

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 29 December 2009**

**CASE NO.: 2009-STA-00072**

*In the Matter of:*

**ASSISTANT SECRETARY OF LABOR FOR  
OCCUPATIONAL SAFETY AND HEALTH,  
U. S. DEPARTMENT OF LABOR,  
*Prosecuting Party,***

*And*

**DONALD NILAND,  
*Complainant,***

v.

**WESTERN MARYLAND TRANSPORT, INC.,  
*Respondent.***

**RECOMMENDED ORDER APPROVING SETTLEMENT**

This proceeding arises under the Surface Transportation Assistance, P.L. 103-272 at 49 U.S.C. § 31105 et seq., and the regulations promulgated thereunder at 29 C.F.R. Part 1978, which are employee protective provisions. The Secretary of Labor is empowered to investigate and determine “whistleblower” complaints filed by employees of commercial motor carriers who are allegedly discharged or otherwise discriminated against with regard to their terms and conditions of employment because the employee refused to operate a vehicle when such operation would violate a regulation, standard, or order of the United States related to commercial motor vehicles.

Pursuant to Section 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 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.*

The Parties in the above referenced matter have agreed to a settlement of all matters in controversy. A “Stipulation of Settlement” was forwarded to the undersigned on December 21, 2009, which was signed by all parties.

This court finds the agreement to be fair, adequate, reasonable, and in the public interest. *Bradberry v. Koch & Sons Trucking, Inc.*, 2009-STA-15, (ALJ Apr. 20, 2009) (citing *Tankersly v. Triple Crown Services, Inc.*, 1992-STA-8 (Sec’y Feb 18, 1993)). The Parties agree that the Settlement Agreement is fair, adequate, reasonable, and in the public interest.

The undersigned has carefully reviewed the parties’ settlement agreement and has 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

Accordingly, **IT IS RECOMMENDED** that the Administrative Review Board **APPROVE** the **SETTLEMENT**, **ORDER** the parties to perform as agreed to, and **DISMISS** Complainant’s claims in their entirety with prejudice.

**IT IS SO ORDERED.**

**A**

**ROBERT B. RAE**

**Administrative Law Judge**

Washington, D.C.

**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 Ave., NW, Washington, DC. 20210. *See* C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c. (35), 67 Fed. Reg. 64272.

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 inquires and correspondence in this matter should be directed to the Board.