



**Issue Date: 14 October 2015**

*In the Matter of:*

**THOMAS GARRETT,**  
*Complainant,*

**Case No.: 2014-FRS-00046**

**v.**

**UNION PACIFIC RAILROAD COMPANY,**  
*Respondent.*

**ORDER APPROVING SETTLEMENT AGREEMENT**

This matter arises under the Federal Railroad Safety Act (“FRSA” or “the Act”), 49 U.S.C. §20109, as amended. Pursuant to my June 9, 2015, *Order Appointing Mediator*, this matter was sent to a mediator at the Office of Administrative Law Judges (“OALJ”) to assist the parties in settling their dispute. Judge Stephen R. Henley’s October 7, 2015, *Supplemental Order Concluding Mediation* provided notice that the parties had reached a settlement of their claims and directed the parties to file their settlement agreement for my approval.

I received the parties’ *Settlement Agreement and Release of Claims* (“Settlement Agreement”) on October 8, 2015. The Settlement Agreement is signed by Thomas Garrett (“Complainant”); and Kathleen A. Hughes, a representative of Union Pacific Railroad Company (“Respondent”). According to the terms of the Settlement Agreement submitted by the above-mentioned parties, Respondent will pay a total of \$65,000.00. The parties agree that \$35,000.00 of this amount will be paid to Complainant for back pay, less legally required deductions and withholdings and less offsets excluding insurance premiums and union fees. The parties further agree that attorney fees and costs in the amount of \$30,000.00 will be paid to Bauer & Baebler, P.C., for its representation of Complainant in this matter. The parties represent that the compensation terms laid out in the Settlement Agreement are fair and reasonable in relation to Complainant’s claims. The Agreement provides that Complainant will release any and all claims against Respondent arising out of his employment with Respondent, and accordingly, Complainant’s claims will be dismissed with prejudice. Complainant agrees not to seek reemployment with Respondent at any time and to forfeit any seniority rights he had under any collective bargaining agreement. Respondent agrees to perform the requirements of the Settlement Agreement within ten business days of my approval of the agreement.

My review of the Settlement Agreement is limited to a determination of whether its terms are fair, adequate and reasonable under the FRSA.<sup>1</sup> The settlement must adequately protect the whistleblower and must not be contrary to the public interest. My authority over settlement agreements is limited to the statutes that are within my jurisdiction. Therefore, insofar as I approve the Settlement Agreement, my approval only extends to the terms of the Settlement Agreement pertaining to Complainant's current FRSA case.

Because OALJ is a government agency, and this is a public proceeding, the parties' submissions in this case, including the Settlement Agreement, become a part of the record and are subject to the Freedom of Information Act ("FOIA").<sup>2</sup> FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *See, e.g., Fish v. H and R Transfer*, ARB No. 01-071, ALJ Case No. 2000-STA-56, slip op. at 2 (ARB April 30, 2003). Pages 7-8 of the Settlement Agreement provide that both parties will keep the existence and terms of the agreement confidential, with certain specified exceptions. Accordingly, to protect the parties from improper disclosure of this confidential information to the furthest extent permitted by law, the Settlement Agreement will be sealed in a separate envelope and identified as being "Confidential Commercial and Personal Private Information," pursuant to 29 C.F.R. § 70.26(b).

After careful consideration of the Settlement Agreement, I find that its terms and conditions are fair, adequate, and reasonable under the FRSA. I also find that its terms adequately protect Complainant. Furthermore, I believe it is in the public interest to approve the Settlement Agreement as a basis for administrative disposition of this case.

The findings contained herein are based upon the agreed facts and representations contained in the Settlement Agreement and attachments, copies of which are attached hereto, incorporated herein, and made part hereof.

### **ORDER**

In accordance with 29 C.F.R. § 1982.111, it is hereby **ORDERED** that the Settlement Agreement is **APPROVED**, and the parties are directed to carry out its requirements. Accordingly, the complaint is **DISMISSED WITH PREJUDICE**. In accordance with the regulations, the settlement constitutes the final order of the Secretary of Labor<sup>3</sup> and may be enforced under 29 C.F.R. § 1982.113 (2012).

**IT IS FURTHER ORDERED** that the Settlement Agreement is to be kept under seal and designated as "Personal Private Information" and "Confidential Commercial Information" under 20 C.F.R. § 70.26, and shall be afforded the protections thereunder.

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<sup>1</sup> *See Poulos v. Ambassador Fuel Oil Co.*, No. 91-ERA-25, slip op. at 2 (Sec'y of Labor, Nov. 4, 1991).

<sup>2</sup> 5 U.S.C. § 552 (2011).

<sup>3</sup> 29 C.F.R. § 1982.111(e)

**IT IS SO ORDERED.**

Washington, D.C.

CHRISTINE L. KIRBY  
Administrative Law Judge