U.S. Department of Labor

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

In the Matter of

DONALD C. SMITH,

COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

CASE NOS. 94-ERA-43;
94-ERA-44

DATE: June 24, 1996

[Editor's note: Caption's case number was corrected to 1996-ERA-10 by Errata (ARB June 25, 1996)]

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1/]

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This case arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992). The parties submitted a Joint Motion for Dismissal and a Settlement Agreement seeking approval of the settlement and dismissal of the complaint. The Administrative Law Judge (ALJ) issued a decision on May 22, 1996, recommending that the settlement be approved.

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. 42 U.S.C. § 5851(b)(2)(A) (1988). *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.

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

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order and regulations under which the Board now issues final agency decisions. A copy of the final procedural revisions to the regulations (61 Fed. Reg. 19982), implementing this reorganization is also attached.

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.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. *See* Paragraphs 1 and 7. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2, we have limited our review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement of the Complainant's allegations that Respondents violated the ERA.

Paragraph 4 provides that "TVA will take *all reasonable steps* to ensure that no reprisal will be taken against Mr. Smith as a result of this settlement or as a result of his participation in the appeal process". (Emphasis supplied). We construe this to mean that Respondent's managers, administrators and employees will be made aware that any such reprisal is contrary to law and the occurrence of such would be the basis for a separate environmental whistleblower claim by Complainant.

Paragraph 5 provides that the Complainant agrees not to disclose the terms of the agreement except as is necessary to implement or enforce the agreement or as required by law. Paragraph 8 provides that the Complainant is not prohibited from reporting any suspected nuclear safety concern to the proper governmental authority.

We find that the agreement, as here construed, is a fair, adequate and reasonable settlement of the complaint. Accordingly, we APPROVE the agreement and DISMISS THE COMPLAINT WITH PREJUDICE. *See* ¶ 10.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member