



Issue Date: 30 May 2019

Case No.: 2018-ERA-00001

In the Matter of:

KEVIN DEBRITTO,

Complainant,

v.

WECTEC GLOBAL PROJECT SERVICES INC.,

Respondent.

DECISION AND ORDER OF DISMISSAL

This matter arises under the employee protection provisions of the Energy Reorganization Act of 1974, U.S. Code Title 42, Section 5851 (“ERA”) and its implementing regulations at 29 CFR Part 24. On October 27, 2015, Complainant filed a complaint with the Secretary of Labor alleging that Respondent retaliated against him in violation of Section 211 of the ERA. By letter dated September 25, 2017, the OSHA Regional Administrator issued the Secretary’s Findings, finding that Complainant was terminated by Respondent in retaliation for protected activity. Respondent filed objections and a request for a hearing by letter dated October 31, 2017. Respondent’s objections noted that it had filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of New York on March 29, 2017, making this matter subject to an automatic stay pursuant to Section 362(a) of the Bankruptcy Code, and that the objections were filed to “memorialize its objections and preserve its opportunity for a hearing.” Respondent also filed a *Notice of Bankruptcy Filing and Imposition of Automatic Stay* together with its objections.

This case was docketed with OALJ on October 31, 2017, and I issued a *Notice of Assignment* on November 27, 2017. In light of the automatic stay imposed by the Bankruptcy Code, I did not schedule a formal hearing, and instead held a telephonic status conference with the parties. Thereafter, the parties jointly requested appointment of a mediator, and OALJ Mediator Beth Slavet was appointed to serve in that capacity on February 16, 2018. The parties engaged in mediation and reported that they reached a settlement. In August 2018, Respondent’s counsel reported that the parties had signed a settlement agreement and submitted it to the Bankruptcy Court for approval. In January 2019, in response to an inquiry from this office, Respondent’s counsel reported that the parties were still awaiting action from the Bankruptcy Court. On May 1, 2019, I issued an *Order to Respond with Periodic Status Reports*, directing the parties to provide status updates every two months, with the first report due May 15, 2019.

On May 15, 2019, Respondent filed a *Response to Order for Periodic Status Reports*. Respondent reported that the Bankruptcy Court approved Westinghouse's plan of reorganization ("the Plan") on March 27, 2018; that the parties in this matter participated in mediation on May 3, 2018, and entered into a settlement agreement dated June 28, 2018; that in accordance with the Plan approved by the Bankruptcy Court, the parties agreed to treat claims asserted by Complainant as an "allowed claim"; that Westinghouse and its affiliates, including Respondent WECTEC, were reorganized and emerged from bankruptcy on August 1, 2018; and that Complainant's "allowed claim" has been discharged, and payment of the claim has begun. Respondent cited Section 1141(d)(1) of the Bankruptcy Code for its provision that the confirmation of a plan discharges the debtor from any debt that arose before the date of such confirmation, unless the plan or the order confirming the plan provide otherwise. Respondent stated that a discharge operates as an injunction against the commencement or continuation of any action that is discharged under the plan, pursuant to Section 524(a) of the Bankruptcy Code. Therefore, based on the parties' agreement and the Bankruptcy Code, Respondent asserted that the instant proceeding should be terminated with prejudice. (Citing *George Davis v. United Airlines*, ARB Case Nos. 02-105, 02-008, 03-037, ALJ Case Nos. 01-AIR-05, 02-AIR-05, 02-AIR-06 (ARB Apr. 26, 2006)).

Respondent attached the parties' signed Stipulation Agreement, which includes a confidentiality agreement. The Stipulation Agreement reflects that Respondent scheduled Complainant's claims in the bankruptcy proceeding, that the Plan Oversight Board is authorized by the Plan to settle any and all claims asserted against the debtors, that Complainant's claims "are hereby allowed as a prepetition general unsecured claim against Westinghouse" in a specified amount, that the Allowed Claim will be treated as an Allowed Class 3A General Unsecured Claim under the Plan, that Westinghouse obtained Plan Oversight Board authorization to enter into the Stipulation Agreement, and that "the Bankruptcy Court shall retain jurisdiction over the Parties with respect to any matters related to or arising from the Agreement or the implementation of this Agreement."

