



**IN THE MATTER OF:**

**CHAD HENDRIX,**

**ARB CASE NO. 2023-0033**

**COMPLAINANT,**

**ALJ CASE NO. 2020-FRS-00076**

**ALJ MONICA MARKLEY**

**v.**

**DATE: July 13, 2023**

**CSX TRANSPORTATION, INC.,**

**RESPONDENT.**

**Appearances:**

***For the Complainant:***

**Jefferson C. Callier, Esq.; *The Callier Firm*; Columbus, Georgia**

***For the Respondent:***

**Jacqueline M. Holmes, Esq.; *Jones Day*; Washington, District of Columbia**

**Before HARTHILL, Chief Administrative Appeals Judge, and WARREN, Administrative Appeals Judge**

**DECISION AND ORDER APPROVING SETTLEMENT, DENYING MOTION TO SEAL, AND DISMISSING CASE WITH PREJUDICE**

**PER CURIAM:**

This case arises under the whistleblower protection provision of the Federal Railroad Safety Act (FRSA).<sup>1</sup> Chad Hendrix (Complainant) filed a complaint alleging that CSX Transportation, Inc. (Respondent) retaliated against him and

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<sup>1</sup> 49 U.S.C. § 20109, as implemented by 29 C.F.R. Part 1982 (2023).

violated the FRSA.<sup>2</sup> A Department of Labor Administrative Law Judge (ALJ) found that Respondent had violated the FRSA and awarded Complainant backpay, punitive damages, and reasonable attorney's fees and costs.<sup>3</sup> On May 5, 2023, Respondent appealed to the Administrative Review Board (ARB or Board).

On June 2, 2023, the parties filed a Joint Motion to Approve Settlement and Dismiss Action with Prejudice (Joint Motion), stating that the parties had settled the FRSA claim and agreed to dismiss the appeal with prejudice pursuant to the terms of a Confidential Settlement Agreement (Agreement). The parties requested the Board approve the Agreement and dismiss the action with prejudice.<sup>4</sup> The parties attached a signed copy of the Agreement to the Joint Motion.

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>5</sup>

The Agreement encompasses the settlement of matters under laws other than the FRSA. The Board's authority over settlement agreements is limited to statutes that are within the Board's jurisdiction as defined by the applicable delegation of authority.<sup>6</sup> Therefore, we have restricted our review of the Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this FRSA case over which we have jurisdiction.<sup>7</sup>

The Agreement contains a confidentiality clause, pursuant to which the parties request the Board place the Agreement under seal and withhold it from

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<sup>2</sup> Decision and Order Awarding Damages at 1-2. Before the Office of Administrative Law Judges, Complainant testified that Respondent charged him with insubordination and suspended him for refusing to follow its instructions. Complainant alleged that had he followed Respondent's instructions, he would have violated hours-of-service laws. *Id.* at 2, 4-6.

<sup>3</sup> *Id.* at 41.

<sup>4</sup> Joint Motion at 1.

<sup>5</sup> 29 C.F.R. § 1982.111(d)(2).

<sup>6</sup> Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13186 (Mar. 6, 2020); see *Rew v. CSX Transp. Inc.*, ARB Nos. 2021-0042, -0058, ALJ No. 2019-FRS-00073, slip op. at 2 (ARB Nov. 2, 2021) (citing *Helgeson v. Soo Line R.R. Co.*, ARB No. 2019-0054, ALJ No. 2016-FRS-00084, slip op. at 2 (ARB Jan. 13, 2021)).

