

Issue Date: 27 April 2011

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
BOSTON, MASSACHUSETTS

CASE NO. 2010-FRS-00035

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*In the Matter of:*

TAB J. HARDING  
*Complainant*

v.

UNION PACIFIC RAILROAD COMPANY  
*Respondent*

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*Appearances:*

Louis E. Jungbauer, Esq. (Yaeger, Jungbauer & Barczak, PLC);  
St. Paul, Minnesota; for the Complainant

Torry N. Garland, Esq. & Rami S. Hanash, Esq.;  
Denver, Colorado; for the Respondent

*Before:*

Jonathan C. Calianos, Administrative Law Judge

**ORDER DISMISSING CASE WITH PREJUDICE BASED ON STIPULATION**

This matter arises under the employee protection provisions of the Federal Rail Safety Act of 1982 (the “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). 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 (“AIR21”), 49 U.S.C. § 42121.

On July 30, 2010, the Regional Administrator for the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), acting as agent for the Secretary of Labor (“Secretary”), investigated Tab Harding’s complaint of retaliation and found it to have no merit. The Complainant timely objected to the Secretary’s preliminary findings and requested a hearing before the Office of Administrative Law Judges pursuant to 29 C.F.R. §1979.106(a).

On January 19, 2011, I commenced the formal evidentiary hearing in Cedar Rapids, Iowa. Before commencing the second day of the hearing, on January 20, 2011, the parties informed me that they had reached a settlement resolving all disputed issues. The agreement was read into the record and is adopted and incorporated herein by reference. I gave the parties fourteen days to submit a stipulation memorializing their agreement with signatures. Trial Record (“TR”) at 226.

On April 22, 2010, the parties submitted a Stipulation for Dismissal with Prejudice (“Stip.”), signed by counsel for the Complainant and counsel for the Respondent, and a Proposed Order of Dismissal. The Stipulation resolves the controversy arising from the complaint of Tab J. Harding against Union Pacific Railroad Company under the statute. The agreement, as stated on the record by counsel for the Respondent, provides that the Complainant will retain his track inspector seniority date of October 1997, will “be able to exercise all of his rights under the Collective Bargaining Agreement with respect to any position that he is eligible to either make application for . . . or displace a less senior worker,” and “his track inspector disqualification has been removed, so he is now qualified.” TR at 228. Furthermore, the Stipulation for Dismissal provides that “each party [shall] pay his or its own costs.” Stip. At 1. Respondent will not make

any monetary remuneration to the Complainant and does not admit any other concessions. TR at 228-29.

Pursuant to 29 C.F.R. § 1979.111(d)(2), a case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge. Noting that the parties are represented by counsel, I find that the terms of the agreement are fair, adequate, and reasonable, and therefore the settlement is approved. This order will constitute the final order of the Secretary. 29 C.F.R. § 1979.111(e). Accordingly, the complaints filed by Tab J. Harding are hereby **DISMISSED WITH PREJUDICE**.

**SO ORDERED.**

**A**

**JONATHAN C. CALIANOS**  
Administrative Law Judge

Boston, Massachusetts