

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 19 April 2018

Case No.: 2017-FRS-00095
OSHA No.: 8-0370-17-025

In the Matter of:

BOBBY BERGFELD,
Complainant,

v.

CANADIAN PACIFIC RAILWAY CO.,
Respondent.

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

This matter arises under the whistleblower protection provisions of the Federal Rail Safety Act of 2007 (“FRSA”), 49 U.S.C. § 20109, as amended, and implementing regulations found at 29 C.F.R. Part 1982.¹ It is currently scheduled for hearing on June 12, 2018 in Fargo, North Dakota.

On April 13, 2018, the parties submitted a *Confidential Settlement Agreement and Release* (“Settlement Agreement”)²; a *Stipulation of Dismissal of Complaint with Prejudice*; and a *[Proposed] Order Dismissing Complaint With Prejudice*.³

¹ On January 27, 2017, Bobby Bergfeld (“Complainant”) filed a complaint with the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) alleging retaliation in violation of the FRSA. After conducting an investigation, the Secretary of Labor, acting through the Regional Administrator, OSHA, Region V, issued a final determination letter dated July 17, 2017 (“Secretary’s Findings”), finding no reasonable cause to believe Respondent violated the FRSA, and dismissed the complaint. On August 18, 2017, Complainant appealed the Secretary’s Findings to the U.S. Department of Labor, Office of Administrative Law Judges (“OALJ”).

² The parties have agreed that the terms of the settlement will be treated as confidential. The parties have also requested that this agreement not be disclosed under the Freedom of Information Act (“FOIA”). 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) (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 “PREDISCLURE 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

Having been advised of the settlement terms and having reviewed the Settlement Agreement, noting that the parties are represented by counsel, I find the terms to be fair, adequate, reasonable, and not contrary to public policy, and are therefore approved.⁴ Upon my approval, the parties shall implement the terms as stated in the Settlement Agreement, to the extent not otherwise accomplished. This order shall have the same force and effect as one made after a full hearing on the merits.

Accordingly, the hearing scheduled for June 12, 2018 is cancelled. The Settlement Agreement is hereby **APPROVED**, and becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §1982.113. The complaint filed in this matter is **DISMISSED** with prejudice.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

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 Agreement.

³ 29 C.F.R. § 1982.111(d)(1) states that at any time after the filing of objections to the Assistant Secretary's findings and preliminary order, the case may be settled, and, if the case is before an administrative law judge, the settlement is contingent upon the approval of the administrative law judge. Any settlement approved by the administrative law judge becomes the final order of the Secretary. 29 C.F.R. § 1982.111(e).

⁴ I note that the agreement provides for a settlement of all claims Complainant may have against Respondent. However, this approval applies only to the FRSA complaint over which the Office of Administrative Law Judges has jurisdiction.