U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)

Issue Date: 16 February 2017

CASE No.: 2014-FRS-94

In the Matter of

JOHN E. TUCKER,
Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT

This complaint arises under the Federal Rail Safety Act (the "Act" or "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). On January 27, 2017, the parties informed the undersigned that this matter had settled, and submitted the executed Settlement and Final Release (Settlement) for my review.[1] Respondent confirmed that the parties had reached settlement and requested that the case both be dismissed.

The Settlement resolves the controversy arising from the complaint of John Tucker (the Complainant) against the Norfolk Southern Railway Company (the Respondent). This Settlement is signed by the Complainant, as well as the Authorized Agent for the Respondent. The Settlement provides that the Complainant will release the Respondent from claims arising under the FRSA. This Order, however, is limited to whether the terms of the Settlement are a fair, adequate and reasonable settlement of the Complainant's allegations that the Respondent violated the FRSA. As was stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987):

[1] The parties have agreed that the terms of the settlement will be treated as confidential. The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily. 20 C.F.R. § 70.26(b) (2001). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a FOIA request is received seeking release of that information. Accordingly, the Settlement in this matter will be placed in an envelope marked "PREDISCLOSURE NOTIFICATION MATERIALS." Consequently, before any information in this file 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 (2001). Furthermore, the undersigned will refrain from discussing specific terms or dollar amounts contained in the Settlement.

> The Secretary's authority over the settlement agreement is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. *See Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. 86-CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncomb County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3,
> 1986.

As I previously stated, I have therefore limited my review of the Settlement to determining whether the terms thereof are a fair, adequate and reasonable settlement of the Complainant's allegation that the Respondent had violated the FRSA.

Section 20109(d)(2)(A) of the FRSA states that the procedures for actions arising under the FRSA shall be governed by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century [hereinafter AIR 21(h)], 49 U.S.C. § 42121. 29 C.F.R. § 1982.111(d)(1) states 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).

The Settlement provides that the Respondent shall make a payment to the Complainant of the amount agreed upon. The parties represent that the compensation terms are fair and reasonable in relation to the claim. The Settlement also provides that Complainant will release any and all claims against the Respondent under the FRSA arising out of his employment with the Respondent, and accordingly, the Complainant's claim will be dismissed with prejudice.

The parties agree to keep the terms and conditions of the Settlement confidential, to the extent permitted by law. However, notwithstanding the parties' Settlement, the parties' submissions, including the Settlement, become part of the record of the case and may be subject to disclosure under the Freedom of Information Act, 5 U.S.C. section 552, *et seq*. (FOIA). FOIA requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, Case Nos. 92-SWD-2 and 93-STA-15, ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998. The records in this case are agency records which must be made available for public inspection and copying under FOIA. If a FOIA request is made for the Settlement, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption.[2]

Having been advised of the settlement terms and having reviewed the Settlement, noting that the parties are represented by counsel, I find the terms of the Settlement to be fair, adequate, reasonable, and not contrary to public policy, and are therefore approved.[3] Upon my approval,

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[2] *See* n. 1, *supra*.

[3] Ryan Brennan, Esq. (Counsel for the Complainant) and Clifford Godiner, Esq. (Counsel for the Respondent) jointly submitted the Motion to Approve Settlement and the Settlement Agreement.

the parties shall implement the terms of the Settlement as stated in the Settlement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits. Again, it is noted that my authority only extends to approving settlement of the Complainant's claim against the Respondent under the FRSA.

Accordingly,

IT IS HEREBY ORDERED that the Settlement Agreement filed on January 27, 2017, 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 the complaint filed in this matter is **DISMISSED WITH PREJUDICE.**

Digitally signed by PETER SILVAIN JR.
DN: CN=PETER SILVAIN JR.,
OU=ADMINISTRATIVE LAW JUDGE,
O=US DOL Office of Administrative Law
Judges, L=Cincinnati, S=OH, C=US
Location: Cincinnati OH

PETER B. SILVAIN, JR.
Administrative Law Judge