U.S. Department of Labor

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

In the Matter of:

CAROLYN D. EZELL,

COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

ARB CASE NO.: 96-142

ALJ CASE NO. 95-ERA-39

DATE: August 21, 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 (ERA), 42 U.S.C. § 5851 (1988). The parties have requested dismissal of the complaint with prejudice and submitted a Memorandum of Understanding and Agreement in support of such request.

Since the request for approval of the settlement is based on an agreement entered into by the parties, 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); *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, Secretary's Order 2-96 was signed delegating jurisdiction to issue final agency decisions under the environmental whistleblower statutes and the regulations at 29 C.F.R. Part 24, 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.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. *See* Paragraph 4. 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 Respondent violated the ERA.

Paragraph 1 indicates that Complainant and her attorney were to receive a certain sum which they characterized as "payment for compensatory damages, attorneys' fees and litigation expenses." On June 26, 1996, we issued an Order requiring the parties to advise us as to the actual amount of that sum the Complainant was to receive. We were subsequently advised by Complainant's counsel that Complainant was to receive the entire amount of the settlement since she had paid her attorney under a separate agreement. The amount of the settlement is slightly less than Complainant's total attorney's fees and costs, but we note that the Wage and Hour investigation found that the adverse actions taken against Complainant were not motivated by her protected activities and that she remains employed by Respondent at her regular employment. *See* page 1, third and fourth paragraphs.

Paragraph 7 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* ¶ 4.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member