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**Issue Date: 21 October 2011**

CASE NO.: 2011-STA-44

In the Matter of:

BRYAN K. BIRD,  
Complainant

v.

REXCORP/THE LOFTS,  
Respondent

**DECISION AND ORDER APPROVING SETTLEMENT  
AND DISMISSING COMPLAINT**

This proceeding arises under Section 31105 of the Surface Transportation Assistance Act (“STAA”) of 1982 (49 U.S.C. § 31101) and the regulations promulgated thereunder at 29 C.F.R. Part 1978 (1989). The parties signed a Settlement Agreement (“Agreement”) in accordance with 29 C.F.R. § 1978.111(d)(2).<sup>1</sup> The Agreement resolves the controversy arising from the complaint of Bryan Bird against Rexcorp/The Lofts under the statute. The Settlement Agreement is signed by the complainant and the respondent’s representative.

The Settlement Agreement provides that complainant releases respondent from claims arising under the Surface Transportation Act as well as under various other laws. This order 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. As was stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987):

The Secretary’s authority over the settlement agreement is limited to such statutes as are within [the Secretary’s] jurisdiction and is defined by the applicable statute. *See Aurich v. Consol. Edison Co. of N.Y., Inc.*, Case No. 86-CAA-2, Secretary’s Order Approving Settlement, issued July 29, 1987; *Chase v. Buncombe Co., N.C.*, Case No. 85-SWD-4, Secretary’s Order on Remand, issued November 3, 1986.

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<sup>1</sup> On August 3, 2007, various amendments to the STAA were signed into law, which were included in the Implementing Regulations of the 9/11 Commission Act of 2007. *See* Pub. L. No. 110-53, § 1536, 121 Stat. 266, 464-467. The STAA amendments generally strengthen protections for employees who complain of potential dangers and “problems, deficiencies, or vulnerabilities” regarding motor carrier equipment.

I have, therefore, limited my review of this Agreement to determining whether the terms thereof are a fair, adequate, and reasonable settlement of Mr. Bird's allegation that respondent had violated the STAA.

Under the STAA and implementing regulations, a proceeding may be terminated on the basis of a settlement provided either the Secretary or the Administrative Law Judge approves the agreement. 49 U.S.C. app. § 2305(c)(2)(A); 29 C.F.R. § 1978.111(d)(2). The parties must submit for review an entire agreement to which each party has consented. *Tankersley v. Triple Crown Servs., Inc.*, 92-STA-8 (Sec'y Feb. 18, 1993). The agreement must be reviewed to determine whether the terms are a fair, adequate, and reasonable settlement of the complaint. *Macktal v. Sec'y of Labor*, 923 F.2d 1150 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551 (9th Cir. 1989); *Fuchko & Yunker v. Ga. Power Co.*, Case Nos. 89-ERA-9, 10, Sec'y Ord. Mar. 23, 1989, slip op. at 1-2. This Order approving the settlement is final seeing as all parties have joined in the Agreement. *Swischer v. Gerber Childrenswear, Inc.*, 93-STA-1 (Sec'y Jan. 4, 1993).

The Agreement provides that the respondent shall provide neutral employment references for the Complainant and withdraw and not file any legal or civil action it has or may have against the Complainant and forever waives the same. The parties agree that this will satisfy all claims against the respondent, Rexcorp/The Lofts, by the Complainant.

The Agreement provides mutual releases in paragraphs 3 and 5. These paragraphs must be interpreted as limiting the parties 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 Econ. Contracting Co.*, 88-ERA-22 (Sec'y June 28, 1990). No admissions of liability are made.

The parties have agreed to end the litigation, upon terms they have decided are favorable to each of them, without any admission of liability. The courts are designed to resolve "disputes." With approval of this Agreement, there is no longer any dispute requiring a resolution. The parties, who are intimately familiar with the pros and cons of the alternative, i.e., litigation, have resolved any dispute. Such resolutions are to be encouraged. This limitation is not unreasonable.

As so construed, I find the terms of the Agreement to be fair, adequate, and reasonable, and therefore approve it. Accordingly, the complaint filed by Bryan Bird, is hereby dismissed with prejudice.

**A**

RICHARD A. MORGAN  
Administrative Law Judge