



IN THE MATTER OF:

SHAUN M. CARR,

ARB CASE NO. 13-052

COMPLAINANT,

ALJ CASE NO. 2012-FRS-014

v.

DATE: November 13, 2013

BNSF RAILWAY COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Robert Friedman, Esq.; *Law Offices of C. Marshall Friedman*, St. Louis, Missouri

For the Respondent:

Andrea Hyatt, Esq.; *BNSF Railway Company*, Fort Worth, Texas and John Patterson, Esq.; *Coates & Logan LLC*, Overland Park, Kansas

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 March 28, 2013, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) finding that Complainant Shaun M. Carr failed to prove by a preponderance of the evidence that his protected activity was

¹ 49 U.S.C.A. § 20109 (Thomson/West 2012) as implemented by federal regulations at 29 C.F.R. Part 1982 (2013).

a contributing factor in Respondent BNSF Railway Company's decision to terminate his employment. Consequently, the ALJ dismissed his complaint.²

Carr timely petitioned the Administrative Review Board for review of the ALJ's D. & O.³ But before the Board had issued its decision; the parties filed a Notice of Settlement and Joint Motion for Dismissal and Request for Confidentiality and accompanying Release and Settlement Agreement for the Board's review and approval.

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

Review of the Release and Settlement 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 Release and Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this FRSA case over which we have jurisdiction.⁶

Further the settlement provides at paragraph 1E that Carr waives

any other claims relating to any employment practices of BNSF, . . . or any other state or federal law or regulation; or any claims resulting from or arising from my employment with BNSF, including any claim for present or future reinstatement which [he] hereby expressly waive[s] and release[s].

Waiver provisions are limited to the right to sue in the future on claims or causes of

² *Carr v. BNSF Railway Co.*, No. 2012-FRS-014 (ALJ Mar. 28, 2013) (D. & O.).

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 Release and Settlement Agreement at para. 1.

⁶ *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).

action arising out of **facts** or any **set of facts** occurring **before** the date of the agreement; such waivers do not apply to actions taken by the employer subsequent to the agreement date.⁷ We construe paragraph 1E consistently with this precedent.

Accordingly, as so construed, we find that the settlement is fair, adequate, and reasonable, and we **APPROVE** the agreement and **DISMISS** Carr's complaint.⁸

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

⁷ *Smith v. Union Pacific R.R. Co.*, ARB No. 13-058, ALJ No. 2012-FRS-039, slip op. at 2-3 (ARB July 23, 2013). *See also Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51-52 (1974); *Rogers v. General Elec. Co.*, 781 F.2d 452, 454 (5th Cir. 1986).

⁸ We note that the Notice of Settlement and Joint Motion for Dismissal and Request for Confidentiality provides that "the parties request that the Board maintain the confidentiality of [the] enclosed release and settlement agreement, treat it as confidential and not disclose it to third parties." 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.A. § 552 (Thomson/West 1996 & Supp. 2013). FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act. *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-007, slip op. at 2 (ARB Jan. 31, 2011); *Norton v. Uni.-Group, Inc.*, ARB No. 08-079, ALJ Nos. 2007-STA-035, -036; slip op. at 3 (ARB May 30, 2008) (citing *Coffman v. Alyeska Pipeline Serv. Co. & Artic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, -006; slip op. at 2 (ARB June 24, 1996)). Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests. 29 C.F.R. Part 70 (2013).