



**In the Matter of:**

**JOHN MOORE,**

**ARB CASE NO. 15-041**

**COMPLAINANT,**

**ALJ CASE NO. 2014-FRS-073**

**v.**

**DATE: August 6, 2015**

**NATIONAL RAILROAD PASSENGER  
CORPORATION,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**Nicholas P. Frye, Esq., *Nicholas P. Frye & Associates*, Waltham, Massachusetts**

*For the Respondents:*

**Robert D. Corl, Esq., *Amtrak Law Department*, Washington, District of Columbia**

**BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*; E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*; and Luis A. Corchado, *Administrative Appeals Judge***

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

The Complainant, John Moore, filed a complaint under the Federal Railroad Safety Act of 1982 (FRSA)<sup>1</sup> alleging that his employer, National Railroad Passenger Corporation (Amtrak), violated the FRSA's whistleblower protection provisions by retaliating against him for reporting

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<sup>1</sup> 49 U.S.C.A. § 20109 (Thomson/West 2013) as implemented by federal regulations at 29 C.F.R. Part 1982 (2015).

a work-related injury. On March 24, and April 6, 2015, a Department of Labor Administrative Law Judge (ALJ) issued an order and errata, respectively (collectively, the D. & O.), concluding that Amtrak violated the FRSA's employee protection provisions and awarding damages.<sup>2</sup>

Amtrak timely petitioned the Administrative Review Board for review of the ALJ's D. & O.<sup>3</sup> But prior to our consideration of the merits of the case, the parties filed a Confidential Settlement Agreement and General Release (Agreement) and subsequent joint agreement to modify 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.<sup>4</sup>

Review of the Agreement reveals that it may encompass the settlement of matters under laws other than the FRSA. Agreement, ¶¶ 2, 7, 12. 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 Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this FRSA case over which we have jurisdiction.<sup>5</sup>

Paragraph 20 of the Agreement provides that the Agreement shall be construed and interpreted in accordance with the laws of the District of Columbia. We interpret this "choice of law" provision as not limiting the authority of the Secretary of Labor and any Federal courts with regard to any claim or issue arising under the FRSA, which shall be governed in all respects by the laws and regulations of the United States.<sup>6</sup>

We note that the parties further request that the terms of the Agreement remain confidential. Agreement, ¶¶ 6, 18. The parties' submissions, including the Agreement, become

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<sup>2</sup> *Moore v. National Railroad Passenger Corp.*, ALJ No. 2014-FRS-073, slip op. at 34-35 (ALJ Mar. 24, 2015).

<sup>3</sup> *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).

<sup>4</sup> 29 C.F.R. § 1982.111(d)(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).

<sup>6</sup> *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).

part of the record of the case and the record is subject to the Freedom of Information Act (FOIA).<sup>7</sup> FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act.<sup>8</sup> Department of Labor regulations set out the procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.

The parties have certified that the Agreement constitutes the entire settlement with respect to Moore's FRSA claim. Agreement, ¶ 15. Accordingly, consistent with our interpretation explained above,<sup>9</sup> we find that the Confidential Settlement Agreement and General Release, as modified by the parties' joint agreement, is fair, adequate, and reasonable, and we **APPROVE** the Agreement and **DISMISS** Moore's FRSA complaint with prejudice.

**SO ORDERED.**

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

**E. COOPER BROWN**  
**Deputy Chief Administrative Appeals Judge**

**LUIS A. CORCHADO**  
**Administrative Appeals Judge**

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<sup>7</sup> *Vannoy v. Celanese Corp.*, ARB No. 09-118, ALJ No. 2008-SOX-064 (ARB Sept. 27, 2013).

<sup>8</sup> 5 U.S.C.A § 552 (West 1996 & Supp. 2015).

<sup>9</sup> See ¶ 16 "Severability."