

**U.S. Department of Labor**

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**Issue Date: 20 April 2015**

CASE NO.: 2014-FRS-00123

*In the Matter of:*

PAUL WILSON,  
Complainant,

v.

BNSF RAILWAY COMPANY,  
Respondent.

**ORDER APPROVING SETTLEMENT**

This matter arises under the Federal Railway Safety Act (“FRSA”), 49 U.S.C. § 20109, and the implementing regulations found at 29 C.F.R. § 1982. Richard Carlson, Attorney at Law, represented Complainant. Paul Balanon and Jennifer Willingham, Attorneys at Law, represented Respondent. On April 17, 2015, the parties submitted a written request to approve a settlement agreement that was submitted pursuant to 29 C.F.R. § 1982.111(d)(2) and signed by all the parties.

I note that the settlement agreement includes a confidentiality provision agreed to by the parties. The files maintained by this Office, including this settlement agreement, are subject to disclosure under the provisions of the Freedom of Information Act (“FOIA”), unless an exemption applies. 5 U.S.C. § 552; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013). The Department of Labor (“DOL”) has regulations that govern the FOIA process, and exemptions are determined at the time of the request, not at the time of the filing of the agreement. 29 C.F.R. Part 70; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013). 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. 20 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 a sealed envelope clearly marked “CONFIDENTIAL -- PREDISCLOSURE NOTIFICATION REQUIRED” with notice that the parties object to disclosure and seek the procedures of 29 C.F.R. § 70.26 prior to any release of information. Before any information in this file is disclosed pursuant to a FOIA

request, the DOL shall notify the parties to permit them to file any objections to disclosure. See 29 C.F.R. § 70.26.

Furthermore, I note that the agreement also resolves issues under statutes other than the FRSA. “The Secretary’s authority over the settlement agreement is limited to such statutes as are within [the Secretary’s] jurisdiction and is defined by the applicable statute,” and I have, therefore, limited my review to the terms and conditions resolving the FRSA issues. *Poulos v. Ambassador Fuel Oil Co. Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987). Having reviewed the settlement agreement, I find that the settlement terms are fair, adequate, and reasonable, and not contrary to public policy. *Price v. Norfolk Southern Railway Co.*, ARB Case No. 12-020, slip op. at 3, ALJ Case No. 2012-FRS-00051 (Feb. 3, 2012).

I hereby approve the settlement agreement, the terms and conditions of which are adopted by reference and incorporated into this Order. Having approved the agreement, the matter is dismissed with prejudice. All dates are vacated.

SO ORDERED.

RICHARD M. CLARK  
Administrative Law Judge