



Issue Date: 03 July 2013

Case No.: 2013-FRS-44

In the Matter of:

GARY REICHERT,
Complainant,

v.

NORFOLK SOUTHERN RAILWAY CO.,
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT

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 June 28, 2013, the parties submitted a “Joint Motion for approval of Settlement and Final Release” (the “Joint Motion”) and a signed “Settlement and Final Release”, which resolves all issues raised in the complaint, for my review and approval. The Joint Motion and attached Settlement Agreement are incorporated herein by reference, without in any way affecting the confidential designation of the Settlement Agreement as described below. The Joint Motion has been signed by counsel for the parties, and the Settlement Agreement has been signed by the Complainant.

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 Settlement and Final Release, 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). The second full paragraph on page 10 of the Settlement Agreement provides that both parties will keep the existence and terms of the Settlement Agreement confidential, with certain specified exceptions. In both the Settlement Agreement and Motion, the parties have stipulated to the confidential nature of the Settlement Agreement. The parties assert that the Settlement Agreement is exempt from disclosure under

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).

FOIA pursuant to FOIA Exemptions 4 and 6.⁴ Accordingly, to protect the parties from improper disclosure of this confidential information, to the furthest extent permitted by law, the Settlement Agreement 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 Settlement Agreement, 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 the Complainant. Furthermore, I believe it is in the public interest to approve the Settlement Agreement as a basis for administrative disposition of this case, and I therefore approve the Settlement Agreement.

IT IS THEREFORE ORDERED that the Settlement Agreement 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 Labor⁵ and may be enforced under 29 C.F.R. § 1982.113 (2012).

IT IS FURTHER ORDERED that the Settlement Agreement is to be kept under seal and designated as “PERSONAL PRIVATE INFORMATION,” and “CONFIDENTIAL COMMERCIAL INFORMATION” under 29 C.F.R. § 70.26, and shall be afforded the protections thereunder.

Alice M. Craft
Administrative Law Judge

⁴ 5 U.S.C. § 552(b)(4) & (b)(6).

⁵ 29 C.F.R. § 1982.111(e).