



Issue Date: 09 December 2020

OALJ Case No.: 2020-STA-00100
OSHA Case No. 5-0170-20-065

In the Matter of:

DAVID WILCOX,
Complainant,

v.

KERSCHNER'S GAS SERVICES,
Respondent.

**ORDER APPROVING SETTLEMENT AGREEMENT
AND DISMISSING COMPLAINT**

This proceeding arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31105, and the regulations promulgated at 29 C.F.R. Part 1978. It is not yet scheduled for hearing. On December 8, 2020, the parties submitted *Confidential Settlement Agreement and Global Release of Claims* (“Settlement Agreement”) for my review.¹

The STAA and implementing regulations provide that proceedings may be terminated on the basis of a settlement if either the Secretary or the Administrative Law Judge approves the settlement. 49 U.S.C. § 31105(b)(2)(C); 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, and in the public interest. *Edmisten v. Ray Thomas Petroleum*, ARB No. 10-020, ALJ No. 2009-STA-00036 (ARB Dec. 16, 2009). Consistent with this required review, the regulations direct the parties to file a copy of the settlement “with the ALJ or the Administrative Review Board, United States Department of Labor, as the case may be.” 29 C.F.R. § 1978.111(d)(2).

Having reviewed the Settlement Agreement and its provisions, which includes dismissal of the complaint, I find the terms, obligations, and conditions fair, adequate and reasonable, and

¹ 29 C.F.R. § 1978.111(d)(1) states that at any time after the filing of objections to the Assistant Secretary’s findings and preliminary order, the case may be settled, and, if the case is before an administrative law judge, the settlement is contingent upon the approval of the administrative law judge. Any settlement approved by the administrative law judge becomes the final order of the Secretary. 29 C.F.R. § 1978.111(e).

in the public interest.² I also find that the settlement was not procured through duress.³ Accordingly, I approve the parties' Settlement Agreement. To the extent not otherwise done so, the parties shall implement the terms of the approved settlement as specifically stated in the agreement. This Order shall have the same force and effect as one made after a full hearing on the merits.⁴

ORDER

Accordingly, **IT IS HEREBY ORDERED** that the Settlement Agreement and Global Release of Claims filed on December 8, 2020 is **APPROVED**, and thereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. § 1978.113.

IT FURTHER ORDERED that, upon payment of the agreed consideration as set forth in the Settlement Agreement, the complaint filed in this matter is **DISMISSED**, and that counsel for Complainant is allowed to withdraw as counsel of record in this matter following completion of his professional duties necessary to implementing the Settlement on behalf of his client.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

² I note that the agreement provides for release "from any and all claims, known and unknown . . . against Respondent as of the date of this Agreement and Release." (Settlement ¶ 4). However, this approval applies only to the STAA complaint over which the Office of Administrative Law Judges has jurisdiction.

³ I find that Complainant and Respondent were ably represented by counsel.

⁴ The parties have agreed to keep the specific terms of the agreement confidential, subject to applicable laws. To effectuate such confidentiality, I have sealed the settlement agreement. However, notwithstanding the agreement, the parties' submissions, including the settlement agreement, become part of the record of the case and are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a). If a FOIA request is made for the settlement agreement, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption.