



Issue Date: 13 July 2009

In the Matter of

Case No.: 2009 STA 31

THERON K. CARTER
Complainant

v.

**MARTEN TRANSPORT, LTD., and
USIS COMMERCIAL SERVICES, INC.**
Respondents

Appearances: Mr. Theron K. Carter
Pro se (representing himself)

Mr. Stephen A. DiTullio, Attorney
Ms. Mindy J. Rowland, Attorney
For Respondent Marten Transport, Ltd.

Mr. Larry D. Henry, Attorney
For Respondent USIS Commercial Services, Inc.

Before: Richard T. Stansell-Gamm
Administrative Law Judge

**RECOMMENDED DECISION AND ORDER –
DISMISSAL OF COMPLAINT**

I was assigned this case based on the Complainant's April 3, 2009 objection filed in the Office of Administrative Law Judges to the Regional Administrator's March 10, 2009 dismissal of his complaint under the provisions of Section 405 of the Surface Transportation Assistance Act ("STAA" or "Act") of 1982, as amended and re-codified, Title 49 United States Code Section 31105, and the corresponding agency regulation, Title 29, Code of Federal Regulations ("C.F.R.") Part 1978.

On May 24, 2009, based on the stated nature of Mr. Carter's complaint and the Regional Administrator's dismissal of Mr. Carter's complaint, I issued a show cause order to determine whether his complaint should be dismissed prior to a hearing based on an August 2008 settlement agreement. On June 2, 2009, in light of the parties' responses, I extended the show cause order submission period through June 22, 2009 to provide the parties an opportunity to address whether a representative of the Secretary, U.S. Department of Labor ("Secretary") had approved the August 2008 settlement agreement.

Background

From June 2 through June 14, 2005, the Complainant, Mr. Carter, was employed as a truck driver by the Respondent, Marten Transport, Ltd. (“Marten Transport”). During that employment Mr. Carter made a variety of complaints to Marten Transport regarding his assigned truck. Following his employment termination, Mr. Carter filed an employee discrimination complaint under the STAA (“First Complaint”) on June 15, 2005, alleging Marten Transport had discharged him due protected activities under the Act. Subsequently, the Occupational Safety and Health Administration, U.S. Department of Labor, (“OSHA”) investigated and denied the complaint. Mr. Carter objected and requested a hearing before an administrative law judge.

On May 18, 2006, following a hearing in January 2006,¹ Administrative Law Judge Daniel F. Solomon issued a Recommended Decision and Order, 2005 STA 63, finding Marten Transport had violated the STAA employee protection provisions. As relief, Judge Solomon ordered in part reinstatement, back pay from June 14, 2005 through the date of a bona fide offer of reinstatement or comparable re-employment, and compensation for emotional distress. Judge Solomon also directed Marten Transport to take action to have the Respondent, USIS Commercial Services (“USIS”),² amend its DAC employment report for Mr. Carter, by deleting any unfavorable work record information and correcting the record to show continuous employment.

In July 2006, Mr. Carter returned to work with Marten Transport for a few days.

On June 30, 2008, the Administrative Review Board (“ARB” and “Board”), ARB Case Nos. 06-101 and 06-159, affirmed Judge Solomon’s determination and remedies. The ARB also affirmed Judge Solomon’s supplemental order awarding attorney fees and litigation expenses.

On July 8, 2008, through counsel, Mr. Carter filed another STAA employment discrimination complaint (“Second Complaint” and the current complaint before me) with OSHA, alleging that both Marten Transport and USIS engaged in blacklisting. Previously, in May 2008, Mr. Carter advised USIS of Judge Solomon’s decision and order and contested the inclusion of notations about excessive complaints and company policy violations for his employment with Marten Transport. In a June 26, 2008 response, USIS advised Mr. Carter that Marten Transport reaffirmed the annotations as accurate. Mr. Carter asserted Marten Transport’s affirmation and USIS failure to correct the record represented blacklisting. He requested compensatory and punitive damages, plus litigation expenses. OSHA designated the Second Complaint as “Case No. 5-1470-08-012.”

