



IN THE MATTER OF:

MATT SIMON,

COMPLAINANT,

v.

EXELON NUCLEAR SECURITY,

RESPONDENT.

ARB CASE NOS. 13-095
13-096

ALJ CASE NO. 2010-ERA-007

DATE: November 22, 2013

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Lynne Bernabei, Esq. and Alan R. Kabat, Esq.; *Bernabei & Wachtel, PLLC*,
Washington, District of Columbia

For the Respondent:

Donn C. Meindertsma, *Conner & Winters, LLP*, Washington, District of Columbia

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*, and Lisa Wilson Edwards,
Administrative Appeals Judge

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

On April 3, 2009, Matt Simon filed a complaint against Exelon Corporation with the Occupational Safety and Health Administration alleging that he was harassed and terminated for engaging in activities protected under the whistleblower provision of the Energy Reorganization Act of 1974, 42 U.S.C.A. § 5851 (West 2003 & Supp. 2012) (ERA), and its implementing regulations, 29

C.F.R. Part 24 (2013). On September 3, 2013, following a hearing, an Administrative Law Judge (ALJ) determined that Exelon's actions did not constitute a violation of the ERA. *Simon v. Exelon Nuclear Sec.*, 2010-ERA-007 (Sept. 2, 2013). Simon and Exelon each petitioned the Administrative Review Board (ARB or Board) for review. See 29 C.F.R. § 24.110. Prior to a decision, the parties filed with ARB a Joint Motion for Approval of Confidential Settlement Agreement, Dismissal of Complaint with Prejudice, and Confidential Treatment of Settlement Agreement and accompanying Confidential Settlement Agreement and Release (Settlement Agreement). We grant the joint motion to approve the Settlement Agreement, and dismiss the complaint, with prejudice.

DISCUSSION

The ERA's implementing regulations provide that at any time after a party has filed objections to the Assistant Secretary's findings or order and petitions the ARB for review, the case may be settled if the participating parties agree to a settlement and the ARB has accepted the case for review and approves the agreement. 29 C.F.R. § 24.111(d)(2).

The Settlement Agreement before us states that the terms are intended to settle not only Simon's ERA complaint, but also releases his rights and claims under other laws. See Confidential Settlement Agreement at ¶¶ 8(c), 14. The ARB's authority to review settlement agreements is limited to the statutes within the Board's jurisdiction, and is determined by applicable statutes. Here, our review of the Settlement Agreement is limited to ascertaining whether its terms fairly, adequately, and reasonably settle this ERA case over which we have jurisdiction. See, e.g., *Thompson v. Norfolk Southern Ry, Co.*, ARB No. 13-032, ALJ No. 2011-FRS-015, slip op. at 2 (ARB Feb. 28, 2013); *Bhat v. District of Columbia Water & Sewer Auth.*, ARB No. 06-014, ALJ No. 2003-CAA-017, slip op. at 2 (ARB May 30, 2006).

Under the Confidential Settlement Agreement at ¶ 8, Simon "waives any and all rights against ENS that he has or may have under federal or state law arising out of his employment, including termination thereof." Waiver provisions are limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of the Agreement; such waivers do not apply to actions taken by the employer subsequent to the Agreement date. See *Smith v. Union Pacific R.R. Co.*, ARB No. 13-058, ALJ No. 2012-FRS-039, slip op. at 2-3 (ARB July 23, 2013); see also *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51-52 (1974); *Rogers v. General Elec. Co.*, 781 F.2d 452, 454 (5th Cir. 1986). We construe ¶ 8 consistent with this precedent.

Finally, ¶ 12(e) of the Confidential Settlement Agreement provides that the Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois. We interpret this choice of law provision as not limiting the authority of the Secretary of Labor and any Federal court which shall be governed in all respects by the laws and regulations of the United States. See *Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 3 (ARB Sept. 26, 2011).

The parties have certified that the Settlement Agreement constitutes the entire settlement with respect to Simon's ERA claim. Confidential Settlement Agreement at ¶ 12. With the exceptions set out herein, we approve the terms of the Confidential Settlement Agreement as fairly, adequately, and reasonably settling this ERA case.

CONCLUSION

The Confidential Settlement Agreement and Release is **APPROVED**, and Simon's complaint is **DISMISSED** with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LISA WILSON EDWARDS
Administrative Appeals Judge