



Issue Date: 04 April 2014

Case No.: 2012-FRS-00005

In the Matter of:

**O'DELL JACKSON,
Claimant,**

v.

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
Employer,**

DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT

This case arose under the Federal Rail Safety Act (FRSA), as amended,¹ which provides whistleblower protections to employees of railroad carriers for engaging in certain protected activities. On March 5, 2014, the parties submitted a “Settlement Agreement and General Release” (“Settlement Agreement”), which resolves all issues raised in the complaint, for my review and approval. The Settlement Agreement and General Release is incorporated herein by reference, without in any way affecting the confidential designation as described below. The Settlement Agreement and General Release has been signed by the Complainant, the Complainant’s counsel, and a representative for the Respondent.

My review of the Settlement Agreement is limited to a determination of whether its terms are fair, adequate and reasonable under the FRSA.² The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to public interest.

Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties’ submissions in this case, including the Settlement Agreement and General Release, become a part of the record in this case, and are subject to the Freedom of Information Act (“FOIA”).³ FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *See, e.g., Fish v. H and R Transfer*, ARB No. 01-071, ALJ Case No. 2000-STA-56, slip op. at 2 (ARB April 30, 2003). Page 3 of the Settlement Agreement provides that both parties will keep the existence and terms of the Settlement Agreement confidential, with certain specified exceptions. In the Settlement Agreement, the parties have stipulated to its confidential nature. Accordingly, to protect the parties from

¹ 49 U.S.C. § 20109 (2011).

² *See Poulos v. Ambassador Fuel Oil Co.*, No. 91-ERA-25, slip op. at 2 (Sec’y of Labor, Nov. 4, 1991).

³ 5 U.S.C. § 552 (2011).

improper disclosure of this confidential information, to the furthest extent permitted by law, the Settlement Agreement and General Release will be sealed in a separate envelope and identified as being “Confidential Commercial and Personal Private Information,” pursuant to 29 C.F.R. § 70.26(b).

After careful consideration of the Settlement Agreement and General Release, I find that the terms and conditions are acceptable. Moreover, I find the terms of the agreement to be fair, adequate, and reasonable under the FRSA, and that the terms adequately protect Mr. Jackson. Furthermore, I believe it is in the public interest to approve this Settlement Agreement as a basis for administrative disposition of this case, and I therefore approve the Settlement Agreement and General Release.

IT IS THEREFORE ORDERED that the Settlement Agreement and General Release submitted by the parties is APPROVED. The complaint is DISMISSED WITH PREJUDICE. In accordance with the regulations, the settlement constitutes the final order of the Secretary of Labor⁴ and may be enforced under 29 C.F.R. § 1982.113 (2012).

IT IS FURTHER ORDERED that the Settlement Agreement and General Release is to be kept under seal and designated as “Personal Private Information” and “Confidential Commercial Information” under 20 C.F.R. § 70.26, and shall be afforded the protections thereunder.

CHRISTINE L. KIRBY
Administrative Law Judge

⁴ 29 C.F.R. § 1982.111(e)