

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 21 November 2016

ALJ NOS.: 2016-FRS-00073; 2016-FRS-00074

In the Matters of:

MICHAEL DEE

and

ED TORRES,

Complainants,

v.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK),

Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND
DISMISSING COMPLAINT WITH PREJUDICE**

This proceeding arises from a complaint of discrimination filed under the Federal Rail Safety Act (“the FRSA”), 49 U.S.C. § 20109 (2008). On June 30, 2016, the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), acting as agent for the Secretary of Labor (“Secretary”), issued a letter dismissing the complaints of Michael Dee and Ed Torres (“Complainants”) because they did not establish that their protected activities were a contributing factor in the alleged adverse actions. By letter dated July 26, 2016, the Complainants objected to the Secretary’s findings and requested a de novo hearing before an administrative law judge pursuant to 29 C.F.R. § 1982.106 (2013). The hearing was set for February 9, 2017 in Springfield, Massachusetts. On November 15, 2016, counsel for the Respondent submitted a cover letter along with a motion requesting approval of a confidential settlement agreement and to file the settlement agreement under seal. Attached to the motion as Exhibit 1 is a document entitled “Confidential Settlement Agreement and General Release” (hereinafter “Stipulation”).

In reviewing the Stipulation, I must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainants' allegations that the Respondent violated the FRSA whistleblower provisions. *See* 29 C.F.R. § 1982.111(d)(2). I find that the Stipulation complies with the standard required and it is APPROVED pursuant to 29 C.F.R. § 1982.111(d)(2), subject to my comments below.

Considering the request to seal and keep confidential, the Respondent asserted its pre-disclosure notification rights in accordance with 29 C.F.R. § 70.26, and the copy of the Stipulation therefore is being maintained in a separate envelope and identified as being confidential commercial information pursuant to the parties' request. *See Duffy v. United Commercial Bank*, 2007-SOX-00063 (Oct. 23, 2007). In this regard, I find that the Stipulation contains financial information and business information that is privileged or confidential within the meaning of 29 C.F.R. §70.2(j), as well as personal information relating to the Complainants.

With regard to confidentiality of the Stipulation, the parties are advised that notwithstanding the confidential nature of the Stipulation, all of their filings, including the Stipulation, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C.A. § 552 *et seq.* The Administrative Review Board has noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine *at the time a request is made* whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

Seater v. S. Cal. Edison Co., USDOL/OALJ Reporter (PDF), ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

The parties have also requested that access to the Stipulation be restricted by the undersigned under 29 C.F.R. § 18.85 (Restricted Access). I find good cause for such restricted access and the Stipulation will be so maintained under that authority in the sealed envelope. *See* 29 C.F.R. §§ 18.85 & 70.26. *See Sharp v. The Home Depot, Inc.*, ALJ No. 2006-SOX-00129, 2008 DOLSOX LEXIS 4, at *3 (ALJ Jan. 16, 2008).

Upon consideration of the Stipulation and the record in this proceeding, I find that the terms and conditions are fair, adequate, and reasonable under the FRSA. The terms adequately

protect Messrs. Dee and Torres, and it is in the public interest to approve the Stipulation as a basis for administrative disposition of this case. Accordingly, it is **ORDERED** that:

- (1) The request to seal and keep the Stipulation confidential is **GRANTED**;
- (2) The motion to approve the Stipulation is **GRANTED**;
- (3) The Stipulation is **APPROVED**;
- (4) The Stipulation shall be designated as confidential subject to the procedures requiring disclosure under FOIA; and
- (5) The Complaints of Michael Dee and Ed Torres are **DISMISSED WITH PREJUDICE**.

SO ORDERED.

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts