



**Issue Date: 03 January 2013**

**In the Matter of:**

**Case No.: 2012-FRS-00057**

**ASHRAF BAKR,  
Complainant,**

**v.**

**UNION PACIFIC RAILROAD COMPANY,  
Respondent.**

**DECISION AND ORDER APPROVING SETTLEMENT**

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 November 9, 2012, Employer informed the undersigned that this matter had settled, and on December 18, 2012, counsel for Complainant submitted a copy of the executed Settlement Agreement (“Agreement”) for my review.

The Agreement resolves the controversy arising from the complaint of Ashraf Bakr against Union Pacific Railroad Company (“Respondent”). The Agreement is signed by Complainant, Mr. Richard Haydu, counsel for Complainant, and Daniel La Fave, counsel for Respondent. 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 \$3,229.00, less required deductions. 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 agree to keep the terms and conditions of the Agreement confidential, to the extent permitted by law. 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.

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,

**IT IS HEREBY ORDERED** that the Settlement Agreement filed on December 18, 2012, is **APPROVED**, and;

**IT IS FURTHER ORDERED** that the complaint filed in this matter is **DISMISSED WITH PREJUDICE**.

CHRISTINE L. KIRBY  
Administrative Law Judge

Washington, D.C.