



Issue Date: 15 August 2019

Case No.: **2017-FRS-00089**
OSHA No.: 5-2700-16-014

In the Matter of:

DIANDRE GREEN,
Complainant,

v.

CSX TRANSPORTATION INC.,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND
DIMISSING THE CLAIM WITH PREJUDICE**

This proceeding arises from a complaint of discrimination filed under the Federal Rail Safety Act (“the FRSA”), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (the “9/11 Act”), Pub. L. 110-53, 121 Stat 266 (Aug. 3, 2007), and as implemented by federal regulations at 29 C.F.R. Part 1982 (2017) and 29 C.F.R. Part 18, Subpart A (2017).

On August 13, 2019, counsel for Respondent filed a letter informing this Court that the parties have reached a settlement agreement; attached to the letter is a copy of the *Settlement and Final Release of All Claims* (hereinafter the “*Settlement Agreement*”), pursuant to 29 C.F.R. § 1982.111(c) & (d)(2). The *Settlement Agreement* resolves all issues raised in the complaint, has been signed by the Complainant, Complainant’s counsel, and Respondent’s counsel and is incorporated herein by reference.

Based on the record as a whole and upon review of the *Settlement Agreement*, I find that the terms of the *Settlement Agreement* are fair, adequate, and reasonable, and it is hereby **APPROVED** pursuant to 29 C.F.R. § 1982.111(d)(2), subject to the below comments.

With regard to confidentiality of the *Settlement Agreement*, the parties are advised that notwithstanding the confidential nature of the *Settlement Agreement*, all of their filings, including the *Settlement Agreement*, 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., ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added).¹

Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

Finally, I note that my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the *Settlement Agreement* pertaining to Complainant's FRSA claim, 2017-FRS-00050. See *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

ORDER

Accordingly, it is **ORDERED** that:

1. The *Settlement Agreement* is **APPROVED** and constitutes the final order of the Secretary of Labor and may be enforced under 29 C.F.R. § 1982.111(e); and
2. The Complainant's complaint is **DISMISSED WITH PREJUDICE**;
3. The *Settlement Agreement* shall be designated as **CONFIDENTIAL** and maintained in a separate sealed envelope, subject to the procedures requiring disclosure under FOIA.

SO ORDERED.

LARRY S. MERCK
Administrative Law Judge

¹ "Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h)." *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-00005, 1996-TSC-00006, slip op. at 2 n.2 (ARB June 24, 1996).