



Issue Date: 13 October 2016

Case No.: **2016-FRS-26**

In the Matter of:

JONATHAN SHARP,
Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
MICHAEL CAREY and JEFFREY BERGER,
Respondents.

**DECISION AND ORDER APPROVING SETTLEMENT
AND CANCELLING HEARING**

This case arose under the Federal Rail Safety Act (FRSA), as amended,¹ which provides whistleblower protections to employees of railroad carriers for engaging in certain protected activities. On October 11, 2016, Respondent's counsel submitted a signed "Settlement and Final Release" for my review and approval. The Settlement Agreement is incorporated herein by reference, without in any way affecting the confidential designation of the Settlement Agreement as described below. The Settlement Agreement has been signed by the Complainant and his counsel. The Settlement Agreement resolves all issues presented in the matter before me.

My review of the Settlement Agreement is limited to a determination of whether its terms are fair, adequate and reasonable under the FRSA. The settlement must adequately protect the whistleblower. The settlement 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 and Final Release, become a part of the record in this case, and are subject to the Freedom of Information Act ("FOIA").² FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. The Settlement Agreement provides that both parties will keep the existence and terms of the Settlement Agreement confidential, with certain specified exceptions. The parties have stipulated to the confidential nature of the Settlement Agreement. Accordingly, to protect the parties from improper disclosure of this confidential information, to the furthest extent permitted by law, the Settlement Agreement will be sealed in a separate envelope and

¹ 49 U.S.C. § 20109 (2011).

² 5 U.S.C. § 552 (2011).

identified as being “CONFIDENTIAL COMMERCIAL AND PERSONAL PRIVATE INFORMATION” pursuant to 29 C.F.R. § 70.26(b).

After careful consideration of the Settlement Agreement, I find that the terms and conditions are acceptable. Moreover, I find the terms of the agreement to be fair, adequate, and reasonable under the FRSA, and that the terms adequately protect the Complainant. Furthermore, I believe it is in the public interest to approve the 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 and may be enforced under 29 C.F.R. § 1982.113 (2012).

IT IS FURTHER ORDERED that the Settlement Agreement is to be kept under seal and designated as “PERSONAL PRIVATE INFORMATION,” and “CONFIDENTIAL COMMERCIAL INFORMATION” under 29 C.F.R. § 70.26, and shall be afforded the protections thereunder.

The hearing set for December 6, 2016, in South Bend, Indiana, is hereby **CANCELLED**.

Steven D. Bell
Administrative Law Judge