



Issue Date: 26 August 2008

CASE NO.: 2008-STA-00049

In the Matter of:

JAMES PEGG,
Complainant

v.

**CREST FOAM COMPANY, INC. AND
LEGGETT & PLATT, INC.**
Respondent

**RECOMMENDED ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This proceeding arises under Section 31105 of the Surface Transportation Assistance Act (STAA) of 1982 (49 U.S.C. section 31101) and the regulations promulgated thereunder at 29 C.F.R. Part 1978 (1989). On August 21, 2008, the parties filed a Settlement Agreement and General Release of Claims (“Agreement”) in accordance with 29 C.F.R. Section 1978.111(d)(2). The Agreement resolves the controversy arising from the complaint of James Pegg against Crest Foam Company, Inc. and Leggett & Platt, Inc. under the statute.¹ The Settlement Agreement is signed by the Complainant and Leggett & Platt, Inc.²

The Settlement Agreement provides that Complainant releases Respondent from claims arising under the Surface Transportation Act as well as under various other laws. This review is limited to whether the terms of the settlement are a fair, adequate and reasonable settlement of

¹ At the August 7, 2008 hearing, Respondent’s counsel indicated Crest Foam Incorporated’s business was purchased by Leggett & Platt, Inc.

² The Complainant signed the Settlement Agreement on August 19, 2008. Following my receipt of the signed Agreement, I received an undated *ex parte* letter directly from Mr. Pegg. Mr. Pegg’s letter states his attorney has no knowledge of the letter. In the letter, Mr. Pegg indicates he has not signed the Agreement. The letter discusses the merits of the case and comments upon certain provisions of the settlement agreement. Mr. Pegg has since signed the Agreement. His letter does not indicate he was deceived or coerced. Accordingly, the letter does not provide a basis for setting aside the Agreement.

Complainant's allegations that Respondent violated the STAA. *Kidd v. Sharron Motor Lines, Inc.*, 87-STA-2 (Sec'y July 30, 1987); *Poulos v. Ambassador Fuel Oil Co.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, slip op. at 2. As was stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987):

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. Buncombe County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

I have therefore limited my review of this Agreement to determining whether the terms thereof are a fair, adequate and reasonable settlement of Mr. Pegg's allegation that Respondent had violated the STAA.

Under the STAA and implementing regulations, a proceeding may be terminated on the basis of a settlement provided either the Secretary or the Administrative Law Judge approves the agreement. 49 U.S.C. app. section 2305(c)(2)(A); 29 C.F.R. Section 1978.111(d)(2). The parties must submit for review an entire agreement to which each party has consented. *Tankersley v. Triple Crown Services, Inc.* 92- STA-8 (Sec'y Feb. 18, 1993). The agreement must be reviewed to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. *Macktal v. Secretary of Labor*, 923 F.2d 1150 (5th Cir. 1991); *Thompson v. U.S. Department of Labor*, 885 F.2d 551 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89- ERA-9, 89-ERA-10, Sec'y Ord. Mar. 23, 1989, slip op. at 1-2. This Order approving the settlement is final since all parties have joined in the Agreement. *Swischer v. Gerber Childrenswear, Inc.*, 93-STA-1 (Sec'y Jan. 4, 1993).

The Agreement provides that upon the issuance of an order from the undersigned administrative law judge approving settlement and dismissing the complaint with prejudice, Respondent will pay Mr. Pegg a specified sum of money, and will pay a specified sum of money to the Complainant's attorney. The parties agree that these payments will satisfy all claims arising out of Complainant's employment with Leggett and Crest Foam.

The Agreement provides a general release and waiver of claims, in paragraph 6. That paragraph could conceivably be construed as a waiver by Complainant of a cause of action potentially arising in the future, unless it is construed as being modified by further language which limits the waiver to causes "up to the date of hereof". The provision must be interpreted as limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of the agreement. *Bittner v. Fuel Economy Contracting Co.*, Case No. 88-ERA-22, Sec. Ord. Approving Settlement Agreement and Dismissing Complaint (June 28, 1990), Slip op. at 2.

The parties also agree not to sue one-another or the parties released on any matter released by the Agreement. The Respondent agrees to release all claims against the

Complainant, as well. No admissions of liability are made and the provisions of the Agreement are severable.

