

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

Issue Date: 09 August 2017

ALJ NOS.: 2017-FRS-00043; 2017-FRS-00044

In the Matters of:

MICHAEL FLETCHER,
TODD KREKOVICH,
Complainants,

v.

UNION PACIFIC RAILROAD COMPANY,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENTS
AND DISMISSING CLAIMS**

These proceedings arise from complaints 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 the implementing regulations at 29 C.F.R. Part 1982.

On August 8, 2017, the parties submitted a “Joint Motion for Approval of Release and Settlement Agreement,” along with the parties’ Settlement Agreements (hereinafter the “Settlements”) for my review and approval pursuant to 29 C.F.R. §§ 1982.111(c) & (d)(2). The Settlements resolve all issues raised in the complaints, have been signed by the Complainants and Respondent, and are incorporated herein by reference.

After careful consideration of the Settlements, I find the terms and conditions of the agreements to be fair, adequate, and reasonable under the FRSA, and that the terms adequately protect the Complainants. Furthermore, I believe it is in the public interest to approve the Settlements as a basis for administrative disposition of this case, and I therefore approve the Settlements 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). 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 the Settlements be placed under seal by the undersigned. I find good cause for such restricted access and the Settlements will be maintained in a sealed envelope. *See* 29 C.F.R. § 18.85.

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 Complainants' FRS claims, Case No. 2017-FRS-00043/44. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

ORDER

It is hereby **ORDERED** that the Settlements submitted by the parties are **APPROVED**. The complaints are **DISMISSED WITH PREJUDICE**. In accordance with the regulations, the Settlements constitute the final order of the Secretary of Labor¹ and may be enforced under 29 C.F.R. § 1982.113. The Settlements shall be designated as confidential and maintained in a separate sealed envelope, subject to the procedures requiring disclosure under FOIA.

SO ORDERED.

COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts

¹ 29 C.F.R. § 1982.111(e).