In mid-August 2008, the attorneys for Marten Transport and Mr. Carter engaged in a settlement proceeding.

¹During this litigation and at the hearing, Mr. Carter was represented by counsel.

²During this litigation, USIS was not a named Respondent.

On August 19, 2008, Mr. Sherrill Benjamin, OSHA, Whistleblower Program Manager, Region V, approved a proposed settlement agreement and indicated that upon execution, OSHA would accept the agreement as a resolution of the Second Complaint, Case No. 5-1470-08-012.³

On August 21 2008, after his counsel had signed the agreement the day before, Mr. Carter signed the settlement agreement with Marten Transport which indicated the parties reached a complete agreement to settle both the First and Second Complaints.⁴ According to the settlement agreement, Mr. Carter was to receive \$24,496 in back pay, \$30,504 for emotional distress and other compensatory damages, and \$2,903 for other costs. Mr. Carter's counsel was also to receive \$115,715 in attorney fees. Marten Transport also promised to have Mr. Carter's work history corrected and Mr. Carter agreed to withdraw the Second Complaint.

On January 26, 2009, as follow-up, counsel for USIS advised Mr. Carter's attorney that as a result of the settlement agreement, the disputed items had been removed from Mr. Carter's employment record. In response, Mr. Carter's attorney indicated the claim against USIS remained pending with OSHA.

On January 27, 2009, Mr. Carter's counsel asked an OSHA investigator for the status of Mr. Carter's complaint against USIS. The attorney indicated that although Marten Transport was no longer a party to the proceedings, an STAA complaint remained against USIS.

On February 5, 2009, the OSHA investigator responded and asked counsel whether he could provide the damages Mr. Carter was seeking from USIS. She also requested a list of employers to which Mr. Carter had applied and asked when the employment data had been changed.

On February 6, 2009, counsel forwarded the OSHA response to Mr. Carter.

On February 9, 2009, at Mr. Carter's request, his attorney withdrew as counsel for the Second Complaint, OSHA Case No. 5-1470-08-012.⁵

As previously noted, on March 10, 2009, the Regional Administrator dismissed Mr. Carter's Second Complaint based on the settlement agreement and Mr. Carter filed a timely objection on April 3, 2009.

³Respondent Marten's June 19, 2009 submission, Exhibit 3. Mr. Benjamin also recommended the parties forward the settlement to the ARB since it also contained a resolution of the First Complaint. Eventually, the ARB determined it no longer had authority to consider the settlement regarding the First Complaint since a final decision and order since the Board had already issued a final decision and order.

⁴Respondent Marten's May 13, 2009 submission, Exhibit A.

⁵Mr. Carter's May 23, 2009 response, page 3, Section 8.

Parties' Positions

Complainant

In his April 3, 2009 request for hearing and objection to the Regional Administrator's dismissal of the Second Complaint, Mr. Carter asserts that his July 2008 complaint is valid since Marten Transport and USIS did not remove unfavorable information in his DAC record as directed by the administrative law judge.

Mr. Carter also presented several issues regarding this employment in 2006, the settlement agreement, and his subsequent inability to obtain re-employment. First, Mr. Carter worked for another trucking company, Swift Transportation, in May and June 2006 and believes he was then discharged after being set up for failure in order that Marten Transport might reinstate him. However, the reinstatement was a sham since his driving duties involved violations of hours of duty regulations. As a result, he had to quit in July 2006 to uphold his credibility.

Although he had a conference call with a settlement judge and his attorney on August 15, 2008 and presented his position statement, Mr. Carter believes the settlement judge and his lawyer had Marten Transport's position statement several days earlier. Since he had been out of work since July 2006, Mr. Carter queries how the \$50,000 settlement amount was determined, notes that no mention was made of the other trucking company, and questions whether the settlement judge had a conflict of interest. Mr. Carter also alleges that his attorney had a conflict of interest, being more interested in obtaining his attorney fee. Mr. Carter further requests an investigation into a \$5,000 payment which he either did or did not receive,⁶ that he claims represented a "bribe" relating to the re-instatement by Marten Transport. Although he received a fax of the agreement, Mr. Carter noted that it contained two provisions to which he did not agree: a) Marten Transport was no longer required to post a copy of the administrative law judge's decision, and b) Marten Transport was removed from the Second Complaint.

