



In the Matter of:

THOMAS J. SAPORITO, JR.,

ARB CASE NO. 10-118

COMPLAINANT,

ALJ CASE NO. 2010-ERA-018

v.

DATE: June 29, 2011

FPL GROUP, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Thomas Saporito, *pro se*, Jupiter, Florida

For the Respondent:

Mitchell S. Ross, Esq. and William S. Blair, Esq.; *Florida Power and Light Company, Juno Beach, Florida*

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Luis A. Corchado, *Administrative Appeals Judge*; and Lisa Wilson Edwards, *Administrative Appeals Judge*

FINAL DECISION AND ORDER DISMISSING COMPLAINT

Thomas J. Saporito, Jr., filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Florida Power and Light Company (FPL) violated the employee protection provisions of the Energy Reorganization Act of 1974, as amended, 42 U.S.C.A. § 5851 (West 2003 & Supp. 2010) (ERA). A Department of Labor (DOL) Administrative Law Judge (ALJ)

granted FPL's motion for summary decision pursuant to 29 C.F.R. § 18.40(a), (d) (2010), as he determined there is no genuine issue of material fact that FPL did not hire Saporito in retaliation for his protected activity. Thus, the ALJ dismissed Saporito's complaint. Saporito has appealed the dismissal of his complaint to the Administrative Review Board.

While the case was before the Board on appeal, FPL filed a Motion on July 8, 2010, requesting the Board to hold the proceedings in this case in abeyance. In support of its Motion, FPL averred that Saporito had five fully briefed and pending cases before the Board under the ERA's employee protection provisions.¹ It further averred that the Board's decisions in those cases could resolve this case (ARB No. 10-118) without the need for briefing or, at least, substantially narrow the issues for briefing. Thus, FPL moved the Board to hold the proceedings in this case in abeyance until the Board resolved the five pending cases involving Saporito and FPL Group. In response, Saporito filed a Motion opposing FPL Group's Motion with a supporting memorandum of law.

On July 20, 2010, the Board issued an Order providing that pending resolution of FPL's Motion, it would hold the proceedings in this case in abeyance. Subsequently, the Board issued final decisions and orders summarily affirming dismissals of the five previously pending cases involving Saporito and FPL.² Thus, FPL's Motion requesting the Board to hold the proceedings in this case in abeyance until the five pending cases involving Saporito and FPL were resolved is moot.

In light of the Board's summary affirmance of the dismissals of the five previously pending cases involving Saporito and FPL, the Board issued an Order on June 3, 2011, ordering Saporito to submit a sworn affirmation that sufficiently explains how his petition for review in this case and the underlying complaint are not essentially a relitigation of his previous claims brought against FPL. The Board instructed Saporito that it would not address the merits of his petition for review unless he timely submitted such sworn affirmation to the Board within ten (10) days from the date of the Board's Order.

Contrary to the Board's instructions, Saporito has not submitted a sworn affirmation within ten (10) days from the date of the Board's Order dated June 3, 2011, that explains how his petition for review in this case and the underlying complaint are not essentially a re-litigation of his previous dismissed claims brought against FPL, which the

¹ The ARB had docketed these cases as: 09-009/09-010, 09-072, 09-128, 09-129, and 09-141.

² See *Saporito v. Florida Power & Light Co.*, ARB Nos. 09-009, -010; ALJ No. 2008-ERA-014 (Feb. 28, 2011); *Saporito v. Florida Power & Light Co.*, ARB Nos. 09-072, -128, -129, -141; ALJ Nos. 2009-ERA-001, -006, -009, -012 (Apr. 29, 2011).

Board has summarily affirmed. Consequently, we decline to address the merits of his petition for review. Accordingly, we **AFFIRM** the ALJ's Summary Decision and Order and **DISMISS** Saporito's complaint.

SO ORDERED.

LUIS A. CORCHADO
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LISA WILSON EDWARDS
Administrative Appeals Judge