



**Issue Date: 24 April 2020**

Case No.: **2019FRS00025**

*In the Matter of:*

ANTHONY HUDSON,  
*Complainant,*

v.

CSX TRANSPORTATION, INC.,  
*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).<sup>1</sup> On April 13, 2020, the Respondent filed a Settlement and Final Release of all Claims (Settlement Agreement) signed by Complainant, counsel for Complainant, and a representative for Respondent, for my review and approval.

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.<sup>2</sup>

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.*,<sup>3</sup>

---

<sup>1</sup> 49 U.S.C. § 20109.

<sup>2</sup> 29 C.F.R. § 1982.111(e).

<sup>3</sup> 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.

The Settlement Agreement resolves the controversy arising from Complainant's claim against the Respondent and 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).<sup>4</sup> FOIA requires federal agencies to disclose requested documents unless they are exempt from disclosure.<sup>5</sup> 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.<sup>6</sup> 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 will be sealed in a separate 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.<sup>7</sup>

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 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.

---

<sup>4</sup> 5 U.S.C. § 552, *et seq.*

<sup>5</sup> *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.

<sup>6</sup> 29 C.F.R. § 70.26(b).

<sup>7</sup> *See* 29 C.F.R. § 70.26.

Accordingly, it is **HEREBY ORDERED** that the Settlement Agreement filed on April 13, 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.**

JOSEPH E. KANE  
Administrative Law Judge