Despite multiple inquiries and applications, Mr. Carter has been unable to obtain a company solo driver position and remains unemployed. In January 2009, Mr. Carter discovered that Marten Transport may still be providing a deceptive employment history to perspective motor carrier employers.

In a May 23, 2009 response to the initial submissions by Marten Transport and USIS, Mr. Carter raised numerous issues, presented assertions, requested further investigations, and maintained the Second Complaint should not be dismissed.

Mr. Carter asserts Marten Transport and USIS provided misleading information. Mr. Carter worked for Swift Transportation in April, May, and June 2006, which was before, not

⁶Mr. Carter first states, "I never received this money" and then indicates "I did receive \$5,000." He also asserts that his attorney was involved in one of the transactions. In that regard, I note that in an e-mail exchange with counsel for Marten Transport during the settlement proceedings, Mr. Carter's attorney indicated that he "agreed with Mr. Carter to cut my fee by \$5,000 beyond what I already cut." Marten Transport June 19, 2009 response, Exhibit 2.

after, his reinstatement with Marten Transport. Also, he did not quit. His move from Swift Transportation to Marten Transport in July 2006 was a re-instatement; he was not rehired. The USIS DAC record also incorrectly reports that he quit at Marten Transport the first time. Regarding references to other trucking companies, one situation did not involve comparable employment and another occasion was only an invitation for an interview. Mr. Carter questions where USIS gets its information and has difficulty reviewing USIS' DAC reports because he was never provided his personnel records, which he requested. After his May 2008 inquiry, USIS had an obligation to remove all unfavorable information. Mr. Carter asserts, "I have been discriminated against, retaliated, and unemployable [due to] continued actions of Marten [Transport] and DAC records [USIS] [in] misleading perspective employers by making statement that are, unconscionable."

OSHA did not properly investigate the hours of service violations he experienced with Marten Trucking in July 2006.

USIS is subject to the STAA because the company is engaged in the trucking industry and the records maintained by USIS have been altered and contain false information.

Although he talked to the settlement judge on August 12 and 19, 2008, Mr. Carter did not participate in the August 13, 2008 mediation session; he had no knowledge of the meeting.

A USIS DAC report, dated January 27, 2009, for Mr. Carter's employment with Marten Transport in June 2005, includes the following for his work record, "Excessive Complaints" and "Company Policy Violation."

In June 2008 and between December 2008 and February 2009, Mr. Carter contacted dozens of trucking companies and employers and submitted several job applications. However, he was unable to obtain re-employment.

Respondent Marten Transport

In its May 13, 2009 response, Marten Transport asserts that Mr. Carter's Second Complaint should be dismissed on the basis of the August 2008 settlement agreement.

Mr. Carter filed two STAA complaints against Marten Transport. The First Complaint was litigated. However, rather than also litigate the Second Complaint, the parties agreed to mediation, which proved successful. The settlement signed by both Mr. Carter and his counsel specifically states in clear and unequivocal language that the agreement resolves both cases pending with the U.S. Department of Labor. Mr. Carter agreed to forgo his two claims in exchange for payment of over \$50,00.

In light of his acknowledgment that he spoke with the settlement judge on August 19, 2008 in a "post-mediation conference," Mr. Carter's assertion that he was unaware of the mediation is "far-fetched." Also acknowledging receipt of the settlement agreement on August 15, 2009, Mr. Carter voluntarily signed it six days later, on August 21, 2009. Mr. Carter "makes no allegation that he was forced to sign the Agreement by anyone," not by the settlement judge,

not by Marten Transport, and not by his counsel. His “vague reference” to collusion between Marten Transport, his counsel and the settlement judge is unsubstantiated and frivolous. Additionally, to the extent Mr. Carter believes his attorney engaged in inappropriate conduct with Marten Transport or the settlement judge, his remedy is undertaking a private cause of action rather than voiding the settlement agreement. Further, not only did Mr. Carter sign the agreement, he is bound by his attorney’s actions in the settling the case. Finally, based on his counsel’s credentials accompanying the attorney fee petition, Mr. Carter’s attorney was highly qualified to assist Mr. Carter in the resolution of his complaints and ably represented him.

