

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 04 September 2020

CASE NO. 2020-FRS-00018

In the Matter of:

GARY RECKNER,
Complainant

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
Respondent

**ORDER GRANTING JOINT MOTION TO APPROVE SETTLEMENT AND FOR
CONFIDENTIAL TREATMENT OF SETTLEMENT AGREEMENT**

The matter arises under the Federal Railroad Safety Act (“FRSA”), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (“9/11 Act”), Pub. L. No. 110-53 (Aug. 3, 2007) and the implementing regulations at 29 C.F.R. Part 1982.

On August 26, 2020, I received the parties’ Joint Motion to Approve Settlement (“Motion”) as well as “Exhibit A” which is a copy of the parties’ Settlement and Final Release (“Settlement”), which is incorporated by reference here.

In addition to seeking approval of the settlement and dismissal of the case, the parties’ Motion, requests that the Settlement Agreement remain confidential, or more specifically, under seal withheld from disclosure under the Freedom of Information Act (FOIA). 29 C.F.R. § 18.85 provides in cases such as this, that I may seal a portion of the record to protect against undue disclosure of privileged, sensitive or classified material. Section 18.85(b)(2) further provides that notwithstanding the Judge’s Order, all parts of the record remain subject to statutes and regulations pertaining to public access to agency records. Moreover, it has been held in a number of cases, with respect to confidentiality of settlement agreements, that the Freedom of Information Act (“FOIA”), 5 U.S.C. section 552, *et seq.* (1988) requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, 92-SWD-2 and 93-STA-15 (ARB 1998). The records in this case are agency records which may be made available for public inspection and copying under the FOIA.

In the instant matter, the parties specifically assert that the monetary terms of page one (1) of the Agreement contains confidential and privileged commercial or financial information exempt from public disclosure under FOIA exemption four (4), 5 U.S.C. § 552(b)(4) and “other terms of the agreement are considered proprietary and confidential.” As a result, the parties assert, and are entitled to, pre-disclosure notification rights in accordance with 29 C.F.R. §70.26.¹

Finally, in claims under the FRSA, as the case is currently pending before me, I must approve the agreed upon settlement. 29 C.F.R. §1982.111(d)(2). Upon my review, I find the terms of the agreed settlement is fair, equitable, adequate and reasonable and was not procured by duress. Therefore, the Settlement Agreement is **APPROVED**, pursuant to 29 C.F.R. § 1982.111(d)(2). As I have approved the Settlement Agreement, this Order shall have the same force and effect as one made after a full hearing on the merits. I note that my authority over, and approval of, this Agreement is limited to the statutes and terms that are within my jurisdiction and authority as defined by the applicable statute.

ORDER

For the reasons stated above it is **ORDERED** that the parties Joint Motion to Approve Settlement, is **GRANTED** such that:

1. The parties’ Settlement Agreement, identified as Exhibit A, entitled, “Settlement and Final Release,” is **APPROVED**, and thereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §1982.113;
2. The Settlement Agreement is designated as confidential business information under 29 C.F.R. § 70.26. The Settlement Agreement will therefore be afforded the protections thereunder, for purposes of a FOIA request. Pre-disclosure notification will be provided to the parties in relation to other requests for disclosure as well;
3. The hearing scheduled to begin **March 2, 2021** is **CANCELLED**; and

¹ The parties are afforded the right to request that information be treated as confidential business information. See 29 C.F.R. §70.26 (2016). The records in this case however are agency records which must be made available for public inspection and copying under FOIA. Still, whereas the parties jointly requested confidentiality of the information, the Department of Labor (DOL), is 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 itself is not appended to this Order approving settlement. Rather an unredacted copy of the Settlement Agreement in this matter will be placed in a separate envelope marked “PREDISCLURE NOTIFICATION MATERIALS,” in compliance with 29 C.F.R. § 70.26. It will also be noted on the envelope that the pre-disclosure notification will apply to all requests for disclosure of this document. Consequently, before any information in this unredacted Settlement Agreement is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. See 29 C.F.R. § 70.26 (2016).

4. The Complaint filed by Gary Reckner (Complainant) against Norfolk Southern Railway Company (Respondent) in this matter is **DISMISSED WITH PREJUDICE**.

NATALIE A. APPETTA
Administrative Law Judge