



Issue Date: 02 July 2007

Case No.: 2006-STA-00033

In the Matter of:

WILLIAM J. BETTNER,
Complainant

v.

CRETE CARRIER CORPORATION,
Respondent

RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AND DISMISSING COMPLAINT

This proceeding arises under the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31105 (herein “the STAA”), and the regulations promulgated thereunder at 29 C.F.R. Part 1978. On or about March 22, 2006, Complainant, William J. Bettner, filed a complaint of discrimination against Respondent, Crete Carrier Corporation, which was investigated by the Occupational Safety and Health Administration (“OSHA”). On May 18, 2006, OSHA determined that the complaint was without merit. On May 31, 2006, Complainant appealed the findings of OSHA and the case was referred to the Office of Administrative Law Judges.

Subsequent to the Notice of Hearing in this matter, the parties negotiated and executed a Settlement Agreement and General Release of Claims (“Settlement”), which purports to resolve all issues pending before the undersigned. The Settlement was filed with the undersigned on May 21, 2007, under seal, along with the parties’ Agreed Motion for Approval of Settlement and Dismissal with Prejudice. The parties have requested that the Settlement be reviewed only by this Administrative Law Judge and the Administrative Review Board, and further that it is not to be published.

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.*, Case No. 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 undersigned is required to determine if the terms of the settlement as submitted represent a fair, adequate, and reasonable settlement of the complaint. 29 C.F.R. § 1978.111(d)(2).

The Settlement reflects a compromise whose terms are confidential. I have reviewed the Settlement and find the terms are fair, equitable, and reasonable, as required by 29 C.F.R. §1978.111(d)(2)-(3). Further, the terms of the Settlement are deemed confidential and ORDERED sealed as agreed to by the parties. The confidentiality provision is consistent with public policy.

Pursuant to 29 C.F.R. § 1978.109(c), however, the Administrative Review Board 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, **IT IS RECOMMENDED** that the Administrative Review Board **APPROVE** the Settlement Agreement, in a sealed envelope, and made a part hereof, and **DISMISS** this case, with Prejudice.

A

JOSEPH E. KANE
Administrative Law Judge

NOTICE OF REVIEW: The Administrative Law Judge's Recommended Decision and Order Approving Settlement, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 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 Decision and 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 Decision and 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.