



Issue Date: 12 September 2014

CASE NO. : 2013-FRS-52

IN THE MATTER OF

ALPHONSO LOUSTAUNAU

Complainant

v.

UNION PACIFIC RAILROAD COMPANY

Respondent

**DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This matter arises out of a complaint of retaliation filed pursuant to the employee protection provisions of the Federal Rail Safety Act, ("FRSA") 49 U.S.C. §20109.¹ It was scheduled to be heard before the undersigned administrative law judge commencing on April 9, 2014, but the parties filed a Settlement Agreement ("Settlement Agreement") on September 8, 2014. See 29 C.F.R. § 1982.111.

The regulations implementing the FRSA address settlements. Specifically 29 C.F.R. §1982.111(d) (2) states:

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 ALJ...A copy of the settlement will be filed with the ALJ...

¹ The governing regulations are at 29 C.F.R. Part 1982.

A settlement approved by the administrative law judge shall constitute the final order of the Secretary and may be enforced pursuant to 29 C.F.R. § 1982.113 in Federal District Court. 29 C.F.R. § 1982.111(e).

The Settlement resolves the controversy arising from the complaint of Alphonso Loustaunau (the Complainant) against Union Pacific Railroad Company (the Respondent). This Settlement is signed by the Complainant and Respondent. The settlement provides that the Complainant will release the Respondent from claims arising under the FRSA as well as various other laws. This Order, however, is limited to whether the terms of the Settlement are a fair, adequate and reasonable settlement of the Complainant's allegations that the Respondent violated the FRSA. As was stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*, Case No. 86-CAA-1, Sec. 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. Buncomb County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

The Settlement provides that the Respondent shall make payment to the Complainant of the amounts agreed upon. The parties represent that the compensation terms are fair and reasonable in relation to the claim. The settlement also provides for payment of Counsel for Complainant's attorney's fees and litigation costs from the settlement agreement, which are hereby approved. The Settlement also provides that Complainant will release any and all claims against the Respondent arising out of his employment with the Respondent, including his FELA claim, and accordingly, the Complainant's FRS claim will be dismissed with prejudice.

The Complainant and Respondent were ably represented by counsel. The Complainant represents his understanding of the Settlement Agreement's provisions and voluntarily accepts the settlement. Having reviewed the Settlement Agreement, I find the provisions are fair, adequate and not contrary to the public interest. Further, the settlement supports a finding that the complaint be dismissed with prejudice. Accordingly, approval of

the agreement is appropriate. Upon my approval, the parties shall implement their settlement as specifically stated in the Settlement Agreement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits.

Regarding the parties' confidentiality agreement, it has been held in a number of cases with respect to confidentiality that the Freedom of Information Act, 5 U.S.C. §552, *et seq.*, (1988) (FOIA), requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman TankLines, Inc.*, Case Nos. 92-SWD-2 and 93-STA-15, ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998. The records in this case are agency records which may be made available for public inspection and copying under the Freedom of Information Act. However, the employer will be provided a pre-disclosure notification giving the employer the opportunity to challenge any such potential disclosure. The Agreement itself is not appended and will be separately maintained and marked "PREDISCLASURE NOTIFICATION MATERIALS." A protective order restricting access to the Agreement will be placed on the outside of the sealed envelope.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Settlement Agreement is **APPROVED**;
2. The complaint is **DISMISSED WITH PREJUDICE**;

ORDERED this 12th day of September, 2014, at Covington, Louisiana.

LEE J. ROMERO, JR.
Administrative Law Judge

