



Issue Date: 30 November 2018

Case No.: 2018-ERA-00011

In the Matter of:

DAVID WOOD,
Complainant,

v.

MID-AMERICAN GROUP,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING CLAIM**

This proceeding arises under the employee protection provision of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. § 5851 (ERA), and its implementing regulations at Part 24, Title 29, Code of Federal Regulations. On November 15, 2018, the parties filed a Joint Motion and Proposed Order to Approve Settlement, and a Settlement and Mutual Release Agreement (Settlement Agreement) for my review.

Pursuant to 29 C.F.R. § 24.111(d)(2), the claim of Complainant, David Wood, may not be settled without the approval of the administrative law judge (ALJ). Section 24.111(d)(2) provides:

Adjudicatory settlements under the Energy Reorganization Act, the Clean Air Act, the Safe Drinking Water Act, and the Toxic Substances Control Act. At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the judge, or by the ARB if the ARB has accepted the case for review. A copy of the settlement must be filed with the administrative law judge or the ARB, as the case may be.

The parties have complied with this Section by filing their Settlement Agreement for my approval. Any settlement approved by the ALJ becomes the final order of the Secretary. 29 C.F.R. § 24.111(e).

This Order is limited to whether the terms of the Settlement Agreement are a fair, adequate, and reasonable settlement of Complainant's allegations that the Respondent violated

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

The Settlement Agreement resolves the controversy arising from Complainant's claim against the Respondent, Mid-American Group. The Settlement Agreement is signed by the Complainant, Complainant's counsel, as to form only, and an authorized agent for the Respondent. The Settlement Agreement provides that the Complainant will release the Respondent from claims arising under the ERA. The Settlement Agreement provides that the Respondent shall make a payment to the Complainant of the amount agreed upon, among other consideration. And, it provides that the Complainant shall withdraw his claim.

The parties have agreed that the Settlement Agreement is strictly confidential and the Complainant will not disclose any information relating to the Settlement Agreement. However, notwithstanding the Settlement Agreement, the parties' submissions, including the Settlement Agreement, become part of the record of the case and may be subject to disclosure under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* (FOIA). 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 FOIA. If a FOIA request is made for the Settlement Agreement, the United States Department of Labor (DOL) will have to respond and decide whether to exercise its discretion to claim any applicable exemption.¹

Having been advised of the settlement terms by reviewing the Settlement Agreement, and noting that the parties are represented by counsel, I find the terms of the Settlement Agreement to be fair, adequate, reasonable, and not contrary to public policy, and are therefore approved. Upon my approval, the parties shall implement the terms of the Settlement Agreement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits. Again, it is noted that my authority only extends to approving settlement of Complainant's claim against the Respondent under the ERA.

¹ The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily. 29 C.F.R. § 70.26(b). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with pre-disclosure notification if a FOIA request is received seeking release of that information. Accordingly, the Settlement Agreement in this matter will be placed in an envelope marked "PREDISCLOSURE NOTIFICATION MATERIALS." Before any information in this file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. *See* 29 C.F.R. § 70.26.

Accordingly,

IT IS HEREBY ORDERED that the Settlement Agreement filed on November 15, 2018, is **APPROVED**, and thereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. § 24.113.

IT IS FURTHER ORDERED that the claim filed in this matter is **DISMISSED WITH PREJUDICE**.

Jason A. Golden
Administrative Law Judge