

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 10 November 2008

Case No. 2008-STA-00008

In the Matter of:

MICHAEL PODOLSKY,
Complainant,

v.

HURRICANE EXPRESS, INC., KAEDON STEINERT, INC.,
HURRICANE EXPRESS LOGISTICS, INC., HURRICANE EXPRESS LEASING, INC.,
JONATHAN LTD., STEINERT EXPRESS, LLC., and KAEDON STEINERT,
Respondents

Appearances: Paul O. Taylor, Esquire
For the Complainant

Kaedon Steinert, Pro Se
For the Respondent

Before: Edward Terhune Miller
Administrative Law Judge

RECOMMENDED DECISION AND ORDER APPROVING SETTLEMENT

This case involves Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982, 49 U.S.C.A. § 31105 (West 2003)(STAA), and the implementing regulations at 29 C.F.R. Part 1978 (2004). Complainant has filed as of May 27, 2008, an Unopposed Motion to Approve Settlement and Dismiss Proceeding With Prejudice with an attached original settlement agreement styled “Confidential Settlement Agreement & Release of Claims” (Settlement Agreement) to which the enumerated respondent parties are Hurricane Express, Inc., Kaedon Steinert, Inc., Hurricane Express Logistics, Inc., Hurricane Express Leasing, Inc., Jonathan Ltd. Steinert Express, LLC. The Settlement Agreement is executed on behalf of all enumerated respondents except Steinert Express, LLC, by Kaedon Steinert. Sheldon Steinert has executed the Agreement on behalf of Steinert Express LLC. After initial review by this tribunal, the Settlement Agreement has been supplemented and clarified as of October 31, 2008, by a Memorandum of Understanding and Clarification (Memorandum of

Understanding) signed by Sheldon Steinert, Kaedon Steinert, and Complainant's counsel, Paul O. Taylor, Esquire. By their signatures, Kaedon Steinert and Sheldon Steinert have represented explicitly that they have all necessary approval and authority to execute the Settlement Agreement as supplemented and clarified on behalf of the enumerated respondents to the extent they are corporations or otherwise.

The Complainant has been represented by counsel who represents that he has explained the terms of the settlement to Complainant and believes that Complainant understands all terms of the settlement. Respondents of their own volition have not been represented by counsel. The amount of Complainant's counsel's agreed attorney's fee to be paid as specified as a portion of the settlement amount to be paid to Complainant is fair and reasonable under the circumstances and is approved.

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 . . . 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 ALJ or the Administrative Review Board as the case may be." *Id.* The Settlement Agreement as supplemented by the Memorandum of Understanding has been filed with the ALJ for review.

This tribunal as ALJ has reviewed the parties' Settlement Agreement as supplemented by the Memorandum of Understanding as required and has 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), the Administrative Review Board must issue the final order of dismissal of a STAA complaint resolved by settlement. *See Howick v. Experience Hendrix, LLC*, ARB No. 02-049, ALJ No. 2000-STA-32 (ARB Sept. 26, 2002).

All parties requesting settlement approval have certified that there are no other settlement agreements between or among them and have recited that any and all existing or potential claims arising from the same factual circumstances forming the basis of the pending STAA claim have been released and discharged. The parties have certified that the agreement constitutes the entire settlement agreement with respect to the Complainant's claims.

To the extent that the Settlement Agreement, as supplemented by the Memorandum of Understanding, encompasses the settlement of matters under laws other than the STAA, only the terms of the agreement pertaining to the Complainant's STAA claim have been approved, since authority of this tribunal and the Administrative Review Board over settlement agreements is limited to such statutes as are within the Board's jurisdiction and as defined by the applicable statute.

Paragraph I of the Settlement Agreement and Paragraph B of the Memorandum of Understanding provide that the parties shall keep the terms of the settlement confidential with certain specified exceptions. The parties have represented that they understand that their submissions, including the Settlement Agreement and Memorandum of Understanding have become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552 (West 1996). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act." The Department of Labor's 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 (2003).¹

This tribunal has considered the provisions relating to re-employment of Complainant by any of the parties and has concluded that they are not unfair or unreasonable under the particular circumstances of this case.

Wherefore, pursuant to the requirements of the STAA and implementing regulation, the terms of the Settlement Agreement as supplemented and clarified by the Memorandum of Understanding have been appropriately reviewed and the Settlement Agreement as supplemented by the Memorandum of Understanding is approved and should be implanted in accordance with its terms. Therefore, Complainant's Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice should be granted. The case is referred to the Administrative Review Board for issuance of a final decision and order approving settlement and dismissing the claim pursuant to 29 C.F.R. § 1978.109(c). This tribunal recommends that the Administrative Review Board approve the agreement and dismiss the complaint with prejudice.

SO ORDERED.

A

Edward Terhune Miller
Administrative Law Judge

NOTICE: This Recommended Order Approving Settlement and the administrative file in this matter will be forwarded to the Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, for entry of a Final Order. See 29 C.F.R. § 1978.109(a) and 1978.109(c). The parties may file with the Administrative Review

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 v. Alyeska Pipeline Serv. Co. and Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 96-TSC-5, slip op. at 2, n.2 (ARB June 24, 1996).

Board briefs in support of or in opposition to Recommended Order Approving Settlement within thirty days of the issuance of this Recommended Decision unless the Administrative Review Board, upon notice to the parties, establishes a different briefing schedule. 29 C.F.R. § 1978.109(c).