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**Issue Date: 03 June 2010**

CASE NO.: **2010-FRS-00007**

*In the Matter of:*

**KENNETH DAVIES,**
*Complainant*

v.

**FLORIDA EAST COAST RAILWAY, L.L.C.,**
*Respondent*

**RECOMMENDED DECISION AND ORDER GRANTING ON RECONSIDERATION RESPONDENT'S MOTION FOR SUMMARY DECISION AND DISMISSING THE COMPLAINT**

## I. OVERVIEW

This case arises from a complaint filed by Kenneth Davies ("Complainant") with the Department of Labor's Occupational Safety and Health Administration ("OSHA") against Florida East Coast Railway, LLC ("Respondent") under the employee protection provisions of the Federal Rail Safety Act (the "FRSA"), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (the "9/11 Act"), Pub. L. 110-53, 121 Stat 266 (Aug. 3, 2007). On April 1, 2010, I issued an Order Denying Respondent's Motion for Summary Decision. On May 11, 2010, Respondent faxed its Pre-Hearing Memorandum of Law in which Respondent argued that the Complainant released the instant claim under 49 U.S.C. § 20190, and/or that the claimed damages in the instant case were covered by the release agreement signed in Complainant's Federal Employers Liability Act ("FELA") suit against Respondent. PHM at 1. On May 24, 2010, Complainant filed his response in opposition to the Respondent's Pre-Hearing Memorandum.[1]

[1] I construed the Respondent's Pre-Hearing Memorandum as a request to reconsider my order denying summary decision with regard to whether the Release signed between the parties in resolving the Complainant's Federal Employers Liability Act (FELA) claim released the claims herein. As the hearing was set for May 12, 2010, the hearing was postponed to afford Complainant an opportunity to respond to the Pre-Hearing Memorandum and for the undersigned's consideration of the parties' respective positions.

## II. FINDINGS OF FACT

Based upon the parties' original summary decisions submissions as well as the current submission, the following facts are not in dispute:

1. The Complainant alleged that he injured his knee in a trip while working as a track supervisor for the Respondent near the Fort Pierce Material Yard in Ft. Pierce, FL on December 12, 2007. (Mot. at 1, EX 1; Opp. at EX C).[2]

2. On August 11, 2008, the Complainant filed a civil action against Respondent for the December 12, 2007 incident under the FELA, 45 U.S.C. § 51 et. seq., alleging injuries to his knees on December 12, 2007, as a result of negligence by Respondent. (Mot. at 1-2, EX 1).[3]

3. The FELA complaint alleged that Complainant's injury was the result of Respondent's negligence and he sought to recover damages for lost income and benefits, the cost of medical care, for emotional and physical pain, for loss of enjoyment of life, and such other relief as the Court deems just and equitable. (Mot. EX 1 at 3-4; Parties' Joint Pre-Trial Stipulations ¶ I.h).

4. The Respondent filed an answer in the FELA matter on August 20, 2008 denying negligence in connection with the December 12, 2007 incident and asserting that Complainant's knee conditions were not related to the December 12 incident. (Mot. EX 2).

5. On May 13, 2009, Complainant filed a complaint with OSHA under the Federal Rail Safety Act ("FRSA") alleging Respondent threatened termination and denied medical care (supartz injections) in violation of the FRSA. (Mot., EX 8; May 13, 2009 complaint to OSHA).

6. On October 23, 2009, the Complainant filed a supplemental complaint with OSHA, alleging that Respondent has denied approval of medical care, total knee replacement surgery, recommended by the treating physician, Dr. Hussamy, in violation of 49 U.S.C. § 20109. (Oct. 23 Compl.).

7. On November 20, 2009, OSHA issued its finding indicating that Respondent did not violate the FRSA and dismissing the complaint. (OSHA Finding).

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[2] The Respondent's initial Motion for Summary Decision is referred to as Mot.; Complainant's Opposition to the initial motion for summary decision is referred to as Opp.; Respondent's Pre-Hearing Memorandum is referred to as PHM and Complainant's Response to the Pre-Hearing Memorandum is referred to as Opp PHM.

[3] The FELA imposes liability on railroads for injuries to its employees caused by the negligence of the railroad. 45 U.S.C.A. § 51.

8. The Respondent and Complainant entered into a "Settlement and Complete Release of Florida East Coast Railway Company and Railroad Protective Services Inc. of All Claims" on or about December 4, 2009. (Mot., EX 9; Opp., EX C, EX J).

