

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 31 August 2009

CASE NO. 2009-STA-0025

In the Matter of:

ASSISTANT SECRETARY OF LABOR FOR
OCCUPATIONAL SAFETY & HEALTH,
Prosecuting Party,

and

SHERRIE HERBERT,
Complainant,

vs.

NAVAJO EXPRESS,
Respondent.

**RECOMMENDED ORDER APPROVING
SETTLEMENT AGREEMENT**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982, 49 U.S.C.A. § 31105 (West 2003), and the implementing regulations at 29 C.F.R. Part 1978. Following a denial of the claim by OSHA, an appeal was filed and the claim was scheduled for formal hearing before the Office of Administrative Law Judges; however, the parties have now filed a request for approval of their settlement agreement and dismissal of the complaint with prejudice.

Pursuant to Section 31105(b)(2)(C) of the Act, “before the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation.” Under regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Assistant Secretary’s findings “if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board. . . . or the ALJ” 29 C.F.R. §1978.11 l(d)(2). Under the STAA a settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. *Tankersly v. Triple Crown Services, Inc.*, 1992-

STA-8 (Secy Feb. 18, 1993). Consistent with that required review, the regulations direct the parties to file a copy of the settlement “with the ALJ or the Administrative Review Board as the case may be.” *Id.*

I have reviewed the parties’ settlement agreement and have determined that it constitutes a fair, adequate and reasonable settlement of the complaint and is in the public interest. Pursuant to 29 C.F.R. § 1978.109(c), however, the Administrative Review Board must issue the final order of dismissal of a STAA complaint resolved by settlement. *See Howick v. Experience Hendrix, LLC*, ARB No. 02-049, ALJ No. 2000-STA-32 (ARB Sept. 26, 2002).

Accordingly, **IT IS RECOMMENDED** that the Administrative Review Board **APPROVE** the settlement agreement, which is incorporated by reference, and **DISMISS** the complaint with prejudice.

A

ANNE BEYTIN TORKINGTON
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.