



Issue Date: 14 October 2009

Case No. 2009-STA-44

In The Matter Of:

Kirk Koechner,  
Complainant

v.

Clark Transportation,  
Respondent

**RECOMMENDED ORDER APPROVING SETTLEMENT  
AND DISMISSING COMPLAINT**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982 (hereinafter "STAA"), 49 U.S.C. § 31105, and the implementing regulations at 29 C.F.R. Part 1978 (2006). On October 6, 2009, Complainant, by counsel, filed his Unopposed Motion to Approve Settlement and Dismiss Proceeding With Prejudice, requesting approval of the parties' Settlement Agreement and dismissal of the complaint. Counsel for the Complainant represented that Respondents' counsel authorized him to represent that the motion was unopposed.

Pursuant to § 31105(b)(2)(C) of the STAA, "[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 [Administrative Law Judge] or the Administrative Review Board as the case may be." *Id.* I have carefully reviewed the parties' Confidential Settlement Agreement and Release of Claims (hereinafter, "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 an STAA complaint resolved by settlement. See *Howick v. Experience Hendrix, LLC*, ARB No. 02-049, ALJ No. 2000-STA-32 (ARB Sept. 26, 2002).

Paragraph H of the Agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions. I 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.A. § 552. 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 (2006).

Accordingly, **IT IS RECOMMENDED** that the Administrative Review Board **APPROVE** the Agreement and **DISMISS** the complaint.

**SO ORDERED.**

**A**

LINDA S. CHAPMAN  
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, the parties may file briefs with the 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.