



Issue Date: 23 November 2020

Case No.: **2019-FRS-00021**
OSHA No.: **5-2330-18-075**

In the Matter of:

MICAH PEACE,
Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,
Respondent.

**DECISION AND ORDER APPROVING THE SETTLEMENT AGREEMENT AND
DISMISSING THE COMPLAINT WITH PREJUDICE**

This proceeding arises under the Federal Rail Safety Act (“FRSA”). 49 U.S.C. § 20109, as amended by §1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L.No.110-53 (Aug. 3, 2007). On November 19, 2020, counsel for Union Pacific Railroad Company, (the “Respondent”) filed *Joint Motion for Approval of Release and Settlement Agreement* (“Settlement Agreement”). The parties request that the Settlement Agreement remain confidential.¹

The regulation at 29 C.F.R § 1982.111(d)(1) provides that 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 [administrative law judge.]” Under 29 C.F.R. §1982.111(e), any settlement the administrative law judge approves constitutes the final order of the Secretary.

¹ Consistent with 29 C.F.R. § 70.26 (2017) and Executive Order 12,600, “Predisclosure Notification Procedures for Confidential Commercial Information” (Exec. Or. 12,600, 52 Fed. Reg. 23781, 3 C.F.R., 1988 Comp., 235), the materials contained in the Settlement Agreement will be placed in a sealed envelope marked “Confidential Settlement Materials—Confidential Commercial Information. See 29 C.F.R. § 70.26.” In general, confidential commercial information will be disclosed under the Freedom of Information Act (“FOIA”) only in accordance with 29 C.F.R. § 70.26 and Executive Order 12,600. Pursuant to 29 C.F.R. § 70.26(a), a submitter of confidential commercial information must use good-faith efforts to designate any portions of its submission that it considers to be protected from disclosure under Exemption 4. The Department of Labor (“Department”) will provide a submitter with prompt written notice of a FOIA request that seeks its confidential commercial information whenever required under 29 C.F.R. § 70.26(d), except as provided in 29 C.F.R. § 70.26(g), in order to give the submitter an opportunity to object in writing to disclosure of any specified portion of that information under paragraph 29 C.F.R. § 70.26(e).

The Settlement Agreement resolves the controversy arising from the complaint filed by Micah Peace (the “Complainant”) under FRSA. Both the Complainant and counsel for the Respondent signed the Settlement Agreement. Moreover, the Settlement Agreement provides that the Complainant will release the Respondent from claims arising under FRSA, among other statutes. However, this Decision and Order is limited to whether the terms of the Settlement Agreement fairly, adequately, and reasonably settle the Complainant’s allegations under FRSA.²

Having reviewed the Settlement Agreement in full and noting that attorneys represent both parties, I find that the Settlement Agreement’s terms are fair, adequate, reasonable, and consistent with public policy. Therefore, I hereby approve the Settlement Agreement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits.

ORDER

Based on the foregoing, the Settlement Agreement is **APPROVED** and maybe enforced pursuant to 29 C.F.R. § 1982.113. The complaint filed in this matter is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

LARRY S. MERCK
Administrative Law Judge

² 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.” Consequently, my review of the Settlement Agreement is limited to determining whether its terms are a fair, adequate, and reasonable settlement of the Complainant’s complaint under the FRSA.