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Issue Date: 11 June 2007

In the Matter of
ANDRE CLARK
        Complainant

v.   Case Number 2007 STA 00029

J.H.O.C. INC. D/B/A PREMIER TRANSPORTATION
        Respondent

ORDER
RECOMMENDING APPROVAL OF SETTLEMENT
AGREEMENT AND DISMISSAL OF CASE WITH PREJUDICE

This proceeding arises under Section 405 of the Surface Transportation Assistance Act of 1982 (hereinafter "STAA"), 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. The Complainant is represented by Paul Taylor, Esquire, of Burnsville, Minnesota, while the Respondent is unrepresented. However the proposed settlement was effectuated by Mike Medici, President of Respondent J.H.O. C. d/b/a Premier Transportation.

I am asked to approve a settlement set forth in an attached settlement agreement and to dismiss this proceeding with prejudice. A companion case, 2007 STA 00033, Complainant v. MTS Driver Recruiters remains open.

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 G). 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.

The Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18 are applicable to these proceedings. 29 C.F.R. § 1978.106(a). Where the parties arrive at an adjudicatory settlement, the Agreement must be approved by the Administrative Law Judge. 29 C.F.R. § 1978.111(d)(2). Thus, the procedure to be applied in reviewing the Settlement Agreement is that provided by 29 C.F.R. 18.9 dealing with the entry of a Consent Order or Settlement. This case involves the review a Settlement Agreement and Release, and the final disposition is controlled by 29 C.F.R. § 18.9.

After a review of the record, I find that the Settlement Agreement is fair, adequate and reasonable, and accordingly, recommend approval and dismissal of the complaint with prejudice as requested by the parties.

SO ORDERED

A

Daniel F. Solomon
Administrative Law Judge