



**In the Matter of:**

**LONNIE SCHOW,**

**ARB CASE NOS. 15-048**

**COMPLAINANT,**

**ALJ CASE NO. 2013-FRS-043**

**v.**

**DATE: May 29, 2015**

**UNION PACIFIC RAILROAD COMPANY,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**William J. McMahon, Esq.; *Hoey & Farina*; Chicago, Illinois**

***For the Respondent:***

**Steven T. Densley, Esq.; *Union Pacific Railroad*, 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 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 Granting Claim (D. & O.) on April 15, 2015, finding that Union Pacific Railroad Company violated the whistleblower

protection provisions of the FRSA when it investigated and terminated Complainant Lonnie Schow's employment because he reported a co-worker's on-duty injury.<sup>1</sup>

Respondent timely petitioned the Administrative Review Board for review of the ALJ's D. & O.<sup>2</sup> The parties have now filed a Joint Motion for Approval of Release and Settlement Agreement and a Settlement Agreement and Release of Claims 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.<sup>3</sup>

We review the proposed settlement agreement to determine whether it is fair, adequate, and reasonable.<sup>4</sup> Our review is limited to cases arising out of the statutes within our jurisdiction, as delegated by the Secretary of Labor.<sup>5</sup> Therefore, we restrict our review of the proposed settlement agreement to whether it fairly, adequately, and reasonably settles the case before us.<sup>6</sup>

Paragraph 5 of the Settlement Agreement includes a release provision. Waiver provisions such as this 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>7</sup> We construe paragraph 5 consistently with this precedent.

Further, we note that the parties request that the terms of the Settlement Agreement and Release of Claims remain confidential. The parties' submissions, including the Settlement Agreement and Release of Claims, become part of the record of the case and the record is subject to the Freedom of Information Act (FOIA).<sup>8</sup> The FOIA requires federal agencies to disclose

---

<sup>1</sup> *Schow v. Union Pac. R.R. Co.*, ALJ No. 2013-FRS-043, slip op. at 45 (Apr. 15, 2015).

<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. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1982.110(a).

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

<sup>4</sup> *Carr v. BNSF Ry. Co.*, ARB No. 13-052, ALJ No. 2012-FRS-014, slip op. at 3 (ARB Nov. 13, 2013).

<sup>5</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>6</sup> *See Carr*, ARB No. 13-052, slip op. at 2 & n.6.

<sup>7</sup> *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).

<sup>8</sup> 5 U.S.C.A § 552 (West 1996 & Supp. 2014).

requested records unless they are exempt from disclosure under the Act. Department of Labor regulations set out the procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.

Accordingly, as so construed, we find that the settlement is fair, adequate, and reasonable. We **GRANT** the parties' Joint Motion for Approval of Release and Settlement Agreement, **APPROVE** the Settlement Agreement and Release of Claims, and **DISMISS** Schow's complaint with prejudice.

**SO ORDERED.**

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

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