



Issue Date: 07 February 2013

CASE NO.: 2012-FRS-15

IN THE MATTER OF

GENNESE ANNEN

Complainant

v.

UNION PACIFIC RAILROAD COMPANY

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 commencing on March 4, 2013, but the parties filed a Settlement Agreement ("Settlement Agreement") on January 31, 2013. See 29 C.F.R. § 1982.111.

The regulations implementing the FRSA address settlement. 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...

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

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 in Federal District Court. 29 C.F.R. § 1982.111(e).

The Settlement resolves the controversy arising from the complaint of Gennese Annen (the Complainant) against the Union Pacific Railroad Company (the Respondent). This Settlement is signed by the Complainant, as well as two witnesses. The parties have addressed potential medicare lien issues. The settlement provides that the Complainant will release the Respondent from claims arising under the FRSA as well as various other laws. This Order, however, is limited to whether the terms of the Settlement are a fair, adequate and reasonable settlement of the Complainant's allegations that the 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. Buncomb County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

The Settlement provides that the Respondent shall make payment to the Complainant of the amounts agreed upon. The parties represent that the compensation terms are fair and reasonable in relation to the claim. The settlement also provides for payment of Counsel for Complainant's attorney's fees and litigation costs, which are hereby approved. The Settlement also provides that Complainant will release any and all claims against the Respondent arising out of her employment with the Respondent, and accordingly, the Complainant's claims will be dismissed with prejudice. Complainant acknowledges that she has resigned her employment with Respondent effective January 31, 2013.

The Complainant and Respondent were ably represented by counsel. The Complainant represents her 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 hearing 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 notification rights under 29 C.F.R. § 70.26.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that:

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

4. The formal hearing scheduled to commence on March 4, 2013, in Salt Lake City, Utah be **CANCELLED**.

ORDERED this 7th day of February, 2013, at Covington, Louisiana.

LEE J. ROMERO, JR.
Administrative Law Judge