In November 2008, following the ARB’s determination that it no longer retain jurisdiction to address the settlement in regards to the First Complaint,⁷ Marten Transport issued checks to Mr. Carter and his counsel which were cashed.⁸ Notably, up through that time, having been given up to 21 days to consider the agreement and 7 days to revoke it, Mr. Carter raised no objection to the either the settlement or his counsel’s petition for attorney fees.

Concerning USIS, the company is not liable in this case for two reasons. First, since USIS is not an employer under the STAA, its activities are not covered by the Act’s provisions. Second, “to the extent USIS’ actions are attributed to Marten [Transport], whether by agency relationship or otherwise, the Agreement Mr. Carter signed releases any such claims.”

In summary, the First and Second Complaints have been settled for nine months and Mr. Carter received payments under the agreement more than six months ago. No valid basis exists to overturn the parties’ agreement.

On June 19, 2009, through an affidavit, Marten Transport indicated that on August 19, 2009, the proposed settlement agreement in regards to the Second Complaint was approved by Mr. R. Benjamin, the Regional Supervisory Investigator, OSHA, Region 5. His approval satisfies the requirement of 29 C.F.R. 1978.111(d)(1).

Respondent USIS

In its May 15, 2009 response, USIS presented three reasons why the Second Complaint against it should be dismissed. First, since Mr. Carters alleges that USIS functioned as an “instrument” of Marten Transportation, the company took no action separate and apart from Marten Transport and thus the settlement between Mr. Carter and Marten Transport “covers any possible claims Mr. Carter would have against USIS.”

Second, Mr. Carter’s Second Complaint “fails as a matter of law” because the activities alleged by Mr. Carter as blacklisting “merely describe the function of a consumer reporting agency.” Since 1981, USIS has collected and disseminated millions of truck driver employment histories in the United States through its DAC report system, which has become an important part of the truck driver qualification process. In mid-July 2005, Marten Transport provided Mr.

⁷According to paragraph 1 of the settlement agreement, Marten Transport agreed to pay Mr. Carter within 10 days of the ARB approval of the settlement or its determination that such approval was not required.

⁸May 13, 2009 Marten Transport response, sworn affidavit of Ms. Mindy J. Rowland.

Carter's employment history to USIS which included information about a company policy violation and excessive complaints. Under the statute governing its business, the Fair Credit Reporting Act, 15 U.S.C. § 1681 ("FCRA"), USIS may accept such information without independent verification from a credible source. Such activity does not represent "blacklisting." Under the FCRA USIS may receive and report truck driver employment histories without liability until it is informed that the information may not be accurate.

Third, after Mr. Carter advised USIS that he disputed the adverse information, and Marten Transport responded that the matter of his employment history was on appeal to the ARB, USIS never reported that information to anyone. Specifically, no carrier or employer contacted USIS about Mr. Carter until December 31, 2008. By that time, based on the settlement agreement, Marten Transport had removed all the derogatory information and instead indicated his work had been "satisfactory." As a result, USIS did not engage in blacklisting or any "act of its own that caused harm to Mr. Carter."

On June 26, 2009, USIS adopted as part of its position, Marten Transport's June 19, 2009 submission.

Discussion⁹

In considering whether dismissal of the Second Complaint is appropriate at this point, I will review the specific provisions of the August 2008 settlement agreement, which was signed by Mr. Carter on August 21, 2008, his attorney on August 20, 2008 and Marten Transport representatives on August 22 and 25, 2008. Then, I will address Mr. Carter's subsequent repudiation of the agreement and the extent of Marten Transport's compliance with the agreement. Finally, I will determine whether the Second Complaint against Marten Transport and USIS should be dismissed.

