



**In the Matter of:**

**HENRY PRICE,**

**COMPLAINANT,**

**v.**

**NORFOLK SOUTHERN RAILWAY CO.,**

**RESPONDENT.**

**ARB CASE NO. 12-020**

**ALJ CASE NO. 2010-FRS-017**

**DATE: February 3, 2012**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Paul M. Igasaki, *Chief Administrative Appeals Judge*, and E. Cooper Brown, *Deputy Chief Administrative Appeals Judge***

**FINAL DECISION AND ORDER APPROVING SETTLEMENT  
AND DISMISSING APPEAL**

The Complainant, Henry Price, alleged that the Respondent, Norfolk Southern Railway Co., violated the employee protection provisions of the Federal Rail Safety Act,<sup>1</sup> when it harassed and intimidated him in questioning him about his work attendance record and work-related injuries during a meeting that occurred with a Superintendent on February 20, 2009. Price's union representative filed a FRSA whistleblower complaint on his behalf with the Secretary of Labor. Following an investigation, the Area Director for the Occupational Safety

---

<sup>1</sup> 49 U.S.C.A. § 20109 (Thomson/West Supp. 2011)(FRSA).

and Health Administration (OSHA) found that there was no reasonable cause to believe that the Respondent violated the FRSA. Specifically, OSHA found that the evidence failed to demonstrate that Price suffered from an adverse employment action, nor did it support the existence of a connection between any alleged adverse employment action and any prior or prospective protected activity.

Price objected to OSHA's findings and timely requested a de novo hearing before a Department of Labor Administrative Law Judge (ALJ). The ALJ held a formal hearing and ultimately concluded that Price had failed to establish the elements of an FRSA whistleblower complaint. Accordingly, he denied Price's complaint.<sup>2</sup> Price filed a timely Petition for Review of the ALJ's Decision and Order with the Administrative Review Board. The Secretary of Labor has delegated her authority to issue final decisions under the FRSA to the Board.<sup>3</sup>

On December 27, 2012, the Board received Price's Motion to Dismiss. The Motion requests the Board to dismiss Price's appeal because he has entered into a settlement of a cumulative trauma personal injury case, which requires him to dismiss the appeal of his FRSA case pending before the Board. Under the regulations implementing the FRSA, the parties may settle a case at any time after filing objections to OSHA's preliminary findings, and before those findings become final, "if the participating parties agree to a settlement and the settlement is approved . . . by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as the case may be."<sup>4</sup>

The Board could not consider Price's Motion to Dismiss, until it had reviewed the parties' settlement to determine whether it was fair, adequate, and reasonable. Therefore, the Board ordered the parties to provide it with a copy of the parties' settlement for its review.

The Board has now received and reviewed the settlement agreement. Initially, we note that while the settlement agreement encompasses the settlement of matters under statutes other than the FRSA,<sup>5</sup> the Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by the Secretary of Labor's Delegation of Authority. Therefore, we only approve the terms of the Agreement pertaining to Price's current

---

<sup>2</sup> *Price v. Norfolk Southern Railway Co.*, 2010 FRS-017 (Nov. 22, 2010).

<sup>3</sup> Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924, § 5(b)(15) (Jan. 15, 2010)(Secretary of Labor's Delegation of Authority).

<sup>4</sup> 29 C.F.R. § 1982.111(d)(2)(2011).

<sup>5</sup> Settlement and Final Release at 1-10.

FRSA case.<sup>6</sup> Otherwise, we find the settlement to be fair, adequate, and reasonable, and as such we **APPROVE** the settlement and **DISMISS** Price's appeal.

**SO ORDERED.**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**E. COOPER BROWN**  
**Deputy Chief Administrative Appeals Judge**

---

<sup>6</sup> *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).