



Issue Date: 30 September 2015

*In the Matter of:*

**BRIAN LESTER,**  
*Complainant,*

Case No.: 2014-FRS-00078

v.

**INDIANA 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 July 7, 2015, *Notice of Hearing and Prehearing Order*, this matter was scheduled for formal hearing on February 17-18, 2015, in St. Louis, MO.

I received the parties’ *Settlement Agreement and General Release* (“Settlement Agreement”) on September 22, 2015. The Settlement Agreement is signed by Brian G. Lester (“Complainant”); Ryan Brennan, counsel for Complainant; and Kristin L. Bevil, counsel for Respondent. According to the terms of the Settlement Agreement submitted by the above-mentioned parties, Claimant is to receive a payment of \$125,000.00. The parties represent that the compensation terms are fair and reasonable in relation to the 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. The parties also agree that each party to this matter is to bear its own expenses, costs of suit, and attorney fees.

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 FRS case.

Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties’ submissions in this case, including the Settlement Agreement,

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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).

become a part of the record in this case, 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 Mr. Lester. 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.

**IT IS SO ORDERED.**

CHRISTINE L. KIRBY  
Administrative Law Judge

Washington, D.C.

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<sup>2</sup> 5 U.S.C. § 552 (2011).

<sup>3</sup> 29 C.F.R. § 1982.111(e)