



Issue Date: 24 January 2017

CASE NO.: 2015-FRS-00075

IN THE MATTER OF

DAVID P. CARDEN

Complainant

v.

NORFOLK SOUTHERN RAILWAY COMPANY

Respondent

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

This case arises from a complaint filed by David Carden (“Complainant”) against Norfolk Southern Railroad Company (“Respondent”) under the “whistleblower” protection provisions of the Federal Railroad Safety Act (“FRSA”), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (“9/11 Act”), Pub. L. No. 110-53. The 9/11 Act was the result of a Conference Report, H.R. Rep. 110-259 (July 25, 2007) (Conf. Rep.).

A hearing in this matter was scheduled to commence before the undersigned on January 17, 2017 in Birmingham, Alabama. By correspondence dated January 12, 2017, Counsel for Respondent notified the Court that the case had settled and stated a copy of the Settlement Agreement and General Release would be submitted for approval soon. On January 19, 2017, the parties submitted a copy of the Settlement and Final Release Agreement for the undersigned’s approval pursuant to 29 CFR § 1982.111.

I first note that the parties were ably represented by counsel. Further, the Complainant’s signature on the agreement represents his understanding of the agreement’s provisions and the associated rights and obligations. Having reviewed the agreement, I find the provisions are fair, adequate, and not contrary to the public interest. The settlement also supports a finding that the complaint be dismissed. Consequently, approval of the agreement is appropriate. Upon my approval, the parties shall implement their settlement as specifically stated in the Agreement.

The parties have agreed to keep the specific terms of the agreement confidential, subject to applicable laws. To effectuate such confidentiality, I will have the settlement agreement sealed. However, notwithstanding the parties’ agreement, the parties’ submissions, including the settlement agreement, become part of the record of the case and are subject to the Freedom of

Information Act (“FOIA”), 5 U.S.C. § 552(a). If a FOIA request is made for the settlement agreement, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Settlement and Final Release Agreement is **APPROVED**; and
2. The complaint is **DISMISSED WITH PREJUDICE**.

SO ORDERED this 24th day of January, 2017, at Covington, Louisiana.

CLEMENT J. KENNINGTON
Administrative Law Judge