

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 04 November 2013

Case Number: 2012-FRS-00089

In the Matter of

**Wayne S. Jefferson
Complainant**

v.

**BNSF Railway Company
Respondent**

Appearances:

**Robert J. Friedman, Esq.
St. Louis, Missouri
For the Complainant**

**Andrea Hyatt, Esq.
Ft. Worth, Texas
For the Respondent**

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

This matter arises out of a claim filed under the employee protection provisions of the Federal Rail Safety Act (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 (July 25, 2007), and Section 419 of the Rail Safety Improvement Act of 2008 (RSIA), Pub. L. No. 110-432 (Oct. 16, 2008).

A *de novo* formal hearing in this matter was held in Washington, D.C. on April 23-24, 2013. The parties were granted leave to file post hearing briefs with Complainant filing his brief on August 1, 2013 and Respondent on August 6, 2013. Respondent filed a Response to Complainant's Brief on August 20, 2013.

On October 30, 2013, the parties informed the undersigned that the matter had settled,¹ submitting an executed Confidential Agreement and Release (Settlement) for my review and requesting the case be dismissed with prejudice.²

The Settlement resolves the controversy arising from the complaint of Wayne S. Jefferson (“Complainant”) against BNSF Railway Company (“Respondent”). This Settlement is signed by Complainant, as well as counsel for Complainant and Respondent. The Settlement provides that Complainant will release 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 Complainant’s allegations that Respondent violated the FRSA.³

The Settlement provides that Respondent shall make a payment to Complainant of the amount agreed upon. The parties represent that the compensation terms are fair and reasonable in relation to the claim. The Settlement also provides that Complainant will release any and all discrimination and retaliation claims against Respondent arising out of his employment with Respondent, and specifically that the present action shall be dismissed with prejudice.

Having been advised of the settlement terms and having reviewed the Settlement, noting that the parties are represented by counsel, I find the terms of the Settlement to be fair, adequate, reasonable, and not contrary to public policy, and are therefore approved. Upon my approval, the parties shall implement the terms of the Settlement as stated in the Settlement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits. Again, it is noted that my authority only extends to approving settlement of Complainant’s claim against Respondent under the FRSA.

Accordingly, **IT IS HEREBY ORDERED** that the Confidential Agreement and Release filed on November 1, 2013 is **APPROVED**, and thereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §1982.113.

¹ 29 C.F.R. § 1982.111(d)(1) states that at any time after the filing of objections to the Assistant Secretary’s findings and preliminary order, the case may be settled, and, if the case is before an administrative law judge, the settlement is contingent upon the approval of the administrative law judge. Any settlement approved by the administrative law judge becomes the final order of the Secretary. 29 C.F.R. § 1982.111(e).

² The parties have agreed that the terms of the settlement will be treated as confidential. The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily. 20 C.F.R. § 70.26(b) (2001). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predislosure notification if a FOIA request is received seeking release of that information. Accordingly, the Settlement in this matter will be placed in an envelope marked “PREDISCLOSURE NOTIFICATION MATERIALS.” Consequently, before any information in this file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. *See* 29 C.F.R. § 70.26 (2001). Furthermore, the undersigned will refrain from discussing specific terms or dollar amounts contained in the Settlement.

³ As 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.” I have therefore limited my review of the Settlement to determining whether the terms thereof are a fair, adequate and reasonable settlement of the Complainant’s allegation that the Respondent had violated the FRSA.

IT FURTHER ORDERED that the complaint filed in this matter is **DISMISSED WITH PREJUDICE**, and that counsel for Complainant is allowed to withdraw as counsel of record following completion of his professional duties necessary to implementing the Settlement on behalf of his client.

SO ORDERED:

STEPHEN R. HENLEY
Administrative Law Judge