

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



In the Matter of:

TREVER HILLER,

ARB CASE NO. 2020-0010

COMPLAINANT,

ALJ CASE NO. 2018-FRS-00088

v.

DATE: February 26, 2020

**GRAND TRUNK WESTERN
RAILWAY COMPANY,**

RESPONDENT.

Appearances:

For the Complainant:

Robert B. Thompson, Esq.; Harrington, Thompson, Acker & Harrington. Ltd.; Chicago, Illinois

For the Respondent:

Noah G. Lipschultz, Esq., Corey J. Christensen, Esq.; Littler Mendelson, P.C.; Minneapolis, Minnesota

Before: Thomas H. Burrell, Acting Chief Administrative Appeals Judge, James A. Haynes and Heather C. Leslie, Administrative Appeals Judges.

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

PER CURIAM. The Complainant, Trever Hiller, filed a retaliation complaint under the employee protection provisions of the Federal Rail Safety Act of 1982 (FSA), 49 U.S.C. § 20109 (2008), as implemented by 29 C.F.R. Part 1982 (2019) and 29 C.F.R. Part 18 (2019), Subpart A. Complainant alleged that Respondent, Grand Trunk Western Railway Company, his former employer, violated the FRSA whistleblower

protection provisions when it terminated his employment because he reported a work-related injury. The ALJ found in favor of Complainant after a hearing on the merits and awarded damages. Respondent appealed the ALJ's decision to the Administrative Review Board (the Board or ARB) on October 28, 2019. The ARB accepted Respondent's Petition for Review on November 5, 2019.

While the case was pending appeal before the ARB, the parties reached a settlement. Thereafter, the parties submitted a Joint Motion for Approval of Settlement and Withdrawal of Respondent's Petition for Review, as well as the Confidential Settlement Agreement and General Release of All Claims (Agreement).

The FRSA's implementing regulations provide that "[a]t any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved . . . by the ARB if the ARB has accepted the case for review.¹ "A copy of the settlement will be filed with the . . . ARB."²

We have reviewed the settlement to determine whether it is fair, adequate, and reasonable.³ The parties have certified that the Agreement constitutes the sole and entire agreement between Complainant and Respondent. We note that while the Agreement encompasses the settlement of any and all claims Complainant had or could have had against Respondent up to the date of the settlement, the Board's authority over settlement agreements is limited to the statutes within the Board's jurisdiction as defined by the applicable statute. Therefore, we only approve the Agreement's terms pertaining to Complainant's claim that is before us.⁴

We also note that while the Agreement provides that the settlement terms will be maintained in confidence, the parties' submissions, including the Agreement

¹ 29 C.F.R. § 1982.111(d)(2).

² *Id.*

³ *Simon v. Exelon Nuclear Sec.*, ARB Nos. 13-0095, -0096, ALJ No. 2010-ERA-00007, slip op. at 2 (ARB Nov. 22, 2013) (the Board's review of a settlement agreement is limited to ascertaining whether its terms fairly, adequately, and reasonably settle the cases over which we have jurisdiction) (citations omitted).

⁴ *Price v. Norfolk Southern Ry. Co.*, ARB No. 12-0020, ALJ No. 2010-FRS-00017, slip op. at 2-3 (ARB Feb. 3, 2012).

become part of the record of the case and are subject to the Freedom of Information Act (FOIA).⁵ FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure.⁶ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.⁷

Furthermore, the Agreement provides that it shall be interpreted and enforced in accordance with Michigan law. We interpret this choice of law provision as not limiting the authority of the Secretary or any Federal court that shall be governed in all respects by the laws and regulations of the United States.⁸

Finally, we have carefully reviewed the Agreement and find that it constitutes a fair, adequate, and reasonable settlement of Complainant's complaints and is not contrary to the public interest. Accordingly, with the exceptions set out above, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

⁵ 5 U.S.C. § 552 (2016).

⁶ *Bowie v. New Orleans Public Belt R.R.*, ARB No. 13-0007, ALJ No. 2012-FRS-00009, slip op. at 2-3 (ARB Mar. 27, 2013).

⁷ 29 C.F.R. Part 70 *et seq.*

⁸ *See Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-0030, ALJ No. 2010-STA-00056, slip op. at 3 (ARB Sept. 26, 2011).