



**Issue Date: 25 July 2016**

Case No.: 2016-FRS-32

*In the Matter of:*

DAVE PEPPER,  
Complainant,

v.

DELRAY CONNECTING  
RAILROAD COMPANY,  
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT,  
DISMISSING COMPLAINT, AND CANCELLING HEARING**

This complaint arises under the Federal Rail Safety Act, 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (Aug. 3, 2007) ("FRS"). This case is set for hearing on January 10, 2017, in Detroit, Michigan.

On July 11, 2016, the Claimant, through counsel, submitted a Motion to Withdraw his FRS Complaint. Paragraph 7 of the Motion outlined:

Pursuant to negotiations with Respondent Delray Contracting, Complainant has agreed to settle his injury (FELA claim) for the amount of \$300,000.00. Undersigned counsel who represents Complainant in his FELA claim has advised Complainant Pepper that the settlement amount is a fair and reasonable amount and the offer has been accepted by Mr. Pepper with the full knowledge and understanding of all agreed terms. In addition to resolving the FELA claim, the settlement terms require all claims of all types to be dismissed and resolved. This includes Complainant's FRSA claim herein as well as his pending matter before the Railway Labor Adjustment Board. Once again, Complainant has been fully informed of all terms and has agreed to same.

(Motion at 2.) I construe paragraph 7 of the Motion as a request that I approve Claimant's dismissal of his FRS claim as a part of the global settlement between Claimant and Respondent.

I have reviewed the parties' written settlement agreement, which was executed by the parties on or about July 20, 2016, and which was received by me on July 22, 2016. The

settlement purports to resolve all controversies between Complainant and Respondent.<sup>1</sup> I review the settlement agreement only to determine whether the terms of the settlement provide a fair, adequate and reasonable settlement of the Complainant's allegations that the Respondent violated the FRS. As was 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. See *Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. 86-CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncomb County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

The settlement provides that the Respondent shall make a payment to the Complainant of the amount agreed upon. The parties represent that the compensation terms are fair and reasonable in relation to the claim. The settlement also provides that Complainant will release any and all claims against the Respondent arising out of his employment with the Respondent, and accordingly, the Complainant's FRS claims will be dismissed with prejudice.

The parties have agreed to keep the terms and conditions of their settlement confidential, to the extent permitted by law. However, notwithstanding the parties' settlement, the parties' submissions, including those ordered, become part of the record of the case and may be subject to disclosure under the Freedom of Information Act, 5 U.S.C. section 552, *et seq.* (FOIA). FOIA requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, 92-SWD-2 and 93-STA-15, (ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998). The records in this case are agency records which must be made available for public inspection and copying under FOIA. If a FOIA request is made for the settlement agreement in the above-captioned claim, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption.<sup>2</sup>

Having been advised of the settlement terms and having reviewed the Settlement, noting that the parties are represented by counsel, I find the terms of the Settlement to be fair, adequate, reasonable, and are not contrary to public policy. The terms of the settlement are therefore **APPROVED**. Upon my approval, the parties shall implement the terms of the Settlement as stated in the settlement agreement. This Decision and Order shall have the same force and effect

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<sup>1</sup> Specifically, the Settlement "operate[s] so as to fully discharge Releasees, and each of them, from . . . the Federal Railroad Safety Act Complaint filed with the U.S. Department of Labor, which when filed was identified as Case No. 5-270-15-005, and which after appeal by Releasor is identified as Dave Pepper v. Delray Connecting Railroad Company, Case No. 2016-FRS-32." (Settlement at p. 7.)

<sup>2</sup> The parties have agreed that the terms of the settlement will be treated as confidential. 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. 29 C.F.R. § 70.26(b). 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.

as one made after a full hearing on the merits. Again, it is noted that my authority only extends to approving settlement of the Complainant's claim against the Respondent under the FRS.

Accordingly, **IT IS HEREBY ORDERED** that the Settlement and Final Release filed on July 22, 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 FURTHER ORDERED** that the complaint filed in this matter is **DISMISSED WITH PREJUDICE**, and that the hearing scheduled for January 10, 2017, is **CANCELLED**.

**SO ORDERED.**

Steven D. Bell  
Administrative Law Judge