



**IN THE MATTER OF:**

**CLIFF CLEARY,**

**ARB CASE NO. 2025-0020  
2025-0021**

**COMPLAINANT,**

**ALJ CASE NO. 2020-FRS-00028  
2021-FRS-00012**

**v.**

**ALJ JOSEPH E. KANE**

**CSX TRANSPORTATION,  
INC.,**

**DATE: January 14, 2025**

**RESPONDENT.**

**Appearances:**

***For the Complainant:***

**Michael Rapier, Esq.; *Casey Jones Law Firm*; Minneapolis, Minnesota**

***For the Respondent:***

**Thomas R. Chiavetta, Esq.; *Jones Day*; Washington, District of  
Columbia**

**Before WARREN, Acting Chief Administrative Appeals Judge, and Angela  
W. Thompson, Administrative Appeals Judge**

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

**PER CURIAM:**

This case arises under the whistleblower protection provisions of the Federal Railroad Safety Act of 1982 (FRSA).<sup>1</sup> Cliff Cleary (Complainant) filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that CSX Transportation, Inc. (Respondent)

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<sup>1</sup> 49 U.S.C. § 20109, as implemented by 29 C.F.R. Part 1982 (2024).

retaliated against him in violation of FRSA.<sup>2</sup> A United States Department of Labor Administrative Law Judge (ALJ) issued an Order Granting Respondent's Motion for Summary Decision on November 27, 2024.<sup>3</sup> Complainant appealed to the Administrative Review Board (the Board) on December 10, 2024.

On January 8, 2025, the parties filed a Joint Motion to Withdraw Petition for Review and Approve Settlement with an executed Settlement Agreement and General Release (Settlement Agreement) with the Board in which they agreed to dismiss the matter with prejudice.<sup>4</sup> The parties indicated they requested the Board's approval of the Settlement Agreement.<sup>5</sup>

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>6</sup>

In addition to settling Complainant's FRSA claim, the Settlement Agreement releases Respondent from claims beyond the scope of the FRSA claim and outside the Board's jurisdiction.<sup>7</sup> The Board's authority over settlement agreements is limited to statutes that are within the Board's jurisdiction as defined by the applicable delegation of authority.<sup>8</sup> 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>9</sup>

The Settlement Agreement contains a confidentiality clause in which the parties agree that Complainant will not disclose the agreement's terms to anyone other than his counsel, spouse or immediate family, or accountants and/or financial

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<sup>2</sup> Order Granting Respondent's Motion for Summary Decision at 1.

<sup>3</sup> *Id.* at 19.

<sup>4</sup> Joint Motion at 1-2; Settlement Agreement at 1.

<sup>5</sup> Settlement Agreement at 1.

<sup>6</sup> 29 C.F.R. § 1982.111(d)(2).

<sup>7</sup> Settlement Agreement at 1-2.

<sup>8</sup> Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13,186 (Mar. 6, 2020); *see Rew v. CSX Transp. Inc.*, ARB Nos. 2021-0042, -0058, ALJ No. 2019-FRS-00073, slip op. at 2 (ARB Nov. 2, 2021) (citing *Helgeson v. Soo Line R.R. Co.*, ARB No. 2019-0054, ALJ No. 2016-FRS-00084, slip op. at 2 (ARB Jan. 13, 2021)).

<sup>9</sup> *Rew*, ARB Nos. 2021-0042, -0058, slip op. at 2-3 (citing *Thompson v. Norfolk S. Ry. Co.*, ARB No. 2013-0032, ALJ No. 2011-FRS-00015, slip op. at 2 (ARB Feb. 28, 2023)).

or tax advisors.<sup>10</sup> The Settlement Agreement explains that nothing in the agreement “is intended to or shall prevent, impede, or interfere with [Complainant’s] nonwaivable right, without prior notice to CSX, to provide information to the government, participate in investigations, file a complaint, testify in proceedings regarding CSX’s past or future conduct, or engage in any future activities protected under the whistleblower statutes administered by OSHA . . . .”<sup>11</sup> 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, as it would contain an unacceptable “gag provision.”<sup>12</sup> We construe the language contained in the confidentiality clause as allowing Complainant, either voluntarily or pursuant to an order or subpoena, to communicate with, or provide information to, state and federal authorities concerning any suspected violations of law involving Respondent.

