



Issue Date: 02 September 2016

Case Number: 2016-FRS-00009

In the Matter of

TURNER MOODY
Complainant

v.

UNION PACIFIC RAILROAD COMPANY
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 or about September 25, 2015, Turner Moody (“Complainant”) filed a complaint with the Secretary of Labor alleging that Union Pacific Railroad Company (“Respondent”) violated the FRSA by terminating his employment after he reported an altercation with a coworker. Following an investigation, the Secretary, acting through his agent, the Area Director for the Occupational Safety and Health Administration (“OSHA”), dismissed the complaint on October 26, 2015. Complainant timely appealed to the Office of Administrative Law Judges (“OALJ”) and the case was scheduled for formal hearing on August 9, 2016 in Little Rock, Arkansas.

On June 30, 2016, Respondent moved for dismissal or summary decision. Complainant filed a response on July 8, 2016. On July 26, 2016, Respondent filed a reply to Complainant’s response. On July 27, 2016, I denied Respondent’s motions for dismissal and summary decision. On August 5, 2016, I issued an order cancelling the hearing after being advised that the parties had reached a settlement. On August 30, 2016, Respondent filed a *Joint Motion for Approval of Release and Settlement Agreement* and a *Settlement Agreement and Release of Claims* (“Settlement”) for my review and approval pursuant to 29 C.F.R. § 1982.111.¹ The parties state

¹ 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).

that they “have agreed to keep the specific terms of the settlement confidential” and request that the agreement be kept under seal.²

The Settlement resolves the controversy arising from the complaint of Complainant against Respondent. This Settlement is signed by Complainant, as well as counsel for Respondent. The Settlement provides that Complainant will release Respondent from claims arising under the FRSA as well as various other laws. 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.³

The Settlement provides that Respondent shall make a payment to Complainant of the amount agreed upon. The Settlement provides that Complainant will release any and all claims arising out of his employment with Respondent, and that the present action shall be dismissed with prejudice.

I find, after reviewing the Settlement, that its terms are fair, adequate, and reasonable, and not contrary to public policy. I note that both parties are represented by counsel. Upon my approval, the parties shall implement the terms of the Settlement as stated therein. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits. Again, it is noted that my authority only extends to approving settlement of Complainant’s claim against Respondent under the FRSA.

Accordingly, it is hereby ORDERED that the Release and Settlement filed on August 30, 2016 is APPROVED and may be enforced pursuant to 29 C.F.R. § 1982.113.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

² The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily. 20 C.F.R. § 70.26(b) (2001). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a FOIA request is received seeking release of that information. Accordingly, the Settlement in this matter will be placed in an envelope marked “PREDISCLOSURE NOTIFICATION MATERIALS.” Consequently, before any information in this file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. *See* 29 C.F.R. § 70.26 (2001). Furthermore, the undersigned will refrain from discussing specific terms or dollar amounts contained in the Settlement.

³ 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.” I have therefore limited my review of the Settlement to determining whether the terms thereof are a fair, adequate and reasonable settlement of the Complainant’s allegation that the Respondent had violated the FRSA.