



Issue Date: 10 February 2020

Case No.: 2019-FRS-00007

In the Matter of:

RYAN HARNER,
Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING CLAIM**

This claim arises under the whistleblower protection provision of the Federal Rail Safety Act, as amended (FRSA).¹ On January 27, 2020, Complainant filed a Motion to Withdraw Complainant's Complaint with an attached Settlement and Final Release. Claimant's counsel represents that "[p]ursuant to negotiations Respondent and Complainant have agreed to settle this FRSA claim. A copy of the settlement agreement is attached hereto." (Mot. at 2.) The Settlement and Final Release was unsigned. On February 6, 2020, Complainant filed the same Settlement and Final Release (Settlement Agreement), but this time it was signed by both parties.

Pursuant to 29 C.F.R. § 1982.111(d)(2), Complainant's claim may not be settled without the approval of the administrative law judge (ALJ). Section 1982.111(d)(2) provides:

At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ, or by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as the case may be.

The parties have complied with this section by filing the Settlement Agreement for my approval. Any settlement approved by the ALJ becomes the final order of the Secretary.²

¹ 49 U.S.C. § 20109.

² 29 C.F.R. § 1982.111(e).

This Order is limited to whether the terms of the Settlement Agreement are a fair, adequate and reasonable settlement of Complainant's allegations that the Respondent violated the FRSA. As was stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*,³

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.

The Settlement Agreement resolves the controversy arising from Complainant's claim against the Respondent. The Settlement Agreement is signed by both parties. The Settlement Agreement provides that the Complainant will release the Respondent from his claim arising under the FRSA. The Settlement Agreement provides that the Respondent shall make a payment to the Complainant of the amount agreed upon, among other consideration. And, it provides that the Complainant shall withdraw his claim.

Complainant has agreed that he will not disclose the monetary terms of the settlement and acknowledges that such terms are confidential. However, the parties' submissions, including the Settlement Agreement, become part of the record of the case and may be subject to disclosure under the Freedom of Information Act (FOIA).⁴ FOIA requires federal agencies to disclose requested documents unless they are exempt from disclosure.⁵ 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 Agreement, the United States Department of Labor (DOL) will have to respond and decide whether to exercise its discretion to claim any applicable exemption.

The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily.⁶ The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with pre-disclosure notification if a FOIA request is received seeking release of that information. Accordingly, **the Settlement Agreement in this matter (both signed and unsigned) will be placed in an envelope marked "PREDISCLOSURE NOTIFICATION MATERIALS."** Before any information in this file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure.⁷

Having been advised of the settlement terms by reviewing the Settlement Agreement, and noting that the parties are represented by counsel, I find the terms of the Settlement Agreement

³ Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987).

⁴ 5 U.S.C. §§ 552, *et seq.*

⁵ *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.

⁶ 29 C.F.R. § 70.26(b).

⁷ See 29 C.F.R. § 70.26.

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 Agreement. 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 the Respondent under the FRSA.

Accordingly, it is ORDERED that the Settlement Agreement filed on February 6, 2020, is APPROVED, and thereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. § 1982.113. This claim is DISMISSED WITH PREJUDICE.

SO ORDERED.

Jason A. Golden
Administrative Law Judge