



In the Matter of:

**BRANDY THOMPSON, widow of,
JEFF A. THOMPSON,**

COMPLAINANT,

v.

**NORFOLK SOUTHERN RAILWAY,
COMPANY,**

RESPONDENT.

ARB CASE NO. 13-032

ALJ CASE NO. 2011-FRS-015

DATE: February 28, 2013

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

John A. Moss, Esq.; *Steel & Moss*, Atlanta, Georgia

For the Respondent:

E. Scott Smith, Esq.; *Fisher & Phillips LLP*, Atlanta, Georgia

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; and E. Cooper Brown,
*Deputy Chief 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 January 8, 2013, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) finding that the Respondent,

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).

Norfolk Southern Railway Co., retaliated against the Complainant, Jeff A. Thompson,² in violation of the FRSA's whistleblower protection provisions.

The Respondent timely petitioned the Administrative Review Board (Board) for review of the D. & O.³ While the appeal was pending, the parties moved for approval of a settlement agreement and dismissal of the case with prejudice. 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.⁴ We have received a signed copy of the Settlement and Release Agreement and have reviewed its terms.

Review of the Agreement reveals that it encompasses the settlement of matters under laws other than the FRSA.⁵ 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.⁶

Paragraph 7 of the Settlement Agreement provides that the Agreement shall be governed and interpreted by the laws of the Commonwealth of Virginia. 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.⁷

² Mr. Thompson died while the proceedings before the ALJ were ongoing. His widow, Brandy Thompson, succeeded him in the litigation of his FRSA complaint. D. & O. at 1-2.

³ 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).

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

⁵ See, e.g., Settlement and Release Agreement at para. 3.

⁶ *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).

⁷ See *Phillips v. Citizens' Ass'n for Sound Energy*, No. 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).

As so construed, finding that the settlement is fair, adequate, and reasonable, we **APPROVE** the agreement and **DISMISS** Thompson's complaint, with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge