



Issue Date: 18 November 2014

CASE NO.: 2013-FRS-00083

In the Matter of:

**DAVID MEINEN,
Complainant,**

v.

**WISCONSIN CENTRAL LTD.,
Respondent.**

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

This case arises under the employee protection provisions of the Federal Rail Safety Act (FRSA), as amended, 49 U.S.C. §20109. A hearing scheduled for December 16 to 18, 2014 in Madison, Wisconsin was canceled because the parties reached a settlement. However, as the parties submitted a redacted settlement agreement for approval, on November 3, 2014, I issued an Order Canceling Hearing and Notice of Deficiencies, which provided that the settlement was deficient in its present form and held approval in abeyance until an acceptable agreement was submitted for approval. In response, on November 12, 2014, the parties submitted a Joint Motion for Settlement Agreement to be Maintained Separately and Pre-Disclosure Notification, along with the unredacted settlement agreement [hereafter "Settlement Agreement."] Inasmuch as the Settlement Agreement is now complete and is a fair, reasonable, and adequate resolution of this case, it is being approved.

As I noted in the Order Canceling Hearing and Notice of Deficiencies:

Settlement agreements under the FRSA are governed by 29 C.F.R. §1982.111(d)(2), as added, Interim Final Rule, 75 Fed. Reg. 53527, 53533 (Aug. 31, 2010). That section relates to adjudicatory settlements and requires the submission of a settlement agreement to the presiding administrative law judge for approval. *Compare Hoffman v. Fuel Economy Contracting*, 1987-ERA-33 (Sec'y Aug. 4, 1989) (Order) (requiring that settlements in whistleblower cases brought under the Energy Reorganization Act be reviewed to determine whether they are fair, adequate and reasonable) *with Indiana Dept. of Workforce Development v. U.S. Dept. of Labor*, 1997-JTP-15 (Admin. Review Bd. Dec. 8, 1998) (holding ALJ has no authority to require submission of settlement

agreement in Job Training Partnership case when parties have stipulated to dismissal under Rule 41(a)(1)(A)(ii), FRCP, and contrasting ERA cases.)

The Order provided that the amount payable to the Complainant needed to be specified:

Without knowing the amounts payable to Complainant, I cannot evaluate the adequacy of the amount payable to him or determine whether the settlement is fair, reasonable, and adequate, in accordance with 29 C.F.R. §1982.111. *See generally Guity v. Tennessee Valley Authority*, 1990-ERA-10 (ARB Aug. 28, 1996) (ERA case). Although this case arises under the Federal Rail Safety Act, the same principle is applicable as applies to other types of whistleblower cases. Although the parties wish to keep the settlement amounts confidential, they cannot do so. 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, and the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA. *See generally Seater v. Southern California Edison Co.*, 1995-ERA-13 (ARB Mar. 27, 1997). The parties may request that the Settlement Agreement and any attachments be maintained in a separate folder and provided with the maximum confidentiality and exception from public disclosure that is permitted by law, in accordance with 29 C.F.R. §§ 18.15, 18.46, and 18.56. Likewise, the parties may request predisclosure notification in accordance with 29 C.F.R. §70.26. They may not, however, offer a redacted settlement agreement.

Further, the Order required that the amount payable in attorney fees be specified:

A settlement agreement must specify the amount payable to counsel as, otherwise, the actual amount payable to the complainant cannot be determined. *See Guity, supra; see also Tinsley v. 179 South Street Venture*, 1989-CAA-3 (Sec'y Aug. 3, 1989) (order of remand). This matter should be clarified either through a revised settlement agreement or supplemental information provided by the parties.

The submission by the parties of November 12, 2014 cured the specified deficiencies.

As requested by the parties, the Settlement Agreement (and the redacted form of the agreement) shall be maintained in a separate folder and provided with the maximum confidentiality and exception from public disclosure that is permitted by law, in accordance with 29 C.F.R. §§ 18.15, 18.46, and 18.56, and the parties shall be entitled to predisclosure notification in accordance with 29 C.F.R. §70.26.

To the extent that the Settlement Agreement relates to matters under laws other than the Federal Rail Safety Act, I have limited my review to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegations that the Respondent violated the Federal Rail Safety Act. *See Poulos v. Ambassador Fuel Oil Co., Inc.*, 1986-CAA-1 (Sec'y Nov. 2, 1987). In reviewing the Settlement Agreement, I have not determined, or taken

into consideration, the tax consequences of any payments made in accordance with the Settlement Agreement.

Having reviewed the terms of the Settlement Agreement, I find that the settlement is fair, reasonable, and adequate, and that it should be approved. This Decision and Order Approving Settlement Agreement and Dismissing Complaint shall be the final agency action, in accordance with 29 C.F.R. §1982.111(e). Accordingly,

ORDER

IT IS HEREBY ORDERED that the Settlement Agreement be, and hereby is, **APPROVED**, and the parties shall comply with its terms to the extent that they have not already done so; and

IT IS FURTHER ORDERED that the Settlement Agreement (and the redacted form of the agreement) shall be maintained in a separate folder and provided with the maximum confidentiality and exception from public disclosure that is permitted by law, in accordance with 29 C.F.R. §§ 18.15, 18.46, and 18.56, and the parties shall be entitled to predisclosure notification in accordance with 29 C.F.R. §70.26; and

IT IS FURTHER ORDERED that this action be, and hereby is **DISMISSED WITH PREJUDICE**.

PAMELA J. LAKES
Administrative Law Judge

Washington, D.C.