



Issue Date: 10 May 2016

Case No.: 2013-FRS-00034

In the Matter of:

REGGIE SEAY
Complainant,

v.

NORFOLK SOUTHERN RAILWAY CO.,
Respondent.

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

This case arose under the Federal Rail Safety Act (hereafter “FRSA”), as amended,¹ which provides whistleblower protection for engaging in certain protected activities. On April 21, 2016, the parties submitted a signed “Settlement and Final Release” (hereafter the “Agreement”), which resolves all issues raised in the Complaint, for review and approval by the undersigned administrative law judge. The attached Agreement is incorporated herein by reference without in any way affecting the confidential designation of the Agreement as described below. The Agreement has been signed by the parties.

My review of the Settlement Agreement is limited to a determination of whether its terms are fair, adequate and reasonable under the FRSA, 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 (Aug. 3, 2007). *See Poulos v. Ambassador Fuel Oil Co.*, No. 91-ERA-25, slip op. at 2 (Sec’y of Labor, Nov. 4, 1991). The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to public interest. The Agreement may encompass settlement of matters under laws other than under the FRSA. However, I approve only those terms of the Agreement pertaining to the Complainant’s claim under the FRSA.

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 Agreement, become a part of the record in this case, and are subject to the Freedom of Information Act

¹ 49 U.S.C. 20109. Implementing regulations are found at 29 C.F.R Part 1982.

(“FOIA”).² 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 Agreement provides that the parties will keep the terms of the settlement agreement confidential, with certain specified exceptions. The parties assert that the monetary terms of the Agreement qualify as confidential and privileged commercial and financial information within the meaning of Exemption 4 to FOIA (cover letter to Agreement). 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 INFORMATION,” pursuant to 29 C.F.R. § 70.26(b). The sealed envelope will also be identified as being “PERSONAL PRIVATE INFORMATION,” indicating that it may contain information exempt from FOIA pursuant to Exemption 6.

After consideration of the Settlement Agreement, I find that the terms and conditions are acceptable under the Act, 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**. In accordance with the terms of the settlement, the complaint is hereby **DISMISSED WITH PREJUDICE**. In accordance with the regulations, the settlement constitutes the final order of the Secretary of Labor and may be enforced under 29 C.F.R. § 1982.111(e).

IT IS FURTHER ORDERED that the 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.

LARRY A. TEMIN
ADMINISTRATIVE LAW JUDGE

² 5 U.S.C. § 552 (2011).