



**Issue Date: 17 April 2013**

Case No.: 2012-FRS-13

In the Matter of:

Greg Hicks,  
Complainant

v.

Union Pacific Railroad Company,  
Respondent

### **ORDER APPROVING SETTLEMENT**

This case arises under the Federal Rail Safety Act ("FRSA"), which provides whistleblower protections to railroad employees for engaging in certain protected activities. 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53. On February 20, 2013, the parties submitted by email a copy of their signed Settlement Agreement, which resolves all issues raised in the Complaint, for review and approval by the undersigned Administrative Law Judge. The attached Settlement Agreement is incorporated herein by reference.

My review of the Settlement Agreement is limited to a determination of whether its terms are fair, adequate and reasonable. The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to the public interest. After careful consideration of the settlement agreement, I find that none of the terms or conditions are unacceptable. Moreover, I find the terms of the agreement to be fair and reasonable and adequately protect Mr. Hicks. Furthermore, I believe it is in the public interest to approve the agreement as a basis for administrative disposition of this case and I therefore approve the Settlement Agreement.

With regard to the understanding and agreement that the Settlement Agreement is confidential, the parties are advised that notwithstanding the confidential nature of the Agreement, all of their filings, including the Agreement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C.A. § 552, *et seq.* The Administrative Review Board has noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine *at the time a request is made* whether to exercise

its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

*Seater v. S. Cal. Edison Co.*, USDOL/OALJ Reporter (PDF), ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

Accordingly, it is **ORDERED** that the Settlement Agreement is **APPROVED**, and it shall be designated as confidential subject to the procedures requiring disclosure under FOIA. The Complaint of Greg Hicks is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

LINDA S. CHAPMAN  
Administrative Law Judge