



Issue Date: 09 September 2015

In the Matter of:

Case No.: 2014-FRS-00088

MARK JANZEN,
Complainant,

v.

WISCONSIN CENTRAL LTD.,
Respondent.

ORDER APPROVING 8(i) SETTLEMENT AGREEMENT

This matter arises under the Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109, as amended. Pursuant to my March 12, 2015, *Notice of Hearing and Prehearing Order*, this matter was scheduled for formal hearing on July 21-23, 2015, in Milwaukee, WI. On March 4, 2015, I received notice that the parties had reached a full and final settlement of their claims. Accordingly, I issued an *Order Canceling Hearing* on July 8, 2015.

I received the parties' *Section 8(i) Settlement Agreement* on August 31, 2015. The Settlement Agreement is signed by Mark Janzen ("Claimant"); Paul Swanson, trustee in Mr. Janzen's bankruptcy claim ("the Trustee"); and Constance Valkan, a representative of Wisconsin Central Railroad ("Respondent"). Claimant has acknowledged that he has a pending personal bankruptcy matter and that ownership of this action belongs to the Trustee. According to the terms of the Settlement Agreement submitted by the above-mentioned parties, Respondent is to provide the Trustee with a payment of \$35,000.00. This sum is comprised of \$24,249.41 as compensation for alleged wage-based compensatory damages and \$10,750.59 for payment of attorneys' fees and costs in connection with this action. The Trustee is responsible for allocating the settlement payment between Claimant, the bankruptcy estate's creditors, and the Releasers' Attorneys pursuant to a separate agreement they have entered into independent of Wisconsin Central Railroad.

With respect to the specific terms of the Settlement Agreement, I have reviewed it in its entirety, in accordance with the requirements of 20 C.F.R. §702.243(f). Jurisdiction under the Act is undisputed. The form and substance of the application conform to the requirements of 20 C.F.R. §702.242.

The facts giving rise to this claim indicate that on or about April 1, 2011, Claimant filed a complaint with the Occupational Safety and Health Administration alleging that Respondent retaliated against him for making a report of injury. After commencing his FRSA action,

Claimant filed a Chapter 7 bankruptcy petition before the United States Bankruptcy Court for the Eastern District of Wisconsin. An Order of Discharge was entered in the bankruptcy claim on October 2, 2012, and the claim was subsequently closed. The claim was later reopened, and on August 20, 2014, the Trustee was ordered to pursue Claimant's FRSA action for the benefit of the bankruptcy estate's creditors.

The parties in this matter dispute whether Respondent's actions were in any manner unlawful or retaliatory. The parties recognize that there are issues in dispute and wish to avoid the hazards, delays and costs of further litigation by an agreed settlement under § 8(i) of the Act. This Settlement Agreement is intended to be a full, final, and complete settlement of any and all issues arising from said accident. Based on the disputed issues, the parties agree that the proposed settlement is adequate to compensate Claimant for the effects of his industrial injuries. Claimant further stipulates that the Settlement Agreement is not obtained under duress. The parties request that I approve the Settlement Agreement.

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 20 C.F.R. §702.243, it is hereby **ORDERED** that the Settlement Agreement pursuant to Section 8(i) submitted for approval, which includes a provision for the payment of attorneys' fees and costs, is **APPROVED**, and the parties are directed to carry out the requirements of the Settlement Agreement.

IT IS FURTHER ORDERED that the liability of Employer/Carrier for all payments of wage-based compensatory damages and any other payments under the Act will be **TERMINATED** and **DISCHARGED** upon compliance by Employer/Carrier with the requirements of the Settlement Agreement.

IT IS SO ORDERED.

CHRISTINE L. KIRBY
Administrative Law Judge

Washington, D.C.