



Issue Date: 15 December 2014

Case Number: 2014-FRS-00027

In the Matter of

PHILLIP GLAPION
Complainant

v.

CSX TRANSPORTATION
Respondent

**ORDER GRANTING RESPONDENT'S MOTION TO ENFORCE SETTLEMENT
AND DISMISSING CASE**

This case arises under the employee protection provisions of the Federal Rail Safety Act ("FRSA")¹ and was scheduled for hearing on August 28, 2014 in Chicago, Illinois, which was canceled by supplemental order issued on July 15, 2014, upon notice that the parties were "engaged in settlement discussions and believe a settlement is a significant possibility."² In the same order, I carried the case on the court's open docket and requested the parties file a joint status memorandum by August 28, 2014, advising the court whether the matter will be settled, rescheduled for formal hearing or other appropriate action taken.

On August 26, 2014, I received a *Joint Status Memorandum of Complaint Philip Glapion and Respondent CSX Transportation, Inc.*, signed by counsel for Complainant and counsel for Respondent, advising me that "[o]n or about July 23, 2014, the parties agreed to settle the above-referenced matter for a specific amount." The parties stated that the delay in signing and

¹ This case began when Phillip Glapion ("Complainant") filed a complaint with the Secretary of Labor on November 30, 2012 alleging CSX Transportation ("Respondent" or "CSXT") abolished his job on June 4, 2012 and subjected him to workplace harassment through excessive efficiency testing. The Occupational Safety and Health Administration ("OSHA") investigated and concluded that Complainant's job, Y124, was abolished after multiple customer complaints, prompting Respondent to create a new job, titled Y324. Complainant then exercised his seniority rights to assume job title Y324 upon abolishment of job Y124. The investigator also concluded that any efficiency testing was done for the purpose of confirming the effectiveness of the new job and did not constitute an adverse action. OSHA subsequently dismissed the complaint and Complainant filed objections on November 21, 2013, requesting a hearing before an administrative law judge.

² The matter was originally scheduled for hearing on June 10, 2014 but continued, without objection, on Employer's motion of February 12, 2014.

executing the agreement was due to vacation and trial schedules and that “[t]he parties anticipate[d] submitting the finalized documents within the next week.” *Id.*

On November 4, 2014, Respondent submitted a *Motion to Enforce the Settlement and Dismiss Complainant Phillip Glapion’s Complaint with Prejudice* in which Respondent states that “[a]fter agreeing in July 2014 to settle this matter, Respondent was informed that Complainant ‘changed his mind’ and refused to sign the parties’ agreement.” “There is no term of the settlement agreement that is in dispute” and Complainant “now wants more money than the amount agreed upon.” *Id.*

Respondent argues that Complainant’s refusal to sign the agreement “does not invalidate the settlement that he previously knowingly, voluntarily, and purposefully consented” to. Respondent provides e-mail exchanges between Complainant’s attorney and Respondent’s counsel, including an e-mail with a *Settlement Agreement and Release* and an e-mail dated August 26, 2014 in which Complainant’s counsel states, “We can report to the Judge that he has accepted.” *Id.*

On November 18, 2014, Complainant, by and through counsel, William J. McMahon, filed *Complainant’s Response to CSXT Motion to Enforce Settlement* where Complainant requests that Respondent’s motion be denied and this matter be placed back on the active case schedule. Complainant’s counsel explains that Complainant informed him that he decided not to accept CSXT’s settlement offer and that counsel promptly informed Respondent’s attorney of that decision.

The following facts are undisputed: Mr. McMahon, as Complainant’s attorney, had the authority to enter into settlement negotiations with Respondent, represented by Joseph C. Devine. Mr. McMahon and Mr. Devine conducted preliminary negotiations by e-mail, *see Employer Exhibit (“EX”) A*, and eventually agreed upon a settlement figure of \$6,200.00. Complainant was informed by his counsel of this amount, and agreed to it. Lindsey D’Andrea, Respondent’s co-counsel, then sent a settlement agreement to Mr. McMahon on or about July 29, 2014 for signature. *See EX B*. The written agreement did not contain any material term different than what was orally agreed to by counsel for Complainant and Respondent, including the settlement amount. However, Complainant never signed the *Settlement Agreement and Release*, despite regular inquiries by Mr. Devine and Mr. McMahon’s representation in an email on August 26, 2014 that “[w]e can report to the Judge that he accepted to (sic) offer.” *EX E; see generally EX C-E*. On August 28, 2014, the parties filed a *Joint Status Memorandum of Complaint Philip Glapion and Respondent CSX Transportation, Inc.*, signed by both counsel, in which they advise the Court that “the parties agreed to settle the above-referenced matter for a specific amount. ... The parties anticipate submitting the finalized documents within the next week.” *EX F*. However, Complainant subsequently “changed his mind about the settlement” over the weekend of September 13-14, 2014, some 45 days after the written agreement was sent to his counsel. Complainant told his attorney on Monday, September 15, 2014 that he no longer wished to accept the settlement. Mr. McMahon informed Mr. Devine on Wednesday, September 17, 2014. Thereafter, Respondent filed the pending motion to enforce the settlement.

