

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 10 August 2012

CASE NO.: 2003-ERA-13

In the Matter of:

ANDREW SIEMASZKO,
Complainant

v.

FIRSTENERGY NUCLEAR OPERATING COMPANY,
Respondent

Billie P. Garde, Esq.,
For the Complainant

Timothy P. Matthews, Esq.,
For the Respondent

Before: RICHARD A. MORGAN
Administrative Law Judge

**DECISION AND ORDER APPROVING CONFIDENTIAL SETTLEMENT
AND DISMISSING COMPLAINT WITH PREJUDICE**

On February 15, 2003, Complainant filed a whistleblower complaint against his former employer FirstEnergy Nuclear Operating Company, Inc. ("FENOC") alleging that FENOC fired him in violation of the employee protection provisions of the Energy Reorganization Act ("ERA"), 42 U.S.C. § 5851. On July 14, 2009, I granted Respondent's motion for summary judgment finding that Complainant was collaterally estopped from re-litigating the facts established at criminal trial, that there was no genuine issue of material fact, and FENOC had established a valid Subsection 211(g) defense as a matter of law. On February 29, 2012, the Administrative Review Board affirmed in part, reversed in part, and remanded the case.

On August 8, 2012, the parties submitted a Joint Motion for Approval of Settlement Agreement, Dismissal with Prejudice, and Confidential Treatment of Settlement Agreement. The Settlement Agreement is signed by the complainant and the respondent. The Settlement Agreement provides that Complainant releases Respondent from liability for any claim arising out of or relating to any alleged act or omission of the Respondent occurring prior to the date of execution of the Settlement Agreement. Pursuant to the requirements of the Act and the

implementing regulations, I must review the terms and conditions of the settlement agreement and determine if the agreement is a fair, adequate, and reasonable settlement of Complainant's ERA complaint. *Holbrook v. Fluor Daniel Northwest, Inc.*, ARB No. 98-099, ALJ No. 1998-ERA-4 (ARB Mar. 24, 1998); *Smyth v. Regents of the Univ. of Cal., LANL*, ARB No. 98-068, ALJ No. 1998-ERA-3 (ARB Mar. 13, 1998); *Bray v. The Hospital Center at Orange*, 93-ERA-13 (ALJ May 11, 1993). Review and approval of the settlement is limited to matters arising under the employee protection provisions under the jurisdiction of the Department of Labor, in this case the Energy Reorganization Act. *Mills v. Arizona Public Service Co.*, 92-ERA-13 (Sec'y Jan. 23, 1992); *Anderson v. Kaiser Engineers Hanford Co.*, 94-ERA-14 (Sec'y Oct. 21, 1994).

I have reviewed the terms of the settlement agreement and find the terms to be a fair, adequate, and reasonable settlement of the complaint, including the amount of the settlement and the amount to be paid as attorney's fees. See *Patino v. Birken Manufacturing Co.*, ARB No. 09-054, ALJ No. 2005-AIR-23 (ARB Nov. 24, 2009); *Ezell v. Tennessee Valley Auth.*, ARB No. 96-142; ALJ No. 1995-ERA-39 (ARB Aug. 21, 1996); *Pillow v. Bechtel Constr., Inc.*, 87-ERA-35 (ALJ Dec. 7, 1993).

In addition, I have reviewed the parties' request that the entire settlement agreement be treated as confidential business information pursuant to 29 C.F.R. § 70.26. The request is granted and the contents of the settlement will only be disclosed under the Freedom of Information Act in accordance with the regulations set forth at 29 C.F.R. § 70.26.

Based on the foregoing, and in accordance with the agreement of the parties, both represented by attorneys, IT IS ORDERED THAT:

1. The Settlement Agreement is APPROVED;
2. The Settlement Agreement will be part of the record but will not be attached to this order;
3. The complaint in this matter is DISMISSED WITH PREJUDICE; and
4. The Settlement Agreement shall be treated as CONFIDENTIAL financial information pursuant to 29 C.F.R. § 70.26.

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RICHARD A. MORGAN
Administrative Law Judge