



Issue Date: 29 October 2020

Case No.: 2019-FRS-00106

In the Matter of:

BRANSON FOULKS,

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondent.

ORDER APPROVING SETTLEMENT AGREEMENT
AND
ORDER CANCELING HEARING
AND
ORDER OF DISMISSAL

This case arises under the employee protection provisions of the Federal Railroad Safety Act, U.S. Code Title 49, Section 20109, as amended (“FRSA”), and its implementing regulations at 29 CFR Part 1982. On October 28, 2020, the parties submitted a Settlement and Final Release for review. Upon review of the settlement agreement, I find that its terms are fair, adequate, and reasonable, and do not contravene the public interest.

The settlement appears to be a global settlement purporting to dispose of claims in addition to the claim brought under the FRSA. My authority to approve the settlement agreement is limited to matters that are before me – that is, to approve the settlement agreement only insofar as it resolves Mr. Foulks’ complaints under the FRSA. My approval should not be construed as approving the resolution of any claims brought under any other federal statute or under state law. This reservation is not intended to address the effectiveness of the settlement with respect to other claims, and the parties are not precluded from raising the settlement agreement in the course of other proceedings, if any arise.

The parties agree that the settlement agreement is confidential, and have requested that it be treated by this agency as “confidential and privileged commercial and financial information within the meaning of Exemption 4 of the Freedom of Information Act (‘FOIA’), 5 U.S.C. § 552(b)(4),” and “protected from disclosure.” 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 the Freedom of Information Act, unless an exemption applies. Consistent with their request, the parties will be provided a pre-disclosure notification giving them the opportunity to challenge any such potential disclosure. In the event the Agreement is disclosed pursuant to FOIA, such disclosure is not a violation of the agreement and will not result in a breach of the agreement.

Accordingly, with the reservations noted above and limiting my approval to the complaints brought under FRSA, **IT IS ORDERED:**

1. The Settlement and Final Release between the parties submitted on October 28, 2020, is **APPROVED**;
2. The formal hearing scheduled to commence telephonically at 9:30 a.m. EDT on June 2 and 3, 2021, is **CANCELED**; and
3. This matter is **DISMISSED** with prejudice.

SO ORDERED.

MONICA MARKLEY
Administrative Law Judge