

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 05 November 2007

CASE NO.: 2005-SDW-00005

In the Matter of:

LON A. FULLER,
Complainant,

vs.

BECHTEL SAIC CO., LLC, and
BECHTEL NEVADA CORP.,
Respondents.

ORDER APPROVING SETTLEMENT

This case arises under the Safe Drinking Water Act, 42 U.S.C. § 300J-9(i), Pipeline Safety Improvement Act of 2002, 49 U.S.C. § 60129, Energy Reorganization Act of 1974, 42 U.S.C. § 5851, Solid Waste Disposal Act, 42 U.S.C. § 6971, Toxic Substances Control Act, 15 U.S.C. § 2622, Clean Air Act, 42 U.S.C. § 7622, Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9610, and Clean Water Act, 13 U.S.C. § 1367. This proceeding with the Office of Administrative Law Judges (“OALJ”) was initiated after the Complainant asked for a hearing before the OALJ about a complaint he filed against the Respondents under the whistleblower protection provisions of these environmental statutes.

This was originally a consolidation of three cases involving two other complainants, Gregory A. Dann and Thomas J. Koscik, and set for hearing on September 10, 2007. This case was severed from the other two cases on September 5, 2007, after I was advised during a telephone pre-hearing conference that the Complainant had settled his case with the Respondents. The other two cases proceeded to trial.

On September 24, 2007, I received a request from the Complainant and counsel for Bechtel SAIC asking me to approve a settlement agreement signed by them and asking that the settlement agreement be kept confidential and excluded from the record.

Because the OALJ is a government agency, and this is a public proceeding, the parties’ submissions in this case, including the settlement agreement, become a part of the record in this case and are subject to disclosure under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 (1988). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under FOIA. *Gerald Fish v. H and R Transfer*, ARB No. 01-071; ALJ Case No. 00-STA-56 (ARB April 30, 2003).

Though the Complainant and Bechtel SAIC did not explicitly state that the settlement agreement they submitted comprises and includes confidential commercial information which they believe is exempt from disclosure under FOIA, I am going to treat it as such.

The Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests and for protecting the interests of submitters of confidential commercial information. *See* 29 C.F.R. § 70.26. The settlement agreement in this case between the Complainant and Bechtel SAIC will be placed in a separate envelope and identified as being confidential commercial information. I have reviewed the settlement agreement signed by the Complainant and Bechtel SAIC and find that it is a fair, adequate and reasonable settlement of the Complainant's claims under the employee protection provisions of the environmental statutes listed above, and I approve the settlement agreement.

On October 12, 2007, I received a separate settlement agreement signed by the Complainant and Bechtel Nevada Corp. resolving the issues in the claim against Bechtel Nevada. I have also reviewed this settlement agreement find that it is also a fair, adequate and reasonable settlement of the Complainant's claims under the employee protection provisions of the environmental statutes listed above, and I also approve this settlement agreement.

It is hereby ORDERED that the settlement agreements between the Complainant and Bechtel SAIC and between the Complainant and Bechtel Nevada Corp. be APPROVED. It is further ORDERED that this case be DISMISSED WITH PREJUDICE.

A

JENNIFER GEE
Administrative Law Judge

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 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. The date of the postmark, facsimile transmittal, or e-mail communication 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 Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Ave., NW., Washington, DC 20210.

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 the Board exercises its discretion to review this Decision and Order, it will specify the terms under which any briefs are to be filed. 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, found at 72 Fed. Reg. 44956-44968 (Aug. 10, 2007).