August 2008 Settlement Agreement

In the recitals of the August 2008 settlement agreement, the parties indicate the purpose of the agreement is "to settle fully and finally all differences between them, including, but not limited to," the litigation involving the First Complaint, and enter into "a complete and mutual release" on terms set out in the agreement.

In paragraph 3, in exchange for the considerations set out in paragraph 1, including nearly \$58,000 in back pay, emotional distress damages, compensatory damages and expenses, Mr. Carter indicates that he:

understands and agrees that when he signs this Agreement, he is forever giving up and waiving any claims or rights, whether known or unknown, that he may have

⁹While Mr. Carter has presented numerous allegations, including a complaint against another trucking company, and requests for additional investigations, I emphasize that I only have jurisdiction under the STAA to address Mr. Carter's Second Complaint involving the alleged blacklisting by Marten Transport and USIS concerning his employment history with Marten Transport.

against Marten Transport and/or any other business entities owned in whole or in part by Marten Transport, and their respective employees, officials, officers, directors, agents, or insurers, past or present (collectively, hereinafter “the Released Parties”) for any conduct that occurred before the effective date of this Agreement. By waiving and giving up such claims, Mr. Carter understands that he is releasing the Released Parties from any liability or obligation for any expense, damage, or costs or any other losses he might claim, including those related to, but not limited to the following: a. his employment with Marten Transport and his separation from that employment, b. any Marten Transport policy, practice, contract, or other agreement, c. any law governing employment discrimination or harassment, including, but not limited to, the Surface Transportation Act . . .

In paragraph 4, the parties agree to waive their respective appeals rights to the U.S. Courts of Appeal in regards to the June 30, 2008 ARB decision.

In paragraph 5, Mr. Carter waives any request or demand that Marten Transport post the ARB’s June 30, 2008 decision.

In paragraph 6, Marten Transport agrees “to cause Mr. Carter’s employment records with USIS Commercial Services to be amended to reflect only” that: a) his period of employment was from June 2005 to July 2006; b) he was eligible for rehire; and, c) his work record was “satisfactory.” Marten Transport also agrees to provide only the above information about Mr. Carter’s employment if contacted by a perspective employer.

In paragraph 9, Mr. Carter agrees to withdraw the Second Complaint filed on July 8, 2008, Case No. 5-1470-08-012, alleging a violation of the STAA. Mr. Carter acknowledges that the agreement “resolves all claims against Marten Transport raised in the complaint, and that he is not entitled to any further damages from Marten Transport for the claims alleged in Claim No. 5-1470-08-012.”

In paragraph 11, the parties agree that the Agreement was not admissible into evidence of any proceeding “except to enforce the terms of this Agreement.”

In paragraph 13, the parties acknowledge that “they have entered into this Agreement knowingly and voluntarily.”

In paragraph 14, the parties acknowledge their understanding that the Agreement “prohibits them from . . . continuing a lawsuit against the parties which they have released herein for any claim released in paragraph 3 and prohibits them from recovering any amounts or obtaining any remedy for any claim released under paragraph 3 through an action or proceeding brought by others.”

In paragraph 16, the parties understand and agree that the settlement document contains the entire agreement between them “relating to the resolution of the actions and claims referenced herein. . .”

Paragraph 17 reflects the parties' understanding that by signing the agreement "they may be giving up legal rights."

Paragraph 18 indicates that by signing the document, the parties "represent that they have read this entire document and understand all of its terms."

Paragraph 20 states that the provisions of the agreement are severable and the invalidity or unenforceability of any one or more provisions "shall not affect the validity or enforceability of the other provisions. . ."

Paragraph 22 provides Mr. Carter 21 days to consider the terms of the agreement and to the extent he executes the document prior to the expiration of that period, he does so knowingly and willingly. Mr. Carter also again represents that he "read this Agreement carefully and fully understands all the provisions of this Agreement and that he has knowingly and voluntarily entered into this Agreement."

Paragraph 23 provides Mr. Carter seven days to rescind the agreement.

