U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

JOHN A. PONZI,

COMPLAINANT,

v.

WILLIAMS GROUP INTERNATIONAL and WILLIAMS POWER CORPORATION,

RESPONDENTS.

ARB CASE NO. 05-015

ALJ CASE NO. 04-ERA-28

DATE: May 18, 2005

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
John A. Ponzi, pro se, ***Oswego, New York***

For the Respondents:
Thomas M. Closson, Esq., ***Flygare, Schwarz & Closson, Exeter, New Hampshire***

FINAL DECISION AND ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT

This case arises under the employment protection provisions of the Energy Reorganization Act (ERA) of 1974, as amended.[1] The Complainant, John A. Ponzi, filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Respondents, Williams Group International and Williams Power Corporation Inc., "de-selected" him for employment in violation of the ERA's whistleblower protection provisions.

After investigating the allegations in the complaint, OSHA issued a "Notice of Determination" on September 8, 2004, in which it found that the complaint was

[1] 42 U.S.C.A. § 5851 (West 1995).

meritorious and that the Respondents had violated the ERA when it "de-selected" Ponzi for employment because he engaged in protected activity. OSHA ordered the Respondents to pay Ponzi back wages in the amount of $9,360.00 plus interest, compensatory damages of $10,000.00, expunge a portion of Ponzi's employment records, provide a neutral employment reference for Ponzi, refrain from future discrimination and retaliation against Ponzi, post a prescribed "Notice to Employees," and post a notice entitled "Your Rights Under the ERA."

The Respondents filed a hearing request with the Office of Administrative Law Judges on September 14, 2004, but the request did not indicate that the Respondents had served it on Ponzi as required by regulation.[2] After ordering the Respondents to show cause why their hearing request should not be dismissed for failure to comply with the regulation requiring them to serve Ponzi with the hearing request, the Administrative Law Judge (ALJ), issued a Recommended Decision and Order Dismissing Respondent's Request for a Hearing. The ALJ ordered that "the appeal and request for a hearing filed by Respondent is dismissed and the September 8, 2004 determination by OSHA constitutes the final order of the Secretary of Labor."

The Respondents filed a petition for review of the order with the Administrative Review Board.[3] The Secretary of Labor has delegated to the Board the authority to review an ALJ's recommended decision in cases arising under the ERA.[4] The Board issued a Notice of Appeal and Order Establishing Briefing Schedule. On December 9,

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[2] 29 C.F.R. § 24.4(d)(2004) provides in pertinent part:

> (2) The [OSHA] notice of determination shall [inform the parties that] any party who desires review of the determination or any part thereof . . . shall file a request for a hearing with the Chief Administrative Law Judge within five business days of the date of receipt of the determination. . . . If a request for a hearing is not timely filed, the notice of determination shall become the final order of the Secretary.
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> (3) A request for a hearing shall be filed with the Chief Administrative Law Judge. . . . A copy of the request for a hearing shall be sent by the party requesting a hearing to the complainant . . . on the same day that the hearing is requested . . . .

[3] *See* 29 C.F.R. § 24.8 (2004).

[4] Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002); 29 C.F.R. § 24.8(a)(2004).

2004, the parties entered into a Settlement Agreement and General Release that we now review.

We find the overall settlement terms to be reasonable but our review of the agreement reveals that it encompasses the settlement of matters under laws other than the ERA.[5] The Secretary's authority over settlement agreements is limited to such statutes as are within the Secretary's jurisdiction and is defined by the applicable statute.[6] Thus, we approve the instant settlement agreement only insofar as it pertains to matters within the Secretary's jurisdiction.

We find that the agreement, as construed above, is a fair, adequate and reasonable settlement of the complaint. Accordingly, we **APPROVE** the Settlement Agreement and **DISMISS** the complaint.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

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5 See Settlement Agreement and General Release at ¶¶ 1.3, 2.1, 2.2.

6 *Wong v. Coach U.S.A.*, ARB No. 05-010, ALJ No. 03-STA-51, slip op. at 2 (ARB Feb. 28, 2005).