9. The Settlement and Complete Release states:

> Kenneth Davies (Davies) acknowledges the receipt of the sum of THREE HUNDRED and THIRTY-FIVE THOUSAND DOLLARS ($325,000.00), less Railroad Retirement Board lien of THIRTY DOLLARS and FIFTY CENTS ($30.50) for a total sum of THREE HUNDRED TWENTY-FOUR THOUSAND NINE HUNDRED SIXTY NINE DOLLARS AND FIFTY CENTS ($324,969.50) from RAILROAD PROTECTIVE SERVICES, INC. AND FLORIDA EAST COAST RAILWAY, L.L.C. in full settlement and satisfaction of all claims, suits, costs and debts, demands, actions and causes of action arising out of, or in any way connected, with an alleged slip or falling incident (subject incident), which allegedly occurred on December 12, 2007, when Davies was working as a track supervisor near the Ft Pierce Material Yard near the K Branch, Milepost K 1.6. Such claims include, without limitation, claims asserted in **Civil Action No 2008-CA-7271, pending in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, which Davies will dismiss with prejudice**. (bold in original). In consideration of said payment, Davies hereby RELEASES and forever discharges RAILROAD PROTECTIVE SERVICES, INC. D/E/A ROADWAY WORKER CONTRACTING (RPS), FLORIDA EAST COAST RAILWAY, L.L.C. (FEC) STEADFAST INSURANCE COMPANY, AND ZURICH NORTH AMERICA their insurers, officers, agents, employees, predecessors, successors, and assigns, their parent, subsidiary and affiliated companies (hereinafter collectively referred to as "FEC/RPS") from all claims, suits, costs, debts, demands, actions, and causes of action which the Davies has or might have against them for any and all injuries to person and/or damages to property occurring on December 12, 2007, as result of subject incident including without limitation the cost of any future surgery or surgeries.
>
> Furthermore, FEC hereby acknowledges the receipt of ElGHTY THOUSAND DOLLARS ($80,000) from RPS in full settlement and satisfaction of all claims, suits, costs, debts, demands, actions and causes of action arising out of, asserted, or in any way connected to, **Civil Action No. 2008-CA-727I, pending in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, which FEC will dismiss with prejudice**. (bold in original). In consideration of said payment, FEC hereby RELEASES, holds harmless, and forever discharges RPS, STEADFAST INSURANCE COMPANY, and

ZURICH NORTH AMERICA, its insurers, officers, agents, servants and employees, predecessors, successors, assigns, their parent, subsidiary and affiliated companies from all claims, suits, costs, debts, demands, actions, and causes of action which the FEC has or might have against RPS, including but not limited to, FEC's claims of contractual or common law indemnity and/or contribution for any and all injuries to person and/or damages related to the subject December 12, 2007 incident and/or Davies, whatsoever.

RPS verily believes that FEC's claims against RPS are not valid and RPS has valid defenses to said actions, however, the parties to this release desire to compromise and settle Davies and FEC's respective claims rather than incur the expense and uncertainty related to future litigation regarding Davies' and FEC's respective claims.

This release is intended to release all claims of any kind pending against FEC and RPS arising from, or in any way connected to, the subject December 12, 2007 incident, including, but not limited to, personal injuries, disability, medical expenses, future surgeries, attorneys fees, compensatory and punitive damages, liens, claims of retaliation of any kind, discrimination or harassment based on race, color, religion, sex, sexual orientation, age, national origin, disability and marital status under all federal, state and local laws and ordinances including without limitation each of the following federal or Florida statutes or laws, as amended: Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967 (the "ADEA"), the Older Workers Benefit Protection Act (the "OWBPA"), the Equal Pay Act of 1963, the Americans with Disabilities Act and the Florida Civil Rights Act of 1992 (Section 760.01, et seq.), as well as all claims under the Federal Employers' Liability Act, the Employee Retirement Income Security Act, the Family and Medical Leave Act, and any other state, federal or municipal law, statute, public policy, order, or regulation affecting or relating to the claims or rights of employees; and further including any and all claims and suits in tort or contract including without limitation the alleged breach of any contracts of employment, either written or verbal, express or implied, any torts, including personal injuries, defamation, libel, slander, invasion of privacy, fraud, misrepresentation, whistleblowing, interference with advantageous business relationship, negligent hiring, negligent retention, any so-called wrongful discharge claims, and any claim of common law or contractual indemnity and/or claim of contribution, whatsoever.

