U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 18 November 2009

CASE NO. 2009-STA-00066

In the Matter of:

DAVID F. BOLT,
Complainant,

v.

J & R SCHUGEL TRUCKING, INC.,
Respondent.

RECOMMENDED 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 Chicago, Illinois on December 1, 2009. Under cover letter dated November 11, 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 all claims against Complainant "of any kind whatsoever." *See* Settlement Agreement, sections B and C. Section B 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 claims that were existing as of the execution of the 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 EconomyContracting Co.*, Case No. 88-ERA-22, Sec. Ord. Approving Settlement Agreement and Dismissing Complaint (June 28, 1990), Slip op. at 2.

In addition, Section H requires the existence and terms of the Settlement Agreement to be kept confidential. That Section reflects the parties' understanding that the Department of Labor is not bound by the confidentiality provision. The parties are correct; 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.

Finally, paragraph O, the governing law provision, must be construed as not limiting the authority of the Secretary of Labor and any federal court, which shall be governed in all respects by the laws and regulations of the United States. *See Phillips v. Citizens Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).

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;

2. The hearing scheduled for December 1, 2009 is CANCELED; and

2. The complaint filed by David Bolt is hereby DISMISSED WITH PREJUDICE.

SO ORDERED.

A

Paul C. Johnson, Jr.
Administrative Law Judge

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.