



Issue Date: 27 October 2020

Case No.: 2019-FRS-00079
OSHA No.: 4-1760-17-103

In the Matter of:

CHRISTOPHER TURNEY,
Complainant,

v.

**NORFOLK SOUTHERN RAILWAY COMPANY and
CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY COMPANY,**
Respondents.

ORDER APPROVING SETTLEMENT AND FINAL RELEASE

This proceeding arises under the employee protection provisions of the Federal Railroad Safety Act of 2007 (“FRSA”), 49 U.S.C. § 20109, and is currently scheduled for formal hearing on February 17, 2021 in Birmingham, Alabama. On October 26, 2020, counsel for Respondent submitted an executed Settlement and Final Release (“Release”) for my review.¹

Having been advised of the settlement terms and having reviewed the Release, noting that the parties are represented by counsel, I find the terms to be fair, adequate, reasonable, and not contrary to public policy, and are therefore approved.² Upon my approval, the parties shall

¹ 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 preliminary order, the case may be settled, and, if the case is before an administrative law judge, the settlement is contingent upon the approval of the administrative law judge. Any settlement approved by the administrative law judge becomes the final order of the Secretary. 29 C.F.R. § 1982.111(e).

² I note that the Release does not allocate a specific portion of the settlement for attorney’s fees but instead provides that “each party hereto shall bear its respective attorney’s fees, litigation and court costs arising or to arise from this action.” (Release pg. 9). Although settlement agreements commonly provide a specific allocation for attorney’s fees, I find that the total amount of the settlement is fair, adequate, and reasonable compensation of Complainant’s claim and attorney’s fees in this matter. I also note that the Release provides for settlement of “all claims or demands, known or unknown, arising directly or indirectly from [Complainant’s] employment with [Respondent.]” However, this approval applies only to the FRSA complaint over which the Office of Administrative Law Judges has jurisdiction.

implement the terms as stated in the Release, to the extent not otherwise already accomplished. This Order shall have the same force and effect as one made after a full hearing on the merits.³

Accordingly, **IT IS HEREBY ORDERED** that the Settlement and Final Release filed on October 26, 2020 is **APPROVED**, and thereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §1982.113.

IT FURTHER ORDERED that, upon payment of the agreed consideration as set forth in the Release, the complaint filed in this matter is **DISMISSED WITH PREJUDICE**, and that counsel for Complainant is allowed to withdraw as counsel of record in this matter following completion of his professional duties necessary to implementing the Settlement on behalf of his client. The hearing scheduled for February 17, 2021 in Birmingham, Alabama is **CANCELLED**.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

³ The parties have agreed to keep the specific terms of the agreement confidential, subject to applicable laws. To effectuate such confidentiality, I will have the settlement agreement sealed. However, notwithstanding the parties' agreement, the parties' submissions, including the settlement agreement, become part of the record of the case and are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a). If a FOIA request is made for the settlement agreement, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption.