



Issue Date: 22 August 2006

CASE NO.: 2000-STA-47

In the Matter of

LARRY E. EASH, SR.,
Complainant

v.

ROADWAY EXPRESS, INC.,
Respondent

**RECOMMENDED ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This proceeding arises under Section 31105 of the Surface Transportation Assistance Act (STAA) of 1982 (49 U.S.C. §§ 31101) and the regulations promulgated thereunder at 29 C.F.R. Part 1978 (1989). The parties, on August 7, 2006, filed a Settlement Agreement (“Agreement”) in accordance with 29 C.F.R. §§ 1978.111(d)(2). Thereafter, the parties each filed respective supplemental declarations in accordance with 20 C.F.R. § 18.9(b).¹ The Agreement resolves the controversy arising from the complaint of Larry E. Eash against Roadway Express, Inc. The Settlement Agreement is signed by the Complainant and the Employer.

The Agreement provides that the Complainant releases the Respondent from claims arising under the STAA and various other laws. The Agreement also specifically references complaints filed under the STAA styled as *Eash v. Roadway Express, Inc.* ALJ Nos. 1998-STA-28, 2000-STA-7, 2000-STA-47 and ARB Nos. 99-037, 00-061, 00-064, 02-061, 02-008, 02-061, and 04-036, and *Roadway Express v. Administrative Review Board*, Nos. 03-4074, 03-4114, 03-4115, 2004 WL 2671728 (6th Cir. Nov. 22, 2004).

This review, however, is limited to whether the terms of the settlement are a fair, adequate, and reasonable settlement of the Complainant’s allegations that the Respondent violated the STAA in the claim styled 2000-STA-47. First, with respect to the other referenced matters under the STAA, the only case before me is 2000-STA-47.² Second, with respect to claims under other laws, the Department of Labor’s authority to approve settlements is limited to those arising under statutes that are within its jurisdiction. *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56 (Apr. 30, 2003).

¹ This Court received the Complainant’s declaration on August 18, 2006 and the Employer’s on August 17, 2006.

² Additionally, a review of the record and this Court’s detailed Case Tracking system reveals that the case styled 2000-STA-7 does not involve these two parties.

Under the STAA and implementing regulations, a proceeding may be terminated on the 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. This Order approving the settlement is final since all parties have joined in the Agreement. *Swischer v. Gerber Childrenswear, Inc.*, 93-STA-1 (Sec'y Jan. 4, 1993).

The Agreement provides that within five days of issuance of an order dismissing the complaint with prejudice, the Respondent will pay the Complainant specified sums of money designated for wages and costs and expenses. At that same time, Respondent will pay Complainant's counsel a specified sum of money for attorney fees. The parties agree that these payments shall satisfy all obligations of the Respondent to the Complainant and his counsel under the Agreement.

In their supplemental declarations, the parties each stated, pursuant to 20 C.F.R. § 18.9(b), that:

- (1) This Order approving settlement shall have the same force and effect as an order made after a full hearing;
- (2) The entire record on which any order shall be based shall consist solely of the complaint, order of reference or notice of administrative determination (or amended notice, if one is filed), as appropriate, and the Agreement;
- (3) It agreed to a waiver of any further procedural steps before the administrative law judge; and,
- (4) It agreed to a waiver of any right to challenge or contest the validity of the order entered into in accordance with the Agreement.

The Agreement provides, in paragraph 3, a complete release of any claims the Complainant may have or had against the Respondent with respect to his employment, termination, or subsequent reinstatement with the Respondent, including, but not limited to, all claims and allegations asserted or adjudicated in the various STAA cases between the parties. This provision must be interpreted as limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of Agreement. *Bittner v. Fuel Economy Contracting Co.*, Case No. 88-ERA-22, Sec. Ord. Approving Settlement Agreement and Dismissing Complaint (June 28, 1990), slip op. at 2. Paragraphs 9 and 11, also dealing with other claims, is appropriately limited to a waiver of action for matters arising on or before the date the Agreement was executed.

The Agreement contains a confidentiality provision limiting all disclosures except under certain stated circumstances. It has been held in a number of cases with respect to confidentiality provisions in Settlement Agreements that the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* (1988) (FOIA), requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, 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 parties have acknowledged the possibility of such agency disclosure in Paragraph 8(e), which recognizes that nothing in the confidentiality provision limits the Department of Labor from disclosing the Agreement or communicating to a third party its terms and conditions.

I find the terms of the confidentiality provision do not violate public policy in that they do not prohibit the Complainant from communicating with appropriate government agencies. *See, e.g., Bragg v. Houston Lighting & Power Co.*, 94-ERA-38 (Sec'y June 19, 1995); *Brown v. Holmes & Narver*, 90-ERA-26 (Sec'y May 11, 1994); *Conn. Light & Power Co. v. Sec'y of U.S. Dep't of Labor*, No. 95-4094, 1996 U.S. App. LEXIS 12583 (2d Cir. May 31, 1996); and, *Anderson v. Waste Mgmt. of N.M.*, 88-TSC-2, Sec. (Final Order Approving Settlement, December 18, 1990) slip op. at 2, (approving the parties' confidentiality agreement except where disclosure may be required by law. Indeed, the parties have anticipated as much in Paragraph 8(d)).

The Agreement also notes at Paragraph 15 that it is governed and interpreted in accordance with the laws of the State of Ohio. That provision is interpreted as not limiting the authority of the Secretary or any U.S. Court to seek or grant appropriate relief under any applicable federal whistleblower statute or regulation. *Phillips v. Citizens Assoc. for Sound Energy*, 91-ERA-25, (Sec. Final Order of Dismissal, Nov. 4, 1991).

As so construed, noting that the parties are represented by counsel, I find the terms of the Agreement to be fair, adequate and reasonable, and therefore recommend approval. Accordingly, I recommend the complaint filed by Larry Eash, be dismissed with prejudice.

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RICHARD A. MORGAN
Administrative Law Judge

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.