



Issue Date: 05 October 2015

CASE NO.: 2014-FRS-00097

**In the Matter of:
CHRIS B.THERRES,
Complainant,**

v.

**SOO LINE RAILROAD COMPANY d/b/a
CANADIAN PACIFIC RAILWAY,
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. The matters before the undersigned are the Stipulation for Dismissal filed by the parties and the confidential settlement agreement subsequently filed. For the reasons set forth below, the Settlement Agreement is being approved and the case is being dismissed.

Procedural Background

On August 25, 2015, the parties filed a Stipulation of Dismissal with Prejudice, signed by counsel for both parties. In the Stipulation, Complainant agreed to dismiss the pending action with prejudice and the parties agreed to my signing a proposed Order of Dismissal with Prejudice which provides for dismissal “with prejudice, with each party bearing their own costs, disbursements and attorneys’ fees.” However, settlement agreements under the FRSA are governed by 29 C.F.R. §1982.111(d)(2), as added, Interim Final Rule, 75 Fed. Reg. 53527, 53533 (Aug. 31, 2010). 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.) Thus, settlements under the FRSA, as in other

whistleblower programs, must be approved. In view of the above, by an Order Requiring Response and Submission of any Settlement Agreement for Approval of September 14, 2015, I ordered the parties to advise within 30 days whether a settlement agreement was involved and, if so, provide the settlement agreement for approval.

In a response dated September 24, 2015, filed on September 28, 2015, the parties advised that they had confidentially resolved the above-captioned matter. They provided a Confidential Settlement Agreement and Release (hereafter "Settlement Agreement") for approval and asked that it not be disclosed under the Freedom of Information Act and that it be maintained in a confidential envelope and that the parties be contacted in the event that a FOIA request for the Settlement Agreement is made.

I have reviewed the Settlement Agreement and now approve it.

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 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 and Predisclosure Notification.

The Settlement Agreement contains a confidentiality provision and the parties have requested predisclosure notification under 29 C.F.R. §70.26(f). *See also* 29 C.F.R. §18.85(b) (2015) ("Sealing the record.") In that regard, they have designated the Settlement Agreement as containing confidential information. Such information may be exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. §552, to the extent covered by a specific exemption, such as Exemption 4, relating to confidential and privileged commercial and financial information. 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, 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). Pursuant to the request of the parties, however, the Settlement Agreement will remain confidential to the extent permitted. It will be maintained in a separate folder and before any information is disclosed pursuant to a FOIA request, the parties will be notified and given the opportunity to file objections in accordance with 29 C.F.R. §70.26.

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.