



Issue Date: 02 August 2005

CASE NO.: 2004-STA-00048

In the Matter of:

PAUL DENAULT,  
Complainant,

v.

KEENAN TRANSIT COMPANY and WILLIAM KEENAN,  
Respondents.

**RECOMMENDED DECISION AND ORDER  
APPROVING SETTLEMENT**

An Order of December 16, 2004, cancelled the hearing in the instant case, which was brought under the employee protection provisions of the Surface Transportation Assistance Act of 1982, as amended (49 U.S.C. §31101 *et seq.*, with implementing regulations appearing at 29 C.F.R. Part 1978). The case was scheduled for a hearing to be held from January 11 to 14, 2005, in Chicago, Illinois, but the hearing was cancelled because, by letter of December 14, 2004, transmitted by facsimile, counsel for Complainant advised that the parties had reached a settlement and were in the process of reducing the settlement agreement to writing. The Order required the parties to submit an executed settlement agreement to the undersigned for approval at their earliest convenience.

Apparently an executed settlement was submitted but was not received. As a result of repeated efforts by my law clerk, the parties submitted another copy of the executed Settlement Agreement under counsel's cover letter of July 26, 2005. The Settlement Agreement (entitled "Settlement Agreement and Full and Final Release of All Claims") has been signed by Complainant on January 18, 2005, by Complainant's counsel on January 31, 2005, and by Respondent Keenan Transit Co., through its principal William Keenan, and Donald Helm<sup>1</sup> on January 31, 2005.

The regulations relating to settlements of STAA cases provide, in pertinent part:

(2) *Adjudicatory settlement.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the

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<sup>1</sup> Complainant's Objection to Secretary's Finding and Order, filed on June 21, 2004, lists individual respondent Donald Helm. However, the Assistant Secretary's Findings only list Keenan Transit as respondent. Moreover, neither the Findings nor the complaint mentions Donald Helm, although the complaint may be broadly construed as including William Keenan as a named party. See 28 C.F.R. §§ 1978.101(h); 1978.107.

participating parties agree to a settlement and such settlement is approved by the Administrative Review Board, United States Department of Labor, or the ALJ. A copy of the settlement shall be filed with the ALJ or the Administrative Review Board, United States Department of Labor as the case may be.

29 C.F.R. § 1978.111(d)(2).

The Settlement Agreement references laws in addition to the STAA. To the extent that the Settlement Agreement may be deemed to relate to matters under laws other than the STAA, I have limited my review to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegations that the Respondents violated the STAA. *Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-56 (ARB Apr. 30, 2003). *See also Poulos v. Ambassador Fuel Oil Co., Inc.*, 1986-CAA-1 (Sec'y Nov. 2, 1987).

The Settlement Agreement also contains a confidentiality provision. I find that the confidentiality provision does not run afoul of the requirements of law. *See generally Connecticut Light & Power Co. v. Secretary of the U.S. Department of Labor*, 85 F.3d 89 (2d Cir. 1996); *Bragg v. Houston Lighting & Power Co.*, 1994-ERA-38 (Sec'y June 19, 1995). However, the parties are advised that records in whistleblower cases are agency records which the agency must make available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. §552, and the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA.

Having reviewed the terms of the proposed settlement, I find that the settlement is fair, reasonable, and adequate, and that it should be approved. Pursuant to 29 C.F.R. § 1978.109(c), however, the Administrative Review Board has held that it 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). Accordingly,

## ORDER

**IT IS HEREBY RECOMMENDED**, that the Settlement Agreement be **APPROVED**, and that this case be **DISMISSED WITH PREJUDICE**.

**A**

PAMELA LAKES WOOD  
Administrative Law Judge

Washington, D.C.

**NOTICE:** This Recommended Decision and 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 Board briefs in support of or in opposition to the Recommended Decision and 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).

