



**Issue Date: 22 March 2012**

Case No.: 2011-FRS-00026  
OSHA No. 5-1260-10-012

In the Matter of:

JOSE A. GARCIA,  
Complainant,

v.

THE BELT RAILWAY COMPANY OF CHICAGO,  
Respondent.

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

This complaint arises under the Federal Rail Safety Act, 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (Aug. 3, 2007). On February 3, 2012, the parties informed the undersigned that this matter had settled and submitted a copy of the executed Settlement Agreement and Release and Resignation (“Agreement”) for my review. The parties expressed a desire to keep the specific terms of the Agreement confidential, and subsequently filed a redacted copy of the confidential Agreement on March 20, 2012, and a *Joint Motion for Approval of Settlement Agreement*.

The Agreement resolves the controversy arising from the complaint of Jose A. Garcia against the Belt Railway Company of Chicago arising under the FRSA. The Agreement is signed by Complainant and the *Joint Motion for Approval of Settlement Agreement* is signed by counsel for Complainant, William J. McMahon, and counsel for Respondent, Christopher R. Steinway. The Agreement provides that Complainant will release 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 Complainant'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 21st 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 a mutually agreed upon amount. Additionally, Complainant's employment status will be changed from "Dismissed" to "Resigned." The parties represent that the compensation terms are fair and reasonable in relation to the claims. The Agreement also provides that Complainant will release any and all claims against Respondent arising out of his employment with Respondent, and accordingly, Complainant's claims will be dismissed with prejudice. The parties also agree that any attorney's fees or costs incurred by Complainant shall be the sole responsibility of Complainant, and not the responsibility of Respondent.

The parties agree to keep the terms and conditions of the Agreement confidential, to the extent permitted by law. Pursuant to 29 C.F.R. § 70.26, the Agreement shall be sealed and remain confidential. 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, 5 U.S.C. section 552, *et seq.* (FOIA). 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 must be made available for public inspection and copying under FOIA. If a FOIA request is made for the Agreement, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption. However, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26. The parties will be provided a pre-disclosure notification giving the parties the opportunity to challenge any such potential disclosure.

Having been advised of the settlement terms and having reviewed the Agreement, noting that the parties are represented by counsel, I find the terms of the Agreement to be fair, adequate, reasonable, and not contrary to public policy, and therefore approved. Upon my approval, the parties shall implement the terms of the Agreement as 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.

Accordingly, the complaint filed by the Complainant, Jose A. Garcia, is hereby dismissed with prejudice. As the complaint is dismissed, the Secretary's Findings issued pursuant to the complaint are hereby vacated.

**ORDER:**

1. The Settlement Agreement is **APPROVED**.
2. The complaint of Jose A. Garcia is **DISMISSED WITH PREJUDICE**.
3. The Confidential Settlement Agreement and Release and Resignation is designated as "CONFIDENTIAL INFORMATION" under 29 C.F.R. § 70.26, and shall be afforded the protections thereunder.

**A**

CHRISTINE L. KIRBY  
Administrative Law Judge

Washington, D.C.