The Office of Administrative Law Judges may enforce a settlement agreement when an attorney has the authority to accept the agreed terms on behalf of his client,³ when the terms of the written agreement are not materially different from the terms agreed during negotiations,⁴ and the settlement process was not impaired by misrepresentation, duress, or undue influence.⁵ While it is ideal to have documentation of a complainant's acceptance, i.e. a statement made on the record, it is not required to enforce a settlement agreement.⁶ A determination whether to enforce a settlement is based on the totality of the circumstances. *Tankersley*, note 3 at 8.

Complainant's counsel had the authority to enter into settlement negotiations and agree to terms on behalf of his client; the record is absent of any indication to the contrary. The attorneys in this case originally conferred by e-mail and concluded their negotiations over the phone, agreeing to a settlement figure of \$6,200.00. Complainant accepted. Shortly thereafter, Respondent sent Complainant's attorney the memorialized version of the agreement, which Complainant refused to sign over an extended period "after he decided not to accept CSXT's settlement offer." (*Complainant's Response* at 1).

"Settlements need not be reduced to writing to be enforceable and, if a party 'who has previously authorized a settlement changes his mind when presented with the settlement document, that party remains bound by the terms of the agreement.' *Fulgence v. J. Ray McDermott & Co.*, 662 F.2d 1207, 1209 (5th Cir. 1981); accord *Brock v. The Scheuner Corp.*, 841 F. 2d 151, 154 (6th Cir. 1988)." *O'Sullivan*, at 2. Enforcing a settlement agreed to prior to memorialization permits the settlement process to proceed more smoothly and protects the interests of all involved. By enforcing the oral agreement, parties can negotiate settlements without fear that an opposing party will later withdraw from the agreed terms. *Mactal* at 1156-7.

In this case, Complainant voluntarily, knowingly and orally consented to have his attorney settle the matter on his behalf. *See Tankersley*, at 5. Complainant then agreed to the settlement amount of \$6200.00 negotiated by his counsel on his behalf. The record is devoid of any evidence of illegality, fraud, duress, undue influence, mistake, or derogation of an overriding public policy and I find the settlement amount reasonable.⁷ Finally, there is no evidence the terms of the written agreement are materially different than the terms agreed upon during negotiations. Consequently, to not enforce the agreement in this case "would permit a party to make a mockery of others negotiating in good faith, and to make a mockery of the legal process." *Tankersley*, at 8.

This court has the authority to enforce the oral agreement made between the parties' representatives on July 23, 2014 and there is "nothing wrong" with holding a complainant and respondent to their initial consent. *Mactal v. Secretary of Labor*, 923 F.2d 1150, 1157 (5th Cir.

³ *Tankersley v. Triple Crown Services, Inc.*, 1992-STA-8, at 5-6 (June 14, 1994).

⁴ *Holcomb v. Pinnacle Airlines*, 204-AIR-25, at 3 (May 31, 2005); *Hasan v. Nuclear Power Services, Inc., et al*, 1986-ERA-24, at 2 (Sec'y June 26, 1991),

⁵ *Ruud v. Westinghouse Hanford Company*, ARB Case No. 96-087, OALJ Case No. 88-ERA-33, at 10-11 (ARB Nov. 10, 1997).

⁶ *O'Sullivan v. Northeast Nuclear Energy Company*, 90-ERA-35 and 36, at 2 (Sec'y Dec.10, 1990); *Petty v. Timken Corp.*, 849 F.2d 130, 132 (4th Cir. 1998)

⁷ As Complainant failed to provide an explanation as to why he repudiates the settlement, the only logical basis for why Complainant changed his mind is because he wanted more money.

1991). Accordingly, based on a totality of circumstances, the *Motion of Respondent CSX Transportation, Inc. to Enforce the Settlement and Dismiss Complainant Phillip Glapion's Complaint with Prejudice* is hereby GRANTED. I hereby approve the settlement amount of \$6,200.00. Upon payment of this amount by Respondent, this matter will be DISMISSED WITH PREJUDICE.

SO ORDERED:

STEPHEN R. HENLEY
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) with the Administrative Review Board (“Board”) within ten (10) business days of the date of the administrative law judge’s decision. *See* 29 C.F.R. § 1980.110(a). The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party’s supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party’s legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

If no Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c). Even if you do file a Petition, the administrative law judge’s decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days after the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).