In the last paragraph before the signature pages, in bold, capital letters, paragraph 25 repeats paragraph 22's acknowledgements and indicates that the agreement represents the **"FULL, FINAL, COMPLETE, AND BINDING SETTLEMENT OF THE MATTERS COVERED BY THIS AGREEMENT."**

Mr. Carter's Present, Apparent Repudiation

Mr. Carter has presented numerous concerns regarding the settlement process, proceeding, and outcome in August 2008. He specifically states his disagreement with several of the settlement's provisions, including the elimination of the requirement to post the ARB decision and removing Marten Transport from the Second Complaint.

However, for several reasons, I consider Mr. Carter's obvious dissatisfaction with the August 2008 settlement agreement and counsel's representation, and his present repudiation of its provisions, an insufficient basis to invalidate the August 2008 settlement agreement.

As noted by Marten Transport, Mr. Carter was represented by counsel during the settlement negotiations. Having selected an attorney as his representative, Mr. Carter is bound by the actions of the attorney, regardless of whether he now questions the attorney's motives in settling case and has since asked the lawyer to withdraw. *See, e.g. Chao v. Alpine, Inc.* (Case No. 04-102-P-H) (D. Me. Sept. 20, 2004)(district court upheld STAA settlement agreement where employee agreed to settle the matter but refused to sign settlement agreement where attorney represented that the case was in fact resolved). Although Mr. Carter was not present at the actual mediation meeting, his attorney did participate in that function and Mr. Carter spoke with the settlement judge both before and after the meeting. Further, Mr. Carter was not completely passive in the process as demonstrated by the reduction of his lawyer's attorney fee.

Finally, by personally signing the agreement, Mr. Carter ratified his attorney's settlement negotiations and the terms to which his counsel established on his behalf.

While the settlement agreement certainly contains legal jargon, most of the provisions, obligations, and promises in the document are clear. And, some of the principle aspects of the parties' written understanding are set out twice and placed in bold, capital letters for emphasis in the second repetition. I also note that Mr. Carter has not claimed that he did not understand the contents of the agreement.

The settlement agreement provided Mr. Carter several days to review and consider its content and even gave Mr. Carter a week after he signed the agreement to revoke his acceptance. Mr. Carter has made no allegation that he was not given sufficient time to read and understand the agreement and he did not revoke his acceptance within the allotted seven days. Further, between his acceptance of the terms and contents of the settlement agreement and his receipt of the settlement payment in November 2008, Mr. Carter did not raise any objection to the agreement.

The agreement was reviewed by a representative of the Secretary and deemed acceptable in accordance with 20 C.F.R. § 718.111(d)(1). Upon review of the agreement, I also find that its provisions are not unreasonable. Although Mr. Carter had prevailed before the administrative law judge and the ARB, the favorable decision was still subject to appeal. Continued litigation by Marten Transport posed the risk that Mr. Carter might fail to receive any recovery. By obtaining a settlement agreement which precluded further litigation, Mr. Carter obtained a certain and significant payment for back wages and compensatory damages.

Finally, and most important, as a competent adult, Mr. Carter became bound by the settlement agreement when he voluntarily signed the settlement agreement on August 21, 2008 and subsequently received the monetary benefits of that agreement. As noted by Marten Transport, the ARB has determined that "a settlement agreement is a contract and once the parties enter into it, it is binding and conclusive." *Taylor v. Greyhound Lines*, ARB No. 06-137 (ARB April 30, 2007).

Marten Transport's Compliance

In their responses, Marten Transport and USIS assert full compliance with the settlement agreement regarding the correction of Mr. Carter's work record for Marten Transport. However, Mr. Carter has submitted a January 27, 2009 DAC inquiry for his employment with Marten Transport that contains two separate periods of employment. The first entry covers an employment period of June 2005 to June 2005, indicates that a review is required for rehiring, and includes excessive complaints and company policy violations in the work history.¹⁰ The second, and immediately following, entry reflects continuous employment from June 2005 to July 2006, indicates that Mr. Carter is eligible for rehire, and characterizes his work history as "satisfactory."¹¹

¹⁰The information for the first DAC report was provided on July 14, 2005.

¹¹According to the second entry, the amended work history was submitted on August 17, 2006.

