



Issue Date: 01 November 2011

Case No. 2011-STA-43

In the Matter of

HARVEY ALEN ESTRIDGE,

Complainant,

v.

CON-WAY FREIGHT, INC.,

Respondent.

BEFORE: LARRY S. MERCK
Administrative Law Judge

DECISION AND ORDER APPROVING SETTLEMENT

**AND DISMISSING THE COMPLAINT AND ORDER CANCELLING THE
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 August 1, 2011, this matter is set for hearing on November 30, 2011 in Cincinnati, Ohio

On October 5, 2011, Respondent, Con-Way Freight Incorporated submitted a document entitled Settlement Agreement and General Release. The document was signed by Complainant, Harvey A. Estridge, and Daniel W. Egeler, a representative of Con-Way Freight Incorporated, stating that Con-Way Freight Incorporated was released from liability under any cause of action related to Complainant's termination, specifically including this STAA claim.

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. *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 Administrative Review Board (“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 Bidby 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 a Settlement Agreement and General Release, specifically releasing Con-Way Incorporated from liability under STAA claim, as well as precluding any and all claims arising out of the incident at issue.

The Settlement Agreement and General Release encompasses the settlement of matters under laws other than the STAA. The Court’s authority over settlement agreements is limited to such statutes as are within the Court’s jurisdiction and is defined by the applicable statute. Therefore, I may only approve terms of the agreement pertaining to Complainant’s STAA claim.

Paragraph 7 of the Settlement Agreement and General Release provides 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. Accordingly,

ORDER

IT IS HEREBY ORDERED that the parties' Settlement Agreement and General Release is **APPROVED**. **IT IS FURTHER ORDERED** that the Complaint of Harvey A. Estridge is **DISMISSED** with prejudice. It is **FURTHER ORDERED** that the hearing scheduled for November 30, 2011, in Cincinnati, Ohio, is **CANCELLED**.

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.