Both Davies, FEC, and RPS acknowledge that the injuries and/or damages which Davies allegedly sustained may be permanent and progressive; and that recovery may be uncertain and indefinite and that

injuries, damages and losses may not now be fully known and may be more numerous and more serious than now believed. In making this SETTLEMENT AND FINAL RELEASE Davies and FEC rely wholly upon their own judgment and have not been influenced to any extent whatsoever by any representation or statement of the claim agent, physicians, or other representatives of RPS. Davies and FEC acknowledge and admit that no other representation, promise or agreement, of any nature whatsoever, has been made to or with them, and that this SETTLEMENT AND COMPLETE RELEASE, together with the Agreement, contains the entire agreement between the parties hereto and that all terms of this SETTLEMENT AND RELEASE and Agreement are important parts of this contract and are binding upon all parties.

The words "injuries and/or damages" where used in this SETTLEMENT AND COMPLETE RELEASE, include all injuries and/or damages and all consequences of such injuries which may hereinafter develop as well as consequences now developed relating or arising out of the subject December 12, 2007 incident. This SETTLEMENT AND COMPLETE RELEASE is intended to be final, and all parties are taking their chances that the injuries and/or damages may prove to be more or less serious than now believed.

It is further understood that this is a settlement by compromise of a disputed claim or claims and that the payment made is not to be construed as an admission of liability, all liability being expressly denied.

Davies and FEC represent that there will be no unpaid obligations owed to any hospital in the State of Florida or elsewhere for services medicines, medical appliances or x-rays of any kind rendered as a result of the subject accident, either as an inpatient or an outpatient, on or since the date of the incident mentioned above, nor any unpaid obligations incurred and owing by claimant to anyone else for services rendered as a result of the injuries and/or damages complained of including but not limited to health insurers and federal, state and local governments and agencies who can assert or have asserted a lien against the settlement amount paid hereunder. Davies agrees to indemnify FEC/RPS, their successors, predecessors and assigns against any and all losses, costs, liens, expenses and attorneys' fees, incurred as a result of the falsity or inaccuracy of this representation in any respect, including all such losses, costs, expenses and fees. FEC represents that it has paid any and all medical bills relating or arising out of the subject December 12, 2007 incident (up to and including the supartz injections which were last administered in August 2009). [words in parenthesis are handwritten and initialed on document].

> Before executing this Settlement and Final Release, Davies and FEC acknowledge that they have been fully informed of the contents of this Release, and execute it with full knowledge thereof, and of their own free will and accord.

(Mot., EX 9).

## III. PARTIES' ARGUMENTS

The Respondent contends that a settlement agreement is a contract and is subject to the traditional rules of contract interpretation. PHM 2 (citations omitted). Respondent argues that the Settlement and Release signed between the parties released "all claims of any kind" resulting from the December 12, 2007 incident. PHM at 2-4. The Respondent argues further that even if the FRSA claim was not directly barred by the language of the Release, it is indirectly precluded because the specific damages the Complainant seeks in the present matter have been released. PHM 5. In this regard, Respondent points out that the FRSA permits recovery of backpay, compensatory damages, and in appropriate cases, punitive damages. *Id*. Respondent contends that the Complainant lacks any additional damage remedy arising from the December 12, 2007 incident under the express terms of the Release. *Id*. Anticipating that the Complainant may argue ambiguity in the agreement to support his assertion that this claim was not released, Respondent contends that courts have looked at the totality of the circumstances when determining whether a release was enforceable citing *Vinnet v. General Electric Co*., 271 Fed. Appx. 908 (11th Cir. 2008). Respondent also asserts that Complainant's consultation with an attorney prior to signing the release creates a presumption that his consent was voluntary citing *Myricks v. Federal Reserve Bank of Alabama*, 480 F.3d 1036, 1040 (11th Cir. 2007).

Finally, Respondent maintains that there is no ambiguity in the Settlement Agreement and Release and that Parol Evidence is not admissible to interpret the contract terms. PHM 6-8. Respondent citing Professor Corbin's treatise on contracts, maintains that when parties "have made a contract and have expressed it in a writing to which they have both assented as a complete and accurate integration of that contract, evidence, whether parol or otherwise, of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing." PHM 7 citing 3 Corbin On Contracts § 573. Respondent notes that the Parol Evidence Rule is a rule of substantive law, because it deals with the question where and in what sources and materials are to be found the terms of a jural act. *Id*. If a writing is plain and clear, Courts have generally concluded that extrinsic evidence as to its meaning is not admissible. PHM 7-8 (citations omitted).

