



**Issue Date: 04 December 2012**

Case No.: 2012-FRS-00066

In the Matter of

**DOUG A. MADDEN**

Complainant

v.

**NORFOLK SOUTH CORPORATION**

Respondent

**NOTICE OF HEARING CANCELLATION AND  
FINAL ORDER DISMISSING COMPLAINT  
WITH APPROVAL OF SETTLEMENT AGREEMENT**

The above-captioned 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 September 26, 2012, a hearing to be held in Pittsburgh, Pennsylvania was rescheduled for March 20, 2013. By letter from Complainant's counsel dated November 28, 2012 which was received on December 3, 2012, I was provided a copy of the settlement agreement executed by the parties.

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 the public interest.<sup>1</sup> The settlement also supports a finding that the complaint be dismissed. Consequently, approval of the agreement is appropriate.

The parties have agreed to keep the specific terms of the agreement confidential, subject to applicable laws. To effectuate such confidentiality, I will have the settlement agreement sealed. 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.<sup>2</sup>

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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).

<sup>2</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).

Accordingly, I hereby notify the parties that the hearing scheduled for March 20, 2013 is canceled. The parties' settlement agreement is **APPROVED** and the FRS complaint of Doug A. Madden is **DISMISSED**.

**SO ORDERED.**

**LYSTRA A. HARRIS**  
Administrative Law Judge

Cherry Hill, New Jersey