



Issue Date: 14 December 2012

In the Matter of
TONY KOCH
Complainant

v.

Case Number **2012 STA 00039**

TOWNE AIR FREIGHT, LLC,
CHARLIE ATHEY, JOHN DOE AND MARY ROE
Respondents

ORDER
APPROVAL OF SETTLEMENT
and
DISMISSAL OF CLAIM

This proceeding arises under Section 405 of the Surface Transportation Assistance Act of 1982 (hereinafter *ASTAA*), 49 U.S.C. § 31105 (formerly 49 U.S.C. App. § 2305); 29 C.F.R. Part 1978, implementing regulations found at 29 C.F.R. Part 24; and the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges found at 29 C.F.R. Part 18. I am asked to approve a settlement and to dismiss this proceeding without prejudice.

Under the STAA and implementing regulations, a proceeding may be terminated on a 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 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.

I find the overall settlement terms to be reasonable, but some clarification is necessary. I note that the Settlement Agreement incorporates certain confidentiality provisions binding upon the parties in a nondisclosure provision. (Paragraph H). I find that the provisions are acceptable. *See generally Connecticut Light & Power Co. v. Secretary of the U.S. Department of Labor*, 85 F.3d 89 (2nd Cir. 1996). However, the parties are advised that records in whistleblower cases are agency records which the agency must make available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. It has been held in a number of cases with respect to confidentiality provisions in Settlement Agreements that the FOIA requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines*, 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.

After a review of the record, I find that the Settlement Agreement is fair, adequate and reasonable, and accordingly, I Order approval of the settlement terms and dismissal of the complaint without prejudice as requested by the parties.

SO ORDERED

DANIEL F. SOLOMON
ADMINISTRATIVE LAW JUDGE