

U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)



Issue Date: 11 January 2019

CASE NO.: 2017-FRS-00108
OALJ NO.: 5-2210-16-047

In the Matter of:

CLIFF CLEARY,
Complainant,

v.

CSX TRANSPORTATION,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This case arose under the Federal Rail Safety Act (hereafter “FRSA”), as amended,¹ which provides whistleblower protection for engaging in certain protected activities. On January 10, 2019, the parties filed a Joint Motion to Approve Settlements and Dismiss Action with Prejudice.² Exhibit A to the motion is a “Settlement Agreement and General Release” (hereafter the “Agreement”) signed by the Complainant and the Respondent, which resolves all issues raised in the Complaint, for my review and approval. The Agreement is incorporated herein by reference without in any way affecting the confidential designation of the Agreement as described below. The Agreement has been signed by the parties.

My review of the Settlement Agreement is limited to a determination of whether its terms are fair, adequate and reasonable under the FRSA, 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). The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to the public interest. The Agreement may

¹ 49 U.S.C. 20109. Implementing regulations are found at 29 C.F.R Part 1982.

² This case was consolidated for discovery and hearing with two other FRSA cases. Each of the cases is the subject of a separate settlement agreement and separate decisions and orders will be issued for each.

encompass settlement of matters under laws other than under the FRSA. However, I approve only those terms of the Agreement pertaining to the Complainant's claim under the FRSA.

Paragraph 12 of the Agreement regarding governing law states that the Agreement will be governed by the laws of the State of Florida. I interpret this provision as not limiting the authority of the Secretary of Labor or any federal court, which shall be governed in all respects by the laws and regulations of the United States. *See Seater v. Southern California Edison Co.*, ARB No. 97-072, ALJ No. 1995-ERA-13 (ARB Mar. 27, 1997).

Paragraph 10 of the Agreement provides that the parties will keep the "fact and terms of this Agreement" confidential, with certain specified exceptions. The parties are advised that this Decision and Order will be available for public viewing at the website of the Office of Administrative Law Judges. Further, because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties' submissions in this matter, including the Agreement, become a part of the record in this case, and are subject to the Freedom of Information Act ("FOIA").³ FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *See, e.g., Fish v. H and R Transfer*, ARB No. 01-071, ALJ Case No. 2000-STA-56, slip op. at 2 (ARB April 30, 2003). Accordingly, to protect the parties from improper disclosure of confidential information to the extent permitted by law, the Agreement will be sealed in a separate envelope and identified as being "CONFIDENTIAL COMMERCIAL INFORMATION," pursuant to 29 C.F.R. § 70.26(b). The sealed envelope will also be identified as being "PERSONAL PRIVATE INFORMATION," indicating that it may contain information exempt from FOIA pursuant to Exemptions 4 and/or 6.⁴

After consideration of the Settlement Agreement, I find that the terms and conditions of the Agreement that are within the scope of my authority are acceptable under the Act, and that the terms adequately protect the Complainant. Furthermore, I believe it is in the public interest to approve the 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**. In accordance with the terms of the settlement, the Complaint herein is hereby **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. § 1982.111(e).

³ 5 U.S.C. § 552.

⁴ 5 U.S.C. § 552(b)(4) and (6).

IT IS FURTHER ORDERED that the 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.

LARRY A. TEMIN
ADMINISTRATIVE LAW JUDGE