

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 30 September 2015

CASE NO.: 2015-FRS-00018

In the Matter Of:

BRYAN LEE,
Complainant,

v.

UNION PACIFIC RAILROAD CO.
Respondent.

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

This proceeding arises from a complaint of discrimination filed under the Federal Rail Safety Act (“the FRSA”), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (the “9/11 Act”), Pub. L. 110-53, 121 Stat 266 (Aug. 3, 2007). On November 13, 2014, the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), acting as agent for the Secretary of Labor (“Secretary”), issued a letter dismissing the Complainant’s complaint. By letter dated December 23, 2014, the Complainant objected to the Secretary’s findings and requested a *de novo* hearing before an administrative law judge. The hearing was set for September 10, 2015 in Omaha, Nebraska. On September 2, 2015, I conducted a pretrial conference, wherein the parties indicated that all disputed issues were resolved. I subsequently issued an order cancelling the hearing and setting a deadline for submission of settlement documentation.

On September 21, 2015, counsel for the Respondent submitted a cover letter along with a document entitled “Settlement Agreement and Release of Claims” (hereinafter “Stipulation”). Because the cover letter conforms to our discussion during the September 2, 2015 conference, I

will treat the letter as a joint motion to approve the settlement and a request to seal the Stipulation and keep the terms of the settlement confidential.

In reviewing the Stipulation, I must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant's allegations that the Respondent violated the FRSA whistleblower provisions. *See* 29 C.F.R. § 1982.111(d)(2). I find that the Stipulation complies with the standard required and it is APPROVED pursuant to 29 C.F.R. § 1982.111(d)(2), subject to my comments below.

Considering the request to seal and keep confidential, the Respondent, in our conference, asserted its pre-disclosure notification rights in accordance with 29 C.F.R. § 70.26, and the copy of the Stipulation therefore is being maintained in a separate envelope and identified as being confidential commercial information pursuant to the parties' request. *See Duffy v. United Commercial Bank*, 2007-SOX-00063 (Oct. 23, 2007). In this regard, I find that the Stipulation contains financial information and business information that is privileged or confidential within the meaning of 29 C.F.R. §70.2(j), as well as personal information relating to the Complainant.

With regard to confidentiality of the Stipulation, the parties are advised that notwithstanding the confidential nature of the Stipulation, all of their filings, including the Stipulation, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C.A. § 552 *et seq.* The Administrative Review Board has noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine *at the time a request is made* whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

Seater v. S. Cal. Edison Co., USDOL/OALJ Reporter (PDF), ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

The parties have also requested that access to the Stipulation be restricted by the undersigned under 29 C.F.R. § 18.56 (Restricted Access). I find good cause for such restricted access and the Stipulation will be so maintained under that authority in the sealed envelope. *See* 29 C.F.R. §§ 18.56 & 70.26. *See Sharp v. The Home Depot, Inc.*, ALJ No. 2006-SOX-00129, 2008 DOLSOX LEXIS 4, at *3 (ALJ Jan. 16, 2008).

Upon consideration of the Stipulation and the record in this proceeding, I find that the terms and conditions are fair, adequate, and reasonable under the FRSA. The terms adequately protect Mr. Lee and it is in the public interest to approve the Stipulation as a basis for administrative disposition of this case. Accordingly, it is **ORDERED** that:

- (1) The request to seal and keep the Stipulation confidential is **GRANTED**;
- (2) The motion to approve the Stipulation is **GRANTED**;
- (3) The Stipulation is **APPROVED**;
- (4) The Stipulation shall be designated as confidential subject to the procedures requiring disclosure under FOIA; and
- (5) The Complaint of Bryan Lee is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts