



In the Matter of:

TRACY ASMORE,

ARB CASE NO. 2020-0049

COMPLAINANT,

ALJ CASE NO. 2018-FRS-00140

v.

DATE: July 28, 2020

AMTRAK,

RESPONDENT.

Appearances:

For the Complainant:

Fredric A. Bremseth, Esq.; *Bremseth Law Firm*; Minnetonka, Minnesota

For the Respondent:

Sonali Setia, Esq.; William G. Ballaine, Esq.; *Landman, Corsi, Ballaine & Ford, P.C.*; New York, New York

Before: James A. Haynes, Heather C. Leslie and James D. McGinley, *Administrative Appeals Judges*

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

PER CURIAM. This case arises from a complaint of discrimination filed under the Federal Railroad Safety Act (FRSA). 49 U.S.C. §20109 (2007), as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Pub. L. 100-53, and as implemented by 29 C.F.R. Part 1982 (2019) and 29 C.F.R. Part 18 (2019), Subpart A. On June 17, 2020, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) holding that Respondent violated the FRSA whistleblower provisions.

Respondent filed a petition for review with the Administrative Review Board (ARB or the Board) appealing the D. & O. on the merits. On July 24, 2020, while the appeal was pending before the ARB, Respondent filed a document styled “Respondent’s Motion on Consent to Extend Briefing Schedule Pending Administrative Review Board’s Approval of Confidential Settlement Agreement and Requesting Approval Thereof” informing the ARB that the parties reached a settlement of the case and requesting approval of the settlement agreement.

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.¹ We have received a signed copy of the Confidential Settlement Agreement and General Release and have reviewed its terms.

Review of the Agreement reveals that it encompasses the settlement of matters under laws other than the FRSA. 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 Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this FRSA case over which we have jurisdiction.²

The Settlement Agreement provides that it shall be governed and interpreted by the laws of the District of Columbia. We construe this “choice of law” provision as not limiting the authority of the Secretary of Labor and any Federal courts, which shall be governed in all respects by the laws and regulations of the United States.³

Additionally, the Settlement Agreement contains confidentiality and non-disparagement clauses. The ARB notes that the parties’ submissions, including the Settlement Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA).⁴ FOIA requires federal agencies to disclose

¹ 29 C.F.R. § 1982.111(d)(2).

² *Accord Bhat v. District of Columbia Water & Sewer Auth.*, ARB No. 2006-0014, ALJ No. 2003-CAA-00017, slip op. at 2-3 (ARB May 30, 2006).

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

⁴ 5 U.S.C. § 552 (2016).

requested records unless they are exempt from disclosure under the Act.⁵ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.⁶

The ARB finds that the settlement between Complainant and Respondent is fair, adequate, and reasonable, and does not contravene the public interest. Accordingly, with the qualifications set out above, we **APPROVE** the Settlement Agreement, **VACATE** the ALJ's Decision and Order, and **DISMISS** the complaint with prejudice.

SO ORDERED.

⁵ *Hiller v. Grand Trunk W. Ry. Co.*, ARB No. 2020-0010, ALJ No. 2018-FRS-00088, slip op. at 3 (ARB Feb. 26, 2020).

⁶ 29 C.F.R. §70 *et seq.* (2017).