



Issue Date: 16 August 2019

CASE NO.: 2019-FRS-00030
OALJ NO.: 4-1760-17-052

In the Matter of:

ANTHONY S. TAULBEE,
Complainant,

v.

CSX TRANSPORTATION, INC.
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This case arose under the Federal Rail Safety Act (hereafter “FRSA”), as amended,¹ which provides whistleblower protection for engaging in certain protected activities. On August 15, 2019, the parties filed a Settlement and Final Release of all Claims (hereafter the “Agreement”), which resolves the issues raised in the Complaint, for my review and approval. The Agreement is signed by the Complainant, counsel for Complainant, and counsel for Respondent. The Agreement is incorporated herein by reference without in any way affecting the confidential designation of the Agreement as described below.

My review of the Settlement Agreement is limited to a determination of whether its terms are fair, adequate and reasonable under the FRSA, 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (Aug. 3, 2007). The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to the public interest. The Agreement may encompass settlement of matters under laws other than under the FRSA. However, I approve only those terms of the Agreement pertaining to the Complainant’s claim under the FRSA.

The parties’ letter submitting the Agreement requests that the terms of the Agreement be kept confidential and under seal. Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the Decision and Order will be available for public viewing at the website of the Office of Administrative Law Judges. Further, the parties’

¹ 49 U.S.C. 20109. Implementing regulations are found at 29 C.F.R Part 1982.

submissions in this matter, including the Agreement, become a part of the record in this case, and are subject to the Freedom of Information Act (“FOIA”).² FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *See, e.g., Fish v. H and R Transfer*, ARB No. 01-071, ALJ Case No. 2000-STA-56, slip op. at 2 (ARB April 30, 2003). The parties state that the monetary terms of the Agreement qualify as confidential and privileged information under 5 U.S.C. § 552(b)(4). Accordingly, to protect the parties from improper disclosure of confidential information to the extent permitted by law, the Agreement will be sealed in a separate envelope and identified as being “CONFIDENTIAL COMMERCIAL INFORMATION,” pursuant to 29 C.F.R. § 70.26(b). The sealed envelope will also be identified as being “PERSONAL PRIVATE INFORMATION,” indicating that it may contain information exempt from FOIA pursuant to Exemptions 4 and/or 6.³

After consideration of the Settlement Agreement, I find that the terms and conditions of the Agreement that are within the scope of my authority are acceptable under the Act, and that the terms adequately protect the Complainant. Furthermore, I believe it is in the public interest to approve the Agreement as a basis for administrative disposition of this case, and I therefore approve the Agreement.

IT IS THEREFORE ORDERED that the Agreement is **APPROVED**. In accordance with the terms of the settlement, the Complaint herein is hereby **DISMISSED WITH PREJUDICE**. In accordance with the regulations, this Decision and Order approving the settlement constitutes the final order of the Secretary of Labor and may be enforced under 29 C.F.R. § 1982.111(e).

IT IS FURTHER ORDERED that the Agreement is to be kept under seal and designated as “PERSONAL PRIVATE INFORMATION,” and “CONFIDENTIAL COMMERCIAL INFORMATION” under 29 C.F.R. § 70.26, and shall be afforded the protections thereunder.

LARRY A. TEMIN
ADMINISTRATIVE LAW JUDGE

² 5 U.S.C. § 552.

³ *See* 5 U.S.C. § 552(b)(4) and (6).