



Issue Date: 09 January 2014

Case Nos.: 2012-STA-00053 - 00058

In the Matter of:

JOHN A. GRIFFITH,

Complainant,

v.

D&D SEXTON, INC., *et al.*,

Respondents.

**ORDER APPROVING SETTLEMENT AGREEMENT AND RELEASE
AND
ORDER CANCELLING SCHEDULED HEARING
AND
ORDER DISMISSING COMPLAINT WITH PREJUDICE**

This proceeding arises from a complaint filed under the provisions of Section 31105 of the Surface Transportation Assistance Act of 1982, U.S. Code, Title 49, § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (“STAA”) and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 1978 and Part 18. The claim was referred to the Office of Administrative Law Judges for formal hearing upon Complainant’s September 11, 2012 appeal of the Occupational Safety and Health Administration August 14, 2012, determination “that there was no reasonable cause to believe that Respondents violated STAA.” A formal hearing is scheduled to commence at 10:00 AM, Wednesday, February 19, 2014 in Newport News, Virginia.

On January 3, 2014 the Parties filed a “Joint Motion to Approve Confidential Settlement and Dismiss Proceedings with Prejudice.” The supporting document to the Motion was the “Confidential Settlement Agreement and Release” signed by the Complainant and each Respondent.

Implementing Federal regulations at 29 CFR §1978.111(d) provides that “At any time after the filing of objections to the Assistant Secretary’s findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ, if the case is before the judge, or by the ARB if the ARB has accepted the case for review. A copy of the settlement agreement must be filed with the administrative law judge or the ARB, as the case may be.” In reviewing the Settlement Agreement, the Administrative Law Judge must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant’s allegations that the Respondent violated the STAA and are not against public policy. See *Edmisten v. Ray Thomas Petroleum*, No. 10-020, 2009 WL 5178504 (ARB Dec. 16, 2009) Once the settlement agreement is approved, it becomes the final action of the Secretary and may be enforced in United States district court pursuant to 49 U.S.C. 31105(e), 29 CFR §1978.111(e).

The STAA provides that pursuit of rights and remedies under the STAA does not diminish or affect any right available under other federal or state laws designed to redress the employee’s discharge or other discriminatory action taken by the employer against the employee, 49 U.S.C. §31105(g). However, when evaluating the appropriateness of actions under the STAA, any prior actions taken under other redress for the same events and course of conduct, including a collective bargaining agreement, must “be equitably structured such that it is offset by any arbitration award ordered for the same relief to avoid duplicative recovery.” *Lucia, Abernathy and Cowles v. American Airlines, Inc.*, Case Nos. 10-014 / 015 / 016, 2011 WL 4690625, *7 (ARB Sep. 16, 2011)

After review of the Settlement Agreement and the administrative record, this Administrative Law Judge finds that the Settlement Agreement complies with the standards required under the STAA and is approved.

Accordingly, it is **ORDERED** that –

1. The **Settlement Agreement is APPROVED**;
2. The **formal hearing** scheduled to commence February 19, 2014 in Newport News, Virginia, is **CANCELLED**; and,
3. The Complaint is hereby **DISMISSED WITH PREJUDICE**.

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia