



In the Matter of:

MARK GRIGSBY,

ARB CASE NO. 14-093

COMPLAINANT,

ALJ CASE NO. 2014-FRS-082

v.

DATE: JANUARY 6, 2016

**THE KANSAS CITY SOUTHERN
RAILWAY COMPANY,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

**Bristol Baxley, Esq., and Jerry Easley, Esq.; Rome, Arata & Baxley, L.L.C.; Pearland,
Texas**

For the Respondents:

James S. Urban, Esq.; Jones Day, Pittsburgh, Pennsylvania

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

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

This case arose when the Complainant, Mark Grigsby, filed a complaint under the whistleblower protection provisions of the Federal Railroad Safety Act of 1982 (FRSA),¹ and its implementing regulations.² On August 15, 2014, a Department of Labor Administrative Law Judge (ALJ) issued an order granting a Motion for Summary Decision filed by Respondent, The Kansas City Southern Railway Company, and dismissed the complaint with prejudice.

Grigsby timely appealed the ALJ's Order to the Administrative Review Board (ARB or Board). The Secretary of Labor has delegated to the Board the authority to issue final agency decisions under the FRSA.³

On December 11, 2015, while the appeal was pending before the Board, the parties filed a letter and submitted a Settlement Agreement and Release for the Board's final review and approval pursuant to 29 C.F.R. § 1982.111(d)(2). The parties have jointly requested that the Board approve the settlement agreement and dismiss the complaint.

The applicable FRSA implementing regulations specifically provide that “[a]t any time after the filing of objections to the Assistant Secretary’s findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the . . . ARB if the ARB has accepted the case for review.”⁴ “A copy of the settlement” must be filed with the ARB.⁵ We review the terms of a proposed settlement agreement under the FRSA to determine whether it is fair, adequate, and reasonable.⁶ Because the parties have jointly submitted the settlement as required and no party has indicated any opposition to its terms, we

¹ 49 U.S.C.A. § 20109 (Thomson/West 2007 & Thomson Reuters Supp. 2015).

² 29 C.F.R. Part 1982 (2015).

³ See Secretary’s Order 02-2012 (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). See also *Moore v. National R.R. Passenger Corp.*, ARB No. 15-041, ALJ No. 2014-FRS-073, slip op. at 2 (ARB Aug. 6, 2015); *Schow v. Union Pacific R.R. Co.*, ARB No. 15-048, ALJ No. 2013-FRS-043, slip op. at 2 (ARB May 29, 2015); *Peterson v. BNSF Ry. Co.*, ARB Nos. 14-026, 15-019; ALJ No. 2010-FRS-029, slip op. at 2 (ARB Mar. 19, 2015).

⁵ *Id.*

⁶ *Schow*, ARB No. 15-048, slip op. at 2.

deem the terms of the settlement agreement unopposed and will review it in accordance with the applicable regulations.

Review of the agreement reveals that it includes the settlement of matters in addition to Grigsby's FRSA complaint.⁷ But the Board's authority over settlement agreements is limited to claims brought under the statutes within the Board's jurisdiction and pending before the Board. Thus, our approval is limited to this case, and we approve the agreement only insofar as it pertains to Grigsby's FRSA claim.⁸

Additionally, the Settlement Agreement provides that it shall be governed by the laws of the State of Missouri.⁹ We construe this choice of law provision as not limiting the authority of the Secretary of Labor and any federal court, which shall be governed in all respects by the laws and regulations of the United States.¹⁰

Thus, as so construed, we find that the settlement is fair, adequate, and reasonable. Accordingly, we **APPROVE** the Settlement Agreement and Release and, as provided in the agreement, **DISMISS** Grigsby's complaint with prejudice.

SO ORDERED.

LUIS A. CORCHADO
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

⁷ Settlement Agreement and Release (Settlement Agreement), ¶¶ 2, 3.

⁸ *Accord Moore*, ARB No. 15-041, slip op. at 2.

⁹ Settlement Agreement, ¶ 8.

¹⁰ *Moore*, ARB No. 15-041, slip op. at 3; *Cunningham*, ARB No. 11-047, slip op. at 3; *Peterson*, ARB Nos. 14-026, 15-019; slip op. at 3.