Mr. Carter's objection to the apparent continued presence of the first entry is both understandable and legitimate considering the settlement agreement provision that Marten Transport would cause the USIS to amend the DAC record to "reflect only" the information contained in the second entry. However, I consider this lack of full compliance an insufficient basis for invalidating the settlement agreement for two principle reasons. First, the second entry includes June 2005 as the starting employment date and shows a continuous employment period of greater than one month.¹² Thus, by incorporating June 2005, the second work history entry effectively replaces the first work record entry. Second, even if a perspective employer considered both entries together, the second entry clearly indicates that at the completion of 13 months of service with Marten Transport, Mr. Carter was eligible for rehire and his work history was satisfactory and did not contain any derogatory remarks.

Dismissal of Second Complaint

Having concluded that Mr. Carter remains bound by the provisions of the August 2008 agreement and that Marten Transport has substantially complied with its terms regarding Mr. Carter's work history, I find that dismissal of the Second Complaint against Marten Transport is warranted.

Contrary to the promise in paragraph 9, Mr. Carter never withdrew the Second Complaint.¹³ Nevertheless, the remaining provisions of the settlement agreement effectively extinguishes his ability to proceed with the Second Complaint against Marten Transport to recover damages for the alleged blacklisting violation set out in the complaint. Specifically, the remaining portions of paragraph 9 indicate the settlement agreement "resolves all claims against Marten Transport" raised in the Second Complaint. Paragraph 14, also releases the parties from further claims relating to the First and Second Complaints. And, the parties acknowledged in paragraph 25 that the settlement agreement was the "**FULL, FINAL, COMPLETE, AND BINDING SETTLEMENT OF THE MATTERS COVERED BY THIS AGREEMENT.**" Accordingly, Mr. Carter's Second Complaint against Marten Transport must be dismissed.

Turning to the Second Complaint against USIS, the company neither engaged in the settlement proceedings nor signed the resulting document. However, by publishing the work history provided by Marten Transport, and having verified the information with Marten Transport in June 2008, USIS was acting as an apparent agent of Marten Transport. Under the provisions of paragraph 3, agents of Marten Transport were specifically included in the category of "Released Parties" and such parties are absolved of continued liability to the same extent as Marten Transport under paragraphs 9, 14, and 25. Consequently, I find the August 2008

¹²On one work report, Mr. Carter circled the employment period of June 2005 to July 2006 and annotated that it was "wrong." I simply note that Marten Transport's representation in the second work history entry that Mr. Carter worked for the company for 13 months is consistent with the settlement agreement and incorporates the relief in Judge Solomon's decision that his employment be shown to have been continuous.

¹³Although Mr. Carter didn't conform with his promise to withdraw his Second Complaint, paragraph 20 indicates the provisions are severable. As a result, his non-compliance neither invalidates the agreement nor precludes the application of provisions relating to the release of liability.

settlement agreement also bars Mr. Carter from proceeding with the Second Complaint against USIS; the Second Complaint against USIS must also be dismissed.¹⁴

ORDER

The STAA Complaint, dated July 8, 2008, of Mr. THERON K. CARTER against MARTEN TRANSPORT, LTD., and USIS COMMERCIAL SERVICES, INC, is **DISMISSED**.

SO ORDERED:

A

RICHARD T. STANSELL-GAMM
Administrative Law Judge

Date Signed: July 10, 2009
Washington, D.C.

NOTICE OF REVIEW: The administrative law judge's Recommended Decision and Order, 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 Decision and Order, the parties may file briefs with the Board in support of, or in opposition to, the administrative law judge's decision 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.

¹⁴USIS' representation that since the company is not an employer under the Act, it is not covered by the STAA may serve as a separate basis for dismissal of the Second Complaint. However, in light of the agency relationship in this case, I have not address this issue. I also note that since the STAA whistleblower provisions reference "person" rather than "employer" in its discrimination prohibitions, the ARB has yet to determine whether a "person" in 49 U.S.C. § 31105(a), must be an "employer" defined in 49 U.S.C. §. 31101(3)(A). *See Somerson v. Mail Contractors of America*, ARB No. 03-042 (ARB Dec. 16, 2003).