



Issue Date: 29 October 2014

Case No.: 2013-FRS-00008

In the Matter of:

JASON MCCUMBERS,

Complainant.

v.

NORFOLK SOUTHERN RAILWAY
COMPANY,

Respondent.

**ORDER APPROVING SETTLEMENT
AND
DISMISSING THE COMPLAINT**

This case arises under the Federal Rail Safety Act, which provides whistleblower protections to railroad employees for engaging in certain protected activities. 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53. On October 23, 2014, the parties submitted a copy of their signed Settlement Agreement, which resolves all issues raised in the Complaint, for my review and approval. The attached Settlement Agreement is incorporated herein by reference.

My review of the Settlement Agreement is limited to a determination of whether its terms are fair, adequate, and reasonable. The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to the public interest. After careful consideration of the settlement agreement, I find that none of the terms or conditions are unacceptable. Moreover, I find the terms of the agreement to be fair and reasonable and to adequately protect the Complainant. Furthermore, I believe it is in the public interest to approve the agreement as a basis for administrative disposition of this case and I therefore approve the Settlement Agreement.

I note that the Settlement Agreement incorporates certain confidentiality provisions binding upon the parties in a nondisclosure provision. *See generally Connecticut Light & Power Co. v. Secretary of the U.S. Department of Labor*, 85 F.3d 89 (2nd Cir. 1996). Records in whistleblower cases are agency records which the agency must make available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. §552. The parties have acknowledged the applicability of FOIA and requested that any agency receiving a

request for release of the agreement comply with Section 1 of Executive Order 12,600 (June 23, 1987) and 29 C.F.R. §70.26. Specifically, it is incumbent on any agency receiving such a request to give the parties prompt written notice of the request, to give a reasonable time to object in writing, to consider any objections, and in the event of disclosure of the information over objections, to give the party objecting written notice complying with the obligations set forth in 29 C.F.R. §70.26(f).

ORDER

The Settlement Agreement is **APPROVED**, and it shall be designated as confidential subject to the procedures requiring disclosure under FOIA. The Complaint of Jason McCumbers is **DISMISSED WITH PREJUDICE**.

KENNETH A. KRANTZ
Administrative Law Judge

KAK/mrc