

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 11 October 2019

OALJ Case No.: 2018-FRS-00081
OSHA Case No.: 5-1260-17-043

In the Matter of:

RODOLFO R. PENA,
Complainant,

v.

NATIONAL RAILROAD PASSENGER CORP.,
Respondent.

Appearances:

Richard Gilardi, Esq.
Pittsburgh, Pennsylvania
For the Complainant

Megan Kinsey, Esq.
Ft. Worth, Texas and

Matthew P. Strauskulage, Esq.
Philadelphia, Pennsylvania
For the Respondent

DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This matter arises out of a claim filed under the employee protection provisions of the Federal Rail Safety Act ("FRSA"), 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 (July 25, 2007), and Section 419 of the Rail Safety Improvement Act of 2008 (RSIA), Pub. L. No. 110-432 (Oct. 16, 2008).

A *de novo* formal hearing in this matter scheduled for August 27, 2019 in Chicago, Illinois was cancelled upon notice that the parties had settled.¹ On October 3, 2019, counsel for Respondent submitting an executed Confidential Agreement and General Release (“Settlement Agreement”) for my review.²

The Settlement resolves the controversy arising from the complaint of Rodolfo R. Pena (“Complainant”) against the National Railroad Passenger Corporation (“Amtrak”) (“Respondent”). This Settlement is signed by Complainant and counsel for Complainant.³ The Settlement provides that Complainant will release Respondent from claims arising under the FRSA as well as various other laws. This Order, however, is limited to whether the terms of the Settlement are a fair, adequate and reasonable settlement of Complainant’s allegations that Respondent violated the FRSA.⁴

The Settlement provides that Respondent shall make a payment to 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 discrimination and retaliation claims against Respondent arising out of his employment with Respondent.

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, and are therefore approved. 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 Complainant’s claim against Respondent under the FRSA.

Accordingly, **IT IS HEREBY ORDERED** that the Confidential Agreement and General Release filed on October 3, 2019 is **APPROVED**, and thereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §1982.113.

¹ 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).

² The parties have treated the terms of the settlement as confidential. I note the settlement is subject to the Freedom of Information Act (“FOIA”). The parties will be given an EX 4 notice if a FOIA request is received for the document. See *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019).

³ By letter dated October 4, 2019, Respondent’s counsel confirmed Amtrak’s approval of, and agreement to be bound by, the settlement terms.

⁴ As 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.” I have therefore 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.

IT FURTHER ORDERED that, upon payment of the agreed sum, the complaint filed in this matter is **DISMISSED WITH PREJUDICE**, and that counsel for Complainant is allowed to withdraw as counsel of record following completion of his professional duties necessary to implementing the Settlement on behalf of his client.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge