



Issue Date: 20 July 2015

CASE NO.: 2014-FRS-105

In the Matter of:

JERRY LONG,
Complainant,

v.

SOO LINE RAILROAD,
Respondent

ORDER APPROVING SETTLEMENT AGREEMENT

This matter arises out of a complaint filed by Jerry Long (“Complainant”) against Soo Line Railroad, d/b/a Canadian Pacific (“Respondent”) under Section 1521 of the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109. After the Complainant submitted his objections to the Secretary’s Findings on May 17, 2014, and requested a hearing before an administrative law judge, a hearing was scheduled for April 27, 2015. However, the hearing was later cancelled because counsel for the Respondent advised that the parties were close to finalizing a confidential resolution and full release, which was to be submitted to the undersigned. Accordingly, the parties were ordered to “submit their Settlement Documents to the undersigned within thirty (30) days.” On May 11, 2015, counsel for the Complainant submitted a *Stipulation of Dismissal with Prejudice* (“Stipulation”). The Stipulation, which was signed by both parties, read, “Each of the parties to this lawsuit, by and through their counsel, hereby stipulates to dismiss the action in its entirety with prejudice, and without costs, disbursements or fees to any party.” In response to a May 22, 2015, Order finding the Stipulation insufficiently explained, the parties submitted a *Joint Motion for Approval of Release and Settlement Agreement* (“Joint Motion”) on June 8, 2015. However, the undersigned again found the exchanged consideration insufficiently explained. Therefore, on July 2, 2015, the undersigned Ordered the parties to delineate the consideration exchanged in more detail. On July 9, 2015, this Office received a letter from the Complainant’s counsel submitted in response to the undersigned’s July 2, 2015, Order. The correspondence from the Complainant’s counsel delineated the consideration agreed to by the parties and clearly explained its adequacy.

The parties have agreed to keep the terms and conditions of their settlement confidential, to the extent permitted by law. However, notwithstanding the parties’ settlement, the parties’ submissions, including those ordered, become part of the record of the case and may be subject to disclosure under the Freedom of Information Act, 5 U.S.C. section 552, *et seq.* (FOIA). FOIA

requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, 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 must be made available for public inspection and copying under FOIA. If a FOIA request is made for the settlement agreement in the above-captioned claim, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption.¹

Having reviewed the settlement agreement, I find that its terms are fair, adequate, and reasonable. *Price v. Norfolk Southern Railway Co.*, ARB Case No. 12-020, slip op. at 3 (Feb. 3, 2012). Accordingly, I approve the settlement agreement, the terms and conditions of which are adopted by reference and incorporated into this Order, and the matter is dismissed with prejudice.

JOHN P. SELLERS, III
Administrative Law Judge

¹ The parties have agreed that the terms of the settlement will be treated as confidential. The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily. 29 C.F.R. § 70.26(b). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a FOIA request is received seeking release of that information. Accordingly, the Settlement in this matter will be placed in an envelope marked "PREDISCLOSURE NOTIFICATION MATERIALS." Consequently, before any information in this file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. *See* 29 C.F.R. § 70.26 (2001). Furthermore, the undersigned will refrain from discussing specific terms or dollar amounts contained in the Settlement.