



Issue Date: 18 February 2021

CASE NO.: 2019-FRS-00114

In the Matter of:

TROSKY HACHE,
Complainant,

v.

**NATIONAL RAILROAD PASSENGER
CORPORATION D/B/A AMTRAK,**
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT

This case involves the employee protection provisions of 49 U.S.C. § 20109 of the whistleblower-protection provisions of the Federal Rail Safety Act and its implementing regulations at 29 C.F.R. Part 1978. Complainant is proceeding in this matter *pro se*. Attorneys Megan Kinsey and Gina Nicotera represent Respondent. On February 16, 2021, pursuant to 29 C.F.R. § 1978.111(d)(2), the parties submitted a Confidential Settlement Agreement And General Release (“Settlement Agreement”) that resolved all issues in this matter. The Settlement Agreement is appropriate in form and substance and details the respective duties and obligations of the parties pursuant to the agreement.

The Settlement Agreement includes a confidentiality provision agreed to by the parties. 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. 5 U.S.C. § 552; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013). The Department of Labor has regulations that govern the FOIA process, and exemptions are determined at the time of the request, not at the time of the filing of the agreement. 29 C.F.R. Part 70; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013). The parties agree to keep the agreement confidential. The settlement agreement is hereby ordered to be placed in a sealed and separate envelope, clearly marked with notice that the parties object to disclosure and seek the procedures of 29 C.F.R. § 70.26 prior to any release of information.

The Settlement Agreement also includes a general release of liability, which resolves matters and potential matters under a multitude of state and federal laws other than Federal Rail Safety Act. The undersigned’s authority over settlement agreements is limited to the statutes that are within the jurisdiction of the Office of the Administrative Law Judges, and the undersigned has restricted the

review of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this FRSA case. *Mann v. Schwan's Food Company*, ARB No. 09-017, ALJ No. 2008-STA-00027, slip op. at 4 (ARB Dec. 31, 2008).

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

The terms and conditions of the Settlement Agreement are incorporated by reference into this Decision and Order and are hereby adopted and approved. This matter is dismissed with prejudice as to all Respondents. All dates are vacated.

SO ORDERED.

STEWART F. ALFORD
Administrative Law Judge