



Issue Date: 23 July 2020

CASE NO.: 2020-FRS-00019
DOL NO.: 5-2700-19-098

In the Matter of:

KRISTOPHER LUTENSKE,
Complainant,

v,

LAKE STATE RAILWAY COMPANY,
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT

This case arises under the Federal Rail Safety Act (hereafter “FRSA” or the “Act”), as amended¹ and the implementing regulations.² By Notice of Hearing issued March 10, 2020, this matter was scheduled for hearing on September 22, 2020. On May 5, 2020 a mediator was appointed at the request of the parties. On May 27, 2020 I granted the parties’ motion to stay proceedings pending mediation. A supplemental order extending mediation was issued on July 10, 2020. On July 22, 2020, the parties submitted their Settlement Agreement and General Release (hereafter the “Agreement”). The Agreement is incorporated herein by reference without affecting the confidential designation of the Agreement as described below. The Agreement has been signed by the parties.

My review of the Settlement Agreement is limited to a determination of whether its terms are fair, adequate and reasonable under the FRSA. 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.

¹ 49 U.S.C. § 20109.

² 29 C.F.R. Part 1982.

Paragraph 22 of the Agreement regarding governing law states that the Agreement will be governed by the laws of the State of Michigan. I interpret this provision as not limiting the authority of the Secretary of Labor or any federal court, which shall be governed in all respects by the laws and regulations of the United States. *See Seater v. Southern California Edison Co.*, ARB No. 97-072, ALJ No. 1995-ERA-13 (ARB Mar. 27, 1997).

Paragraph 1 of the Agreement addresses “Payment and Release” and purports to release claims under statutes in addition to the FRSA. My authority over the settlement agreement is limited to statutes within the Secretary’s jurisdiction and is defined by the applicable statute. I therefore approve only the terms of the Agreement pertaining to Complainant’s FRSA claim, OALJ Case No. 2019-FRS-00019.

Paragraph 11 of the Agreement provides that the Complainant agrees not to disclose the terms of the Agreement. The parties are advised that this Decision and Order will be available for public viewing at the website of the Office of Administrative Law Judges. Further, because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties’ 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”).³ 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). 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 6.⁴

After consideration of the Agreement, I find that the terms and conditions of the Agreement that are within the scope of my authority and are consistent with my comments above concerning Paragraph 1 of the Agreement 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 settlement agreement submitted by the parties is **APPROVED**. In accordance with the terms of the settlement, the Complaint herein is hereby **DISMISSED WITH PREJUDICE**. In accordance with the regulations, the settlement constitutes the final order of the Secretary of Labor and may be enforced under 29 C.F.R. § 1982.111(e).

³ 5 U.S.C. § 552.

⁴ 5 U.S.C. § 552(b)(4) and (6).

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