



Issue Date: 03 April 2014

Case No.: 2013-FRS-00088

In the Matter of:

**THOMAS McKINLEY,
Claimant,**

v.

**ILLINOIS CENTRAL RAILROAD, INC.,
Employer,**

DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT

This case arose under the Federal Rail Safety Act (FRSA), as amended,¹ which provides whistleblower protections to employees of railroad carriers for engaging in certain protected activities. On February 18, 2014, the parties submitted a “Confidential Settlement Agreement and Release of Claims” (“Settlement Agreement”), which resolves all issues raised in the complaint, for my review and approval. The Settlement Agreement was accompanied by a Joint Motion for Approval of Settlement Agreement signed by counsel for the Complainant and counsel for the Respondent. The Confidential Settlement Agreement and Release of Claims is incorporated herein by reference, without in any way affecting the confidential designation as described below. The Confidential Settlement Agreement and Release of Claims has been signed by the Complainant and a representative of the Respondent.

My review of the Settlement Agreement is limited to a determination of whether its terms are fair, adequate and reasonable under the FRSA.² The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to public interest.

Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties’ submissions in this case, including the Confidential Settlement Agreement and Release of Claims, become a part of the record in this case, and are subject to the Freedom of Information Act (“FOIA”).³ FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *See, e.g., Fish v. H and R Transfer*, ARB No. 01-071, ALJ Case No. 2000-STA-56, slip op. at 2 (ARB April 30, 2003). Page 3 of the Settlement Agreement provides that both parties will keep the existence and terms of the

¹ 49 U.S.C. § 20109 (2011).

² *See Poulos v. Ambassador Fuel Oil Co.*, No. 91-ERA-25, slip op. at 2 (Sec’y of Labor, Nov. 4, 1991).

³ 5 U.S.C. § 552 (2011).

Settlement Agreement confidential, with certain specified exceptions. In the Settlement Agreement, the parties have stipulated to its confidential nature. Accordingly, to protect the parties from improper disclosure of this confidential information, to the furthest extent permitted by law, the Confidential Settlement Agreement and Release of Claims will be sealed in a separate envelope and identified as being “Confidential Commercial and Personal Private Information,” pursuant to 29 C.F.R. § 70.26(b).

After careful consideration of the Confidential Settlement Agreement and Release of Claims, I find that the terms and conditions are acceptable. Moreover, I find the terms of the agreement to be fair, adequate, and reasonable under the FRSA, and that the terms adequately protect Mr. McKinley. Furthermore, I believe it is in the public interest to approve this Settlement Agreement as a basis for administrative disposition of this case, and I therefore approve the Confidential Settlement Agreement and Release of Claims.

IT IS THEREFORE ORDERED that the Confidential Settlement Agreement and Release of Claims submitted by the parties is APPROVED. The complaint is DISMISSED WITH PREJUDICE. In accordance with the regulations, the settlement constitutes the final order of the Secretary of Labor⁴ and may be enforced under 29 C.F.R. § 1982.113 (2012).

IT IS FURTHER ORDERED that the Confidential Settlement Agreement and Release of Claims is to be kept under seal and designated as “Personal Private Information” and “Confidential Commercial Information” under 20 C.F.R. § 70.26, and shall be afforded the protections thereunder.

CHRISTINE L. KIRBY
Administrative Law Judge

⁴ 29 C.F.R. § 1982.111(e)