



Issue Date: 10 December 2014

CASE NO.: 2013-FRS-00009

IN THE MATTER OF

**WANDA WILEY,
Complainant**

v.

**NORFOLK SOUTHERN RAILWAY COMPANY,
Respondent**

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

This matter arises out of a complaint of retaliation filed pursuant to the employee protection provisions of the Federal Rail Safety Act, (“FRSA”) 49 U.S.C. §20109.¹ It was scheduled to be heard before the undersigned administrative law judge commencing on November 12, 2014 in Birmingham, Alabama. At the beginning of the hearing, the parties notified me that a settlement had been reached, and they explained the general terms of the settlement. The parties filed a Settlement and Final Release Agreement (“Agreement”) on December 3, 2014. *See* 29 C.F.R. § 1982.111.

The regulations implementing the FRSA address settlements. Specifically, 29 C.F.R. §1982.111(d)(2) states:

At any time after the filing of objections to the Assistant Secretary’s findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ....A copy of the settlement will be filed with the ALJ....

¹ The governing regulations are at 29 C.F.R. Part 1982.

A settlement approved by the administrative law judge shall constitute the final order of the Secretary and may be enforced pursuant to 29 C.F.R. § 1982.113 in Federal District Court. 29 C.F.R. § 1982.111(e).

The Agreement resolves the controversy arising from the complaint of Wanda Wiley (Complainant) against Norfolk Southern Railway Company (Respondent). This Agreement is signed by Complainant and Respondent. The settlement provides that Complainant will release Respondent from claims arising under the FRSA as well as various other laws. This Order, however, is limited to whether the terms of the Agreement are a fair, adequate, and reasonable settlement of Complainant's allegations that Respondent violated the FRSA.

As was stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987):

The Secretary's authority over the settlement agreement is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. See *Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. 86-CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncomb County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

The Agreement provides that the Respondent shall make payment to Complainant of the amounts agreed upon. The parties represent that the compensation terms are fair and reasonable in relation to the claim. The settlement also provides for payment of Counsel for Complainant's attorney's fees and litigation costs from the settlement agreement, which are hereby approved. The Agreement also provides that Complainant will release any and all claims against the Respondent arising out of her employment with the Respondent, and accordingly, the Complainant's FRSA claim will be dismissed with prejudice.

Complainant and Respondent were ably represented by counsel. Complainant represents her understanding of the Agreement's provisions and voluntarily accepts the settlement. Having reviewed the Agreement, I find the provisions are fair, adequate, and not contrary to the public interest. Further, the settlement supports a finding that the complaint be dismissed with prejudice. Accordingly, approval of the agreement is appropriate. Upon my approval, the parties shall implement their settlement as specifically stated in the Agreement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits.

Regarding the parties' confidentiality agreement, it has been held in a number of cases with respect to confidentiality that the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, (1988) (FOIA), requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman TankLines, Inc.*, Case Nos. 92-SWD-2 and 93-STA-15, ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998. The monetary terms of the settlement qualify as confidential and privileged commercial and financial information within the meaning of Exemption 4 of the FOIA, 5 U.S.C. § 522(b)(4), and thus are protected from disclosure by any federal agency. Respondent has so designated and marked those provisions on the copy of the Agreement. In the event the United States Department of

Labor, Occupational Safety and Health Administration, or any related component receives a request for disclosure of the monetary terms set forth in the attached agreement, Respondent expects the receiving agency or component to comply fully with its obligations under Section 1 of Executive Order 12,600 (June 23, 1987) and 29 C.F.R. § 70.26 (2012), to give Respondent prompt notice of the request, to give Respondent a reasonable time to object in writing to disclosure, to consider Respondent's objections, and, in the event the disclosure officer decides to disclose information over Respondent's objection, to give Respondent written notice thereof in compliance with the obligations set forth in 29 C.F.R. § 70.26(f).

Also, the Agreement itself is not appended and will be separately maintained and marked "PREDISCLURE NOTIFICATION MATERIALS." A protective order restricting access to the Agreement will be placed on the outside of the sealed envelope.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Settlement and Final Release Agreement is **APPROVED**; and
2. The complaint is **DISMISSED WITH PREJUDICE**.

SO ORDERED this 8th day of December, 2014, at Covington, Louisiana.

CLEMENT J. KENNINGTON
Administrative Law Judge