U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 21 November 2007

In the Matter of
ANDRE CLARK
Complainant

v. Case Number 2007 STA 00033

MTS DRIVER RECRUITERS
Respondent

ORDER

RECOMMENDING APPROVAL OF SETTLEMENT AGREEMENT AND DISMISSAL OF CASE WITH PREJUDICE

This proceeding arises under Section 405 of the Surface Transportation Assistance Act of 1982 (hereinafter "STAA"), 49 U.S.C. § 31105 (formerly 49 U.S.C. App. § 2305); 29 C.F.R. Part 1978, implementing regulations found at 29 C.F.R. Part 24; and the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges found at 29 C.F.R. Part 18. The Complainant is represented by Paul Taylor, Esquire, of Burnsville, Minnesota, while the Respondent is represented by Karen Berkery, Esquire, Detroit, Michigan.

I am asked to approve a settlement set forth in an attached settlement agreement and to dismiss this proceeding with prejudice. A companion case, 2007 STA 00029, Complainant v. J.H.O.C. d/b/a Premier Transportation has been settled.

Under the STAA and implementing regulations, a proceeding may be terminated on a basis of a settlement provided either the Secretary or the Administrative Law Judge approves the agreement. 49 U.S.C. app. § 2305 (c)(2)(A); 29 C.F.R. § 1978.111(d)(2). The parties must submit for review an entire agreement to which each party has consented. ***Tankersley v. Triple Crown Services, Inc.,*** 92-STA-8 (Sec'y Feb. 18, 1993). The agreement must be reviewed to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. ***Macktal v. Secretary of Labor,*** 923 F.2d 1150 (5th Cir. 1991); ***Thompson v. U.S. Department of Labor,*** 885 F.2d 551 (9th Cir. 1989); ***Fuchko and Yunker v. Georgia Power Co.,*** Case Nos. 89-ERA-9, 89-ERA-10, Sec'y Ord. Mar. 23, 1989, slip op. at 1-2.

I find the overall settlement terms to be reasonable, but some clarification is necessary. I note that the Settlement Agreement incorporates certain confidentiality provisions. See title and paragraph F. I find that the provisions are acceptable. *See generally* ***Connecticut Light & Power Co. v. Secretary of the U.S. Department of Labor,*** 85 F.3d 89 (2nd Cir. 1996). 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. It has been held in a number of cases with respect to confidentiality provisions in Settlement Agreements that the FOIA requires federal agencies to disclose requested documents unless they are exempt from disclosure. ***Faust v. Chemical Leaman Tank Lines,*** Case Nos. 92-SWD-2 and 93-STA-15,

ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998. The records in this case are agency records which must be made available for public inspection and copying under the Freedom of Information Act.

The Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18 are applicable to these proceedings. 29 C.F.R. § 1978.106(a). Where the parties arrive at an adjudicatory settlement, the Agreement must be approved by the Administrative Law Judge. 29 C.F.R. § 1978.111(d)(2). Thus, the procedure to be applied in reviewing the Settlement Agreement is that provided by 29 C.F.R. 18.9 dealing with the entry of a Consent Order or Settlement. This case involves the review a Settlement Agreement and Release, and the final disposition is controlled by 29 C.F.R. § 18.9.

After a review of the record, I find that the Settlement Agreement is fair, adequate and reasonable, and accordingly, recommend approval and dismissal of the complaint with prejudice as requested by the parties.

SO ORDERED

A

Daniel F. Solomon
Administrative Law Judge

NOTICE OF REVIEW: The administrative law judge's Recommended Decision and Order, 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, the parties may file briefs with the Board in support of, or in opposition to, the administrative law judge's decision 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.