



Issue Date: 23 November 2009

CASE NO.: 2009-STA-00016

In the Matter of:

JOHN ARTIS JENKINS, III,
Complainant,

v.

4D TRUCKING CO.,
Respondent,

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

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), (herein STAA) and the implementing regulations at 29 C.F.R. Part 1978. The parties have 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, “[b]efore 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. §1978.111(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 (Sec’y 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 carefully 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. I note that the settlement agreement may encompass the settlement of matters under

laws other than the STAA. My authority over settlement agreements is limited to the statutes that are within the jurisdiction of the Office of Administrative Law Judges as defined by the applicable statute. Accordingly, I recommend approval of only the terms of the agreement pertaining to Complainant's STAA Case.

Finally, the Agreement provides that the parties shall keep the terms of the settlement confidential. I note that the 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.A §552 (West 2007). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests. 29 C.F.R. §70 *et seq.*

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 and **DISMISS** the instant complaint with prejudice.

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ROBERT B. RAE
Administrative Law Judge

Washington, D.C.

¹ *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005-006, slip op. at 2 (ARB June 24, 1996).

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.