

U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)



Issue Date: 19 February 2008

Case No. 2007-STA-45

In the Matter of:

JOHNNY HAYES,

Complainant,

v.

FABRAL,
(d/b/a Mountain Metals Manufacturing),

Respondent.

Appearances:

For the Complainant:
Johnny Hayes, Pro Se,
Columbia, South Carolina

For the Respondent:
Warren Hall, Esq.,
Kimberly L. Fogarty, Esq.,
Alston and Bird LLP
Atlanta, Georgia

Before: LARRY S. MERCK
Administrative Law Judge

RECOMMENDED ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act (hereinafter the "STAA") of 1982, 49 U.S.C. § 31105, and the implementing regulations at 29 C.F.R. Part 1978. Pursuant to an Order of Continuance and Notice Rescheduling Hearing, issued on November 30, 2007, the matter was scheduled for hearing on January 29, 2008, in Columbia, South Carolina. During the

course of the hearing, the parties requested a thirty (30) day delay to submit a Settlement Agreement. On February 15, 2008, the parties filed a request for approval of their Settlement Agreement and Request to Dismiss Complaint. (hereinafter the "Agreement").

Pursuant to § 31105(b)(2)(C) of the STAA, "[b]efore the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation." Under regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Assistant Secretary's findings "if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board, United States Department of Labor, or the ALJ." 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. *Tankersly v. Triple Crown Services, Inc.*, 1992-STA-8 (Sec'y Feb. 18, 1993). Consistent with that required review, the regulations direct the parties to file a copy of the settlement "with the [Administrative Law Judge] or the Administrative Review Board as the case may be." *Id.*

I have carefully reviewed the parties' Agreement and have determined that it constitutes a fair, adequate and reasonable settlement of the complaint and is in the public interest. Pursuant to 29 C.F.R. § 1978.109(c), however, the Administrative Review Board must issue the final order of dismissal of an STAA complaint resolved by settlement. See *Howick v. Experience Hendrix, LLC*, ARB No. 02-049, ALJ No. 2000-STA-32 (ARB Sept. 26, 2002).

While recognizing that the parties intend to settle all pending matters, the Agreement encompasses the settlement of matters under laws other than the STAA or beyond the jurisdiction of the undersigned. (*Agreement at paragraphs B., D., and F.*) The Administrative Review Board's authority over settlement agreements is limited to such statutes as are within its jurisdiction and as defined by the applicable statute. I approve only the terms of the Agreement pertaining to the Complainant's STAA claim, pending before me. *Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56 (ARB Apr. 30, 2003). Here, the parties have certified that the agreement constitutes the entire settlement agreement with respect to the Complainant's claims. (*Agreement*).

Paragraph C of the Agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions. I emphasize that "[t]he parties' submissions, including the agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552. FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act." *Coffman v. Alyeska Pipeline Serv. Co. and Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. Part 70.¹

Accordingly, **IT IS RECOMMENDED** that the Administrative Review Board **APPROVE** the Agreement and **DISMISS** the complaint.

A

LARRY S. MERCK
Administrative Law Judge

NOTICE OF REVIEW: The Administrative Law Judge's Recommended Order Approving Settlement, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board ("Board"), U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. See 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

¹ "Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h)." *Coffman*, slip. Op. at 2, n.2.

Within thirty (30) days of the date of issuance of the Administrative Law Judge's Recommended Order, the parties may file briefs with the Board in support of, or in opposition to, the Administrative Law Judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.

The relief ordered in the Recommended Order Approving Settlement is stayed pending review by the Secretary. 29 C.F.R. § 1978.109(b).