The Complainant argues that he did not release all claims associated with the December 12, 2007 incident when he signed the Settlement and Complete Release in December 2009. OPP PHM 2. Complainant contends that he executed the release to fully resolve his claims under the FELA in Civil Action No. 2008-CA-7271. *Id*. Complainant disputes Respondent's reading of the release and maintains that the release "in no way affects [his] DOL claim against Respondent, nor was any effect on the DOL [claim] intended." Opp PHM 2-3. The Complainant argues that the first and second paragraphs of the Release plainly states that the

lawsuit being released by the parties was Civil Action No. 2008-CA-7271, the FELA lawsuit. Opp PHM 3. He states that he signed the release with the understanding that the claims being released were the claims contained within the specific civil action listed in the first paragraph. *Id*. The Complainant contends that when a contract is susceptible to two different interpretations, each of which is reasonably inferred from the terms of the contract, the agreement is ambiguous. Opp PHM 4 (citations omitted). Complainant maintains that it has a different interpretation of the release than the Respondent and that his interpretation is reasonable. *Id*. [4] Specifically, Complainant states that because the FELA action is specifically mentioned in the release as the action Complainant would be dismissing, he reasonably interpreted the release as releasing only the claims under the FELA. [5] *Id*. Complainant argues that Respondent's failure to request dismissal of the FRSA claim after execution of the release supports his position that the release did not include the FRSA claim because Respondent's counsel submitted the FELA Stipulation of Dismissal to the Complainant's counsel, but never submitted a Stipulation of Dismissal for the FRSA claim. Opp PHM 4-5. Complainant contends that because the release is ambiguous, extrinsic evidence should be heard regarding the parties' intent at the time the release was signed. Opp PHM 5. Therefore, Complainant maintains there are issues of disputed material facts as to the release that can only be resolved after considering evidence other than the release, including the credibility of witnesses.

## IV. STANDARD OF REVIEW

A motion for reconsideration, or "amendment of judgment" as it is known under FRCP 59(e),[6] "must either clearly establish a manifest error of law or must present newly discovered evidence." *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007); *Bogosian v. Woloohojian Realty Corp*., 323 F.3d 55, 72 (1st Cir. 2003), *quoting Jorge Rivera Surillo & Co. v. Falconer Glass Indus., Inc*., 37 F.3d 25, 29 (1st Cir. 1994). In the present matter, the Order Denying Respondent's Motion for Summary Decision concluded that because the parties disagreed as to the interpretation or meaning of the Settlement and Complete Release, there was an issue of material fact as to the parties' intent in signing the Settlement and Complete Release. In its Pre-Hearing Memorandum, the Respondent renews its argument that the release the parties' signed released all claims including the present claim related to the December 12, 2007 incident. In support of its renewed argument, Respondent cites legal authority holding that extrinsic evidence of the meaning of a writing may not be considered if the writing is clear and unambiguous. As

[4] Complainant and his counsel have filed affidavits as to their intention when signing the Settlement and Complete Release. Opp. EX C ¶ 6 and EX J ¶ 5; Opp PHM at 1-2.

[5] In the present matter, the Complainant has acknowledged in a Status Conferences, that any compensatory damages, including costs of medical care and lost wages, sustained as a result of the December 12, 2007 work incident have been fully satisfied by the Settlement and Complete Release signed to resolve the FELA case. The Complainant stated he is pursuing the FRSA claim in an effort to establish Respondent violated the statute and to obtain punitive damages.

[6] As motions for reconsideration of an administrative law judge's decision are not addressed in either the Act or its implementing regulations, or in the Rule of Practice and Procedure for Proceedings before the Office of Administrative Law Judges (29 C.F.R. § 18.1 *et seq*.), Rule 59(e) is applicable. *See* 29 C.F.R. § 18.1; *Galle v. Ingalls Shipbuilding, Inc*., 33 BRBS 141, 143-144 n.8 (1999).

the Order Denying Respondent's Motion for Summary Decision did not consider important authority, reconsideration is appropriate.

