



Issue Date: 01 March 2007

CASE NO.: 2007-STA-00002

SAMUEL G. MANCUSO,
Complainant,

v.

TLC SERVICES GROUP,
Respondent.

RECOMMENDED ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This proceeding arises under the employee protection provisions of the Surface Transportation Assistance Act, 49 U.S.C. § 31105 (“the Act” hereinafter), and implementing regulations set forth at 29 C.F.R. part 1978. The pertinent provisions of the Act prohibit the discharge, discipline, or discrimination of employees who refuse to operate a commercial motor vehicle because of apprehension of serious injury due to unsafe conditions or health matters.

Samuel Mancuso (“Complainant”) filed a complaint of discrimination under the Act against TLC Services Group (“Respondent”), and requested a hearing before the Office of Administrative Law Judges (“OALJ”). By Notice issued October 11, 2006, I scheduled a hearing in the matter, which was subsequently rescheduled to January 17, 2007, upon joint motion of the parties. On the scheduled date, the parties appeared and engaged in settlement discussions, and advised on the record that they had reached an agreement in this matter.

On February 26, 2007, the parties submitted a signed stipulation of settlement (“the Agreement”), the terms of which may be generally summarized as follows:

1. The parties agree that the terms of the settlement shall be held in confidence. Complainant agrees not to disclose the terms of the Agreement to any person other than his spouse, attorney, accountant or tax preparer, and further agrees to require that all permitted disclosures be held in confidence. Complainant agrees to notify counsel for Respondent if any other disclosure is requested for a legal purpose.
2. Respondent agrees not to disclose the contents of the Agreement to any person other than as may be required by law. Respondent agrees to notify Complainant of any requested disclosure behind the limited disclosure anticipated by the Agreement. Respondent further agrees to expunge from its litigation file all references to Complainant’s personal identification

information, including his driver's license and social security number.¹

3. Respondent shall pay to Complainant the sum of ten thousand dollars (\$10,000.00), less required withholding taxes in consideration for the release of any and all claims, and any and all potential claims that could have been asserted against Respondent with respect to the matters involved in the instant cause of action.
4. Complainant agrees that but for the Agreement and release of claims, he would not be entitled to the sum set forth at ¶ 3 above.
5. Complainant agrees that he is solely responsible for determining any tax liability associated with the payments referred to herein, and agrees to indemnify and hold Respondent harmless against any tax liability and associated interest and penalty that may be assessed other than that amount for which Respondent would ordinarily be liable.
6. Complainant agrees to waive, release and relinquish all claims and rights which he may have against Respondent, its parent company, any of its subsidiaries, affiliated companies, benefit plans, or their respective predecessors, successors and assigns, as well as their respective past or present officers, directors, agents, representatives or employees and their respective successors and assigns, heirs, executors, insureds, representatives ("Releasees"), based on any act or omission occurring before the date of this agreement, including but not limited to the events alleged in the instant action. Complainant specifically waives, releases and relinquishes any and all claims arising from or relating to his employment with Respondent based on any act or omission occurring before the date of the Agreement, which could be asserted under state, federal, local or common law, with the exception of :

The release described at ¶ 6 shall not apply to Complainant's entitlement to any vested employee pension plan or 401k benefits to which he is entitled as a result of his employment with Respondent, or claims arising out of the enforcement of the Agreement, or any claims under the Workers' Compensation Act.
7. Complainant does not waive his rights to unemployment benefits, and Employer agrees that it shall not contest the claim for unemployment benefits that Complainant filed in January 2007.
8. Complainant represents that there are no other pending lawsuits, actions, charges or other claims against Respondent or any Releasee of any nature, in any forum. Complainant agrees to forestall from bringing any claim or

¹ Respondent's exhibits filed with OALJ have been redacted to expunge references to personal information, in accordance with Complainant's correspondence filed February 21, 2007 and with consent of Respondent.

action against Respondent or any Releasee, relating to events or omissions occurring prior to the date of the Agreement, arising out of or in connection with Complainant's employment by Respondent or separation from employment with Respondent. Complainant further agrees to "opt out" of any class action suit in which Respondent is named as a defendant.

9. The parties agree that the Agreement represents the entire agreement of the parties, and no other agreements shall be binding unless in writing, signed by the parties, and expressly stated to represent an amendment to the Agreement.
10. Complainant agrees that the Agreement shall not be construed as an admission by Respondent that it engaged in any wrongdoing or incurred any liability.
11. The parties agree not to make or solicit any comments, remarks or statements that may be construed as derogatory or detrimental to the other party's good name or reputation.
12. Respondent agrees to provide a neutral reference for Complainant, limited to his job title and dates of employment with Respondent, upon request to Respondent's Human Resources Manager.
13. Complainant waives any and all rights to employment with Respondent and specifically promises not to knowingly apply for employment or re-employment with Respondent, or any parent, subsidiary, affiliate or successor of Respondent. Complainant acknowledges that Respondent and its affiliates have no obligation to employ him in any capacity.

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 Act, 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). 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 received and carefully reviewed the parties' settlement agreement 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 STA complaint resolved by settlement. See Howick v. Experience Hendrix, LLC, ARB No. 02-049, ALJ No. 2000-STA-32 (ARB Sept. 26,

2002). The parties are hereby advised that the Agreement encompasses the settlement of matters under laws and regulations other than the Act. The Board's authority over settlement agreements is limited to such statutes as are within the Board's jurisdiction and is defined by the applicable statute. Fish v. H and R Transfer, ARB No. 01-071, ALJ No. 00-STA-56 (ARB Apr. 30, 2003).

Accordingly, IT IS RECOMMENDED that the settlement of matters strictly within the jurisdiction of the Administrative Review Board be APPROVED pursuant to the agreement and that the Board DISMISS the complaint with prejudice.

So ORDERED.

A

Janice K. Bullard
Administrative Law Judge

Cherry Hill, New Jersey

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, 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.