



In the Matter of:

DAVID PETERSON,
COMPLAINANT,

v.

BNSF RAILWAY COMPANY,
RESPONDENT.

ARB CASE NOS. 14-026
15-019

ALJ CASE NO. 2010-FRS-029

DATE: March 19, 2015

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Fredric A. Bremseth, Esq.; *Bremseth Law Firm, PC*; Minnetonka, Minnesota

For the Respondent:

Joanne R. Bush, Esq.; *Jones Day*, Houston, Texas

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

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

This case arises under the Federal Railroad Safety Act of 1982 (FRSA), 49 U.S.C.A. § 20109 (Thomson/West Supp. 2014), as implemented by 29 C.F.R. Part 1982 (2014). An Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) on January 10, 2014, finding that BNSF Railway Company violated the whistleblower protection provisions of the FRSA when it terminated Peterson's employment because he reported a work-related injury.¹

¹ *Peterson v. BNSF Ry. Co.*, ALJ No. 2010-FRS-029, slip op. at 15 (Jan. 10, 2014).

The ALJ ordered Peterson's reinstatement, as well as back pay from the date of Peterson's termination, \$10,000 in compensatory damages, and \$100,000 in punitive damages.²

BNSF timely petitioned the Administrative Review Board for review of the ALJ's D. & O.³ The parties have now filed a Release and Settlement Agreement for the Board's review and approval. Under the FRSA's implementing regulations, the parties may settle a case we have accepted for review, if the parties agree to a settlement and we approve it.⁴

We review the proposed settlement agreement to determine whether it is fair, adequate and reasonable.⁵ Our review is limited to cases arising out of the statutes within our jurisdiction, as delegated by the Secretary of Labor.⁶ In addition to the case we have accepted for review, the parties' proposed settlement agreement covers *Perez v. BNSF Ry. Co.*, No. 14-cv-04802, an "Enforcement Action" currently pending before the United States District Court for the District of Minnesota.⁷ As the parties appear to recognize, the district court, rather than the ARB, has authority over the Enforcement Action.⁸ Therefore, we restrict our review of the proposed settlement agreement to whether it fairly, adequately, and reasonably settles the case before us.⁹

We note that the under the proposed settlement agreement, Peterson and his counsel waive their rights to recover any remedies, attorneys' fees, or litigation costs incurred in this case.¹⁰ We construe the waiver as limiting the rights of Peterson and his counsel on claims and

² *Id.*, slip op. at 18-19.

³ *See* Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1982.110(a).

⁴ 29 C.F.R. § 1982.111(d)(2).

⁵ *Carr v. BNSF Ry. Co.*, ARB No. 13-052, ALJ No. 2012-FRS-014, slip op. at 3 (ARB Nov. 13, 2013).

⁶ *See* Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1982.110(a).

⁷ Release and Settlement Agreement at para. 1.

⁸ *See* Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1982.110(a); Release and Settlement Agreement at para. 8.

⁹ *See Carr*, ARB No. 13-052, slip op. at 2 & n.6.

¹⁰ Release and Settlement Agreement at para. 1.

causes of actions arising from the facts of this case; the waiver does not apply to any events occurring after the date of the agreement.¹¹

Paragraph 9 of the Confidential Agreement and Release provides that the Agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota. We interpret 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.¹²

Moreover, we construe the waiver provision to render moot BNSF’s separate petition, in *Peterson v. BNSF Ry. Co.*, ARB No. 15-019, ALJ No. 2010-FRS-029, for review of the ALJ’s Supplemental Order Awarding Attorney Fees And Costs.

Accordingly, as so construed, we find that the settlement is fair, adequate, and reasonable. We **APPROVE** the Release and Settlement Agreement and, as provided in the agreement, **DISMISS** Peterson’s claims with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge

¹¹ *Smith v. Union Pacific R.R. Co.*, ARB No. 13-058, ALJ No. 2012-FRS-039, slip op. at 3 (ARB July 23, 2013).

¹² *See Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 3 (ARB Sept. 26, 2011).