



In the Matter of:

DARWIN OAKES,

**ARB CASE NOS. 12-101
13-017**

COMPLAINANT,

ALJ CASE NO. 2011-FRS-023

v.

DATE: February 21, 2013

**CENTRAL RAILROAD CO. OF
INDIANAPOLIS d/b/a/ CHICAGO,
FORT WAYNE AND EASTERN
RAILROAD,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Louis E. Jungbauer, Esq., and Justin N. Brunner, Esq.; *Yaeger, Jungbauer & Barczak PLC*; St. Paul, Minnesota

For the Respondent:

Ronald A. Lane, Esq., and Kristin L. Bevil, Esq.; *Fletcher & Sippel, LLC*; Chicago Illinois

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; and Lisa Wilson Edwards, *Administrative Appeals Judge*

FINAL DECISION AND ORDER APPROVING SETTLEMENT

This case arises under the employee protection provisions of the Federal Railroad Safety Act of 1982 (FRSA).¹ On August 7, 2012, a Department of Labor Administrative

¹ 49 U.S.C.A. § 20109 (Thomson/West 2012), as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Pub. L. No. 110-53, and as implemented by federal regulations at 29 C.F.R. Part 1982 (2012).

Law Judge (ALJ) issued a Decision and Order (D. & O.) finding that the Respondent, Central Railroad Company of Indianapolis, retaliated against the Complainant, Darwin Oakes, in violation of the FRSA's whistleblower protection provisions. On November 12, 2012, she issued a Supplemental Decision and Order Awarding Damages (Supp. D. & O.).

The Railroad timely petitioned the Administrative Review Board (Board) for review of both decisions.² Prior to decision, the parties petitioned for approval of a settlement agreement and dismissal of the case. The FRSA's implementing regulations provide that at any time after a party has filed objections to the Assistant Secretary's findings or order, the case may be settled if the participating parties agree to a settlement and, if the Board has accepted the case for review, the Board approves the settlement agreement.³ We have received a signed copy of the Settlement Agreement and General Release and have reviewed its terms.

Review of the Agreement reveals that it may encompass the settlement of matters under laws other than the FRSA.⁴ The Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by the applicable delegation of authority. Therefore, we have restricted our review of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this FRSA case over which we have jurisdiction.⁵

Paragraph 15 of the Settlement Agreement provides that the Agreement shall in all aspects be interpreted, enforced, and governed by the laws of the State of Indiana. We construe this "choice of law" provision as not limiting the authority of the Secretary of Labor and any Federal courts, which shall be governed in all respects by the laws and regulations of the United States.⁶

² See Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69378 (Nov. 16, 2012); 29 C.F.R. § 1982.110(a).

³ 29 C.F.R. § 1982.111(d)(2)(emphasis added).

⁴ See, e.g., Settlement Agreement at para. 1.

⁵ *Accord Bhat v. District of Columbia Water & Sewer Auth.*, ARB No. 06-014, ALJ No. 2003-CAA-017, slip op. at 2 (ARB May 30, 2006).

⁶ See *Phillips v. Citizens' Ass'n for Sound Energy*, No. 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).

The parties have certified that the Settlement Agreement constitutes the entire settlement with respect to Oakes's FRSA claim.⁷ Accordingly, finding that the settlement is fair, adequate, and reasonable, we **APPROVE** the agreement and **DISMISS** Oakes's complaint.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LISA WILSON EDWARDS
Administrative Appeals Judge

⁷ See Settlement Agreement at para 10.