



In the Matter of:

JEFFREY HELGESON,

ARB CASE NO. 2019-0054

COMPLAINANT,

ALJ CASE NO. 2016-FRS-00084

v.

DATE: January 13, 2021

**SOO LINE RAILROAD COMPANY,
d/b/a CANADIAN PACIFIC,**

RESPONDENT.

Appearances:

For the Complainant:

Keith E. Ekstrom, Esq. and Fredric A. Bremseth, Esq.; *Bremseth Law Firm, P.C.*; Minnetonka, Minnesota

For the Respondent:

Tracey Holmes Donesky, Esq. and Greta Bauer Reyes, Esq.; *Stinson LLP*; Minneapolis, Minnesota

**Before: James D. McGinley, *Chief Administrative Appeals Judge*, and
Thomas H. Burrell, *Administrative Appeals Judge***

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT
AND DISMISSING CASE WITH PREJUDICE**

PER CURIAM. This case arises under the employee protection provision of the Federal Railroad Safety Act of 1982 (FRSA).¹ Complainant Jeffrey Helgeson filed a

¹ 49 U.S.C. § 20109 (2008); as implemented at 29 C.F.R. Part 1982 (2020).

complaint alleging that Respondent Soo Line Railroad Company, d/b/a Canadian Pacific, violated the FRSA when it terminated his employment. On April 25, 2019, a U.S. Department of Labor Administrative Law Judge issued a Decision and Order (D. & O.) holding that Respondent violated the FRSA and awarding Complainant damages and other relief. Respondent petitioned the Administrative Review Board (ARB or the Board) for review of the D. & O.

The parties have now filed a “Settlement Agreement and Release” (Agreement) for the Board’s review and approval. The FRSA’s implementing regulations provide that parties may settle a case that the Board has accepted for review, if the parties agree to a settlement and the Board approves it.² We review the proposed Agreement to determine if it is fair, adequate, and reasonable.³

Review of the Agreement reveals that it may encompass the settlement of matters under laws other than the FRSA.⁴ 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.⁵

The Agreement also requires that the parties keep its terms confidential.⁶ The parties’ submissions, including the Agreement, become part of the record of the case and the record is subject to the Freedom of Information Act (FOIA).⁷ The FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act. Department of Labor regulations set out the procedures

² 29 C.F.R. § 1982.111(d)(2).

³ *Navarro v. RCL Wiring, LP*, ARB No. 2019-0040, -0043, 2016-FRS-00017, slip op. at 2 (ARB July 1, 2019).

⁴ Agreement at ¶ 3.

⁵ *Accord Asmore v. Amtrak*, ARB Case No. 2020-0049, ALJ No. 2018-FRS-00140, slip op. at 2 (ARB July 28, 2020).

⁶ Agreement at ¶ 5.

⁷ *See* 5 U.S.C. § 552 (2016).

for responding to FOIA requests and for appeals by requesters from denials of such requests.

Furthermore, if the confidentiality clause was interpreted to preclude Complainant from communicating with federal or state enforcement agencies concerning alleged violations of law, it would violate public policy and therefore constitute an unacceptable “gag” provision.⁸ We note that the Agreement provides that Complainant is excused from the confidentiality obligation “as required by law” and that nothing in the Agreement “is intended to or shall prevent, impede or interfere with Helgeson providing truthful testimony and information in the course of an investigation or proceeding authorized by law and conducted by a government agency.”⁹ We construe such language as allowing Complainant, either voluntarily or pursuant to an order or subpoena, to communicate with, or provide information to, state and federal authorities about suspected violations of law involving Respondent.¹⁰

After careful review of the Agreement, the Board finds that, subject to the qualifications set out above, the settlement between Complainant and Respondent is fair, adequate, and reasonable, and does not contravene the public interest. Accordingly, we **APPROVE** the Agreement, and, as provided in the Agreement, **DISMISS** the complaint with prejudice.

SO ORDERED.

⁸ *Kingsbury v. Gordon Express, Inc.*, ARB No. 2007-0047, ALJ No. 2006-STA-00024, slip op. at 2-3 (ARB Aug. 31, 2007).

⁹ Agreement at ¶ 5.

¹⁰ *See Pawlowski v. Hewlett-Packard Co.*, ARB No. 1999-0089, ALJ No. 1997-TSC-00003, slip op. at 2 (ARB May 5, 2000).