



**Issue Date: 15 August 2016**

**OALJ Case No.: 2016-FRS-00033**  
**OSHA Case No.: 6-0030-16-019**

*In the Matter of:*

**MARK HARRIS,**  
*Complainant,*

v.

**SOUTHWESTERN RAILROAD,**  
*Respondent.*

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

This matter arises out of a claim filed under the employee protection provisions of the Federal Railroad Safety Act (“FRSA”), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Pub. L. No. 110-53, 121 Stat. 266, 444-48 (2007), and Section 419 of the Rail Safety Improvement Act of 2008 (“RSIA”), Pub. L. No. 110-432, 122 Stat. 4848, 4892-93 (2008).

On January 25, 2016, Mark Harris (“Complainant”) filed a formal complaint with the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), pursuant to the FRSA, alleging that his former employer, Southwestern Railroad (“Respondent” or “Southwestern”), terminated his employment in retaliation for raising safety issues. After conducting an investigation, the Secretary of Labor, acting through the Regional Administrator, OSHA, issued a final determination letter dated March 14, 2016 (“Secretary’s Findings”), finding no reasonable cause to believe Respondent violated the FRSA, and dismissed the complaint. On March 17, 2016, Complainant appealed the Secretary’s Findings to the U.S. Department of Labor, Office of Administrative Law Judges (“OALJ”). I scheduled the matter for formal hearing on October 16, 2016 in Lubbock, Texas.

On June 27, 2016, at the parties’ joint request, I appointed a mediator. On July 22, 2016, I issued an order concluding mediation and canceling the hearing after counsel advised the Court that the parties had reached a settlement. On August 9, 2016, the parties submitted an executed

settlement agreement (“Settlement”) for my review and approval pursuant to 29 C.F.R. § 1982.111.<sup>1</sup>

The Settlement resolves the controversy arising from Complainant’s complaint against Respondent. The Settlement provides that Complainant will release Respondent from claims arising under the FRSA as well other laws, and that the present action shall be dismissed with prejudice. This order, however, is limited to whether the terms of the Settlement are a fair, adequate, and reasonable settlement of Complainant’s allegations that Respondent violated the FRSA.<sup>2</sup>

The Settlement states that Respondent denies any wrongdoing, and that the agreement imposes no confidentiality requirement. The parties agree that Respondent shall make one payment in the amount of \$16,500.00 to Complainant, representing non-wage compensatory damages and emotional distress, and a second payment to Complainant in the gross amount of \$16,500.00, less legally required state and federal withholdings, representing backpay. Respondent shall also make one payment in the amount of \$17,000.00 to Mr. Jerry Easley, Esq., representing attorney’s fees, costs and expenses. The three checks shall be delivered to Complainant’s counsel within ten days of the issuance of this order. The Settlement is signed by Complainant, his counsel and a representative of Respondent. There is no indication that the agreement was made under duress. Additionally, I find the terms of the Settlement to be fair, adequate, reasonable, and not contrary to public policy.

### **Order**

Based on the above, it is hereby ORDERED that the *Settlement Agreement* filed August 9, 2016 is APPROVED, and thereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §1982.113. It is further ORDERED that the complaint filed in this matter is DISMISSED with prejudice.

**SO ORDERED:**

**STEPHEN R. HENLEY**  
Chief Administrative Law Judge

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<sup>1</sup> After objections to the Secretary’s Findings are filed, “the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ.” 29 C.F.R. § 1982.111(d)(2). A settlement approved by the ALJ “constitute[s] the final order of the Secretary.” § 1982.111(e).

<sup>2</sup> As stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987), “the Secretary’s authority over the settlement agreement is limited to such statutes as are within [the Secretary’s] jurisdiction and is defined by the applicable statute.”