



Issue Date: 12 December 2008

Case No.: 2008-STA-00057

In the Matter of

BARRY ROBERTS,

Complainant

v.

BUCKLEY POWDER COMPANY,

Respondent

RECOMMENDED ORDER APPROVING SETTLEMENT

This proceeding arises under the Employee Protection Provisions of the Service Transportation Assistance Act of 1982, 49 U.S.C. § 31101 *et seq.* (the Act) and the regulations published at 29 C.F.R. Part 1978. Specifically, the case involves complainant's appeal and request for a hearing of the findings of the Secretary of Labor dated May 22, 2008 denying the complaint filed by Mr. Roberts on February 12, 2008.

By letter dated November 7, 2008, counsel for the respondent, Kim L. Ritter, advised that the parties had reached a basis of settlement. I therefore issued an order on November 12, 2008 cancelling the hearing scheduled in this case for December 1, 2008 and allowing the parties 30 days to file a motion requesting a dismissal of the complaint involved in this case based on the terms of their settlement agreement. The parties complied with this order and filed a Joint Motion for Dismissal with Prejudice dated November 21, 2008, which is separately signed by counsel for the claimant, Paul O. Taylor, and counsel for the respondent. The parties provide in this joint motion that they have entered into a confidential settlement agreement, a copy of which was submitted, and that they move for an order of dismissal with prejudice based on this settlement agreement. They further request the entry of an order which shall have the same force and effect as an order issued after the hearing and that the order be based on the appeal and determination by the Secretary of Labor. They agree to waive any further proceedings before the Office of Administrative Law Judges and the right to contest or challenge the validity of the order based on the settlement agreement which is noted to be confidential. *See* 29 C.F.R. § 18.9(b).

The confidential settlement agreement submitted by the parties is signed by the complainant, Barry Roberts, and the Chief Financial Officer of Buckley Powder Company, Howard Wichter. I have reviewed this agreement and approve the dismissal of the complaint on the grounds the settlement agreement appears to be fair, adequate and reasonable, and it effectuates the purpose of the Act. However, paragraph G. of the settlement agreement provides that the amount of the settlement set forth in the agreement and the existence of the settlement agreement shall be kept strictly confidential and shall not be disclosed to any person or entity, except as required by the process of law, and that the parties may disclose the agreement to their respective attorneys, financial advisors, and the complainant's spouse. This paragraph goes on to provide that the parties understand that I must approve the agreement and that my recommended decision approving the agreement is subject to review by the Administrative Review Board. The respondent therefore consents to disclosure of the agreement for that purpose.

I note that the Freedom of Information Act, 5 U.S.C. § 552 (1988) (FOIA), requires agencies to disclose requested documents unless they are exempt from disclosure. Moreover, the regulations promulgated by the Department of Labor provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of the submitters of confidential commercial information. *See* 29 C.F.R. Part 70. Therefore, my approval of the Joint Motion for Dismissal, as well as the confidential settlement agreement, is recommended with the understanding that the U.S. Department of Labor will address the parties' agreement to keep the terms of the settlement confidential in the event a FOIA request is filed.

Noting the above restrictions, I hereby approve the settlement. Pursuant to 29 C.F.R. § 1978.109(c), however, the Administrative Review Board must issue the final order of dismissal of a complaint under the Act, which is 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 HEREBY RECOMMENDED that the Administrative Review Board approve the settlement agreement, which is incorporated by reference, and dismiss the appeal of Barry Roberts with prejudice.

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DONALD W. MOSSER
Administrative Law Judge

NOTICE OF REVIEW: The administrative law judge's Recommended Order Approving Settlement, along with the administrative file, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Suite S-5220, Washington, DC 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, para. 4.c(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order Approving Settlement, the parties may file briefs with the Administrative Review Board (Board) in support of, or in opposition to, the administrative law judge's order, unless the Board, upon notice to the parties, establishes a different briefing schedule. *See* 29 C.F.R. § 1978.109 (c)(2). All further inquiries and correspondence in this matter should be directed to the Board.