



**Issue Date: 02 August 2018**

Case No.: 2016-FRS-00042  
OSHA No.: 4-5070-15-086

*In the Matter of:*

**KENNETH L. BROOKS,**  
*Complainant,*

v.

**CSX TRANSPORTATION, INC.,**  
*Respondent.*

**DECISION AND ORDER GRANTING PARTIES' JOINT MOTION TO APPROVE  
SETTLEMENT AND DISMISS THE CLAIM**

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), and as implemented by federal regulations at 29 C.F.R. Part 1982 (2017) and 29 C.F.R. Part 18, Subpart A (2017).

On July 20, 2018, the parties filed *Complainant Kenneth L. Brooks' and Respondent CSX Transportation, Inc.'s Joint Motion to Approve Settlement and Dismiss Action with Prejudice*, along with a copy of the *Settlement Agreement and General Release* (hereinafter the "Settlement Agreement"), pursuant to 29 C.F.R. § 1982.111(c) & (d)(2). The Settlement Agreement resolves all issues raised in the complaint, has been signed by the Complainant, Complainant's counsel, and Respondent's counsel and is incorporated herein by reference.

Based on the record as a whole and upon review of the Settlement Agreement, I find that the terms of the Settlement Agreement are fair, adequate, and reasonable, and it is hereby **APPROVED** pursuant to 29 C.F.R. § 1982.111(d)(2), subject to the below comments.

With regard to confidentiality of the Settlement Agreement, the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, all of their filings, including the Settlement Agreement, 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.*, 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 predisclosure notification rights under 29 C.F.R. § 70.26.

Finally, I note that my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Settlement Agreement pertaining to Complainant's FRSA claim, 2016-FRS-00042. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

Accordingly, it is **ORDERED** that:

- (1) The parties' Joint Motion is **GRANTED**;
- (2) The Settlement Agreement is **APPROVED** and constitutes the final order of the Secretary of Labor and may be enforced under 29 C.F.R. § 1982.111(e); and
- (3) The complaint of Kenneth L. Brooks is **DISMISSED WITH PREJUDICE**.

**SO ORDERED.**

LARRY S. MERCK  
Administrative Law Judge