



Issue Date: 16 July 2014

CASE NO.: 2014-FRS-00066

In the Matter of:

**JUSTIN JOHNSON,
Complainant,**

v.

**GRAND TRUNK WESTERN RAILROAD COMPANY,
Respondent.**

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

This case arises under the employee protection provisions of the Federal Rail Safety Act (FRSA), as amended, 49 U.S.C. §20109. Pursuant to a Scheduling Order of June 19, 2014, the case was tentatively scheduled to be heard in Detroit, Michigan, from January 15 to 16, 2015; however, no hearing is necessary as the parties have reached a settlement.

Under cover letter of June 27, 2014, filed on July 7, 2014, counsel for Complainant, on behalf of both parties, submitted a Confidential Settlement Agreement and Release of All Claims (hereafter "Settlement Agreement") signed by both parties, for approval, in accordance with 29 C.F.R. §1982.111(d)(2), as added, Interim Final Rule, 75 Fed. Reg. 53527, 53533 (Aug. 31, 2010).¹ That section relates to adjudicatory settlements and requires the submission of a settlement agreement to the presiding administrative law judge for approval. *Compare Hoffman v. Fuel Economy Contracting*, 1987-ERA-33 (Sec'y Aug. 4, 1989) (Order) (requiring that settlements in whistleblower cases brought under the Energy Reorganization Act be reviewed to determine whether they are fair, adequate and reasonable) *with Indiana Dept. of Workforce Development v. U.S. Dept. of Labor*, 1997-JTP-15 (Admin. Review Bd. Dec. 8, 1998) (holding ALJ has no authority to require submission of settlement agreement in Job Training Partnership case when parties have stipulated to dismissal under Rule 41(a)(1)(A)(ii), FRCP, and contrasting ERA cases.)

Other Causes of Action/Future Claims. I have limited my review to determining whether the terms of the Settlement Agreement are a fair, adequate and reasonable settlement of Complainant's allegations that the Respondent violated the FRSA. *See, e.g., Fish v. H and R*

¹ An earlier copy of the Settlement Agreement was transmitted under cover letter of June 13, 2014; however, inasmuch as it was not signed by or on behalf of Respondent, I did not act upon that document and had my law clerk request that a copy executed by both parties be submitted.

Transfer, ARB No. 01-071, ALJ No. 2000-STA-56 (ARB Apr. 30, 2003); *Poulos v. Ambassador Fuel Oil Co., Inc.*, 1986-CAA-1 (Sec'y Nov. 2, 1987). Likewise, to the extent that the Settlement Agreement may relate to future claims, I have interpreted it as relating solely to the right to sue in the future on claims or causes of action arising out of facts occurring before the date of the Settlement Agreement. *See generally McCoy v. Utah Power*, 1994-CAA-0001 (Sec'y, Aug. 1, 1994)

Confidentiality Clause. The Settlement Agreement contains a confidentiality provision. However, the parties are advised that records in whistleblower cases are agency records which the agency must make available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. §552, and the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA. *See generally Seater v. Southern California Edison Co.*, 1995-ERA-13 (ARB Mar. 27, 1997).

Having reviewed the terms of the Settlement Agreement, I find that the settlement is fair, reasonable, and adequate, and that it should be approved. Accordingly, I issue the following Order, in accordance with 29 C.F.R. §1982.111. This Decision and Order Approving Settlement Agreement and Dismissing Complaint shall be the final agency action, in accordance with 29 C.F.R. §1982.111(e).

ORDER

IT IS HEREBY ORDERED that the Settlement Agreement be, and hereby is, **APPROVED**, and the parties shall comply with its terms to the extent that they have not already done so; and

IT IS FURTHER ORDERED that this action be, and hereby is **DISMISSED WITH PREJUDICE**.

PAMELA J. LAKES
Administrative Law Judge

Washington, D.C.