



Issue Date: 23 November 2009

Case No.: 2008-STA-00065

In the matter of:

FERNANDO DEMECO WHITE,

Complainant,

v.

SALSON LOGISTICS, INC.,

Respondent.

**ORDER APPROVING SETTLEMENT AGREEMENT
AND
ORDER RECOMMENDING DISMISSAL WITH PREJUDICE**

The above matter is a complaint of employment discrimination under Section 31105 of the Surface Transportation Act of 1982, 49 USC §31105, et seq., as amended (Act) and is implemented through regulations at 29 CFR, Part 1978. The case was been referred to the Office of Administrative Law Judges for formal hearing upon the Appeal by Complainant of the Occupational Safety and Health Administration August 26, 2008, determination that the Complainant's case was without merit. This case arose from within the U.S. Federal Court 11th Circuit and is pending formal hearing before this Administrative Law Judge.

The Act provides at §31105(b)(2)(C) that "Before the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary of Labor, the complainant, and the person alleged to have committed the violation." Federal regulations at 29 CFR §1978.111(d)(2) provide that "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 such settlement is approved by the Administrative Review Board, United States Department of Labor, or the ALJ [administrative law judge]. A copy of the settlement shall be filed with the ALJ or the Administrative Review Board, United States Department of Labor as the case may be." Such settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, reasonable and in the public interest.

On November 19, 2009, the Parties filed a "Joint Motion to Dismiss with Prejudice" along with a fully executed "Settlement Agreement and General Release" with the Court. The settlement

agreement follows numerous aggressively contested motions and comes on the eve of the formal hearing. During this time the Claimant has proceeded without benefit of counsel. His proceeding pro se followed written advice of the right to representation and the procedural requirements of a formal hearing process. This Administrative Law Judge finds that the Claimant's decision to proceed without benefit of counsel was made voluntarily and constitutes a knowing waiver of the right to representation.

This Administrative Law Judge has reviewed the submitted settlement agreement in great detail, and finds the terms of the agreement to be fair, adequate and reasonable settlement of all issues arising from the complaint and to be in the public interest. **Pursuant to 29 CFR §1978.111(d)(2), the "Settlement Agreement and General Release" is APPROVED.**

Pursuant to 29 CFR §1978.109(c), IT IS RECOMMENDED that the Administrative Review Board, APPROVE the "Joint Motion to Dismiss With Prejudice".

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ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb

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, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶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.