At my request, Respondent also submitted copies of the *Modified Second Amended Joint Chapter 11 Plan of Reorganization*, and the *Findings of Fact, Conclusions of Law, and Order Confirming Modified Second Amended Joint Plan of Reorganization*, filed in the Bankruptcy Court on March 28, 2018.

Also on May 15, 2019, Complainant filed a status report opposing dismissal of this case. Complainant stated that he had received only one payment to date toward the total settlement amount, and "[t]here are a few particulars regarding bankruptcy proceedings and taxes that need to be addressed."

In *Davis*, which Respondent cited in support of its request for dismissal, the Administrative Review Board ("ARB") addressed a situation similar to this one. There, the complainants had made claims against United Airlines under the whistleblower protection provision of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C.A. § 42121. While the claims were on appeal to the ARB, United Airlines filed for bankruptcy protection and the ARB stayed further proceedings on the claims pursuant to

the automatic stay provision of the Bankruptcy Code, 11 U.S.C.A. § 362(a)(1). The Bankruptcy Court subsequently entered an order confirming United Airlines' Plan of Reorganization, and the Plan took effect. United Airlines thereafter filed a Notice of Discharge with the ARB, and contended that the claims should be dismissed because they were discharged and released in the bankruptcy proceeding as provided in Sections 524(a) and 1141(d)(1) of the Bankruptcy Code and the terms of the Confirmation Order. The ARB found that none of the complainants had shown any reason why Sections 524(a) and 1141(d)(1) should not be understood literally. Because the statutory text and the Bankruptcy Code orders operated to extinguish the AIR 21 claims, the ARB lifted its stay and dismissed the complaints with prejudice. *George Davis v. United Airlines*, ARB Case Nos. 02-105, 02-008, 03-037, ALJ Case Nos. 01-AIR-05, 02-AIR-05, 02-AIR-06 (ARB Apr. 26, 2006).

That reasoning applies with equal force here, and leads to the conclusion that this case must be dismissed. In this case, Complainant initiated an ERA claim against Respondent in October 2015, and while the claim was pending, Respondent filed for Chapter 11 bankruptcy. The instant proceeding was subject to the automatic stay provision of the Bankruptcy Code. The Bankruptcy Court subsequently entered an order confirming Westinghouse's *Modified Second Amended Joint Chapter 11 Plan of Reorganization* on March 28, 2018, and the Plan took effect on August 1, 2018.¹ As in *Davis*, Respondent asserts that Complainant's claim should be dismissed because it was discharged and released in the bankruptcy proceeding as provided in Sections 524(a) and 1141(d)(1) of the Bankruptcy Code and the terms of the Confirmation Order.

Section 1141(d)(1) of the Bankruptcy Code provides for discharge of debts that arose prior to the confirmation of a Chapter 11 reorganization plan, as follows:

Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—

(A) discharges the debtor from any debt that arose before the date of such confirmation . . . whether or not—

(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;

(ii) such claim is allowed under section 502 of this title; or

(iii) the holder of such claim has accepted the plan

11 U.S.C. § 1141(d)(1). Section 524(a) provides that a discharge “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover, or offset any debt” that is discharged under the plan. 11 U.S.C. § 524(a). Under the Bankruptcy Code, “[t]he term ‘debt’ means liability on a claim.” 11 U.S.C. § 101(12). As Respondent’s “debt” or liability on this claim arose before the date of the confirmation of the

¹ See <http://www.kccllc.net/Westinghouse>. As the Plan has been confirmed and has taken effect, the automatic stay has terminated.

Plan, the Bankruptcy Court's Order confirming the plan (issued March 28, 2018) discharged Respondent from liability on Complainant's claim. That discharge precludes continuance of this action, as provided in Section 524(a).

