



Issue Date: 12 October 2016

Case No.: 2015-FRS-00058

In the Matter of:

DAVID DURFEE,
Complainant,

v.

GRAND TRUNK WESTERN RAILROAD COMPANY,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT, DISMISSING
COMPLAINT, AND CANCELLING HEARING**

This proceeding arises under the employee protection provisions of the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109. A hearing of this case is currently scheduled for October 13, 2016 in Detroit, Michigan.

On September 7, 2016, Employer’s counsel filed with this Court the parties’ *Joint Motion for Approval of Settlement Agreement* (“Joint Motion”), signed by Claimant’s counsel and Employer’s counsel. The *Joint Motion* requests an order “(1) finding the proposed settlement agreement is fair, adequate, reasonable, and not contrary to the public interest; (2) approving the proposed settlement agreement; and (3) dismissing this matter with prejudice, each party to bear its own costs.” *Id.* at 2. Additionally, the *Joint Motion* requests that “the financial terms of the settlement agreement be maintained in confidence.” *Id.* at 1. The *Joint Motion* is accompanied by a Confidential Settlement Agreement (“*Settlement Agreement*”), signed by Employer’s counsel and by Claimant.

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 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*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013).

The Implementing Federal regulations at 29 C.F.R. § 1982.111(d)(2) provide the following regarding settlements:

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ, or by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as the case may be.

29 C.F.R. § 1982.111(d)(2). Additionally, “[a]ny settlement approved by OSHA, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced in United States district court pursuant to §1982.113.” 29 C.F.R. § 1982.111(e).

To the extent that the *Settlement Agreement* contains provisions that may relate to actions by Complainant or Respondent under any other statutes other than the FRSA, this Order makes no determination regarding the propriety of such provisions. My authority over settlement agreements is limited to the statutes that are within the jurisdiction of the Office of Administrative Law Judges as set forth in the applicable statute. Accordingly, I approve only the terms of the Settlement Agreement pertaining to Complainant’s FRSA case.

After review of the *Settlement Agreement* and the administrative record, I find that the *Settlement Agreement* complies with the standards required under the Act and is approved.

ORDER

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

1. The hearing in the above-captioned claim is **CANCELLED**;
2. The Settlement Agreement in Case No.: 2015-FRS-00058 is **APPROVED**;
3. The Complainants’ complaints are **DISMISSED WITH PREJUDICE**;
4. The Settlement Agreement in Case No.: 2015-FRS-00058 is **CONFIDENTIAL**, and per the request of the parties in the Settlement Agreements are to be handled in a manner consistent with the restricted access provisions of 29 C.F.R. § 18.85(b), Privileged, Sensitive, or Classified Material and the pre-disclosure notice requirements of 29 C.F.R. § 70.26.

LARRY S. MERCK
Administrative Law Judge

