



**Issue Date: 24 October 2016**

CASE NO. 2015-FRS-00053

*In the Matter of*

**DANIEL NELSON,**  
Complainant,

v.

**HERZOG TRANSIT SERVICES,**  
Respondent.

**ORDER APPROVING SETTLEMENT**  
**AND DISMISSING COMPLAINT**

This case arises under the Federal Rail Safety Act, 49 U.S.C. § 20109, and its implementing regulations, 29 C.F.R. Part 1982. On October 14, 2016, the parties filed a joint motion to approve a proposed settlement agreement and dismiss the case. A settlement requires the approval of the administrative law judge. *See* 29 C.F.R. § 1982.111(d)(2).

On October 17, 2016, I conducted a telephone conference. Complainant, who is self-represented, was present. Respondent was represented by counsel of record. I advised the parties of certain changes that were necessary if their agreement was to be approved.

On October 21, 2016, the parties submitted for review and approval a revised settlement agreement. The revision addresses the requirements that I stated at the phone conference. I approve the revised settlement with certain caveats.

First, language in the agreement settles, releases, or otherwise addresses claims and potential claims that go beyond the scope of the Federal Rail Safety Act and its implementing regulations. I limit my review to the asserted whistleblower claim only; anything beyond that exceeds this Office's jurisdiction.

Second, the tax characterization and treatment of the settlement is outside the jurisdiction and expertise of this Office, and I do not review it.

Third, the parties choose New Mexico law to control any dispute between them concerning the agreement and a particular New Mexico forum for the litigation of any such dispute. As I construe this provision, it is not intended to and does not limit the authority of any federal court or of the Secretary of Labor. It is an agreement between the parties, limited in its application to

themselves. For the federal courts and the Secretary, the law and regulations of the United States control.<sup>1</sup>

Fourth, the agreement contains a confidentiality provision that imposes certain requirements on Complainant. I construe the provision to allow Complainant to disclose the settlement agreement or respond to questions about it when required by law or proper legal process. The provision does not purport to limit disclosures that the Department of Labor might make. The parties should appreciate that the records of the Department of Labor are subject to the Freedom of Information Act. If a person requests information that includes this settlement agreement, the Department (after complying with the applicable regulatory procedures) might release to the requestor a copy of the settlement agreement.

#### Order

The proposed settlement agreement is fair and reasonable as to the claim under the Federal Rail Safety Act. None of the terms is against the public interest. The proposed settlement agreement is APPROVED, and the parties are ORDERED to comply with its terms.

This matter is DISMISSED with prejudice in its entirety as to all claims and all parties.

SO ORDERED.

STEVEN B. BERLIN  
Administrative Law Judge

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<sup>1</sup> See *Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 3 (ARB Sept. 26, 2011).