<sup>7</sup> *Rew*, ARB Nos. 2021-0042, -0058, slip op. at 2-3 (citing *Thompson v. Norfolk S. Ry. Co.*, ARB No. 2013-0032, ALJ No. 2011-FRS-00015, slip op. at 2 (ARB Feb. 28, 2013)).

disclosure under the Freedom of Information Act (FOIA or Act) because they believe the monetary terms of the Agreement qualify as “confidential and privileged commercial and financial information within the meaning of Exemption 4 of FOIA . . . and are thus protected from disclosure.”<sup>8</sup>

The Board denies the parties’ request to seal and withhold the Agreement from disclosure under the FOIA. The parties’ submissions, including the Agreement, are part of the record and subject to the FOIA.<sup>9</sup> “The FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act.”<sup>10</sup> In the absence of a FOIA request, it is premature and would be inappropriate for the Board to determine whether any exemption is applicable.<sup>11</sup> If a FOIA request is received for this particular Agreement, the Department of Labor will follow the proper procedures for responding to FOIA requests.<sup>12</sup>

Furthermore, if the confidentiality clause was interpreted to preclude Complainant from communicating with federal or state enforcement agencies concerning alleged violations of law, it would violate public policy, as it would contain an unacceptable “gag provision.”<sup>13</sup> The clause includes language that Complainant shall not disclose the Agreement’s existence or terms to a third party except “(i) . . . to his spouse, counsel, accountants and/or financial or tax advisors, who shall be instructed to hold this information in the strictest confidence; and (ii) to the extent disclosure is compelled by law or compulsory legal process.”<sup>14</sup> We construe such language as allowing Complainant, either voluntarily or pursuant to

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<sup>8</sup> Joint Motion at 1-2.

<sup>9</sup> 5 U.S.C. § 552. Accordingly, there is no reason to “seal” the Agreement.

<sup>10</sup> *Rew*, ARB Nos. 2021-0042, -0058, slip op. at 3 (citing *Ware v. BNSF Ry. Co.*, ARB No. 2014-0044, ALJ No. 2013-FRS-00028, slip op. at 3 (ARB June 24, 2014)).

<sup>11</sup> *See Bettner v. Crete Carrier Corp.*, ARB No. 2007-0093, ALJ No. 2007-STA-00033, slip op. 3 n.11 (ARB Sept. 27, 2007) (citation omitted) (discussing premature FOIA exemption requests and determinations concerning settlement agreements).

<sup>12</sup> 29 C.F.R. Part 70 (2023). Pursuant to 29 C.F.R. § 70.26(b), submitters may, in good-faith, designate portions of their submissions as containing confidential commercial information, which they consider to be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4). Because the parties have designated the Agreement as containing confidential commercial information, the Board will treat the Agreement as subject to the pre-disclosure procedures in 29 C.F.R. § 70.26.

<sup>13</sup> *Rew*, ARB Nos. 2021-0042, -0058, slip op. at 3 (citing *Helgeson*, ARB No. 2019-0054, slip op. at 3)).

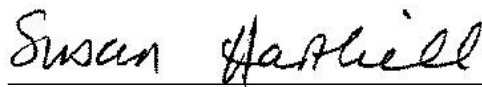
<sup>14</sup> Joint Motion, Exhibit (Ex.) A at 4, ¶ 12.

an order or subpoena, to communicate with, or provide information to, state and federal authorities about suspected violations of law involving Respondent.<sup>15</sup>

The Agreement also provides that it shall be governed by the laws of the state of Florida. We construe this “Governing Law” provision as not limiting the authority of the Secretary of Labor, the Board, and any federal court with regard to any issue arising under the FRSA, which authority shall be governed in all respects by the laws and regulations of the United States.<sup>16</sup>

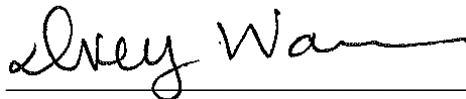
The Board concludes that the Agreement is fair, adequate, and reasonable, and does not contravene the public interest. Accordingly, we **APPROVE** the Agreement, **DENY** the parties’ Motion to Seal, and **DISMISS** the complaint with prejudice.

**SO ORDERED.**



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**SUSAN HARTHILL**  
**Chief Administrative Appeals Judge**



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**IVEY S. WARREN**  
**Administrative Appeals Judge**

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<sup>15</sup> *Rew*, ARB Nos. 2021-0042, -0058, slip op. at 3 (citing *Helgeson*, ARB No. 2019-0054, slip op. at 3)).

<sup>16</sup> *Id.* (citing *Thompson*, ARB No. 2013-0032, slip op. at 2).