

U.S. Department of Labor

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Issue Date: 02 July 2019

CASE NO.: 2018-ERA-5

In the Matter of:

MICHAEL TAIN,
Complainant

v.

WESTINGHOUSE ELECTRIC COMPANY, LLC,
Respondent

ORDER LIFTING STAY AND GRANTING JOINT MOTION FOR DISMISSAL OF COMPLAINT WITH PREJUDICE, APPROVAL OF SETTLEMENT AGREEMENT AND CONFIDENTIAL TREATMENT OF SETTLEMENT AGREEMENT

This matter arises from a Complaint 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 C.F.R. Part 24. On January 27, 2016, complainant, Michael Tain (“Complainant”) filed a complaint with the U.S. Department of Labor (“DOL”), Occupational Safety and Health Administration (“OSHA”), alleging that respondent, Westinghouse Electric Company, LLC (“Respondent” or “Westinghouse”), retaliated against him in violation of section 211 of the ERA. On March 29, 2017, Westinghouse filed a voluntary petition under chapter 11 of the United States Bankruptcy Code (“Bankruptcy”). Upon the filing of Westinghouse’s chapter 11 petition, an automatic stay went into effect with respect to pending and potential claims against Westinghouse pursuant to 11 U.S.C. § 362. OSHA thereafter completed its investigation and on February 12, 2018, issued the Secretary’s Findings, dismissing the complaint. Mr. Tain timely objected to the Secretary’s Findings and requested a hearing.

The case was assigned to the undersigned on March 30, 2018. Review of the file shortly thereafter revealed that by Notice of Automatic Stay dated March 22, 2018, Respondent’s counsel advised that on March 29, 2017, Westinghouse filed its action in Bankruptcy, which was pending before the U.S. Bankruptcy Court for the Southern District of New York, as Case No. 17-10751. As a result, on April 6, 2018 I issued an Order staying further proceedings for the duration of the bankruptcy. The same Order directed the parties are to notify this Court when Respondent’s bankruptcy proceedings were completed.

On June 27, 2019, I received the parties “Joint Motion for Dismissal With Prejudice, Approval of Settlement Agreement, And Confidential Treatment of Settlement Agreement”

(“Motion”), with an accompanying Memorandum of Points and Authorities in support thereof (“Memorandum”), certain other documents, and the executed Settlement Agreement. In the motion and memorandum, the parties stated that on August 1, 2018, Westinghouse emerged from bankruptcy pursuant to its plan of reorganization (“Plan”), which was confirmed prior thereto, and included a copy of the relevant approved plan. As such, with the termination of the automatic stay under 11 U.S.C.A § 362(a)(1), I find it appropriate to lift the stay in these proceedings.

Additionally, the parties reached a settlement in this matter. As part of the Plan, W Wind Down Co., LLC (“Wind Down Co.”) a company established to administer Westinghouse debtor obligations, signed the settlement agreement and will make payment on behalf of Respondent in accordance with the Plan and the terms of the parties’ Settlement Agreement. As a result of the approved Plan, its confirmation and the Settlement Agreement, the parties agree dismissal is appropriate in this matter, pursuant to sections 524(a) and 1141(d)(1) of the Bankruptcy Code and the terms of its confirmed Plan, which provides for discharge and release of the debt in the bankruptcy proceeding . Review of the Plan and Order confirming the Plan is consistent with 11 U.S.C. §§ 1141(d)(1) and 524(a), indicating Respondent was discharged from liability for Complainant’s claim. Consequently, with the discharge of any debt and therefore liability for the claim, dismissal of this action is appropriate.

The parties included a copy of their signed Settlement Agreement, which includes a request that the Settlement Agreement remain confidential. 29 C.F.R. § 18.85 provides in cases such as this, that I may seal a portion of the record to protect against undue disclosure of privileged, sensitive or classified material. Section 18.85(b)(2) further provides that notwithstanding the judge’s order, all parts of the record remain subject to statutes and regulations pertaining to public access to agency records. Moreover, it has been held in a number of cases, with respect to confidentiality of settlement agreements, that the Freedom of Information Act (“FOIA”), 5 U.S.C. section 552, *et seq.* (1988) requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, 92-SWD-2 and 93-STA-15 (ARB 1998). The records in this case are agency records which may be made available for public inspection and copying under the FOIA.

In the instant matter, the parties specifically assert that the Agreement contains confidential commercial or financial information exempt from public disclosure under FOIA exemption four, 5 U.S.C. § 552(b)(4) and information that could compromise Complainant’s personal privacy under FOIA exemption six, 5 U.S.C. § 552(b)(6). As a result, the parties assert, and are entitled to, pre-disclosure notification rights in accordance with 29 C.F.R. §70.26¹.

¹ The parties are afforded the right to request that information be treated as confidential business information. See 29 C.F.R. §70.26 (2016). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predislosure notification if a FOIA request is received seeking release of that information. Accordingly, the Settlement Agreement itself is not appended to this Order approving settlement. Rather an unredacted copy of the Settlement Agreement in this matter will be placed in a separate envelope marked “PREDISCLURE NOTIFICATION MATERIALS,” in compliance with 29 C.F.R. § 70.26. It will also be noted on the envelope that the predislosure notification will apply to all requests for disclosure of this document. Consequently, before any information in this unredacted Settlement Agreement is disclosed pursuant to a FOIA

Finally, in claims under the ERA, 42 U.S.C. §5851(b)(2)(A) and 20 C.F.R. §24.111(d)(2), provide for approval of any agreed upon settlement by an Administrative Law Judge (ALJ), if the case is before the Judge, as in the instant matter. In reviewing the Settlement Agreement, the ALJ must determine whether the terms of the agreement are fair, adequate and reasonable, settle the complainant's allegations that Respondent violated the ERA, and are not against public policy. *See*, 42 U.S.C. §5851(b)(2)(A) and 29 CFR Part 24.

After review of the Settlement Agreement, I find it is fair, adequate and reasonable, and complies with the requirements of the ERA and is therefore approved.

ORDER

For the reasons stated above it is ORDERED that the parties Joint Motion for Dismissal with Prejudice, Approval of Settlement Agreement and Confidential Treatment of Settlement Agreement is GRANTED such that:

1. The stay of these proceedings is LIFTED;
2. The Settlement Agreement is APPROVED;
3. The Complaint filed by Michael Tain (Complainant) against Westinghouse (Respondent) in this matter is DISMISSED WITH PREJUDICE; and
4. The Settlement Agreement is designated as confidential business information under 29 C.F.R. § 70.26. The Settlement Agreement will therefore be afforded the protections thereunder, for purposes of a FOIA request. Predisclosure notification will also be provided to the parties in relation to other requests for disclosure as well.

request, the DOL is required to notify the parties to permit them to file any objections to disclosure. *See* 29 C.F.R. § 70.26 (2016).

SO ORDERED.

NATALIE A. APPETTA
Administrative Law Judge