



Issue Date: 21 February 2017

Case Nos.: 2016-FRS-00088
2016-FRS-00089

In the Matters of

PATRICK HARBOLIC
ERIC ADAMS
Complainants

v.

METRO NORTH RAILROAD
Respondent

FINAL ORDER DISMISSING COMPLAINT WITH APPROVAL OF SETTLEMENT AGREEMENT AND CANCELING PREHEARING CONFERENCE AND HEARING

This matter arises under the employee protection provisions of the Federal Rail Safety Act (FRSA or the Act), 49 U.S.C. § 20109, as amended.¹ The employee protection provisions of the Act apply to railroad employees who feel they have been subjected to retaliatory discipline or discrimination by their employer for engaging in protected activities related to railway safety. Implementing regulations were published on August 31, 2010. *See* “Procedures for the Handling of Retaliation Complaints Under the National Transit systems Security Act and the Federal Railroad Safety Act,” 75 Fed. Reg. 53,522 (Aug. 31, 2010), to be codified at 29 C.F.R. Part 1982.² Patrick Harbolic and Eric Adams (each referenced as “Complainant”) filed a complaint under § 20109 of the FRSA against Metro North Railroad (“Metro North” or “Respondent”) in which each Complainant alleged Metro North retaliated against him for his participation in protected activity under the FRSA.

An Initial Prehearing Order And Notice Of Hearing (“Hearing Order”) issued on October 31, 2016, a prehearing teleconference was scheduled for February 22, 2017 and a hearing for March 21-23, 2017. By facsimile transmission from Complainants’ counsel dated and received February 16, 2017, a Notice of Settlement Agreement and Request for Approval, as well as an “Agreement To Settle And Withdraw” (“Settlement Agreement”) was received.

¹ Pub. L. 110-53, Title XV, §1521, Aug. 3, 2007, 121 Stat. 444; Pub. L. 110-432, Div. A, Title IV, § 419, Oct 16, 2008, 122 Stat. 4892.

² Unless otherwise noted, all references to regulations are to Title 29, Code of Federal Regulations (C.F.R.). References to the implementing regulations will cite to the applicable provision in Part 1982, rather than to the Federal Register.

The Settlement Agreement fully settles and resolves the dispute between Complainants and Respondent at issue in these matters. Both Complainants and Respondent were ably represented by counsel. The Settlement Agreement states that it “has been obtained and entered into without duress and in the best interest of the all parties.”

The review of the Settlement Agreement is limited to determining if its provisions are a fair, adequate and reasonable settlement of Complainants’ allegations that Respondent had violated the FRSA. Those provisions are found to be fair, adequate, reasonable and not contrary to public interest.³ Further, the Settlement Agreement supports a finding that the instant complaints be dismissed with prejudice. Accordingly, approval of the Settlement Agreement is appropriate. Upon such approval, the parties will implement the provisions of the Settlement Agreement. This Order will have the same force and effect as one made after a full hearing on the merits.⁴

The parties are notified that the prehearing conference and hearing as scheduled in the Hearing Order are canceled. The parties’ Settlement Agreement is **APPROVED** and the FRSA complaints are Patrick Harbolic and Eric Adams are **DISMISSED** with prejudice.

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey

³ See *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep’t of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, 89-ERA-9, 89-ERA-10 (Sec’y Mar. 23, 1989 and *Heffley v. NGK Metals Inc.*, 89-SDW-2 (Sec’y Mar. 6, 1990).

⁴ See 29 C.F.R. § 1982.111(e) of the Interim Final Rule, 75 Fed. Reg. 53527 (Aug. 31, 2010).