



Issue Date: 15 April 2011

CASE NO: 2011-SOX-11

IN THE MATTER OF

KEVIN WALLACE
Complainant

v.

TESORO CORPORATION and
CLAUDE MOREAU, Sr. VP of Marketing
Respondents

**ORDER DISMISSING COMPLAINT FOR REMOVAL
TO U.S. DISTRICT COURT**

This matter arises from the complaint of Kevin Wallace (the Complainant), filed against Tesoro Corporation and Claude Moreau (the Respondents) on May 17, 2010, under the Accountability Act, Title VII of the Sarbanes-Oxley Act of 2002, 18 U. S. C. §1514A (“Sox”). On October 22, 2010, the Secretary of Labor, acting through her agent, the Regional Administrator for the Occupational Safety and Health Administration (“OSHA”), found that there is no reasonable cause to believe that Respondents violated SOX. On November 23, 2010, the Complainant filed objections to the Secretary’s preliminary order dismissing the complaint and seeking judicial review in the U.S. District Court. On December 16, 2010, Complainant filed a second request for transfer of this case to the Federal District Court of Texas, Western District, San Antonio Division.

A Complainant may remove his case to a Federal District Court if a final decision has not been issued “within 180 days of the filing of the complaint”. In this matter, 180 days have already passed since the Complainant originally filed his complaint in which no final decision has been rendered and there is no indication of bad faith on the part of Complainant. Additionally, the Complainant not only provided notice of his intention to

file in District Court but on February 3, 2011 did so in the United States District Court Western Division of Texas San Antonio Division. As a result, the Administrative Law Judge “no longer [has] jurisdiction to enter any order in the case other than one dismissing it on the ground that [the Complainant] wishes to remove the case to District Court.” *Powers v. Pinnacle Airlines, Inc.*, USDOL/OALJ Reporter ARB No. 05-138, ALJ No. 2005-SOX-00065 at 5 (ARB Oct. 31, 2005). *See also Stone v. Duke Energy Corp.*, F.3d 320, 322-323 (4th Cir. 2005).

Accordingly, the complaint filed by Kevin Wallace with the Department of Labor on May 17, 2010 is **DISMISSED** as the Complainant wishes to remove the case to District Court pursuant to 18 U.S.C. §1514A(1).

So ORDERED this 15th day of April, 2011 at Covington, Louisiana.

A

C. RICHARD AVERY
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) with the Administrative Review Board (“Board”) within ten (10) business days of the date of the administrative law judge’s decision. *See* 29 C.F.R. § 1980.110(a). The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

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: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) 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.

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: (1) 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 (2) 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, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

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 no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c). Even if you do file a Petition, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days after the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).