



**Issue Date: 06 October 2016**

Case No.: **2016-FRS-00011**

*In the Matter of:*

**MICHELLE MARVIN and INDIANA CRANE  
AND RIGGING SERVICE, LLC,**  
Complainants,

v.

**NORFOLK SOUTHERN RAILWAY COMPANY,**  
Respondent.

### **DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT**

This case arose under the Federal Rail Safety Act (FRSA), 49 U.S.C. § 20109, as amended, which provides whistleblower protections to employees of railroad carriers for engaging in certain protected activities. On October 6, 2016, the parties submitted for my review and approval a “Settlement and Final Release” (“Settlement Agreement”), which resolves all issues raised in the complaint. The Settlement Agreement is incorporated herein by reference, without in any way affecting the confidential designation as described below. The Settlement Agreement is signed by the Complainant and a representative of the Respondent.

My review of the Settlement Agreement is limited to a determination of whether its terms are fair, adequate and reasonable under the FRSA.<sup>1</sup> The settlement must adequately protect the whistleblower and must not be contrary to public interest.

Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties’ submissions in this case, including the Settlement Agreement, become a part of the record in this case, and are subject to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. FOIA requires agencies to disclose requested records unless such records are exempt from disclosure under FOIA. *See, e.g., Fish v. H and R Transfer*, ARB No. 01-071, ALJ Case No. 2000-STA-56, slip op. at 2 (ARB Apr. 30, 2003). Paragraph 6 of the Settlement Agreement provides that the parties will keep the existence and terms of the Settlement Agreement confidential, with certain specified exceptions.

I **ORDER** paragraph 1 on page 2 of the Settlement Agreement, which contains confidential financial information, to be sealed. I do not find that the parties have set forth

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<sup>1</sup> *See Poulos v. Ambassador Fuel Oil Co.*, No. 91-ERA-25, slip op. at 2 (Sec’y of Labor, Nov. 4, 1991).

sufficient reasons to seal the remaining portions of the agreement when weighed by the presumption of public access. *See* 29 C.F.R. § 18.85(b).

This Office will place the Settlement Agreement in a sealed envelope marked “Confidential Commercial and Personal Financial Information” and place it in the case file. A copy of the Settlement Agreement with paragraph 1 redacted will be placed in the public file. In the event that a request is made for access to the unredacted copy of the Settlement Agreement, the Department of Labor will provide the parties with pre-disclosure notification and an opportunity to respond before any disclosure is made. *See* 29 C.F.R. § 70.26. However, the parties are reminded that the pre-disclosure notice procedure does not, in any way, constitute a finding that the Settlement Agreement, or any portion thereof, will be exempt from disclosure under FOIA. Similarly, this procedure does not suggest that the appropriate disclosure officer would ultimately decline disclosure of the settlement agreement to the FOIA requester, if such a FOIA request were received. *See* 29 C.F.R. § 70.26(f).

After careful consideration of the Settlement Agreement, I find that the terms and conditions are acceptable. Moreover, I find the terms to be fair, adequate, and reasonable under the FRSA, and that the terms adequately protect Complainants. Furthermore, I believe it is in the public interest to approve this Settlement Agreement as a basis for administrative disposition of this case, and I therefore approve the Settlement Agreement.

**IT IS THEREFORE ORDERED** that the Settlement Agreement submitted by the parties is **APPROVED**. The complaint is **DISMISSED WITH PREJUDICE**. In accordance with the regulations, the settlement constitutes the final order of the Secretary of Labor<sup>2</sup> and may be enforced under 29 C.F.R. § 1982.113.

**SO ORDERED.**

**MORRIS D. DAVIS**  
Administrative Law Judge

Washington, D.C.

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<sup>2</sup> 29 C.F.R. § 1982.111(e).