The standard for granting summary judgment or decision is set forth at 20 C.F.R. §18.40(d) which is derived from Federal Rules of Civil Procedure (FRCP) 56.[7] Section 18.40(d) permits an Administrative Law Judge to enter summary decision, "if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show there is no genuine issue as to any material fact and that a party is entitled to summary decision." 20 C.F.R**.** §18.40(d) (1994). A material fact is one whose existence affects the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). And, a genuine issue exists when the non-movant produces sufficient evidence of a material fact so that a fact finder is required to resolve the parties' differing versions at trial. *Id*. at 249. In deciding a Rule 56 motion for summary decision, the Court must consider all the material submitted by both parties, drawing all reasonable inferences in a manner most favorable to the non-movant. *Adickes v. S.H. Kress & Co*., 398 U.S. 144, 158-159 (1970); *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

The whistleblower protection provision of the FRSA provides that actions under the statute are governed by the analytical framework and burdens of proof applied under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century AIR 21, 49 U.S.C. § 42121(b). 49 U.S.C. § 20109(d)(2)(A)(i).[8] Section 20109(c)(1) of the FRSA prohibits a railroad carrier from delaying or interfering with the medical or first aid treatment of an employee who is injured during the course of employment. Section 20109(c)(2) prohibits a railroad carrier from disciplining, or threatening to discipline an employee for requesting medical or first aid treatment, or for following the orders or treatment plan of a treating physician. The FRSA provides that damages for violation of the whistleblower provision of the FRSA include back pay, compensatory damages (including litigation costs and reasonable attorney fees) and possibly punitive damages. 49 U.S.C. § 20109 (e)(2) and (3).

The preliminary question presented here is whether the Complainant released the FRSA claim in the parties' Settlement and Complete Release. The United States Court of Appeals for the Eleventh Circuit has determined that "a settlement agreement is essentially a contract and is subject to the traditional rules of contract interpretation." *Norfolk Southern Corp. v. Chevron, USA, Inc.*, 371 F.3d 1285, 1290 (11th Cir. 2004) (citing *Monahan v. Comm'r*, 321 F.3d 1063,

[7] Rule 56(c) provides that summary decision shall be rendered "if the pleadings, depositions, answers to interrogatories, admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. Proc. 56(c).

[8] To prevail in an AIR 21 case and by extension an FRSA case, a complainant must prove by a preponderance of the evidence that he engaged in activity the statute protects, that the employer knew about such activity, that the employer subjected him to an unfavorable personnel action, and that the protected activity was a contributing factor in the unfavorable personnel action. 49 U.S.C.A. §§ 42121(a), 42121(b)(2)(B)(iii). If the employer has violated AIR 21 or by application the FRSA, the complainant is entitled to relief unless the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable action in the absence of the protected activity. § 42121(b)(2)(B)(iv). *See, e.g., Patino v. Birken Manufacturing Co., ARB No. 06-00125, ALJ No. 2005-AIR-00023 (ARB July 7, 2008); Peck v. Safe Air Int'l, Inc*., ARB 02-028, ALJ No. 2001-AIR-003, slip op. at 22 (ARB Jan. 30, 2004).

1068 (11th Cir. 2003). Under Florida law, the interpretation of contracts is a question of law if the contractual language is clear and unambiguous. *Bragg v. Bill Heard Chevrolet, Inc.*, 374 F.3d 1060, 1066 (11th Cir. 2004). The Eleventh Circuit has stated that in order to release a cause of action under Title VII of the Civil Rights Act of 1964, "the employee's consent to the settlement [must be] voluntary and knowing based on the totality of the circumstances." *Myricks v. Federal Reserve Bank of Atlanta*, 480 F.3d 1036, 1040 (11th Cir. 2007). The Court considered several objective factors in evaluating whether the release was voluntary and knowing including the "plaintiff's education and business experience, the amount of time plaintiff considered the agreement before signing it, the clarity of the agreement, the plaintiff's opportunity to consult with an attorney; the employer's encouragement or discouragement of consultation with an attorney; and the consideration given in exchange for the waiver when compared with the benefits to which the employee was already entitled." *Id*. citing *Puentes v. United Parcel Serv. Inc.*, 86 F.3d 196, 198 (11th Cir. 1995). The Court also stated that "an employee's decision to consult an attorney before signing a clear release creates a presumption that the release is enforceable." *Myricks,* 480 F.3d at 1041.

No evidence was presented to show that Complainant's release was obtained without his knowing and voluntary participation. Complainant was represented by counsel who engaged in settlement discussions with counsel for Respondent. Complainant's counsel made changes to the Settlement and Complete Release. The Complainant signed the release after consultation with counsel. Additionally, the Complainant received $325,000 in consideration for signing the Release. Accordingly, I find the release is enforceable.

