



Issue Date: 13 April 2010

**CASE NOS.: 2010-ERA-00001
2006-ERA-00003**

In the Matter of:

JOHNNY F. NEAL, JR.
Complainant

v.

ENTERGY NUCLEAR OPERATIONS, INC.
Respondent

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND
DISMISSING COMPLAINTS WITH PREJUDICE**

These proceedings arise from complaints of discrimination filed under Section 211 of the Energy Reorganization Act of 1974 (the "ERA"), 42 U.S.C. § 5851, and the procedural regulations found at 29 C.F.R. Part 24 (2008). With the consent of the parties, on January 26, 2010, I was appointed Settlement Judge pursuant to 29 C.F.R. § 18.9(e) for purposes of attempting to reach a global resolution of the following matters: (a) Case No 2010-ERA-00001 which was assigned to me and had a summary judgment motion pending; (b) Case No. 2006-ERA-00003 pending before the Administrative Review Board ("ARB") on appeal from a May 9, 2008, Recommended Decision and Order issued by Judge Colleen A. Geraghty; and (c) A Wrongful Termination Complaint pending before the Occupational Safety and Health Administration ("OSHA"). On March 9, 2010, the parties achieved a global resolution of all disputes and on March 29, 2010, they filed a Settlement Agreement, Release and Covenant Not to Sue (hereinafter, "Settlement Agreement") along with a Motion to Keep Settlement Agreement Confidential. In order to have jurisdiction over the case that was pending on appeal, the parties filed a motion with the ARB seeking remand of that matter to Judge Geraghty. On March 31, 2010, the ARB issued an order remanding Case No. 2006-ERA-00003 to Judge Geraghty, and on April 12, 2010, Judge Geraghty issued an order reassigning her case to me and consolidating both cases for purposes of considering the Settlement Agreement. The matter is now ripe for disposition.

In reviewing the Settlement Agreement, I must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant's allegations that the Respondent violated the ERA. See 42 U.S.C. § 5851(b)(2)(A); 29 C.F.R. § 24.111(d)(2); *Holbrook v. Fluor Daniel Northwest, Inc.*, USDOL/OALJ Reporter (PDF), ARB No. 98-099,

ALJ No. 1998-ERA-00004 at 1 (ARB March 24, 1998). I find that the Settlement Agreement complies with the standard required and it is APPROVED.

There is one additional point that requires brief attention. The parties seek to designate the Settlement Agreement as confidential. In that regard, the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, all of their filings, including the Settlement Agreement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act (“FOIA”), 5 U.S.C.A. § 552, *et seq.* The Administrative Review Board has noted that:

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 is applicable, the document would have to be disclosed.

Seater v. S. Cal. Edison Co., USDOL/OALJ Reporter (PDF), ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

Finally, the parties acknowledge in Paragraph 4 of the Settlement Agreement that nothing contained therein shall in any way limit the Complainant’s future communications with the Nuclear Regulatory Commission or other government agencies, and I find that the Settlement Agreement is consistent with the mandate found at 10 C.F.R. § 50.7(f).

Accordingly, it is **ORDERED** that:

- (1) The Settlement Agreement is **APPROVED**;
- (2) The Settlement Agreement shall be designated as confidential subject to the procedures requiring disclosure under FOIA; and
- (3) The Complaints of Johnny F. Neal, Jr. are **DISMISSED WITH PREJUDICE**.

SO ORDERED.

A

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts