



Issue Date: 29 May 2018

Case Nos.: 2014-FRS-00139
2014-FRS-00140
2014-FRS-00142

In the Matter of:

**GREGORY ENGEL, BRIAN NEMETH, and
MATTHEW HEFLIN,**
Complainants,

v.

TERMINAL RAILROAD ASSN OF ST. LOUIS,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

These complaints arise under the Federal Rail Safety Act, 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 (Aug. 3, 2007) (“FRSA”). On May 16, 2018, this Office received from counsel for the Complainants a fully executed Settlement Agreement (“Settlement”) between the Complainants, Gregory Engel, Matthew Heflin, and Brian Nemeth, and the Respondent, Terminal Railroad Association of St. Louis. The parties requested that this Settlement remain confidential.¹ This Settlement recognizes that the Complainants agree that these complaints filed pursuant to the FRSA will be withdrawn and/or dismissed as settled.

¹ Consistent with 20 C.F.R. § 70.26 (2017) and Executive Order 12,600, “Predisclosure Notification Procedures for Confidential Commercial Information” (Exec. Or. 12,600, 52 Fed. Reg. 23781, 3 C.F.R., 1988 Comp., 235), the materials contained in the Settlement Agreement will be placed in a sealed envelope marked “Confidential Settlement Materials – Confidential Commercial Information. See 20 C.F.R. § 70.26.” Moreover, in this Decision and Order, the undersigned has refrained from referencing any specific terms or dollar amounts contained in the Settlement Agreement. In general, confidential commercial information will be disclosed under the Freedom of Information Act (“FOIA”) only in accordance with 20 C.F.R. § 70.26 and Executive Order 12,600. Pursuant to 20 C.F.R. § 70.26(a), a submitter of confidential commercial information must use good-faith efforts to designate any portions of its submission that it considers to be protected from disclosure under Exemption 4. The Department of Labor (“Department”) will provide a submitter with prompt written notice of a FOIA request that seeks its confidential commercial information whenever required under 20 C.F.R. § 70.26(d), except as provided in 20 C.F.R. § 70.26(g), in order to give the submitter an opportunity to object in writing to disclosure of any specified portion of that information under paragraph 20 C.F.R. § 70.26(e). See 20 C.F.R. § 70.26.

The Settlement resolves the controversy arising from the complaints of Gregory Engel, Matthew Heflin, and Brian Nemeth against Terminal Railroad Association of St. Louis. This Settlement is signed by all Complainants and the Respondent. The Settlement provides that the Complainants will release the Respondent from claims arising from “injuries and/or damages” resulting from an incident on September 17, 2013, under the FRSA. This Order, however, is limited to whether the terms of the Settlement are a fair, adequate and reasonable settlement of the Complainants’ allegations that the Respondent violated the FRSA. As was stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987):

The Secretary’s authority over the settlement agreement is limited to such statutes as are within [the Secretary’s] jurisdiction and is defined by the applicable statute. *See Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. 86-CAA-2, Secretary’s Order Approving Settlement, issued July 29, 1987; *Chase v. Buncomb County, N.C.*, Case No. 85-SWD-4, Secretary’s Order on Remand, issued November 3, 1986.

I have therefore limited my review of the Settlement to determining whether the terms thereof are a fair, adequate and reasonable under the FRSA.

Section 20109(d)(2)(A) of the FRSA states that the procedures for actions arising under the FRSA shall be governed by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121. 29 C.F.R. § 1982.111(d)(1) states that at any time after the filing of objections to the Assistant Secretary’s findings and preliminary order, the case may be settled, and if the case is before an administrative law judge, the settlement is contingent upon the approval of the administrative law judge. Any settlement approved by the administrative law judge becomes the final order of the Secretary. 29 C.F.R. § 1982.111(e).

The Settlement provides that the Respondent shall make a payment to the Complainants of the amounts agreed upon. The parties represent that the compensation terms are fair and reasonable in relation to the claims. The Settlement also provides that Complainants will release any and all claims against the Respondent arising out of their employment with the Respondent, and accordingly, the Complainants’ claims will be dismissed with prejudice.

The parties agree to keep the terms and conditions of the Settlement confidential, to the extent permitted by law. However, notwithstanding the parties’ agreement, the parties’ submissions, including the Settlement, become part of the record of the case and may be subject to disclosure under the Freedom of Information Act, 5 U.S.C. section 552, *et seq.* (“FOIA”). FOIA requires federal agencies to disclose requested documents unless they are exempt from disclosure. *See supra* n.1.

Having reviewed the Settlement, noting that the parties are represented by counsel, I find it to be fair, adequate, reasonable, and not contrary to public policy.

Upon my approval, the parties shall implement the terms of the Settlement as stated in the Settlement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits. Again, it is noted that my authority only extends to approving settlement of the Complainants' claims against the Respondent under the FRSA.

Accordingly, **IT IS HEREBY ORDERED** that the Settlement Agreement filed on May 16, 2018, is **APPROVED**, and hereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §1982.113. The parties, furthermore, waive any further procedural steps before this forum, as well as any rights to challenge or contest the validity of this Order entered in accordance with the Settlement.

IT FURTHER ORDERED that the complaints filed in this matter are **DISMISSED WITH PREJUDICE**.

JOHN P. SELLERS, III
Administrative Law Judge