

**U.S. Department of Labor**

Office of Administrative Law Judges  
William S. Moorhead Federal Office Building  
1000 Liberty Avenue, Suite 1800  
Pittsburgh, PA 15222



(412) 644-5754  
(412) 644-5005 (FAX)

**Issue Date: 17 August 2010**

CASE NO. 2010-FRS-1

In the Matter of:

CHARLES P. NEWMAN, JR.,  
Complainant

v.

UNION RAILROAD COMPANY,  
Respondent

Appearances:

Daniel J. Cohen, Esq.  
For the Complainant

Michael P. Duff, Esq.  
For the Respondent

Before: RICHARD A. MORGAN  
Administrative Law Judge

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

This matter arises under the employee protection provisions of the Federal Rail Safety Act [hereinafter "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). On August 4, 2010, the parties signed a Settlement Agreement ("Agreement"). The Agreement resolves the controversy arising from the complaint of Charles Newman against Union Railroad Company under the statute. The Settlement Agreement is signed by the complainant and the respondent.

The Settlement Agreement provides that complainant releases respondent from claims arising under the FRSA as well as under various other laws. This order is limited to whether the terms of the settlement are a fair, adequate and reasonable settlement of complainant's allegations that 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):

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. Buncombe County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

I have therefore limited my review of this Agreement to determining whether the terms thereof are a fair, adequate and reasonable settlement of Mr. Newman's allegation that 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 21<sup>st</sup> Century [hereinafter "AIR21"], 49 U.S.C. § 42121. 29 C.F.R. §1979.111(d)(2) states that a case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge. This order will constitute the final order of the Secretary. 29 C.F.R. §1979.111(e).

The Agreement provides that the Respondent shall make a payment to Complainant of mutually agreed upon amount. The parties agree that these payments will satisfy all claims against the Respondent by the Complainant. The Complainant agrees that he is responsible for satisfying any and all liens or subrogation claims arising from these payments.

The Respondent agrees that it will remove the disciplinary charge and the discharge from the Complainant's service record. It will also not disclose or disseminate information relating to the Complainant's employment to third parties.

The parties agree that this order shall have the same force and effect as an order made after full hearing, that the entire record on which this order may be based shall consist solely of the settlement agreement and the order, that the parties waive further procedural steps, and that the parties waive any right to challenge or contest the validity of this order.

In paragraph 4, the parties agree that Complainant will not seek employment with Union Railroad or any of its related entities in the future. The parties have agreed to end the litigation, upon terms they have decided are favorable to each of them, without any admission of liability. The courts are designed to resolve "disputes." With approval of this Agreement, there is no longer any dispute requiring a resolution. The parties, who are intimately familiar with the pros and cons of the alternative, i.e., litigation, have resolved any dispute. Such resolutions are to be encouraged. This limitation is not unreasonable.

The Agreement provides a general release, in paragraph 9. This provision must be interpreted as limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of the agreement. *Bittner v. Fuel Economy Contracting Co.*, 88-ERA-22, (Sec'y Order June 28, 1990). No admissions of liability are made.

Paragraph 6 states that the Agreement will not be filed with “any court or administrative agency.” The Regulations state that the Agreement must be filed with the administrative law judge. Thus, I read that provision to be a prohibition on the filing the agreement with any court or any administrative agency in connection with other claims/grievances filed by the complainant. The Agreement was properly submitted to the undersigned as required by the Regulations.

I find the overall settlement terms to be reasonable but some clarification is necessary. Paragraph 11 of the Agreement contains a confidentiality provision limiting all disclosures except under certain stated circumstances. It has been held in a number of cases with respect to confidentiality provisions in Settlement Agreements that the Freedom of Information Act, 5 U.S.C. section 552, *et seq.* (1988) (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 may be made available for public inspection and copying under the Freedom of Information Act. However, the employer will be provided a pre-disclosure notification giving the employer the opportunity to challenge any such potential disclosure. In the event the Agreement is disclosed, pursuant to 5 U.S.C. section 552, *et seq.*, the parties have provided such disclosure is not a violation of the agreement and will not result in a violation of the agreement. (See paragraphs 5 and 7). The Agreement itself is not appended and will be separately maintained and marked “PREDISCLURE NOTIFICATION MATERIALS.” A protective order restricting access to the Agreement will be placed on the outside of the sealed envelope.

I find the terms of the “confidentiality” provision do not violate public policy in that they do not prohibit the Complainant from communicating with appropriate government agencies. *See, e.g., Bragg v. Houston Lighting & Power Co.*, 94-ERA-38 (Sec’y June 19, 1995); *Brown v. Holmes & Narver*, 90-ERA-26 (Sec’y May 11, 1994); *The Connecticut Light & power Cop. v. Secretary Of United States Department of Labor*, No. 95-4094, 1996 U.S. App. LEXIS 12583 (2d Cir. May 31, 1996); and, *Anderson v. Waste Management of New Mexico*, Case No. 88-TSC-2, Sec. Final Order Approving Settlement, December 18, 1990, slip opin. at 2, where the Secretary honored the parties’ confidentiality agreement except where disclosure may be required by law.

As so construed, noting that the parties are represented by counsel, I find the terms of the Agreement to be fair, adequate and reasonable, and therefore approve it. Accordingly, the complaint filed by Charles P. Newman, Jr. is hereby dismissed with prejudice. As the complaint is dismissed, the Secretary’s Findings are hereby vacated.

**A**

RICHARD A. MORGAN  
Administrative Law Judge

**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 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.