U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)

Issue Date: 17 May 2011

CASE NO. 2009-STA-00058

In the Matter of:

ROBERT J. PETHERS, JR.,
Complainant,

v.

HERITAGE OPERATING, LP,
d/b/a HERITAGE PROPANE,
and
MARTIN MCNULTY,
Respondents

ORDER APPROVING SETTLEMENT AGREEMENT

Under cover letter dated April 22, 2011, the parties submitted for approval a settlement agreement purporting to resolve the above-captioned matter. The agreement submitted at that time did not include the signature of Respondents or their representatives. A member of my staff contacted counsel for Complainant, who provided a copy of the signature page including the signature of Respondents' representative. My review is limited to whether the terms of the settlement are a fair, adequate and reasonable settlement of Complainant's allegations that Respondent violated the STAA. *Kidd v. Sharron Motor Lines*, Inc., 87-STA-2 (Sec'y July 30, 1987); *Poulos v. Ambassador Fuel Oil Co.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, slip op. at 2.

The Settlement Agreement provides that Complainant releases Respondent from claims arising under not only the Surface Transportation Act, but numerous other employee-protection and civil rights statutes, as well as general tort law. *See* Settlement Agreement, section I.C. That section might be construed as a waiver by Complainant of a cause of action potentially arising in the future, unless it is construed as being modified by further language which limits the waiver to causes of action "based upon or relating in any way to his employment or termination of employment..." The provision must be interpreted as limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of the agreement. *Bittner v. Fuel Economy Contracting Co.*, Case No. 88-ERA-22, Sec. Ord. Approving Settlement Agreement and Dismissing Complaint (June 28, 1990), Slip op. at 2.

As so construed, noting that the parties are represented by counsel, I find the terms of the Settlement Agreement to be fair, adequate and reasonable. Accordingly, IT IS ORDERED:

1. The Settlement Agreement, as construed above, is APPROVED; and
2. The complaint filed by Robert J. Pethers, Jr. is hereby DISMISSED WITH PREJUDICE.

SO ORDERED.

A

Paul C. Johnson, Jr.
Associate Chief Administrative Law Judge