release.

This tribunal has considered the provisions relating to re-employment of Complainant by Respondent and has concluded that they are not unfair or unreasonable under the particular circumstances of this case.

Wherefore, pursuant to the requirements of the STAA and implementing regulation, the terms of the Settlement Agreement have been appropriately reviewed and the Settlement Agreement is approved and should be implemented in accordance with its terms. Therefore, Complainant's request for approval of the Settlement Agreement and dismissal of the Complaint with prejudice should be granted. The case is referred to the Administrative Review Board for issuance of a final decision and order approving settlement and dismissing the claim pursuant to 29 C.F.R. § 1978.109(c). This tribunal recommends that the Administrative Review Board approve the agreement and dismiss the complaint with prejudice.

SO ORDERED.

**A**

Edward Terhune Miller  
Administrative Law Judge

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, Room S-4309, 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).