



**Issue Date: 24 June 2009**

CASE NO. 2008-STA-00056

In the Matter of:

JOHN J. MCLEAN, III,  
Complainant,

vs.

CALEX EXPRESS, INC., CALEX LOGISTICS, and  
BLUE HEN LINES,  
Respondents.

### **ORDER APPROVING SETTLEMENT**

A hearing in this case, brought under the employee protection provisions of the Surface Transportation Assistance Act, 49 U.S.C. §31105 (“STAA”), and the applicable regulations at 29 C.F.R. Part 1978, was scheduled to be held in Scranton, Pennsylvania on January 27, 2009. The hearing was cancelled based on the parties’ representation that the case had been settled. On June 15, 2009, the parties filed a fully executed settlement agreement, and requested that it be approved. My review is limited to whether the terms of the settlement are a fair, adequate and reasonable settlement of 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.

The Settlement Agreement provides that Complainant releases Respondent from claims arising under not only the Surface Transportation Act, but numerous other employee-protection and civil rights statutes, as well as general tort law, and releases Respondent from claims for attorney’s fees. *See* Settlement Agreement, section A, paragraphs 1-13. That section might 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 the execution of this agreement.” 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.

In addition, Section G requires the existence and terms of the Settlement Agreement to be kept confidential. 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. The Agreement itself is not appended to this Order and will be separately maintained and marked "PREDISCLASURE NOTIFICATION MATERIALS."

As so construed, noting that the parties are represented by counsel, I find the terms of the Settlement Agreement to be fair, adequate and reasonable. Accordingly, IT IS ORDERED:

1. The Settlement Agreement, as construed above, is APPROVED; and
2. The complaint filed by John J. McLean III is hereby DISMISSED WITH PREJUDICE.

**SO ORDERED.**

**A**

Paul C. Johnson, Jr.  
Administrative Law Judge