Two provisions warrant further discussion. First, in paragraph 11, “Re-employment or Reinstatement” the Complainant agrees not to apply to work with Leggett or its subsidiary companies, divisions, successors and affiliates. The Complainant is not presently employed by Respondent or parties released. Both parties are represented by legal counsel. The purpose of the Act lies in “promoting highway safety and protecting employees from retaliatory discharge.” *Brock v. Roadway Express, Inc.*, 481 U.S. 252, 262 (1987). The STA is “aimed at preventing intimidation...” *Long v. Roadway Express, Inc.*, 1988-STA-31 (Sec’y Mar. 9, 1990). While those concerns were raised in the complaint, the parties have agreed to end the litigation, upon terms they have decided are favorable to each of them, without any admission of liability. The courts are designed to resolve “disputes.” Once this Agreement is approved, there is no longer any dispute requiring a resolution. The parties, who are intimately familiar with the pros and cons of the alternative, i.e., litigation, themselves have resolved any dispute. Such resolutions are to be encouraged. Given the significant number of truck driving jobs available, this limitation is not unreasonable. Nor should the courts second-guess the Complainant’s choice not to work for the released parties.

Second, paragraph 13 “Voluntary Non-Cooperation” precludes the Complainant from assisting in any and all third-party claims against the Respondent. It may be approved only to the extent it is within the Secretary’s purview. Paragraph 13 may be invalid because it might discourage other potential whistleblowers. The provision does, however, permit the Complainant to assist in an investigation conducted by an agency of the United States government as required by law. In any case, if found invalid, the clause is nevertheless severable and the remainder of the Agreement may be approved.

I find the overall settlement terms to be reasonable but some clarification is necessary. Paragraph 7 “Confidentiality and Non-Disclosure” limits all disclosures except under certain stated circumstances. The Complainant is permitted to disclose the terms of the agreement to his spouse, attorneys, accountants, or professional financial advisers and to applicable government taxing authorities. In all other respects, Complainant agrees to keep the terms of the agreement confidential “except as required by legal process and then only after notice is first given to [Respondent]” so that Respondent “will have a reasonable opportunity to oppose such disclosure.” To the extent that this provision of the confidentiality agreement can be construed to preclude Complainant from disclosing the agreement or events leading to the Agreement to a governmental authority without first notifying the Respondent, it has the potential to violate public policy by impeding lawful governmental action and would not be enforceable. *See, e.g., Bragg v. Houston Lighting & Power Co.*, 94-ERA-38 (Sec’y June 19, 1995); *Brown v. Holmes & Narver*, 90-ERA-26 (Sec’y May 11, 1994); *The Connecticut Light & power Cop. v. Secretary Of United States Department of Labor*, No. 95-4094, 1996 U.S. App. LEXIS 12583 (2d Cir. May 31, 1996); and, *Anderson v. Waste Management of New Mexico*, Case No. 88- TSC-2, Sec. Final Order Approving Settlement, December 18, 1990, slip op. at 2, where the Secretary honored the parties’ confidentiality agreement except where disclosure may be required by law.

In all other respects, it has been held in a number of cases with respect to confidentiality provisions in Settlement Agreements that the Freedom of Information Act, 5 U.S.C. Section 552, *et seq.* (1988) (FOIA), requires federal agencies to disclose requested documents unless they are exempt from disclosure. *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. The records in this case are agency records which must be made available for public inspection and copying under the Freedom of Information Act. However, the employer will be provided a pre-disclosure notification giving the employer the opportunity to challenge any such potential disclosure. In the event the Agreement is disclosed, pursuant to 5 U.S.C. Section 552, *et seq.*, such disclosure is not a violation of the agreement and will not result in a violation of the agreement. (See paragraphs 10 and 19). The Agreement itself is not appended and will be separately maintained and marked "PREDISCLURE NOTIFICATION MATERIALS."

The Agreement also notes at Paragraph 16 that it is governed and interpreted in accordance with the laws of the State of Massachusetts. That provision is interpreted as not limiting the authority of the Secretary or any U.S. court to seek or grant appropriate relief under any applicable federal whistleblower statute or regulation. *Phillips v. Citizens Assoc. for Sound Energy*, Case No. 91-ERA-25, Sec. Final Order of Dismissal (Nov. 4, 1991).

As so construed, noting that the parties are represented by counsel, I find the terms of the Agreement to be fair, adequate and reasonable, and therefore approve it. Accordingly, the complaint filed by James Pegg, is hereby dismissed with prejudice.

SO ORDERED.

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COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts

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-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).