



Issue Date: 24 July 2018

Case No.: **2018-FRS-83**

In the Matter of:

PAUL MONCOVEISCH,
Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
Respondent.

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

This complaint arises under the Federal Rail Safety Act, 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, (“9/11 Act”), Pub. L. No. 110-53 (Aug. 3, 2007). On July 13, 2018, this Office received from counsel for the Respondent a fully executed Settlement and Final Release (Settlement) between the Complainant, Paul Moncoveisch, and the Respondent, Norfolk Southern Railway Company, for my review. The parties requested that this Settlement remain confidential.¹ This Settlement recognizes that Complainant agrees that this complaint filed pursuant to the FRSA will be withdrawn and/or dismissed as settled.

The Settlement resolves the controversy arising from the complaint of Paul Moncoveisch, against Norfolk Southern Railway Company. This Settlement is signed by the Complainant. The Settlement provides that the Complainant will release the Respondent from claims arising from the injury on March 29, 2017. This Order, however, is limited to whether the terms of the

¹ 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 marked “Confidential Settlement Materials – Confidential Commercial Information. See 20 C.F.R. § 70.26.” I have refrained from referencing any specific terms or dollar amounts contained in the Settlement Agreement. Confidential commercial information will be disclosed under the Freedom of Information Act (“FOIA”) only in accordance with 20 C.F.R. § 70.26 and Executive Order 12,600. Pursuant to 20 C.F.R. § 70.26(a), a submitter of confidential commercial information must use good-faith efforts to designate any portions of its submission that it considers to be protected from disclosure under Exemption 4. The Department of Labor (“Department”) will then provide a submitter with prompt written notice of a FOIA request that seeks its confidential commercial information whenever required under 20 C.F.R. § 70.26(d), except as provided in 20 C.F.R. § 70.26(g), in order to give the submitter an opportunity to object in writing to disclosure of any specified portion of that information under paragraph 20 C.F.R. § 70.26(e). See 20 C.F.R. § 70.26.

Settlement are a fair, adequate and reasonable settlement of the Complainant's allegations that the Respondent violated the FRSA. As was stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987):

The Secretary's authority over the settlement agreement is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. See *Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. 86-CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncomb County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

Therefore I have limited my review of the Settlement to determining whether the terms thereof are a fair, adequate and reasonable settlement of the Complainant's allegation that the Respondent had violated the FRSA.

Section 20109(d)(2)(A) of the FRSA states that the procedures for actions arising under the FRSA shall be governed by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century [hereinafter AIR 21(h)], 49 U.S.C. § 42121. 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).

The Settlement provides that the Respondent shall make a payment to the Complainant of the amount agreed upon. The parties represent that the compensation terms are fair and reasonable in relation to the claim. The Settlement also provides that Complainant will release any and all claims against the Respondent arising out of his employment with the Respondent, and accordingly, the Complainant's claims will be dismissed with prejudice.

The parties agree to keep the terms and conditions of the Settlement confidential, to the extent permitted by law. However, notwithstanding the parties' agreement, the parties' submissions, including the Settlement and Exhibit A, become part of the record of the case and may be subject to disclosure under the Freedom of Information Act, 5 U.S.C. section 552, *et seq.* (FOIA). FOIA requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, Case Nos. 92-SWD-2 and 93-STA-15, ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998. The records in this case are agency records which must be made available for public inspection and copying under FOIA. If a FOIA request is made for the Settlement, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption.²

Having been advised of the settlement terms and having reviewed the Settlement, noting that the parties are represented by counsel, I find the terms of the Settlement to be fair, adequate, reasonable, and not contrary to public policy.

² See n. 1, *supra*.

Upon my approval, the parties shall implement the terms of the Settlement as stated in the Settlement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits. Again, it is noted that my authority only extends to approving settlement of the Complainant's claim against the Respondent under the FRSA.

Accordingly, **IT IS HEREBY ORDERED** that the Settlement and Final Release filed on July 13, 2018, is **APPROVED**, and hereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §1982.113. The parties, furthermore, waive any further procedural steps before this forum, as well as any rights to challenge or contest the validity of this Order entered in accordance with the Settlement and Final Release.

IT FURTHER ORDERED that the complaint filed in this matter is **DISMISSED WITH PREJUDICE**.

JOHN P. SELLERS, III
Administrative Law Judge