



**Issue Date: 23 August 2010**

**CASE NO.: 2009-STA-00001**

*In the Matter of:*

**DWAN STALWORTH,**  
*Complainant,*

v.

**JUSTIN DAVIS ENTERPRISES, INC.,**  
*Respondent.*

**RECOMMENDED DECISION AND ORDER**  
**APPROVING SETTLEMENT**  
**AND ORDER CANCELLING HEARING**

This case involves Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982, 49 U.S.C.A. § 31105 (STAA), and the implementing regulations at 29 C.F.R. Part 1978.

On August 20, 2010, the parties filed a joint “Consent Motion to Approve Mutual Settlement Agreement and to Withdraw Objection and Dismiss Case with Prejudice.” Complainant and Respondent have filed a “Mutual Settlement Agreement” entered into on August 19, 2010, and Complainant signed a “Withdrawal of Objection” on that same date. The parties request review and approval by the Administrative Review Board as submitted, and that the complaint be dismissed with prejudice.

Under the applicable regulations, this tribunal makes the initial review and recommendation on the proposed Settlement Agreement and has done so. See 29 C.F.R. §1978.111(d)(2). Complainant has waived any further procedural steps before this tribunal, which, within the limits of its authority, has issued a recommended decision and order approving the settlement.

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 Settlement Agreement and Release has been duly filed with the undersigned ALJ for review, and is incorporated herein by reference.

The Complainant has been acting *pro se* in this matter and Respondent has been represented by counsel. The Agreement confirms that Claimant has been advised regarding the terms of the Settlement Agreement and that Complainant understands all terms of the settlement. Respondent had denied and does not admit any violation of the STAA or related regulations upon which this action is based.

The consideration for the Release executed by the Complainant in addition to Five Thousand Six Hundred Two Dollars and Eight Cents (\$5,602.08) includes withdrawal with prejudice of the subject appeal filed with the Occupational Safety & Health Administration ("OSHA") and release of any and all claims related to those legal actions.

The settlement amount to be paid to Complainant is fair and reasonable under the circumstances, is not inconsistent with the public interest, and is approved. This tribunal has reviewed the parties' Settlement Agreement as required 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), 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).

The parties have declared that the Settlement Agreement constitutes the complete and entire agreement and understanding of the parties with respect to the Complainant's claims, and purports to resolve fully and finally any and all disputes between them.

To the extent that the Settlement Agreement encompasses the settlement of matters under laws other than the STAA, only the terms of the agreement pertaining to the Complainant's STAA claim have been approved, since authority of this tribunal and the Administrative Review Board over settlement agreements is limited to such statutes as are within the Board's jurisdiction and as defined by the applicable statute.

This tribunal has considered the provisions relating to Complainant's waiver of any right to reinstatement, employment, recall, re-hire or re-employment of Complainant by Respondent or any of Respondent's subsidiaries, affiliates, divisions, successors or assigns and has concluded that they are not unfair or unreasonable under the particular circumstances of this case.

Wherefore, pursuant to the requirements of the STAA and implementing regulation, the terms of the Settlement Agreement have been appropriately reviewed and the Settlement Agreement is approved and should be implemented in accordance with its terms.

**WHEREFORE**, Complainant's request for approval of the Settlement Agreement and dismissal of the Complaint with prejudice should be granted.

This case is referred to the Administrative Review Board for issuance of a final decision and order approving settlement and dismissing the claim pursuant to 29 C.F.R. § 1978.109(c). This tribunal recommends that the Administrative Review Board approve the agreement and dismiss the complaint with prejudice.

The hearing scheduled for August 26, 2010, is **HEREBY CANCELLED**.

**IT IS SO ORDERED.**

**A**

**ROBERT B. RAE**  
**U. S. Administrative Law Judge**

Washington, D.C.