



In the Matter of:

DARRIN MUENZBERG,

ARB CASE NO. 2021-0070

COMPLAINANT,

ALJ CASE NO. 2018-SPA-00001

v.

DATE: May 13, 2022

APL MARITIME, LTD,

RESPONDENT.

Appearances:

For the Complainant:

Cory A. Birnberg, Esq.; *Birnberg & Associates*; San Francisco, California

For the Respondent:

Renee Feldman, Esq.; *Little Mendelson, P.C.*; Walnut Creek, California

Before: James D. McGinley, *Chief Administrative Appeals Judge* and Thomas H. Burrell, *Administrative Appeals Judge*

**DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING CASE WITH PREJUDICE**

PER CURIAM. This case arises under the whistleblower protection provision of the Seaman's Protection Act (SPA),¹ and the applicable implementing regulations.² Darrin Muenzberg (Complainant) filed a complaint alleging that APL Maritime, LTD (Respondent) retaliated against him in violation of SPA. On September 15,

¹ 46 U.S.C. § 2114 (2010), as amended by Section 611 of the Coast Guard Authorization Act of 2010, P.L. 111-281.

² 29 C.F.R. Part 1986 (2021).

2021, an Administrative Law Judge (ALJ) issued a Decision and Order finding that Complainant did not establish by a preponderance of the evidence that his protected activity contributed in any way to any of Respondent's adverse actions. Complainant timely appealed to the Administrative Review Board (Board).

On May 9, 2022, the parties filed a Joint Request for Order Approving Settlement and Partially Sealing Settlement Agreement, stating that the parties settled the SPA claim and agreed to dismiss the appeal with prejudice pursuant to the terms of the Confidential Settlement Agreement and Release of Claims (Settlement Agreement). The parties requested the Board to approve the Settlement Agreement and dismiss the action with prejudice. The parties attached two signed copies of the agreement to the motion, an unredacted version and a redacted version. The redacted version conceals the first paragraph of Section 3 of the Settlement Agreement.

The SPA's implementing regulations provide that at any time after a party has filed objections to the Assistant Secretary's findings or order, the case may be settled if the participating parties agree to a settlement and, if the Board has accepted the case for review, the Board approves the settlement agreement.³

A review of the Settlement Agreement reveals that it encompasses the settlement of matters under laws other than the SPA. The Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by the applicable delegation of authority.⁴ Therefore, we have restricted our review of the Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this SPA case over which we have jurisdiction.

The parties asserted their pre-disclosure notification rights in accordance with 29 C.F.R. § 70.26, designating the first paragraph of Section 3 of the unredacted Settlement Agreement as containing confidential commercial information. The parties move the Board to seal the unredacted version. We grant this request and have "sealed" the unredacted electronic Settlement Agreement by maintaining it as separate and confidential.

With regard to the confidentiality of the unredacted Settlement Agreement, the parties are advised, notwithstanding the confidential nature of the unredacted Settlement Agreement, that all of the parties' submissions become part of the record and are subject to the Freedom of Information Act (FOIA).⁵ The FOIA requires federal agencies to disclose requested records unless they are exempt from

³ 29 C.F.R. § 1986.111(d)(2).

⁴ *Helgeson v. Soo Line R.R. Co.*, ARB No. 2019-0054, ALJ No. 2016-FRS-00084, slip op. at 2 (ARB Jan. 13, 2021).

⁵ 5 U.S.C. § 552 (2016).

disclosure under the Act.⁶ Department of Labor regulations set out the procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.⁷ Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

Furthermore, the Settlement Agreement contains a confidentiality clause that Complainant shall not disclose the agreement's terms to a third party unless one of the listed exceptions applies. If the confidentiality clause was interpreted to preclude Complainant from communicating with federal or state enforcement agencies concerning alleged violations of law, it would violate public policy and therefore constitute an unacceptable "gag" provision.⁸ We construe such language as allowing Complainant, either voluntarily or pursuant to an order or subpoena, to communicate with, or provide information to, state and federal authorities about suspected violations of law involving Respondent.⁹

The Agreement also provides that it shall be governed by the laws of the State of Maryland. We construe this "Applicable Law" provision as not limiting the authority of the Secretary of Labor, the Board, and any federal court regarding any issue arising under SPA, which authority shall be governed in all respects by the laws and regulations of the United States.

The Board concludes that the settlement between Complainant and Respondent is fair, adequate, and reasonable, and does not contravene the public interest. Accordingly, the request to seal and keep the Settlement Agreement in its entirety confidential is **GRANTED** subject to the procedures requiring disclosure under FOIA. We **APPROVE** the settlement agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

⁶ *Ware v. BNSF Ry. Co.*, ARB No. 2014-0044, ALJ No. 2013-FRS-00028, slip op. at 3 (ARB June 24, 2014).

⁷ 29 C.F.R. Part 70 (2017).

⁸ *See Helgeson*, ARB No. 2019-0054, slip op. at 3.

⁹ *Id.*