

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

Armando Machado)
Complainant)
v.) 80-CETA-194
South Florida Employment. and)
Training Consortium)
Respondent)

Decision and Order

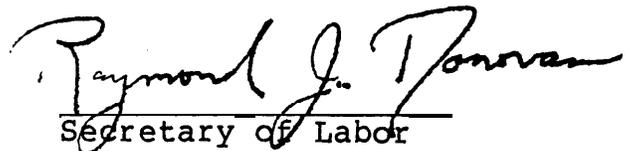
Respondent South Florida Employment and Training Consortium (SFETC) has requested review of the Administrative Law Judge's Decision and Order on Remand in this case. I had remanded the case to him on February 22, 1982 for calculation of back pay due to the complainant, Armando Machado, after the case had been remanded to me by the former Fifth Circuit. SFETC challenges the ALJ's holding that Machado did not release his right to seek back pay for the entire period since his discharge by SFETC by accepting a check for over \$18,000 and signing a statement that acceptance of that payment would close the case. SFETC also argues that the ALJ's order should be vacated because the 11th Circuit has held that back pay may not be awarded for a procedural violation alone under CETA. County of Monroe v. U.S. Department of Labor, 690 F.2d 1359 (1982). SFETC's exceptions are DENIED.

SFETC argues that the ALJ's holding that Machado did not waive his right to seek additional back pay was based on an error of fact. The ALJ held that the release signed by Machado had no effect because SFETC did not contact Machado's lawyer prior to obtaining Machado's signature, but SFETC asserts the record shows Machado's lawyer was aware of his signing the release and accepting the check. In fact, the record indicates that, at first, Mr. Machado refused to sign the release or accept the check because it stated that acceptance would close the case. When he did sign it, he testified he did so under protest because this case was pending on whether he should be deemed a CETA participant or a regular employee. The language of the release itself indicated that it is payment in full as required by the ALJ's original order in this case. That order, of course, has been modified in one crucial respect that affects back pay by the remands of the Court of Appeals and my Order of February 22, 1983 - Machado was a regular employee and is entitled to back pay for the entire period from his discharge to his reinstatement. As the history of this case demonstrates, Machado never relinquished his claim that he was a regular employee which would entitle him to more than the \$18,000 in back pay originally ordered by the ALJ and covered by the release signed on November 5, 1981. That claim, of course, was pending before me when the release was signed,

and ultimately was upheld. I hold that by accepting a check and signing a statement on November 5, 1981, **Machado** did not release his right to back pay for the entire period he would have been employed as a regular employee. (The **ALJ** quite properly deducted the amount received on November 5, 1981 from the back pay due under his order on remand.)

SFETC argues, in addition, that it would be contrary to the ruling of the Eleventh Circuit in County of Monroe v. U.S. Department of Labor, supra, to award back pay for a purely procedural violation. However, County of Monroe is inapposite here. It dealt with the situation in which a discharge was procedurally defective but the underlying basis for the discharge was valid; that is, as I explained in Jerome Whaley v. Chicago Police Department, 79-CETA-121 (Nov. 30, 1982) no back pay is due where the procedural defect was harmless error. Here, **Machado** has been ordered to be and has been reinstated. SFETC had no grounds to discharge him, and, if proper procedures had been followed, his status when he was transferred to work for Sabar, Inc. would have been made clear.

THEREFORE, the Decision and Order on Remand of the ALJ is adopted in all respects.


Secretary of Labor

Dated: July 29, 1983
Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: Machado v. South Florida Employment & Training Consortium
Case No.: 80-CETA-494
Document: Decision and Order

Copies of the above-referenced document were mailed to the persons listed below on July 29, 1983.

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