



Issue Date: 13 February 2014

Case No.: 2013-FRS-00015

In the Matter of:

MICHAEL P. JACOBY,

Complainant,

v.

CSX TRANSPORTATION, INC.,

Respondent.

DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT
AND
ORDER DISMISSING COMPLAINT WITH PREJUDICE

This case arises under the employee protection provisions of the Federal Railroad Safety Act, U.S. Code, Title 49, §20109, as amended (“FRSA”), and its implementing regulations at 29 CFR, Part 1982. The claim was referred to the Office of Administrative Law Judges for formal hearing upon appeal by Complainant of the November 6, 2012 Occupational Safety and Health Administration determination dismissing the complaint. A formal hearing scheduled to commence on August 28, 2013 in Savannah, Georgia, was continued to November 13, 2013 in Newport News, Virginia, by Order of June 7, 2013, due to prior scheduling conflicts involving Respondent’s counsel. By Order of August 29, 2013, the November 13, 2013 hearing was continued to March 13, 2014. By Order of January 7, 2014, the March 13, 2014 hearing was cancelled on averment of counsel that a settlement of all issues had been reached by the Parties. On July 21, 2014, Employer’s counsel filed a “Settlement Agreement and General Release” signed by the Complainant and counsel for both Parties.

Implementing Federal regulations at 29 CFR §1982.111(d)(2) provides that “At any time after the filing of objections to the Assistant Secretary’s findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ, if the case is before the judge, or by the ARB if the ARB has accepted the case for review. A copy of the settlement agreement will be filed with the administrative law judge or the ARB, as the case may be.” In reviewing the Settlement Agreement, the Administrative Law Judge must determine

whether the terms of the agreement fairly, adequately and reasonably settle the Complainant's allegations that the Respondent violated the FRSA. Once the settlement agreement is approved, it becomes the final action of the Secretary, 29 CFR §1982.111(e).

In addition to the terms set forth in the "Settlement Agreement and General Release" the Parties agreed and stipulated that –

1. The Decision and Order entered approving the "Settlement Agreement and General Release" shall have the same force and effect as an Order made after a full hearing;
2. The Parties waive any further procedural steps before the presiding Judge;
3. The Parties waive any rights to challenge or contest the validity of the Decision and Order entered approving the "Settlement Agreement and General Release";
4. Each Party shall bear all its own costs, expenses, and legal and accounting fees incurred in connection with this action; and,
5. The Decision and Order entered approving the "Settlement Agreement and General Release" shall be the final agency action.

After review of the Settlement Agreement and the administrative record, this Administrative Law Judge finds that the terms of the agreement fairly, adequately and reasonably settle the Complainant's allegations that the Respondent violated the FRSA and that the Settlement Agreement complies with the standard required under the FRSA and is approved.

Accordingly, it is **ORDERED** that –

1. The Settlement Agreement is **APPROVED**; and,
2. The Complaint is hereby **DISMISSED WITH PREJUDICE**.

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia