



Issue Date: 23 January 2013

Case No.: 2012-FRS-00051

In the Matter of

EDWARD A. TODD
Complainant

v.

NORFOLK SOUTHERN RAILWAY COMPANY
Respondent

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

This matter arises under the employee protection provisions of the Federal Rail Safety Act (FRSA or the Act), 49 U.S.C. § 20109, as amended.¹ The employee protection provisions of the Act apply to railroad employees who feel they have been subjected to retaliatory discipline or discrimination by their employer for engaging in protected activities related to railway safety. Implementing regulations were published on August 31, 2010. *See* “Procedures for the Handling of Retaliation Complaints Under the National Transit systems Security Act and the Federal Railroad Safety Act,” 75 Fed. Reg. 53,522 (Aug. 31, 2010), to be codified at 29 C.F.R. Part 1982.² Edward A. Todd (“Complainant”) filed a complaint under § 20109 of the FRSA against Norfolk Southern Railway Company (“NSR” or “Respondent”) in which he alleged he was terminated by NSR for his participation in protected activity under the FRSA.

I scheduled a hearing for January 24, 2013. During a telephonic prehearing conference I held with the parties on January 15, 2013, the parties informed me that they had reached an agreement to settle that complaint. By letter from Respondent’s counsel dated and received January 22, 2013, I received the parties’ Confidential Settlement Agreement and Release (“Settlement Agreement”) which fully settles and resolves their dispute. Both parties were ably represented by counsel. The Settlement Agreement states that the Complainant understands and voluntarily accepts its provisions.

¹ Pub. L. 110-53, Title XV, §1521, Aug. 3, 2007, 121 Stat. 444; Pub. L. 110-432, Div. A, Title IV, § 419, Oct 16, 2008, 122 Stat. 4892.

² Unless otherwise noted, all references to regulations are to Title 29, Code of Federal Regulations (C.F.R.). References to the implementing regulations will cite to the applicable provision in Part 1982, rather than to the Federal Register.

The Settlement Agreement provides that Complainant releases Respondent from claims arising under the FRSA, as well as under various other laws. This order is limited to whether the terms of the Agreement 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'y 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 of Remand, issued November 3, 1986.

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

Having reviewed the Settlement Agreement, I find its provisions are fair, adequate, reasonable and not contrary to public interest.³ Further, the Settlement Agreement supports a finding that the complaint be dismissed with prejudice. Accordingly, approval of the Settlement Agreement is appropriate. Upon my approval, the parties shall implement the provisions of the Settlement Agreement. This Order shall have the same force and effect as one made after a full hearing on the merits.⁴

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, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption.⁵

Accordingly, I hereby notify the parties that the hearing scheduled for January 24, 2013 is

³ *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).

⁴ *See* 29 C.F.R. § 1982.111(e) of the Interim Final Rule, 75 Fed. Reg. 53527 (Aug. 31, 2010).

⁵ *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).

canceled. The parties' settlement agreement is **APPROVED** and the FRSA complaint of Edward A. Todd is **DISMISSED** with prejudice.

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey