

Issue Date: 12 July 2011

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

CASE NO.: 2010-FRS-00037

In the Matter of:

MARK MYLAR,
Complainant,

v.

UTAH TRANSIT AUTHORITY.
Respondent.

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

This matter arises out of a complaint of retaliation filed pursuant to the employee protection provisions of the Federal Rail Safety Act, (“FRSA”) 49 U.S.C. § 20109.¹ It was scheduled to be heard before the undersigned administrative law judge on June 1, 2011, but the parties requested the opportunity to pursue settlement through the Office of Administrative Law Judges’ Settlement Judge procedure. *See* 29 C.F.R. § 18.9. These negotiations proved successful, and the parties filed a Settlement, Release and Waiver Agreement (“Settlement Agreement”) on July 6, 2011. *See* 29 C.F.R. § 1982.111.

The regulations implementing the FRSA address settlements. Specifically 29 C.F.R. § 1982.111(d)(2) states:

At any time after the filing of objections to the Assistant Secretary’s findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ A copy of the settlement will be filed with the ALJ

A settlement approved by the administrative law judge shall constitute the final order of the Secretary and may be enforced pursuant to 29 C.F.R. § 1982.113 (Federal District Court). 29 C.F.R. § 1982.111(e).

¹ The governing regulations are at 29 C.F.R. Part 1982.

I note that paragraph 12 of the Settlement Agreement provides that the Settlement Agreement shall be subject to and governed by the laws of the State of Utah. The Administrative Review Board has construed similar “choice of law” provision[s] as not limiting the authority of the Secretary of Labor and any Federal court, which shall be governed in all respects by the laws and regulations of the United States.” *Pegg v. Crest Foam Company, et. al.*, ARB NO. 08-129, ALJ No. 2008-STA-049 PDF at 3 (ARB Nov. 4, 2008) (citing *Philips v. Citizens’ Ass’n for Sound Energy*, 191-ERA-025, slip op. at 2 (Sec’y Nov. 4, 1991)).

The Complainant and Respondent were ably represented by counsel. The Complainant represents his understanding of the Settlement Agreement’s provisions and voluntarily accepts the settlement. Having reviewed the Settlement Agreement, I find the provisions are fair, adequate and not contrary to the public interest. Further, the settlement supports a finding that the complaint be dismissed with prejudice. Accordingly, approval of the agreement is appropriate. Upon my approval, the parties shall implement their settlement as specifically stated in the Settlement Agreement. This Decision and Order shall have the same force and effect as one made after a full hearings on the merits.

The parties have agreed to keep the specific terms of the agreement confidential, subject to applicable laws, and pursuant to 29 C.F.R. § 70.26, the Settlement Agreement shall be sealed and remain confidential. However, notwithstanding the parties’ agreement, the parties’ submissions, including the Settlement Agreement, become part of the record of the case and are subject to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(a). If a FOIA request is made for the Settlement Agreement, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption. The parties are entitled to pre-disclosure notifications rights under 29 C.F.R. § 70.26.

ORDER

Wherefore, it is ordered that:

1. The Settlement Agreement is APPROVED;
2. The complaint is DISMISSED WITH PREJUDICE; and
3. The Settlement Agreement is designated as “CONFIDENTIAL COMMERCIAL INFORMATION,” under 20 C.F.R. § 70.26, and shall be afforded the protections thereunder.

SO ORDERED.

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COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts