

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 09 November 2012

ALJ NO.: 2012-STA-00050

In the Matter of:

MICHAEL WILLIAMS,
Complainant

v.

STONE TRANSPORT,
Respondent

ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT

This proceeding arises from a complaint of discrimination filed under the employee protection provisions of Section 405 of the Surface Transportation Assistance Act (“STAA”), as amended, 49 U.S.C.A. § 31105 (West 2008) and the procedural regulations found at 29 C.F.R. Part 1978 (2012). On November 6, 2012, the parties submitted a Settlement Agreement, Release, and Agreement for Dismissal of Pending Action (“Agreement and Dismissal”), in accordance with 29 C.F.R. §1978.111(d)(2). The Agreement and Dismissal resolves the controversy arising from the complaint of Michael Williams against Stone Transport under the STAA. The Agreement and Dismissal is signed by Williams and Stone Transport.

The STAA and its implementing regulations provide that a proceeding under the STAA may be ended prior to entry of a final order by a settlement agreement between the parties. 49 U.S.C. § 31105(b)(2)(C); 29 C.F.R. § 1978.111(d)(2) (2010). The parties must submit for review the entire agreement to which each party has consented. *Tankersley v. Triple Crown Services, Inc.* 92-STA-8 (Sec’u Feb. 19, 1993). The Administrative Law Judge’s role in reviewing the parties’ settlement agreement is limited to ascertaining whether the terms of the agreement fairly, adequately, and reasonably settle the Complainant’s allegations that the Respondent violated the STAA. *Ass’t Sec’y & Zurenda v. Corporate Express Delivery Sys., Inc.*, ARB No. 00-041, ALJ No. 1999-STA-00030 (ARB March 31, 2000).

Paragraphs 1 through 3 of the Agreement and Dismissal provide that upon the issuance of an order from the undersigned administrative law judge approving settlement and dismissing the complaint with prejudice, Respondent will pay Williams a specified sum of money. The parties agree that these payments will satisfy all claims arising out of Complainant’s employment with

Stone Transport. This Agreement and Dismissal sufficiently releases Stone Transport from Williams' claim under the STAA.

Paragraph 4 states that Williams will at no time in the future seek employment with Stone Transport, or any company owned by or commonly controlled with Stone Transport, and further that if Williams does seek employment and is accepted as an employee that he may be immediately terminated without notice. Clauses forbidding reemployment are not void as against public policy and are permissible. *Taylor v. Greyhound Lines*, ARB No. 06-137, ALJ No. 2006-STA-19 (ARB Apr. 30, 2007).

Paragraph 5 of the Agreement and Dismissal provides that the terms of the Agreement shall be interpreted and enforced pursuant to the laws of the State of Michigan. This choice of law provision is construed as not limiting the authority of the Secretary of Labor and any Federal court. See *Phillips v. Citizens. Assoc. for Sound Energy*, No. 91-ERA-25, slip op. at 2 (Sec'y Nov. 4, 1991).

Paragraph 9 states that the agreement represents a release of disputed claims and that no admissions of liability are made.

Paragraph 10 of the Agreement and Dismissal restricts disclosure of information relating to this case, and this settlement. However, the parties are advised that their submissions, including the Agreement and Dismissal, become part of the record of the case, and are subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. The FOIA requires Federal agencies, including the Department of Labor, to disclose requested records unless they are exempt from disclosure under the Act. Therefore, the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA. The Administrative Review Board has noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

Seater v. S. Cal. Edison Co., 1995-ERA-13 (ARB March 27, 1997). The parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

Paragraph 8 acknowledges that Williams has entered into the Agreement and Dismissal upon opportunity to seek advice from counsel and warrants further discussion. Williams has been *pro se* throughout his litigation before this court and has been notified on numerous occasions of his right to counsel, should he desire. The mere fact that Williams is a *pro se* complainant does not diminish his ability to knowingly and voluntarily enter into the Agreement and Dismissal. I find that Williams and Stone Transport have knowingly and voluntarily made the determination to resolve this dispute amicably in order to avoid the expense, inconvenience, and uncertainty of continued litigation.

Pursuant to the requirements of the Act and the implementing regulations, I have carefully reviewed the terms of the parties' Agreement and Dismissal, and I have determined that it constitutes a fair, adequate and reasonable settlement of the complaint and therefore approve it.

Accordingly, the complaint filed by Michael Williams against Stone Transport is hereby DISMISSED with prejudice.

SO ORDERED.

TIMOTHY J. McGRATH
Administrative Law Judge

Boston, Massachusetts