



Issue Date: 16 June 2008

Case No: 2008STA00048

IN THE MATTER OF:

DANIEL DAVIS,
Complainant,

v.

ECOSCAPE SOLUTIONS GROUP,
Respondent.

RECOMMENDED ORDER APPROVING SETTLEMENT

This matter arose out of a discrimination complaint filed under the whistleblower protection provision of the Surface Transportation Assistance Act of 1982 (“STAA” or “Act”), as amended and recodified, 49 U.S.C.A. § 31105 (2000), and its implementing regulations, 29 C.F.R. Part 1978 (2007). On May 27, 2008 counsel for Respondent, on behalf of the parties, filed a Confidential Settlement Agreement (“Agreement”) signed by the parties and a Certificate of Satisfaction and Notice of Dismissal (“Request for Dismissal of Complaint”) signed by Complainant.

In this case, having carefully reviewed the Agreement, and otherwise being fully advised of the terms contained therein, except as specifically noted in footnote one, the Presiding Judge finds that the Agreement is a fair, adequate, and reasonable settlement of Complainant’s STAA complaint.¹ Moreover, the Presiding Judge finds that the terms of the Agreement are consistent with public policy.

¹ Under the Act, the Presiding Judge’s authority to approve the settlement is limited to terms and conditions that resolve issues that arose out of the employment relationship in the context of alleged violations of the Act. Accordingly, the Presiding Judge’s review of the settlement in this case covers only those provisions over which the Presiding Judge has jurisdiction. *Ass’t Sec’y & Zurenda v. Corporate Express Delivery Systems, Inc.*, ARB No. 00-041, ALJ No. 1999-STA-00030 (ARB Mar. 31, 2000). Moreover, to the extent that any of the terms of the Agreement could be read as restricting Complainant’s ability to voluntarily communicate with, and provide information to, any state or federal government agencies, they are void as against public policy and unenforceable. *Tankersley v. Triple Crown Servs., Inc.*, Case No. 1992-STA-00008 (Sec’y Feb. 1, 1995). However, in this case, the parties have agreed that if any part of the Agreement is found void or unenforceable, then the validity of the remaining agreement shall not be affected. Accordingly, such provisions are severed from the remainder of the agreement to the extent that they would prohibit Complainant from communicating with government authorities. *Id.* The Agreement also contains a choice of law provision. This choice of law provision is construed “as not limiting the authority of the Secretary of Labor or any Federal court, which shall be governed in all respects by the laws and regulations of the United States.” *Taylor v. Greyhound Lines*, ARB No. 06-137, ALJ No. 2006-STA-00019 (ARB Apr. 30, 2007).

Accordingly, **IT IS RECOMMENDED** that, pursuant to 49 U.S.C. § 31105(b)(2)(C) and 29 C.F.R. § 1978.111(d)(2), the Administrative Review Board **APPROVE** the parties' Agreement and **DISMISS** the complaint with prejudice.²

Moreover, in this case, the parties have agreed that the terms of the agreement are confidential and have requested that the Agreement remain under seal. Therefore, a notice shall be prominently placed on the case record noting the parties' request and directing that OALJ follow the procedures set forth in 29 C.F.R. § 70.26 if a FOIA request is received by this Office which encompasses the Agreement.³

SO ORDERED.

A

Daniel A. Sarno, Jr.
Administrative Law Judge

DAS/mam
Newport News, Virginia

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, U.S. Department of Labor, Suite S-5220, 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).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order Approving Settlement, the parties may file briefs with the Administrative Review Board ("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. *See* 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.

² While the parties have not specifically requested that the complaint be dismissed with prejudice, the Presiding Judge finds that, based on his review of the Agreement, the parties intend that their Agreement fully and finally settle all issues arising out of Complainant's STAA complaint.

³ A settlement may not be filed "under seal," although it may be subject to the 29 C.F.R. § 70.26 pre-disclosure notification requirements before it is released under the FOIA. *Bettner v. Crete Carrier Corp.*, ARB No. 07-093, ALJ No. 2006-STA-00033 (ARB Sep. 27, 2007).