



Issue Date: 16 May 2008

CASE NO.: 2008-STA-00029

In the Matter of

**ASSISTANT SECRETARY OF LABOR FOR
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION,**
Prosecuting Party,

DAVID M. SEXTON,
Complainant,

v.

FRONTIER EQUIPMENT RENTALS and ROBERT KEITH SPERL,
Respondents.

**RECOMMENDED ORDER GRANTING MOTION TO APPROVE,
APPROVING SETTLEMENT AND RECOMMENDING DISMISSAL, AND
VACATING 6/17/08 TRIAL DATE**

This case arises under Section 405 of the Surface Transportation Assistance Act of 1982 (the "Act" or "STAA"); 49 U.S.C § 31105; 29 C.F.R. Part 1978 *et. seq.* On or about November 17, 2005, Complainant David M. Sexton ("Complainant") filed an individual complaint with the Department of Labor ("DOL") alleging retaliation against him by Respondents Frontier Equipment Rentals and Robert Keith Sperl ("Respondents") in violation of the employee protection provisions of the STAA.

On May 13, 2008, I received a document entitled "Adjudicatory Settlement and Motion to Approve" a settlement between the parties including the Assistant Secretary of Labor for Occupational Health & Safety Administration ("Prosecuting Party") (the "Settlement Agreement") executed by all parties.

On May 16, 2008, I conducted a telephone conference with the parties to clarify ambiguities concerning the Settlement Agreement. As part of the telephone conference, it was further agreed that the Settlement Agreement would be amended as follows:

Paragraphs 2 and 4 at page 3 of the Settlement Agreement are revised to read as follows:

2. Respondents agree to immediately expunge from employment records any negative references relating to Mr. Sexton's employment with Frontier Equipment Rental.

3. The Secretary is aware that Respondent Robert Keith Sperl is currently in bankruptcy under Chapter 7 of the Bankruptcy Code as an individual debtor. The claims the Secretary asserts arose pre-petition. The parties understand that the monetary obligation in this Settlement Agreement are dischargeable as to Respondent Robert Keith Sperl, an individual, and no party to the Settlement Agreement will assert that the monetary obligations in this case are or can be excepted from discharge.

Finally, with respect to the executed Settlement Agreement, the parties further clarified that Mr. Sperl was signing the Settlement Agreement in his individual capacity and as president of Respondent Frontier Equipment Rental. Except as amended in this Recommended Order, all other terms and conditions in the Settlement Agreement remain in full force and effect.

Pursuant to section 31105(b)(2)(C) of the Act, “[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.*

I have carefully reviewed the parties' Settlement Agreement, as amended, 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 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).

For good cause shown:

IT IS ORDERED that the parties’ motion to approve settlement is **GRANTED** and the trial date set for June 17, 2008 in Pasadena, California, is **VACATED**. I also recommend that the Settlement Agreement between Prosecuting Party, Complainant and Respondents be **APPROVED**, and this matter be **DISMISSED WITH PREJUDICE**. Accordingly, it is recommended that:

1. The Secretary of Labor or her designees on the Administrative Review Board approve the Settlement Agreement;
2. The claim of Complainant David M. Sexton against Respondents Frontier Equipment Rentals and Robert Keith Sperl be dismissed *with prejudice*; and

3. Each party shall bear all of its own costs, expenses, and legal and accounting fees incurred in connection with this action.

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GERALD M. ETCHINGHAM
Administrative Law Judge

San Francisco, California

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.