U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 28 August 2014

Case No.: 2014-ERA-00003

In the Matter of:

JOHNNY R. ICARD,
Complainant,

v.

EXELON GENERATION-CLINTON POWER STATION,
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND ORDER DISMISSING COMPLAINT WITH PREJUDICE

This matter arises under the employee protection provisions of the Energy Reorganization Act of 1974, U.S. Code, Title 42, § 5851 (ERA) and its implementing regulations at 29 CFR, Part 24.[1]

The Complainant filed a complaint on May 2, 2013, alleging that Respondent retaliated against him in extending him on a performance improvement plan (PIP) and forcing him to retire early in retaliation for documenting and reporting maintenance rule program issues. The complaint was investigated and on April, 9, 2014, the Occupational Safety and Health Administration, Chicago Regional Office, dismissed the complaint when the Regional Administrator issued the Secretary's Findings that Complainant's protected activity was not a contributing factor in his adverse action. On May 2, 2014, the Complainant filed his objections to the Secretary's decision and requested a hearing before an Administrative Law Judge.

On August 20, 2014, the Parties filed their executed "Confidential Settlement Agreement and General Release" (Settlement Agreement) with this office.

Implementing Federal regulations at 29 CFR § 24.111 (d)(2) provides that "[a]t any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ, if the case is before the judge, or by the ARB if the ARB has accepted the case for review. A copy of the settlement agreement must be filed with the Administrative Law Judge or the ARB, as the case may be." In reviewing the Settlement Agreement, the Administrative Law Judge must determine whether the terms of the agreement fairly, adequately and reasonably

[1] Federal Register, Volume 76, pages 2808 to 2826 (January 18, 2011)

settle the Complainant's allegations that the Respondent violated the ERA. *See* 42 U.S.C. §5851(b)(2)(A); *Holbrook v, Fluor Daniel Northwest, Inc.,* ARB No. 98-099, ALJ No. 1998-ERA-00004 (ARB Mar. 24, 1998). Once the settlement agreement is approved, it becomes the final action of the Secretary, 29 CFR §24.111(e).

The ERA provides that pursuit of rights and remedies under the ERA does not diminish or affect any right available under other federal or state laws designed to redress the employee's discharge or other discriminatory action taken by the employer against the employee. However, when evaluating the appropriateness of actions under the ERA, any prior actions taken under other redress for the same events and course of conduct, including a collective bargaining agreement, must "be equitably structured such that it is offset by any arbitration award ordered for the same relief to avoid duplicative recovery." *Lucia, Abernathy and Cowles v. American Airlines, Inc.,* ARB Case Nos. 10-014 / 015 / 016, at page 8 (Sep. 16, 2011); ALJ Case Nos. 2009-AIR-017 / 016/015 (Oct 15, 2009).

After review of the Settlement Agreement, this Administrative Law Judge finds that the Settlement Agreement complies with the standard required under the ERA and is approved. After review of the parties' joint request that the Settlement Agreement be kept confidential because it contains confidential business and personal information, this Administrative Law Judge finds that the Settlement Agreement shall be treated in accordance with 29 CFR Section 70.26 and *5* CFR Sections 552(b)(4) and (b)(5) and that there be restricted access to the parties' confidential agreement pursuant to 29 CFR Section 18.56. The Court shall place the parties' Settlement Agreement in a sealed envelope in a separate file and mark it as containing confidential information to avoid improper disclosure pursuant to 29 CFR Sections 18.56 and 70.26 and 5 CFR Sections 552(b)(4) and (b)(5).

ORDER

Accordingly, it is **ORDERED** that:

1. The Settlement Agreement is **APPROVED**; and

2. The Complaint is hereby **DISMISSED WITH PREJUDICE**.

3. The Parties' request for restricted access to the Settlement Agreement is **APPROVED**.

Digitally signed by JOSEPH KANE
DN: CN=JOSEPH KANE,
OU=ADMINISTRATIVE LAW JUDGE,
O=Office of Administrative Law Judges,
L=Cincinnati, S=OH, C=US
Location: Cincinnati OH

JOSEPH E. KANE
Administrative Law Judge