



**Issue Date: 25 November 2013**

Case No.: 2013-TSC-3

In the Matter of:

VERNON FRYE,  
Complainant,

v.

COIT SERVICES OF OHIO, INC.,  
Respondent.

**ORDER APPROVING SETTLEMENT AGREEMENT AND  
DISMISSING COMPLAINT**

This proceeding arises under Section 2622 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2622 and Section 7622 of the Clean Air Act (CAA), 42 U.S.C. 7622, and Section 11(c) of the Occupational Safety & Health Act, 29 U.S.C. § 660(c). The “whistleblower” provision is codified at section 18C of the Fair Labor Standards Act, 29 U.S.C. 218C. Also, and the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges found at 29 CFR Part 18A.

As a result of his termination, on or about January 9, 2012, Vernon Frye (“Complainant”) filed a complaint with the Secretary of Labor on January 26, 2012. The complaint alleged that he was terminated in a retaliatory action as a result of complaints he made to his employer about lack of compliance with environmental and safety regulations on a job site in December of 2011. The Occupational Safety and Health Administration (“OSHA”) conducted a preliminary investigation, and determined, in pertinent part, that Complainant was engaged in protected activity in his reports to his employer and that his January 9, 2012 termination was an adverse action as contemplated by the TSCA and CAA. On July 17, 2013, the Secretary of Labor, through her OSHA Regional Administrator made findings of fact and ordered: 1) Complainant’s reinstatement to his former position with all seniority, pay, benefits and rights accrued prior to discharge; 2) back wages in the amount of \$82,000.00, plus interest, and further wage replacement until a valid offer of reinstatement was made; 3) compensatory damages in the amount of \$60,000.00 as a result of pain, suffering and financial setbacks the Complainant experienced as a result of his termination; 4) payment of attorney’s fees in the amount of \$19,228.40; 5) Complainant’s employment records would be expunged of any reference to his protected activities and the resulting adverse action; and 6) posting at the workplace of a relevant notice.

On August 16, 2013, the Respondent filed Objections to the Secretary's Findings with the Chief Administrative Law Judge of the U.S. Department of Labor and requested a *de novo* hearing. A "Cross Objection" to the Secretary's findings was also filed by Complainant's Counsel on August 13, 2013. The case was assigned to me, and on October 21, 2013, I issued a "Notice of Assignment and Intent to Schedule Telephone Conference," to establish relevant dates for the further handling of the case.

On November 6, 2013, I received a proposed "Settlement Agreement, Mutual Release and Covenants Not to Sue" executed by both parties, along with a Joint Motion for Dismissal with Prejudice. In the parties' motion, they have requested that all claims be dismissed with prejudice and that I additionally retain jurisdiction to assure compliance with the settlement agreement. This is not possible as my jurisdiction over the matter ends with the case's dismissal. However, the governing regulations also make it unnecessary.

29 C.F.R. § 24.112(d)(2) includes provisions for settlement of CAA and TSCA claims during their pendency with an Administrative Law Judge:

At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement must be filed with the administrative law judge or the Board, as the case may be.

In turn, subsection 24.112(e) provides that "Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board will constitute the final order of the Secretary and may be enforced pursuant to § 24.113." 29 C.F.R. § 24.112(e). Finally, § 24.113 deals with judicial enforcement of settlement agreements, and it provides for actions both by the Secretary of Labor and/or the private parties in the United States District Court for the district in which the violation was found to have occurred.

The parties "Joint Motion for Dismissal with Prejudice" and "Settlement Agreement, Mutual Release and Covenants Not to Sue," submitted to me on November 6, 2013, (including its 2 exhibits) are, by reference, fully incorporated herein.

I have reviewed the terms of the "Settlement Agreement, Mutual Release and Covenants Not to Sue." I find the provisions are fair, adequate, reasonable, and not contrary to public interests. I therefore approve the settlement agreement.

At the request of the parties, the terms of the settlement agreement shall remain confidential. Should the settlement agreement become the subject of a request under the Freedom of Information Act, 5 U.S.C. 552, the procedures in 29 C.F.R. § 70.26 shall apply. 29 C.F.R. § 18.9; 42 U.S.C. § 5851(b)(2)(A); 29 C.F.R. § 70.26.

Accordingly, **IT IS HEREBY ORDERED** that the parties will carry out the requirements of the “Settlement Agreement, Mutual Release and Covenants Not to Sue” and further, the parties “Joint Motion for Dismissal with Prejudice” is hereby **APPROVED** and the proceeding in this matter is **DIMISSED** with prejudice.

PETER B. SILVAIN, JR.  
Administrative Law Judge