



Issue Date: 20 July 2016

OALJ Case No.: 2016-FRS-00028
OSHA Case No.: 5-1260-14-014

In the Matter of:

JOHN ZELIS,
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 November 22, 2013, John Zelis (“Complainant”) filed a formal complaint with the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), pursuant to the FRSA, alleging that his former employer, Union Pacific Railroad Company (“Respondent” or “Union Pacific”), terminated his employment in retaliation for reporting an on-the-job injury. After conducting an investigation, the Secretary of Labor, acting through the Regional Administrator, OSHA, Region V, issued a final determination letter dated February 5, 2016 (“Secretary’s Findings”), finding no reasonable cause to believe Respondent violated the FRSA, and dismissed the complaint. On February 22, 2016, Complainant appealed the Secretary’s Findings to the U.S. Department of Labor, Office of Administrative Law Judges (“OALJ”). I scheduled the matter for formal hearing on July 20, 2016 in Chicago, Illinois.

On June 1, 2016, Complainant filed a motion requesting that the Court order an investigation into Respondent and Union Pacific Director David O’Hara under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 (“RICO”) and assess appropriate lost wages. On June 14, 2016, Respondent filed a *Motion for Summary Decision*

(“Motion for Summary Decision”). Complainant filed a response on June 24, 2016. On July 6, 2016, I denied, in part, Respondent’s Motion for Summary Decision.¹

On July 8, 2016, at the parties’ joint request, I appointed a mediator. On July 15, 2016, I issued an order concluding mediation and canceling the hearing after counsel advised the Court that the parties had reached a settlement. On July 19, 2016, the parties submitted a *Joint Motion to Approve Settlement* with a *Settlement Agreement and Release of Claims* (“Settlement”) for my review and approval pursuant to 29 C.F.R. § 1982.111.²

The Settlement resolves the controversy arising from Complainant’s complaint against Respondent. The Settlement provides that Complainant will release Respondent from claims arising under the FRSA as well other laws, and that the present action shall be dismissed with prejudice. 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 states that Respondent denies any wrongdoing, and that the agreement imposes no confidentiality requirement. The parties agree that Respondent shall make two payments of \$27,500.00 to Complainant, both representing non-wage damages. The first payment is to be made within ten days of the issuance of this order, and the second in January 2017. The Settlement is signed by Complainant and a representative of Respondent. It is unclear whether Complainant has sought the advice of counsel in his review of the Settlement. However, the Settlement provides that Complainant has had an opportunity to consult with legal counsel and there is no indication that the agreement was made under duress. Additionally, I find the terms of the Settlement to be fair, adequate, reasonable, and not contrary to public policy.

Order

Based on the above, it is hereby ORDERED that the *Settlement Agreement and Release of Claims* dated July 14, 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 is further ORDERED that the complaint filed in this matter is DISMISSED with prejudice.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

¹ I granted summary decision for Complainant’s RICO claims and other claims that fall outside the scope of the FRSA and this tribunal’s jurisdiction.

² 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).

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.”