

U.S. Department of Labor

Office of Administrative Law Judges
11870 Merchants Walk - Suite 204
Newport News, VA 23606

(757) 591-5140
(757) 591-5150 (FAX)



Issue Date: 12 September 2005

Case No: 2005-STA 00012

In the Matter of:

DANIEL DAVIS,
Complainant,

v.

MTL OF THE SOUTHEAST, INC.,
Respondent.

Appearances:

Daniel Davis, *Pro Se*
Todd W. Cline, Esq., for Respondent

Before:

Daniel A. Sarno, Jr.
Administrative Law Judge

**RECOMMENDED DECISION AND ORDER APPROVING
SETTLEMENT AND DISMISSING COMPLAINT**

This action arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. §31105, and the implementing regulations at 29 C.F.R. Part 1978 (2004). Complainant filed a complaint of discrimination against Respondent, MTL, on or about October 22, 2004. The complaint was investigated by the Occupational Safety and Health Administration (OSHA). After completing its investigation, OSHA determined on or about December 20, 2004 that the complaint was without merit. On January 6, 2005, Complainant appealed the findings, and the case was transferred to the Office of Administrative Law Judges for hearing.

After a hearing was scheduled, the parties negotiated and executed a Settlement and Release Agreement ("Agreement"), which purports to resolve all issues pending before this tribunal, and which has been filed on September 1, 2005, to this tribunal for approval, and, following approval, dismissal of the complaint with prejudice. Pursuant to section 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.* This tribunal is required to determine that the terms of the Agreement as submitted represent a fair, adequate, and reasonable settlement of the complaint. 29 CFR §1978.111(d)(2).

Examination of the Agreement establishes that the terms of the Agreement constitute a fair, equitable, adequate, and reasonable settlement of the complaint. The Agreement incorporates certain reasonable payment provisions, and a comprehensive and unrestricted release of the parties, each to the other, of all claims deriving from acts or omissions which occurred prior to the effective date of the Settlement agreement. The confidentiality provision and constraints against the Complainant are consistent with public policy. The Agreement provides that it is intended to be the entire agreement between the parties, and that the terms of the Agreement are severable in the event that any portion of the Agreement is found to be unenforceable.

Pursuant to 29 C.F.R. § 1978.109(c), however, 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).

Accordingly, **IT IS RECOMMENDED** that the Administrative Review Board **APPROVE** the September 1, 2005, settlement agreement and **DISMISS** the complaint with prejudice.

A
DANIEL A. SARNO, JR.
Administrative Law Judge

DAS/jre

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).

