



Issue Date: 18 March 2020

Case No.: 2019-STA-00029

In the Matter of:

RYAN BURK
Complainant

v.

FL TRANSPORTATION, INC.
Respondent

DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT, DISMISSING CLAIM, AND SEALING SETTLEMENT DOCUMENTS

1. Nature of Request. This proceeding arises under the employee protection provisions of the Federal Railroad Safety Act of 2007 (“FRSA”), 49 U.S.C. § 20109. The Act includes a whistleblower protection provision with a Department of Labor complaint procedure. Pursuant to 29 C.F.R. § 1982.111(d)(2), the parties submitted a proposed confidential settlement agreement for the undersigned’s approval.

2. Procedural History, Findings of Fact, and Legal Conclusions.

a. Complainant filed a complaint on March 6, 2018 with the Occupational Safety and Health Administration (OSHA) alleging Respondent committed retaliation prohibited by the FRSA. Respondent filed a response to the complaint in which it denied liability. The undersigned issued a Notice of Hearing on August 1, 2019.

b. On March 12, 2020, Complainant filed an “Unopposed Motion to Approve Settlement Agreement and Dismiss Proceeding With Prejudice” and “Confidential Settlement Agreement” for the undersigned’s approval.¹ The Settlement Agreement was signed in counterpart by each of the parties.

c. Paragraph 13 of the Settlement Agreement provides that Complainant has agreed to

¹ At any time after the filing of objections to the Assistant Secretary’s findings and preliminary order, the case may be settled, and, if the case is before an administrative law judge, the settlement is contingent upon the approval of the administrative law judge. 29 C.F.R. § 1982.111(d)(1). Any settlement approved by the administrative law judge becomes the final order of the Secretary. 29 C.F.R. § 1982.111(e).

keep the terms of the settlement confidential. Although the parties did not specifically request that the settlement documents be filed under seal, the undersigned has determined that sealing the settlement documents is consistent with the Settlement Agreement's intent to keep the terms of the settlement confidential.

d. Having been advised of the settlement terms and having reviewed the Settlement Agreement, noting that the parties are represented by counsel, the undersigned finds the terms to be fair, adequate, reasonable, and not contrary to public policy.

3. Ruling and Order.

a. The Settlement Agreement is APPROVED and may be enforced pursuant to 20 C.F.R. § 1982.113. The parties shall implement the terms as stated in the Settlement Agreement, to the extent not otherwise accomplished. This Order shall have the same force and effect as one made after a full hearing on the merits.

b. The Settlement Agreement shall be kept confidential pursuant to 29 C.F.R. § 70.26. Accordingly, the Settlement Agreement shall be sealed and remain confidential and will be placed in a sealed envelope in the administrative file.

c. Notwithstanding the parties' agreement, the parties' submissions, including the Settlement Agreement, become part of the record of the case and are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a). If a FOIA request is made for the Settlement Agreement, the U.S. Department of Labor will respond and decide whether to exercise its discretion to claim any applicable exemption. The parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

d. This case is DISMISSED with prejudice.

SO ORDERED this day at Covington, Louisiana.

TRACY A. DALY
ADMINISTRATIVE LAW JUDGE