The Plan and the Order confirming the Plan do not provide otherwise. The Plan provides that the holder of an Allowed Class 3A General Unsecured Claim "shall receive, in full and final satisfaction of such Claim, Cash Distributions, to be made in accordance with Section 7 herein." *Modified Second Amended Joint Chapter 11 Plan of Reorganization*, Section 4.3(b)(i). The administration of cash distributions and the distribution dates are addressed in Section 7 of the Plan. Section 11.1 of the Plan provides for the discharge of claims:

[E]ffective as of the Effective Date: (a) the rights afforded in the Plan and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge and release of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims ... against ... the Debtors ..., (b) all Claims and Interests shall be satisfied, discharged and released in full, and the Reorganized Debtors' liability with respect thereto shall be extinguished completely ..., and (c) all Entities shall be precluded from asserting against the Reorganized Debtors ... any other Claims or Interests based upon any documents, instruments or any act or omission, transaction or other activity of any kind or nature that occurred before the Effective Date.

Similarly, Section 11.3 provides for discharge of the debtors:

[U]pon the Effective Date, in consideration of the distributions to be made under the Plan, each holder of a Claim or Interest and any Affiliate of such holder shall be deemed to have forever waived, released and discharged the Debtors ... and the Reorganized Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights and liabilities that arose prior to the Effective Date Upon the Effective Date, all such persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim or Interest against the Debtors ... and the Reorganized Debtors.

Modified Second Amended Joint Chapter 11 Plan of Reorganization, Section 11.

The Bankruptcy Court's *Findings of Fact, Conclusions of Law, and Order Confirming Modified Second Amended Joint Plan of Reorganization* (the "Confirmation Order") approved "all release, exculpation, and injunction provisions set forth in the Plan, including but not limited to those contained in Section 11 of the Plan" (Order ¶ 34). The Order also provided that the Plan and the Confirmation Order shall be binding upon the Debtors and "all known and unknown creditors ... including any holders of Claims," and provided for discharge of the Reorganized Debtors from all claims and liabilities to the fullest extent permitted by Section 1141 of the Bankruptcy Code. (Order ¶¶ 11-15).

Upon review and consideration of the Plan and the Confirmation Order, I find that neither document creates an exception to the provisions of Section 1141(d)(1) of the Bankruptcy Code in this case. Consequently, Respondent was discharged from any debt (liability on a claim) in this matter by the Confirmation Order entered by the Bankruptcy Court, and that discharge precludes the continuation of this action. 11 U.S.C. §§ 524(a); 1141(d)(1). Therefore, this case must be dismissed.

The parties agreed in their Stipulation Agreement that “the Bankruptcy Court shall retain jurisdiction over the Parties with respect to any matters related to or arising from the Agreement or the implementation of this Agreement.” The Bankruptcy Court’s Confirmation Order similarly states that the Bankruptcy Court “shall retain exclusive jurisdiction with respect to all matters arising from or related to the Chapter 11 Cases, the Plan, and the implementation of this Confirmation Order, including, without limitation, those matters set forth in Section 11 of the Plan.” (Order ¶ 48). Therefore, to the extent Complainant is seeking a tribunal to retain jurisdiction to address some “particulars” that remain, the Bankruptcy Court has retained jurisdiction over the Plan, and the parties have agreed that the Bankruptcy Court shall retain jurisdiction over the parties to address any matters related to the Stipulation Agreement.

THEREFORE, for the reasons set forth above, IT IS ORDERED that the complaint filed by Kevin DeBritto (Complainant) against WECTEC Global Project Services Inc. (Respondent) is **DISMISSED**.

SO ORDERED.

MONICA MARKLEY
Administrative Law Judge

MM/jcb
Newport News, VA

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board (“the Board”) within 10 business days of the date of this decision. The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check

the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

The date of the postmark, facsimile transmittal, or e-filing will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110.