



IN THE MATTER OF:

LONNIE SMITH,

ARB CASE NO. 13-058

COMPLAINANT,

ALJ CASE NO. 2012-FRS-039

v.

DATE: July 23, 2013

UNION PACIFIC RAILROAD COMPANY,

and

STEVEN WILSON,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

*For the Complainant:*

Brian Duginske, Esq., *Yaeger, Jungbauer & Barczak, PLC.*, St. Paul,  
Minnesota

*For the Respondent:*

Jeffery J. Devashrayee, Esq., *Union Pacific Railroad Co.*, Salt Lake City,  
Utah

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).<sup>1</sup> On April 22, 2013, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) finding that the Respondent, Union Pacific Railroad, retaliated against the Complainant, Lonnie Smith, in violation of the FRSA's whistleblower protection provisions and ordering the Railroad to pay Smith compensatory and punitive damages and attorney's fees and costs.

The Railroad timely petitioned the Administrative Review Board for review of the ALJ's D. & O.<sup>2</sup> But before the Board had issued its decision; the Complainant submitted a Petition for Approval of Settlement Agreement and the accompanying settlement agreement for the Board's review.

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.<sup>3</sup>

Review of the Agreement reveals that it may encompass the settlement of matters under laws other than the FRSA.<sup>4</sup> 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.<sup>5</sup>

Further the settlement provides at paragraph 2,

Complainant further agrees that all claims alleging retaliation and/or discrimination connected in any way to the facts of this matter, and alleged to be in violation of any

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 29 C.F.R. § 1982.111(d)(2)(emphasis added).

<sup>4</sup> Settlement Agreement at para. 2.

<sup>5</sup> *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).

federal, state or local law, are deemed resolved by this Agreement, and are consequently waived and/or withdrawn with prejudice.

Waiver provisions are limited to the right to sue in the future on claims or causes of 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.<sup>6</sup> We construe ¶ 2 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** Smith's complaint.

**SO ORDERED.**

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

**JOANNE ROYCE**  
**Administrative Appeals Judge**

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<sup>6</sup> *Johnson v. Transco Prods., Inc.*, ALJ No. 1985-ERA-007, slip op. at 2 (Sec'y Aug. 8, 1985). 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).