

U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)



Issue Date: 01 February 2010

Case No. 2009-STA-69

In the Matter of

JOE OLIVER,

Complainant,

v.

AMERITRANS, LLC,

Respondent.

APPEARANCES:

Joe Oliver

Pro se Complainant

David Bizzell

Ameritrans, LLC

Pro se Respondent

BEFORE: LARRY S. MERCK
Administrative Law Judge

RECOMMENDED ORDER APPROVING SETTLEMENT

AND ORDER CANCELLING HEARING

This proceeding arises under Section 405, of the employee protection provisions of the Surface Transportation Assistance Act of 1982 ("STAA"), 49 U.S.C. § 31101 *et seq.* and the implementing regulations published at 29 C.F.R. Part 1978. Pursuant to a

Notice of Hearing and Prehearing Order, issued October 14, 2009, this matter is set for hearing on April 1, 2010, in Columbia, South Carolina.

On December 15, 2009, Respondent, Ameritrans, LLC, submitted a document entitled General Release. The document was signed by Complainant, Mr. Joe Oliver, and stated that Ameritrans was released from liability under any cause of action related to his termination, specifically including this STAA claim. A conference call was held on January 14, 2010, during which the parties confirmed that they were bound by the settlement agreement. The parties also confirmed their intent that the case be dismissed based on the agreement. On January 19, 2010, Ameritrans owner David Bizzell filed a signed document noting that the company had agreed to and complied with the settlement agreement. Mr. Bizzell attached, *inter alia*, a copy of an Agreement of Final Settlement and Release before the North Carolina Industrial Commission, as well as a copy of the General Release.

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 ALJ or the Administrative Review Board as the case may be.” *Id.*

The Board requires that all parties requesting settlement approval provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or certify that the parties have not entered into other such settlement agreements. *See Biddy v. Alyeska Pipeline Serv. Co.*, ARB Nos. 96-109, 97-015, ALJ No. 95-TSC-7, slip op. at 3 (ARB Dec. 3, 1996). Here, the parties have properly submitted both the General Release, specifically releasing Ameritrans from liability under STAA claim, as well as the Agreement of Final Settlement and Release precluding any and all workers’ compensation claims arising out of the incident at issue.

The agreement encompasses the settlement of matters under laws other than the STAA. The Board’s authority over settlement agreements is limited to such statutes as are within the Board’s jurisdiction and is defined by the applicable statute. Therefore, I

may only recommend approval of the terms of the agreement pertaining to Complainant's STAA claim. *Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56 (ARB Apr. 30, 2003).

Paragraphs 7 and 10 of the General Release provide 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 (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. & 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 70.¹

I have carefully reviewed the parties' settlement documents and have determined that they constitute a fair, adequate, and reasonable settlement of the complaint and are 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 agreement and **DISMISS** the complaint with prejudice.²

A

LARRY S. MERCK
Administrative Law Judge

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.

² Therefore, the hearing and all further proceedings in this matter are **CANCELLED**.

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.