



**Issue Date: 07 September 2012**

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CASE NO.: 2012 FRS 36  
In the Matter of

**MARVIN W. COLE, SR**  
Complainant

v.

**BURLINGTON NORTHERN  
SANTA FE RAILWAY CO. ("BNSF")**  
Respondent

Appearances: Mr. Michael P. McReynolds, Attorney  
For the Complainant

Ms. Joanne R. Bush, Attorney  
For the Respondent

Before: Richard T. Stansell-Gamm  
Administrative Law Judge

**CANCELLATION OF HEARING,  
FINAL ORDER APPROVING SETTLEMENT &  
DISMISSAL OF COMPLAINT**

This matter arises under the employee protection provisions of the Federal Rail Safety Act of 2007 ("FRS"), Title 49 United States Code Section 20109. Pursuant to Notice of Hearing, dated March 30, 2012, I set a hearing date of January 15, 2013 for this case in Minneapolis, Minnesota. On August 28, 2012, I received: a) notification that the parties have resolved the issues in this case, and b) their settlement agreement.

I first note that the parties were ably represented by counsel. Further, the Complainant represents his understanding of the agreement's provisions and the associated rights and obligations. Having reviewed the agreement, I find the provisions are fair, adequate and not contrary to public interest.<sup>1</sup> The settlement also supports a finding that the complaint be dismissed. Consequently, approval of the agreement is appropriate. Upon approval, the parties shall implement their settlement as specifically stated in the agreement.

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<sup>1</sup>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).

The parties have agreed to keep the specific terms of the agreement confidential, subject to applicable laws. To effectuate such confidentiality, I have sealed the settlement agreement. 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,<sup>2</sup> the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption.<sup>3</sup>

Accordingly, the hearing scheduled for January 15, 2013 is cancelled; the parties' settlement agreement is **APPROVED**; and, the FRS complaint of Mr. Marvin W. Cole, Sr. is **DISMISSED**.

**SO ORDERED:**

RICHARD T. STANSELL-GAMM  
Administrative Law Judge

Date Signed: September 5, 2012  
Washington, DC

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<sup>2</sup>As requested by Employer's counsel, I have included an order that she be notified upon receipt of a FOIA request and prior to disclosure. Upon such notification, Employer's counsel will have an opportunity to request an applicable disclosure exemption.

<sup>3</sup>See *Debose v. Carolina Power and Light Co.*, 92-ERA-14 (Sec'y Feb. 7, 1994) and *Darr v Precise Hard Chrome*, 95-CAA-6 (Sec'y May 9, 1995).