



IN THE MATTER OF:

STEVE NAVARRO,

ARB CASE NOS. 2019-0040
2019-0043

COMPLAINANT,

ALJ CASE NO. 2016-FRS-00017

v.

DATE: July 1, 2019

RCL WIRING, LP, d/b/a IDAHO
& SEDALIA TRANSPORTATION
COMPANY,

RESPONDENT.

Appearances:

For the Complainant:

Joseph Bauer, Esq., *The Bauer Law Firm, LLC*, St. Louis, Missouri

For the Respondent:

Molly Brown Bartalos, Esq., Anthony M. Knipp, Esq., *McCausland Barrett & Bartalos P.C.*, Kansas City, Missouri

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

These cases arises under the employee protection provision of the Federal Railroad Safety Act of 1982 (FRSA).¹ Complainant Steve Navarro filed a complaint alleging that Respondent RCL Wiring, d/b/a Idaho & Sedalia Transportation Company, violated the FRSA when it subjected him to several retaliatory actions,

¹ 49 U.S.C. § 20109 (2008), as implemented at 29 C.F.R. Part 1982 (2018).

including discharge from employment. On March 7, 2019, an Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) awarding Navarro damages, attorney’s fees and costs. Respondent timely petitioned the Administrative Review Board (Board) for review of the D. & O.

The parties have now filed a “Confidential Settlement and Release Agreement” (Settlement) for the Board’s review and approval. Under the FRSA’s implementing regulations, parties may settle a case we have accepted for review, if the parties agree to a settlement and the Board approves it.² We review the proposed Settlement to determine if it is fair, adequate and reasonable.

Review of the Settlement reveals that it may encompass the settlement of matters under laws other than the FRSA.³ 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 these FRSA cases over which we have jurisdiction.

Paragraph 7 of the Settlement contains confidentiality and non-disparagement clauses. In this regard, the ARB’s authority is constrained as a matter of law. The parties’ submissions, including the Settlement, become part of the record of the case, and the record is subject to the Freedom of Information Act (FOIA). FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure.⁴ Department of Labor regulations set out the procedures for responding to FOIA requests and for requestors’ appeals from denials of such requests.⁵ Further, if the confidentiality and non-disparagement clauses were interpreted to preclude Navarro from communicating with federal or state enforcement agencies concerning alleged violations of law, they would constitute unacceptable “gag” provisions.⁶

² 29 C.F.R. § 1982.111(d)(2) (2018).

³ Settlement, ¶ 4.

⁴ 5 U.S.C. § 552 (2016).

⁵ 29 C.F.R. § 70 et seq. (2018).

⁶ *Kingsbury v. Gordon Express, Inc.*, ARB No. 07-047, ALJ No. 2006-STA-024, slip op. at 2-3 (ARB Aug. 31, 2007).

Paragraph 11 of the Settlement provides that it shall be interpreted and enforced in accordance with the laws of the State of Missouri. We interpret this choice of law provision as not limiting the authority of the Secretary of Labor or any Federal court which shall be governed in all respects by the laws and regulations of the United States.⁷

The parties have certified that the Settlement constitutes the entire settlement with respect to Navarro's FRSA complaint.⁸ We have carefully reviewed the Settlement and find that it is fair, adequate, and reasonable. Accordingly, we hereby **APPROVE** the Settlement and, as provided therein,⁹ **DISMISS** Navarro's FRSA complaint with prejudice.

FOR THE ADMINISTRATIVE REVIEW BOARD:

William T. Barto
Chief Administrative Appeals Judge

Note: Questions regarding any case pending before the Board should be directed to the Board's staff: Telephone: (202) 693-6200; Facsimile: (202) 693-6220.

⁷ 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).

⁸ Settlement, ¶¶ 3, 15.

⁹ Settlement, ¶ 5.