



**Issue Date: 03 July 2019**

**CASE NO.: 2018-FRS-130**

**IN THE MATTER OF**

**JOE W. MARTIN**

Complainant

v.

**NORFOLK SOUTHERN RAILWAY COMPANY**

Respondent

### **DECISION AND ORDER APPROVING SETTLEMENT**

This matter arises under the whistleblower protections of the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109, as amended, and the implementing regulations found at 29 C.F.R. Part 1982. Both Complainant and Respondent are represented by attorneys. The matter is currently set for hearing on October 15, 2019. However, the parties submitted a Settlement and Final Release (“Settlement Agreement”) that resolved all issues pending for hearing in this matter.

Regulations provide that a case may be settled at any time after the filing of objections to the Assistant Secretary’s findings if the participating parties agree to a settlement and the settlement is approved by the administrative law judge. 29 C.F.R. § 1982.111(d)(2). Any settlement approved by the administrative law judge will constitute the final order of the Secretary and may be enforced in U.S. District Court. 29 C.F.R. § 1982.111(e).

The Settlement Agreement includes a general release of liability which resolves matters and potential matters under a multitude of state and federal laws other than FRSA. My authority over settlement agreements is limited to the statutes that are within my jurisdiction, and I have restricted my review of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this FRSA case. *See Mann v. Schwan’s Food Company*, ARB No. 09-017, ALJ No. 2008- STA-00027, slip op. at 3 (ARB Dec. 31, 2008). Accordingly, my approval extends only to the terms of the Settlement Agreement pertaining to Complainant’s FRSA case.

The Settlement Agreement also includes a confidentiality provision. The files maintained by this Office, including this Settlement Agreement, are subject to disclosure under the

provisions of the Freedom of Information Act (“FOIA”), unless an exemption applies. *See* 5 U.S.C. § 552; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 3 (ARB July 22, 2013). The Department of Labor has implemented regulations that govern the FOIA process, and exemptions will be determined at the time of the request, not at the time of the filing of the agreement. *See* 29 C.F.R. Part 70; *McDowell v. Doyon Drilling Servs., Ltd.*, ARB No. 97-053, ALJ NO. 96-TSC-00008, slip op. at 2 (ARB May 19, 1997).

As construed, and after carefully considering the terms of the Settlement Agreement, I find that the terms and conditions appear to be fair, adequate, and reasonable. I further find that the Settlement Agreement is not contrary to the public interest. *See Carciero v. Sodexo Alliance, SA*, ARB No. 09-067, ALJ No. 2008-SOX-012, slip op. at 3 (ARB Sept. 30, 2010).

## **ORDER**

Accordingly, IT IS HEREBY ORDERED that:

1. The terms and conditions of the Settlement Agreement are incorporated by reference into this Decision and Order and are hereby APPROVED. The parties are ordered to carry out the provisions of the Settlement Agreement.

2. The terms and conditions of the Settlement Agreement are incorporated by reference into this Decision and Order and are hereby adopted and APPROVED.

3. Consistent with 20 C.F.R. § 70.26 (2017) and Executive Order 12,600, “Predisclosure Notification Procedures for Confidential Commercial Information” (Exec. Or. 12,600, 52 Fed. Reg. 23781, 3 C.F.R., 1988 Comp., 235), the materials contained in the Settlement Agreement will be placed in a SEALED envelope and MARKED “Confidential Commercial and Financial Information. *See* 20 C.F.R. § 70.26.”

4. The parties having resolved all the issues pending for hearing, the matter is now fully concluded. The hearing set for October 15, 2019, is CANCELED.

5. The above-referenced complaint is DISMISSED WITH PREJUDICE.

J. ALICK HENDERSON  
Administrative Law Judge