



In The Matter Of:

WILLIAM B. FAUST

CASE NOS. 92-SWD-0002  
93-STA-0015

COMPLAINANT,

DATE: June 13, 1996

v.

CHEMICAL LEAMAN TANK LINES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD<sup>1/</sup>

### ORDER

The Secretary issued a Remand Order (R. O.) in these consolidated cases under the employee protection provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9610 (1988)<sup>2/</sup> and the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. § 31105 (West 1995) on April 2, 1996. In the R. O., the Secretary dismissed the CERCLA complaint because Faust was unable to establish that Chemical Leaman was aware of his alleged protected activity under that act. However, the Secretary held that Faust established the liability of Chemical Leaman with regard to the STAA violation and remanded the matter to an Administrative Law Judge for a recommended decision on damages.

On April 5, 1996, counsel for Chemical Leaman responded to the R. O. by requesting that it be vacated because "the case was fully and finally settled in February 1996." This

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<sup>1/</sup> This matter was filed before the Secretary of Labor pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and the Surface Transportation Assistance Act of 1982, and the respective implementing regulations. On April 17, 1996 a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under these statutes and regulations to the newly created Administrative Review Board (the Board). Order 2-96 (April 17, 1996), 61 Fed. Reg. 19978 (May 3, 1996) (copy attached). The Board reviewed the remand order and the entire record in this case prior to issuing this order.

<sup>2/</sup> Although this complaint was given a Solid Waste Disposal Act (SWD) case number, only CERCLA and STAA violations were alleged.

April 5, 1996 correspondence, mailed after the R. O. had been issued, was the first notification the Department of Labor had of this purported settlement.

Certainly settlements are to be encouraged. Nothing in this order should be construed otherwise. Judicial efficiency is greatly enhanced by the settlement of disputes when the judge is timely informed of the settlement. Here, the parties obviated any efficiency advantage to the settlement by failing to notify the Secretary of it until after a decision had been issued.

More important than efficiency is the public interest in surface transportation safety. The STAA makes it very clear that settlements must be approved by the Secretary of Labor (or his designee). The relevant section states that “. . . Before 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.” 49 U.S.C. § 31105(b)(2)(C). Public policy demands that settlement agreements between the parties of a discrimination complaint filed under the federal employee protection statutes be reviewed by the Secretary of Labor (or his designee) to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 29 C.F.R. § 24.6; *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep’t of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9 and 10, Sec. Order, Mar. 23, 1989, slip op. at 1-2. If the terms of a settlement are not fair, adequate and reasonable, other potential whistleblowers may be discouraged from reporting safety violations. See *Plumlee v. Alyeska Pipeline Service Co.*, Case No. 92-TSC-7, Sec. Dec. and Ord., Aug. 6, 1993, slip op. at 5.

Since the settlement has not yet been approved, it is not currently valid. Chemical Leaman’s request to vacate the R. O. is denied. That decision remains in full force and effect. This matter is remanded to an ALJ for appropriate consideration of the parties’ proposed settlement, assuming that both parties desire to proceed with the settlement, or if either party so desires, for issuance of a recommended order on damages consistent with the R. O. of April 2, 1996.

SO ORDERED.

DAVID A. O’BRIEN  
Chair

KARL J. SANDSTROM  
Member

JOYCE D. MILLER  
Alternate Member