

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DEREK FENTON,

Plaintiff,

vs.

NEW JERSEY TRANSIT CORPORATION,
NEW JERSEY TRANSIT RAIL
OPERATIONS, INC., JAMES
WEINSTEIN, JAMES S. SIMPSON,
MYRON P. SHEVELL, DEBORAH L.
GRAMICCIONI, ANDREW P. SIDAMON-
ERISTOFF, FLORA M. CASTILLO, and
JOHN DOE NOS. 1-5,

Defendants.

CIVIL ACTION

Case No.: 10-cv-5761 (KSH) (PS)

**SETTLEMENT AGREEMENT AND
GENERAL RELEASE**

1. Parties. The parties to this Settlement Agreement are Derek Fenton, his heirs, executors, administrators, assigns and representatives ("Fenton"); and the State of New Jersey and New Jersey Transit Corporation, and any of their officials, attorneys, agents, servants, representatives, successors and assigns, including those persons named in their official capacities as defendants in Fenton's complaint. (collectively, "New Jersey Transit" or "NJT"). This Agreement sometimes refers to Fenton and NJT as the "Parties."

2. Purpose. The Parties have chosen to enter into this Agreement to avoid further proceedings with respect to any claim Fenton has against NJT and any claims NJT has against Fenton, including those brought in the United States District Court for

the District of New Jersey under the caption Fenton v. New Jersey Transit Corporation, et al., Docket No. 10-cv-5759. The Parties wish to resolve, finally and completely, all actual or potential disputes between them which arise out of Fenton's action on September 11, 2010, and his subsequent termination of employment by New Jersey Transit, as of the date of the final execution of this Agreement.

3. No Admission or Admissibility. The making of this Agreement shall not be considered an admission of guilt, liability or wrongdoing by any Party; and shall not be construed as an admission against interest against any one or more of them. Nor shall this Agreement be admissible into evidence in any subsequent proceeding, except for the enforcement of the Agreement. The Parties have entered into this Agreement solely for the purpose of resolving this case without the need for further litigation.

4. Representations. Each Party represents that he or it: 1) has read the agreement in its entirety; 2) has discussed the agreement with counsel and has had adequate time to consider its terms and counsel's advice thereon; and 3) enters into the Agreement freely and voluntarily, without coercion, and with full knowledge and understanding of its contents and its binding nature.

5. Dismissal of Claims and Release by Fenton. In consideration of the promises made by New Jersey Transit, Fenton hereby agrees to the dismissal with prejudice of his lawsuit captioned Fenton v. New Jersey Transit Corp., et al., Docket No. 10-cv-5759, now pending in the United States District Court for the District of New Jersey. In addition, Fenton hereby releases New Jersey Transit from any and all claims that he has, or may have had, against New Jersey Transit that arise out of New Jersey Transit's termination of his employment as a result of Fenton's conduct on September 11, 2010, including those claims brought in the above-referenced lawsuit.

6. Promises by New Jersey Transit. In consideration of the promises made by Fenton, New Jersey Transit hereby agrees to do the following:

A. NJT will provide Fenton with Full Reinstatement to his employment position with New Jersey Transit. Full Reinstatement shall consist of:

1) NJT will reclassify a vacant Assistant Consist Coordinator position to a Consist Coordinator position and place Fenton in the latter title. At the time of his discharge, Fenton had been in the latter position in an acting capacity. His salary as a Consist Coordinator will be \$86,110

per year. Fenton will not be subject to any "probationary" status.

2) NJT will pay Mr. Fenton his back pay at the per diem rate of \$331.20, dating from September 13, 2010, until the date he resumes work. This payment will be subject to all appropriate deductions including, but not limited to, state and federal taxes, pension deductions and contributions, and medical insurance premiums.

3) Based on his years of service, Fenton is entitled to 22 days of vacation in calendar year 2011 subject to the standard vacation accrual adjustments of NJ Transit Policy No. 3.04(F).

4) At the time of his discharge, Fenton was enrolled in NJ Transit's 401(k) plan, to which he contributed 5% of his pay and which NJT matched with a 2% payment. Fenton will be re-enrolled in this plan with all time accrued. The 5% employee contribution will be deducted from his back pay payment, and NJT will make its 2% contribution. Additionally, Fenton was enrolled in NJ Transit's pension plan (NJTERP) and was contributing 2% of his salary to that plan. This amount will also be deducted from his back pay.

5) With respect to his Railroad Retirement Board pension plan, Fenton will be given full service credit for

the time he was out of work. Contributions that he would have made during this time period will be deducted from the back pay.

6) NJT will fully and completely expunge this matter from Fenton's HR personnel file, and will likewise fully expunge the record of the Railroad discharge hearing. NJT further represents that there is no pending ethics investigation by its ethics officer concerning Fenton.

7) Fenton will be reissued a NJ Transit cell phone, as is customary for employees in his title. He will also be reissued his "Head End/Train Riding Authorization." He will not be required to pay for a new employee ID card. Fenton will also be removed from NJT's "No Access" list.

8) NJT will reinstate Fenton to his full benefits package, and NJT will repay his COBRA payments less the amount he would have contributed for these benefits as an NJ Transit employee.

9) At the time of his discharge, Fenton held two union positions: one as a yardmaster in the UTU-Y, and one as a conductor in the UTU. NJT acknowledges that Fenton has not lost any seniority rights as a conductor. NJT agrees that it will support Fenton in his request to his union for restoration of his seniority rights with respect to the yardmaster position.

B. NJT will not take any adverse or retaliatory employment action against Fenton based upon his actions in Manhattan on September 11, 2010; nor will those actions, or the subsequent charges and actions of NJT be used against him by NJT as part of any disciplinary procedure or employment decision. NJT will not require Fenton to disavow or recant that conduct, nor will he be required to undergo any "sensitivity training" the result of that conduct. Mr. Fenton will be subject to all rules and regulations governing his employment with NJ Transit, including the regulation that he undergo all training that is required of NJT employees in the normal course of their employment.

C. NJT will pay \$25,000 for Mr. Fenton's pain and suffering.

D. NJT will pay \$25,000 for Mr. Fenton's attorney's fees. The fees will be payable to the American Civil Liberties Union of New Jersey Foundation.

E. NJT hereby releases any and all claims it has, or may have had, against Fenton arising out of his conduct in Manhattan on September 11, 2010.

7. Miscellaneous

A. The Agreement sets forth the entire agreement between the Parties, and supersedes any prior agreements,

written or oral. Neither Party has relied on any representations or promises, other than set forth in this Agreement.

B. This Agreement may not be modified, except upon express written consent of the Parties.

C. This Agreement is the product of joint negotiation between the Parties, and is not to be construed for or against any party by virtue of his or its participating in its preparation.

D. This agreement shall be governed by and construed in conformance with New Jersey law.

E. The action pending in the United States District Court will be dismissed with prejudice.



DEREK FENTON

Sworn to and subscribed
Before me this 21 day
Of April, 2011.



NOTARY PUBLIC *Alexander Shalom*
MY COMMISSION EXPIRES *Attorney-at-law State of New Jersey*

NEW JERSEY TRANSIT

By: 

Sworn to and subscribed
Before me this 19th day April 2011



Notary Public

My Commission expires 6/16/2011

7 JOYCE J. ZUCZEK
NOTARY PUBLIC OF NEW JERSEY
COMMISSION EXPIRES JUNE 16, 2011