



(412) 644-5754
(412) 644-5005 (FAX)

Issue Date: 03 August 2010

CASE NO.: 2009-STA-76

In the Matter of:

JOHN J. CLEMONS
Complainant

v.

FIRST STUDENT, INC.
Respondent

**RECOMMENDED ORDER APPROVING SETTLEMENT AGREEMENT
AND DISMISSING CASE**

This proceeding arises from a complaint filed by John J. Clemons against First Student, Inc. under Section 405 of the Surface Transportation Assistance Act (STAA) of 1982 (49 U.S.C. § 31105) and the regulations promulgated thereunder (29 C.F.R. Part 1978 (2004)). A hearing was held in this matter before the undersigned in Minneapolis, Minnesota, on June 2, 2010, at which time the parties reached a settlement. The parties were given thirty (30) days to submit a signed settlement to this court. On August 2, 2010, a Settlement Agreement was submitted to this court. A Joint Motion to Seal Agreement was also filed at the same time.

The Act and implementing regulations provide that a proceeding under the Act may be ended prior to entry of a final order by a settlement agreement between the parties. 49 U.S.C. § 31105(b)(2)(C); 29 C.F.R. § 1978.111(d)(2). The Administrative Law Judge's role in reviewing the parties' settlement agreement is limited to ascertaining whether the terms of the agreement fairly, adequately and reasonably settle the Complainant's allegations that the Respondent violated the Act. *Ass't Sec'y & Zurenda v. Corporate Express Delivery Systems, Inc.*, ARB No. 00-041, OALJ No. 1999-STA-30 (ARB March 31, 2000) (*Zurenda*); *Champlin v. Florilli Corp.*, OALJ No. 1991-STA-7 (Sec'y May 20, 1992).

Pursuant to the requirements of the Act and the implementing regulations, I have carefully reviewed the terms of the parties' Settlement Agreement, and I have determined that it constitutes a fair, adequate and reasonable settlement of the complaint.

With regard to the parties' Joint Motion to Seal Agreement related to paragraph 3 of the Settlement Agreement providing that the monetary terms of the settlement be kept confidential, we must emphasize that "[t]he parties' submissions, including the agreement become part of the

record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (West 1996). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act. *Coffman v. Alyeska Pipeline Serv. Co. and Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. *See* 29 C.F.R. Part 70 (2003).¹

ACCORDINGLY, it is hereby RECOMMENDED that:

1. The Settlement Agreement be APPROVED; and
2. The complaint of John J. Clemons be DISMISSED with prejudice.

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DANIEL L. LELAND
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, 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.

¹ Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h)." *Coffman*, slip op. at 2, n.2.