

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 12 April 2012

Case No: 2011-STA-38

In the Matter of:

Charles Hanna,
Complainant,

v.

Trinity Logistics Group, Inc.,
Respondent,

Appearances:

Paul O. Taylor, Esq.
For Complainant

McCord Wilson, Esq.
For Respondent

Before: Joseph E. Kane
Administrative Law Judge

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

This proceeding arises under the “whistleblower” employee protection provisions of Section 405 of the Surface Transportation Assistance Act of 1982 [hereinafter “the Act” or “STAA”], 49 U.S.C. § 31105 (formerly 49 U.S.C. app. § 2305), and the applicable regulations at 29 C.F.R. Part 1978. 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. The new subsection 49 U.S.C. §31105(b)(3)(C), provides for punitive damages up to \$250,000 where previously only compensatory damages were allowed.

On June 26, 2011, Charles Hanna, the complainant, filed a complaint with the Occupational Safety and Health Administration (“OSHA”), against Trinity Logistics Group, Inc., the respondent., alleging violation of the employee protection provisions of the Surface Transportation Assistance Act of 1982 (“STAA”). OSHA investigated the allegations in the complaint and issued a decision finding no violation. Complainant appealed the investigative findings to the Department of Labor, Office of Administrative Law Judges and an administrative hearing was noticed for February 7, 2012. The parties requested assignment of a Settlement Judge pursuant to 29 C.F.R. § 18.9(e). The Chief Judge issued an Order Appointing Settlement Judge on November 30, 2011, and on December 8, 2011, following request by the parties, I issued an Order Continuing Hearing. Following successful conclusion of mediation with the Settlement Judge, Paul O. Taylor, counsel for Complainant submitted a Notice of Settlement, indicating that a settlement agreement would be circulated between the parties and submitted to the Court. On April 5, 2012, Complainant submitted Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice.

On March 21, 2012, McCord Wilson, counsel for the respondent, Trinity Logistics Group, Inc. and on March 29, 2012, the complainant signed a Settlement Agreement (“Agreement”) in accordance with 29 C.F.R. section 1978.111(d)(2), in an effort to resolve the remaining issues. The Agreement resolves the controversy arising from the complaint of Charles Hanna against Trinity Logistics Group, Inc. under the statute. Included in the Agreement, under paragraph A, Consideration, is a breakdown of the settlement to Complainant, indicating an amount attributed to Loss of Wages; an amount attributed to compensatory damages, emotional distress, mental pain, back pay, front pay, punitive damages and case expenses; and an amount attributed to Attorney Fees and Costs. Also submitted with the Agreement, and included within the Unopposed Motion to Approve Settlement, is a statement of Mr. Taylor representing that the settlement agreement is fair, adequate and reasonable.

The Settlement Agreement provides that complainant releases Respondent from claims arising under the Surface Transportation Act and, apparently, under 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. Consolidated Edison Company of New York*,

Inc., Case No. 86-CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncombe County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

I have therefore limited my review of this Agreement to determining whether the terms thereof are a fair, adequate and reasonable settlement of Mr. Hanna'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. section 31105(b)(2)(C); 29 C.F.R. section 1978.111(d)(2). The parties must submit for review an entire agreement to which each party has consented. *Tankersley v. Triple Crown Services, 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. Secretary of Labor*, 923 F.2d 1150 (5th Cir. 1991); *Thompson v. U.S. Department of Labor*, 885 F.2d 551 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec'y Ord. Mar. 23, 1989, slip op. at 1-2. This Order approving the settlement is final since all parties have joined in the Agreement. *Swischer v. Gerber Childrenswear, Inc.*, 93-STA-1 (Sec'y Jan. 4, 1993).

The Agreement provides that Respondent shall make payments to Complainant of amounts mutually agreed to. The parties agree that these payments will satisfy all claims against the respondent by the complainant.

The Agreement provides releases and dismissal of claims against Respondent by Complainant in paragraphs B, subparagraphs 1 through 11; and releases and discharges of claims against Complainant by Respondent in paragraph C; no admission of liability are made by the parties pursuant to paragraph D; and a covenant not to sue by Complainant and agreement by Complainant to dismiss his charges against Respondent in this case (2011-STA-38) is stated in paragraph E. These provisions must be interpreted as limiting 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.*, 88-ERA-22, (Sec'y Order June 28, 1990). Paragraph F deals with future communications of prospective employers of Complainant with Respondent and Paragraph G provides Complainant with continuation of employment at Respondent. I find the overall settlement terms to be fair, adequate and reasonable, but some clarification is necessary. Paragraph H of the Agreement contains a confidentiality provision, limiting all disclosures except under certain stated circumstances. It has been held in a number of cases with respect to confidentiality provisions in Settlement

Agreements that the Freedom of Information Act, 5 U.S.C. section 552, *et seq.* (1988) (FOIA), requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, Case Nos. 92-SWD-2 and 93-STA-15, ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998.

The records in this case are agency records which must be made available for public inspection and copying under the Freedom of Information Act. However, the respondent employer will be provided a pre-disclosure notification giving Respondent the opportunity to challenge any such potential disclosure. In the event the Agreement is disclosed, pursuant to 5 U.S.C. section 552, *et seq.*, the parties have provided such disclosure is not a violation of the agreement and will not result in a violation of the agreement. Paragraph I contains a liquidated damages provision and an amount to be paid by Complainant if the Agreement is otherwise violated. The Agreement itself is not appended and will be separately maintained and marked:

“PREDISCLOSURE NOTIFICATION MATERIALS.”

I find the terms of the “confidentiality” provision do not violate public policy in that they do not prohibit the Complainant from communicating with appropriate government agencies. *See, e.g., Bragg v. Houston Lighting & Power Co.*, 94-ERA-38 (Sec’y June 19, 1995); *Brown v. Holmes & Narver*, 90-ERA-26 (Sec’y May 11, 1994); *The Connecticut Light & Power Corp. v. Secretary Of United States Department of Labor*, No. 95-4094, 1996 U.S. App. LEXIS 12583 (2d Cir. May 31, 1996); and, *Anderson v. Waste Management of New Mexico*, Case No. 88-TSC-2, Sec’y. Final Order Approving Settlement, December 18, 1990, slip opin. at 2, where the Secretary honored the parties’ confidentiality agreement, except where disclosure may be required by law.

As so construed, noting that the parties are represented by counsel, I find the terms of the Agreement to be fair, adequate and reasonable, and I therefore approve it.

Accordingly, the complaint filed by Charles Hanna is hereby DISMISSED with prejudice.

A

JOSEPH E. KANE
Administrative Law Judge

