



Issue Date: 19 January 2012

Case No.: 2011-FRS-00007

In the Matter of:

RONALD W. HELM,
Complainant,

v.

THE BURLINGTON NORTHERN
SANTA FE RAILROAD CO.,
Respondent,

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

This matter arises under the employee protection provisions of the Federal Rail Safety Act of 2007 ("FRSA"), as amended, 49 U.S.C. § 20109. Pursuant to a Notice of Hearing, I set a hearing date of November 14, 2011 for this case in Kansas City, Missouri. Prior to the hearing, I was advised that the complainant had withdrawn his FRSA claim. On December 9, 2011, I issued an Order Denying Claimant's Request to Withdraw Claim and requested the parties submit any settlement agreement to me for approval. On January 9, 2012, I received the parties' Release and Settlement Agreement ("Agreement"), which fully settles and resolves their dispute.

Both parties were ably represented by counsel. The Complainant represents his understanding of the agreement's provisions and voluntarily accepts the settlement. The Agreement is signed by Complainant, counsel for Complainant and a representative of Respondent.

The 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 Agreement 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'y 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 of Remand, issued November 3, 1986.

I have therefore limited my review of the Agreement to determining whether the terms thereof are a fair, adequate and reasonable settlement of Mr. Helm's allegation that Respondent had violated the FRSA.

Having been advised of the settlement terms and reviewed the Agreement, I find the provisions are fair, adequate, reasonable and not contrary to public interest.¹ 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 Agreement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits. The Decision and Order Approving Settlement and Dismissing Complaint constitutes the final order of the Secretary.²

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 Agreement shall be sealed and remain confidential. A protective order restricting access to the Agreement will be attached to the outside of the sealed envelope. However, notwithstanding the parties' agreement, the parties' submissions, including the Agreement, become part of the record of the case and may be subject to disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.* The Administrative Review Board has noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine *at the time a request is made* whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

¹ See *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, 89-ERA-9, 89-ERA-10 (Sec'y Mar. 23, 1989 and *Heffley v. NGK Metals Inc.*, 89-SDW-2 (Sec'y Mar. 6, 1990).

² See 29 C.F.R. § 1982.111(e) of the Interim Final Rule, 75 Fed. Reg. 53527 (Aug. 31, 2010).

Seater v. S. Cal. Edison Co., USDOL/OALJ Reporter (PDF), ARB No. 97-072,ALJ No. 1995-ERA-13, at 2 (ARB March 27, 1997) (emphasis supplied). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

Accordingly, it is **ORDERED** that:

1. The Settlement Agreement is **APPROVED**;
2. The complaint of Ronald W. Helm is **DISMISSED WITH PREJUDICE**; and
3. The Settlement Agreement is designated as “CONFIDENTIAL COMMERCIAL INFORMATION,” under 29 C.F.R. § 70.26, and shall be afforded the protections thereunder.

SO ORDERED.

A

JOSEPH E. KANE
Administrative Law Judge