I must next determine whether the Settlement and Complete Release as written and signed by the parties is clear and unambiguous on its face. If it is, then extrinsic evidence as to its meaning is not admissible. *Boat Town U.S.A., Inc. v. Mercury Marine Division of Brunswick Corp.*, 364 So.2d 15, 17 (FLA 4th DCA 1978); *See also*, 3 Corbin On Contracts § 573.

Contrary to the Complainant's assertion, the Settlement and Complete Release on its face is not limited to release of only the FELA claim. In addition to releasing the specific suit under the FELA,[9] the document expressly provides that in consideration of the payment made, the Complainant releases and discharges Respondent "from all claims, suits, costs, debts, demands, actions, and causes of action which the Davies has or might have against them for any and all injuries to person and/or damages to property occurring on December 12, 2007, as result of subject incident including without limitation the cost of any future surgery or surgeries." Mot. EX 9 ¶ 1.

In addition, the fourth paragraph includes an expansive release, stating explicitly that the release "is intended to release **all claims of any kind pending** against FEC and RPS arising from, or in any way connected to, the subject December 12, 2007 incident, including, but not

[9] The first paragraph of the Settlement and Complete Release explicitly states that Complainant acknowledges receipt of the sum of $335,000 "in full settlement and satisfaction of all claims, suits, costs and debts, demands, actions and causes of action arising out of, or in any way connected, with an alleged slip or falling incident (subject incident), which allegedly occurred on December 12, 2007, when Davies was working as a track supervisor near the Ft. Pierce Material Yard near the K Branch, Milepost K 1.6. Such claims include, without limitation, claims asserted in Civil Action No. 2008-CA-7271 pending in the Circuit Court…in Duval County Florida, which Davies will dismiss with prejudice."

limited to,…medical expenses, future surgeries, attorneys fees, **compensatory and punitive damages**…**claims of retaliation of any kind**….” Mot. EX 9 ¶ 4 (emphasis supplied). This paragraph of the Release goes on to include release of discrimination or harassment claims under several specifically identified federal statutes and claims under other enumerated statutes including the FELA, and then states “**and** [claims under] **any other state, federal or municipal law, statute, public policy, order or regulation affecting or relating to the claims or rights of employees**; and further including any and all claims or suits in tort or contact including….the alleged breach of any contracts of employment….including….whistleblowing…..whatsoever.” Mot. EX 9 ¶ 4 (emphasis supplied). This last highlighted phrase releasing claims under any other federal law affecting or relating to the claims or rights of employees, plainly covers claims under the FRSA, as it is a federal statute protecting railroad employees from discharge, demotion, reprimand or any other discrimination, if the discrimination is due to the employee’s report of a work injury, and prohibiting railroads from denying, delaying or interfering with medical or first aid treatment, or from disciplining an employee for following the orders or treatment plan of a treating physician. I have determined, upon close consideration of the language and terms of the Release and analysis of relevant legal authority, that the Settlement and Complete Release unambiguously released the claim under the FELA as well as all other claims arising from or related to the December 12, 2007 work incident.[10] Therefore, extrinsic evidence as to the parties’ intent may not be considered to contradict or modify the Release signed by the parties. I find there is no material fact in dispute as to the terms of the Release, and that the Release signed by the parties includes release of the claims contained in the instant matter. Accordingly, Respondent’s motion for summary decision is GRANTED, and the claim is DISMISSED.

**SO ORDERED.**

A

**COLLEEN A. GERAGHTY**
Administrative Law Judge

Boston, Massachusetts

**NOTICE OF REVIEW**: Review of this Decision and Order is by the Administrative Review Board pursuant to ¶ 5.c.15. of Secretary's Order, 75 Fed. Reg. 3924 (Jan. 25, 2010) (effective Jan. 15, 2010). Regulations, however, have not yet been promulgated by the Department of Labor detailing the process for review by the Administrative Review Board of decisions by Administrative Law Judges under the employee protection provision of the Federal Railroad Safety Act. Accordingly, this Recommended Decision and Order and the administrative file in this matter will be forwarded for review by the Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Ave, NW, Washington DC 20210. *See generally* 5 U.S.C. § 557(b). However, since procedural regulations have not yet been promulgated, it is suggested that any party wishing to appeal this Decision and Order should also formally submit a Petition for Review with the Administrative Review Board.

[10] Additionally, the Settlement and Complete Release expressly released Respondent from the specific damages the Complainant seeks herein, that is, punitive damages. Mot. EX 9 ¶ 4.