



**IN THE MATTER OF:**

**MICHAEL K. TONGEN,**

**ARB CASE NO. 14-032**

**COMPLAINANT,**

**ALJ CASE NO. 2013-FRS-010**

**v.**

**DATE: May 30, 2014**

**UNION PACIFIC RAILROAD CO.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearance:**

*For the Respondent:*

**Daniel R. LaFave, Esq.; *Union Pacific Railroad Co.*, Chicago, Illinois**

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*, and Joanne Royce, *Administrative Appeals Judge***

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

This case arises under the employee protection provisions of the Federal Railroad Safety Act of 1982 (FRSA).<sup>1</sup> On January 23, 2014, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order Granting Claim (D. & O.)

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<sup>1</sup> 49 U.S.C.A. § 20109 (Thomson/West 2013) as implemented by federal regulations at 29 C.F.R. Part 1982 (2013).

finding that Respondent Union Pacific Railroad retaliated against Tongen by terminating his employment in violation of the FRSA's whistleblower protection provisions.<sup>2</sup>

Union Pacific timely petitioned the Administrative Review Board for review of the ALJ's D. & O.<sup>3</sup> But before the Board had issued its decision, the parties filed a Settlement Agreement for the Board's review and approval.

The FRSA's implementing regulations provide that at any time after a party has filed objections to the Assistant Secretary's findings or order, the case may be settled if the participating parties agree to a settlement and, if the Board has accepted the case for review, the Board approves the settlement agreement.<sup>4</sup>

Review of the Settlement Agreement reveals that it encompasses the settlement of matters under laws other than the FRSA.<sup>5</sup> The Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by the applicable delegation of authority. Therefore, we have restricted our review of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this FRSA case over which we have jurisdiction.<sup>6</sup>

Accordingly, as so construed, we find that the settlement is fair, adequate, and reasonable, and we **APPROVE** the agreement and **DISMISS** Tongen's complaint.

**SO ORDERED.**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**JOANNE ROYCE**  
**Administrative Appeals Judge**

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<sup>2</sup> *Tongen v. Union Pacific R.R. Co.*, ALJ No. 2013-FRS-010, slip op. at 20 (Jan. 23, 2014).

<sup>3</sup> *See* Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1982.110(a).

<sup>4</sup> 29 C.F.R. § 1982.111(d)(2).

<sup>5</sup> Settlement Agreement at para. 2.

<sup>6</sup> *Accord Thompson v. Norfolk Southern Railway, Co.*, ARB No. 13-032, ALJ No. 2011-FRS-015, slip op. at 2 (ARB Feb. 28, 2013); *Bhat v. District of Columbia Water & Sewer Auth.*, ARB No. 06-014, ALJ No. 2003-CAA-017, slip op. at 2 (ARB May 30, 2006).