U.S. Department of Labor

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

In the Matter of:

ADAM MCNIECE,

COMPLAINANT,

v.

NORTHEAST NUCLEAR ENERGY COMPANY AND BARTLETT NUCLEAR, INC.,

RESPONDENT.

ARB CASE NO. 96-151

ALJ CASE NOS. 95-ERA-18
95-ERA-47, 96-ERA-14

DATE: SEP 25 1996

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1]

FINAL ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT

This case arises under the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992). On August 6, 1996, the Board issued a Supplemental Preliminary Order and Order Establishing Briefing Schedule. On September 9, 1996 the Board received a Motion for Approval of Settlement Agreement and Dismissal With Prejudice in support of the parties' request for dismissal of the complaint with prejudice.

The request for approval is based on a Settle Agreement (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.

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[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.

Review of the Agreement reveals that it may encompass the settlement of matters under laws other than the ERA. *See* Agreement, ¶ 1.1. 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 ERA.

Paragraph 1.1 of the Agreement could be construed as a waiver by the 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).

Paragraph 8.1 of the Agreement provides that the agreement will be governed by the laws of Connecticut. We construe this to except the authority of the Secretary of Labor and any Federal court which shall be governed in all respects by the laws and regulations of the United States. *See Phillips v. Citizens Ass'n for Sound Energy,* Case No. 91-ERA-25, Final Ord. of Dismissal, Nov. 4, 1991, slip op. at 2.

Paragraphs 1.1 and 3.1 of the Agreement provide that the Complainant shall keep the terms of the settlement confidential, with certain specified exceptions. Paragraphs 3.3 and 4.1 of the Agreement provide that Complainant shall not be prohibited or restricted from reporting or providing information to any Federal or state governmental agency. The parties' Memorandum of Points and Authorities in Support of the Motion requests that the Board regard the record in this case as confidential pursuant to predisclosure notification rights under 29 C.F.R. § 70.26. We have held in a number of cases with respect to confidentiality provisions in settlement agreements that the Freedom of Information Act, 5 U.S.C. § 552 (1988)(FOIA) "requires agencies to disclose requested documents unless they are exempt from disclosure..... *Plumlee v. Alyeska Pipeline Service Co.,* Case Nos. 92-TSC-7, 10; 92WPC-6, 7, 8, 10, Sec. Final Order Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip op. at 6. *See also Davis v. Valley View Ferry Authority, Case* No. 93-WPC-1, Sec. Final Order Approving Settlement and Dismissing Complaint, Jun. 28, 1993, slip op. at 2 n. 1 (parties' submissions become part of record and are subject to FOIA); *Ratliff v. Airco Gases,* Case No. 93-STA-5, Sec. Final Order Approving Settlement and Dismissing Complaint with Prejudice, Jun. 25, 1993, slip op. at 2 (same).

The records in this case are agency records which must be made available for public inspection and copying under the FOIA. In the event a request for inspection and copying of the

record of this case is made by a member of the public, that request must be responded to as provided in the FOIA. If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption were applicable, the document would have to be disclosed. Since no FOIA request has been made, it would be premature to determine whether any of the exemptions in FOIA would be applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information. It would also be inappropriate to decide such questions in this proceeding.

Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requesters from denials of such requests, and for protecting the interests of submitters of confidential commercial information. *See* 29 C.F.R. Part 70 (1995).

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. Agreement, ¶¶ 1.1, 1.2.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member