



Issue Date: 19 December 2014

CASE NO.: 2014-FRS-00033

IN THE MATTER OF

GARY FULTZ,
Complainant

v.

ALABAMA SOUTHERN RAILROAD, LLC,
Respondent

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

The above-styled proceeding arose 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 (“9/11 Act”), Pub. L. No. 110-53 (August 3, 2007) [hereinafter “FRSA”].

On December 17, 2014, the parties signed a Confidential Settlement Agreement and Release (“Agreement”). The Agreement resolves the controversy arising from the complaint of Gary Fultz against Alabama Southern Railroad, LLC under the statute. The settlement Agreement is signed by Complainant and Respondent.

The Settlement Agreement provides that Complainant releases Respondent from claims arising under the FRSA as well as under various other laws. This order is limited to whether the terms of the settlement are a fair, adequate and reasonable settlement of Complainant’s allegations that respondent violated the FRSA. See, *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.”).

I reviewed this Agreement to determine whether the terms thereof are a fair, adequate and reasonable settlement of Mr. Fultz’s allegation that Respondent had violated 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 [hereinafter “AIR21”], 49 U.S.C. § 42121. 29 C.F.R. § 1979.111(d)(2) states that a case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge. This order will constitute the final order of the Secretary. 29 C.F.R. § 1979.111(e).

The Agreement provides that the respondent shall make a payment to Complainant of a mutually agreed upon amount. The parties agree that this payment will satisfy all claims against the Respondent by the Complainant.

The parties have agreed to end the litigation, upon terms they have decided are favorable to each of them, without any admission of liability. The courts are designed to resolve “disputes.” With approval of this Agreement, there is no longer any dispute requiring a resolution. The parties, who are intimately familiar with the pros and cons of the alternative, i.e., litigation, have resolved any dispute. Such resolutions are to be encouraged. This limitation is not unreasonable.

It has been held in a number of cases with respect to confidentiality 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 may be made available for public inspection and copying under the Freedom of Information Act. However, the employer will be provided a pre-disclosure notification giving the employer the opportunity to challenge any such potential disclosure. The Agreement itself is not appended and will be separately maintained and marked “PREDISCLOSURE NOTIFICATION MATERIALS.” A protective order restricting access to the Agreement will be placed on the outside of the sealed envelope.

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 approve it. Accordingly, the complaint filed by Gary Fultz is hereby dismissed with prejudice. As the complaint is dismissed, the Secretary’s Findings are hereby vacated.

ORDERED this 19th day of December, 2014, at Covington, Louisiana.

LEE J. ROMERO
ADMINISTRATIVE LAW JUDGE