U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

ROBERT E. TYNDALL,

COMPLAINANT,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY,

RESPONDENT.

ARB CASE NO. 96-ARB-195

ALJ CASE NOS. 93-CAA-6
95-CAA-5
96-CAA-2

DATE: September 25, 1996

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1/]

FINAL ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT

These consolidated cases arise under the employee protection provision of the Clean Air Act (CAA), 42 U.S.C. § 7622 (1988). The parties notified the Administrative Law Judge (ALJ) that they resolved all matters in the complaint and submitted a Settlement Agreement seeking dismissal of the complaint. The ALJ issued a Recommended Order Approving Settlement and Dismissal of Complaint on September 17, 1996.

The request for approval is based on an agreement entered into by the parties, therefore, we must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 24 C.F.R. § 24.6. *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

[1/] On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996).

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions. Final procedural revisions to the regulations implementing this reorganization were also promulgated on that date. 61 Fed. Reg. 19982.

Paragraph 7 at page 3 of the Agreement could be construed as a waiver by Complainant of any causes of action he may have which arise in the future. As the Secretary has held in prior cases, *see Johnson v. Transco Products, Inc.*, Case No. 85-ERA-7, Sec. Ord., Aug. 8, 1985, such a provision must be interpreted as limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of the agreement. *See also Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51-52 (1974); *Rogers v. General Electric Co.*, 781 F.2d 452, 454 (5th Cir 1986).

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the CAA. See Settlement Agreement ¶ 7. As stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2:

> [The Secretary's] authority over settlement agreements is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. *See Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. [86-]CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncombe County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

We have therefore, limited our review of the agreement to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegation that Respondent violated the CAA.

We find that the agreement, as so construed, is a fair, adequate, and reasonable settlement of the complaint. Accordingly, we APPROVE the agreement and DISMISS THE COMPLAINT WITH PREJUDICE. See Settlement Agreement ¶ 3.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member