

**U.S. Department of Labor**

Office of Administrative Law Judges  
O'Neill Federal Building - Room 411  
10 Causeway Street  
Boston, MA 02222

(617) 223-9355  
(617) 223-4254 (FAX)



**Issue Date: 20 December 2005**

CASE NO.: 1991-STA-00028

In the Matter of

**KENNETH LAND**  
Complainant

v.

**CONSOLIDATED FREIGHTWAYS, INC.**  
Respondent

*Appearances:*

Brian P. Fitzsimmons, Esquire (Hanley, Hassett & Fitzsimmons, LLC), Quincy, MA, for the Complainant

Paul J. Kingston, Esquire and Thomas J. Mango, Esquire (Rubin and Rudman LLP), Boston, MA, for the Respondent

Wendy A. Cassidy, Esquire (Massachusetts Commission Against Discrimination), Boston, MA, for the Commission<sup>1</sup>

*Before:* Daniel F. Sutton  
Administrative Law Judge

**RECOMMENDED DECISION AND ORDER  
APPROVING SETTLEMENT AGREEMENT**

This case arises under the employee protection provisions of Section 405 of the Surface Transportation Assistance Act, 49 U.S.C. § 31105 (the "STAA") based on a complaint filed by Kenneth Land (the Complainant) on June 19, 1990, alleging that Consolidated Freightways, Inc. (the Respondent) discharged him in violation of Section 405 of the STAA in retribution for his having filed a Section 405 complaint against the Respondent in 1985. The case, which has a long and complex procedural history, has been pending before the Office of Administrative Law Judges since 1992 on remand from the Secretary of Labor. *See Land v. Consolidated*

---

<sup>1</sup> Attorney Cassidy entered a limited appearance on behalf of the Massachusetts Commission Against Discrimination which issued a decision in a related matter involving the Complainant and Respondent.

*Freightways*, ALJ No. 91-STA-28 (Sec'y May 6, 1992). Proceedings on remand were deferred initially at the request of the parties pending final adjudication of a related state claim before the Massachusetts Commission Against Discrimination in *Land v. Consolidated Freightways, Inc.* No. 90-SEM-0001. More recently, proceedings on the STAA case were stayed pursuant to Section 362(a)(1) of the Bankruptcy Act, 11 U.S.C. § 362(a)(1), in light of the Respondent's pending bankruptcy filing.

On December 15, 2005, the Complainant and Respondent filed a Joint Motion to Approve Settlement Application and Settlement Agreement and Mutual Releases. In pertinent part, the parties' settlement provides that the Claimant will be allowed a \$125,000.00 Class 4 unsecured pre-petition claim in the Respondent's bankruptcy matter (the "Allowed Claim") which shall be entitled to the same treatment as other similar Class 4 unsecured pre-petition claims under the Plan of Liquidation. Settlement Agreement at ¶ 2. In consideration, the Complainant grants a general release to the Respondent. *Id.* at ¶ 9.

The STAA and its implementing regulations provide that a proceeding under the STAA may end 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) (2003). 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 Systems, Inc.*, ARB No. 00-041, ALJ No. 1999-STA-30 (ARB March 31, 2000).

Pursuant to the requirements of the STAA and implementing regulations, I have carefully reviewed the terms of the parties' settlement agreement, and I have determined that it constitutes a fair, adequate and reasonable settlement of the complaint. Accordingly, the following order is entered:

- (1) the parties' Settlement Agreement is hereby approved in its entirety;
- (2) the Complainant Kenneth Land shall be allowed a \$125,000.00 Class 4 unsecured pre-petition claim in the Respondent's bankruptcy matter (the "Allowed Claim") which shall be entitled to the same treatment as other similar Class 4 unsecured pre-petition claims under the Plan of Liquidation in exchange for Mr. Land's general release of all claims arising out of or related to any disputes between the parties including, but not limited to, claims related to the Complainant's termination and alleged discrimination under the STAA; and
- (3) the matter is referred to the Administrative Review Board for issuance of a final decision and order pursuant to 29 C.F.R. § 1978.109(c). *See Howick v. Experience Hendrix, LLC*, ARB No. 02-049, ALJ No. 2000-STA-32 (ARB Sept. 26, 2002).

**SO ORDERED.**

**A**

DANIEL F. SUTTON  
Administrative Law Judge

Boston, Massachusetts