



In the Matter of:

SEAN BOWIE,

ARB CASE NO. 13-007

COMPLAINANT,

ALJ CASE NO. 2012-FRS-009

v.

DATE: March 27, 2013

**NEW ORLEANS PUBLIC BELT
RAILROAD,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Ross Citti, Esq., and Phyllis Rogers, Esq.; *Youngdahl & Citti, PC*; Houston, Texas

For the Respondent:

Patrick A. Talley, Jr., Esq.; Curt L. Rome, Esq.; and David J. Saltaformaggio, Esq.; *Phelps Dunbar LLP*, New Orleans, Louisiana

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; and Joanne Royce, *Administrative Appeals Judge*

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

This case arises under the employee protection provisions of the Federal Railroad Safety Act of 1982 (FRSA).¹ On October 19, 2012, a Department of Labor

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).

Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) finding that the Respondent, New Orleans Public Belt Railroad retaliated against the Complainant, Sean Bowie, in violation of the FRSA's whistleblower protection provisions and ordered the Railroad to reinstate Bowie and to pay him compensatory and punitive damages and to pay his attorney's fees and costs.

The Railroad timely petitioned the Administrative Review Board for review of the ALJ's D. & O.² But before the Board had issued its decision; the Railroad wrote to the Board explaining that the parties had reached a full and final settlement of all claims by Bowie against the Railroad.

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 encompasses 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

Further, the Settlement Agreement provides that the parties shall keep the terms of the settlement confidential.⁶ The Board notes that 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).⁷ FOIA requires Federal agencies to disclose

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 Receipt, Release and Indemnity Agreement by and between Sean Bowie and New Orleans Public Belt Railroad (Settlement Agreement) at para. 7.

⁵ *Accord Thompson v. Norfolk Southern Railway, Co.*, ARB No. 13-032, ALJ No. 2011-FRS-015, slip op. at 2 (ARB Feb. 28, 2013); *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 Settlement Agreement at para. 29.

⁷ 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2012).

requested records unless they are exempt from disclosure under the Act.⁸ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.⁹

The parties have certified that the Settlement Agreement constitutes the entire settlement with respect to Bowie's FRSA claim.¹⁰ Accordingly, finding that the settlement is fair, adequate, and reasonable, we **APPROVE** the agreement and **DISMISS** Bowie's complaint with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

⁸ *Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 3 (ARB Sept. 26, 2011); *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, -006; slip op. at 2 (ARB June 24, 1996).

⁹ 29 C.F.R. § 70 *et seq.* (2012).

¹⁰ Settlement Agreement at para 24.