In the Joint Motion, the parties request that the Board place the Settlement Agreement under seal and withhold it from disclosure under the Freedom of Information Act (FOIA) because they find the terms of the agreement confidential.<sup>13</sup> The Board denies the parties’ request to seal and withhold the Settlement Agreement from disclosure under the FOIA. The parties’ submissions, including the Agreement, are part of the record and subject to the FOIA.<sup>14</sup> “The FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act.”<sup>15</sup> In the absence of a FOIA request, it is premature and would be inappropriate for the Board to determine whether any exemption is applicable.<sup>16</sup> If a FOIA request is received for this particular Agreement, the Department of Labor will follow the appropriate procedures for responding to FOIA requests.<sup>17</sup>

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<sup>10</sup> Settlement Agreement at 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Clem v. Comput. Scis. Corp.*, ARB No. 2020-0025, ALJ Nos. 2015-ERA-00003, -00004, slip op. at 3 n.4 (ARB May 16, 2022) (citing *Helgeson v. Soo Line R.R. Co.*, ARB No. 2019-0054, ALJ No. 2016-FRS-00084, slip op. at 3 (ARB Jan. 13, 2021)).

<sup>13</sup> Joint Motion at 1.

<sup>14</sup> 5 U.S.C. § 552. Accordingly, there is no reason to “seal” the Agreement.

<sup>15</sup> *Rew*, ARB Nos. 2021-0042, -0058, slip op. at 3 (citing *Ware v. BNSF Ry. Co.*, ARB No. 2014-0044, ALJ No. 2013-FRS-00028, slip op. at 3 (ARB June 24, 2014)).

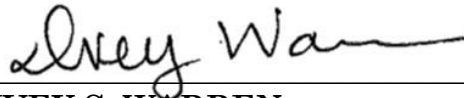
<sup>16</sup> *See Bettner v. Crete Carrier Corp.*, ARB No. 2007-0093, ALJ No. 2007-STA-00033, slip op. 3 n.11 (ARB Sept. 27, 2007) (citation omitted) (discussing premature FOIA exemption requests and determinations concerning settlement agreements).

<sup>17</sup> 29 C.F.R. Part 70. Pursuant to 29 C.F.R. § 70.26(b), submitters may, in good-faith, designate portions of their submissions as containing confidential commercial information, which they consider to be protected from disclosure under Exemption 4 of the FOIA, 5

Lastly, the Settlement Agreement provides it shall be governed by the laws of the state of Florida.<sup>18</sup> This “Governing Law” provision does not limit the authority of the Secretary of Labor, the Board, or any federal court as to any issue arising under FRSA, and whose authority shall be governed in all respects by the laws and regulations of the United States.<sup>19</sup>

Upon careful review of the parties’ Settlement Agreement, the Board concludes it is fair, adequate, and reasonable and is not contrary to the public interest. Accordingly, we **APPROVE** the Settlement Agreement and **DISMISS** the complaint with prejudice.

**SO ORDERED.**



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**IVEY S. WARREN**

**Acting Chief Administrative Appeals Judge**



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**ANGELA W. THOMPSON**

**Administrative Appeals Judge**

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U.S.C. § 552(b)(4). Because the parties have designated the Settlement Agreement as containing confidential information, the Board will treat the Agreement as subject to the pre-disclosure procedures in 29 C.F.R. § 70.26.

<sup>18</sup> Settlement Agreement at 3.

<sup>19</sup> *Rew*, ARB Nos. 2021-0042, -0058, slip op. at 3 (citing *Thompson*, ARB No. 2013-0032, slip op. at 2).