



In the Matter of:

MANSOUR GUILTY,

ARB NO. 96-180

COMPLAINANT,

ALJ CASE NO. 90-ERA-10

DATE: August 28, 1996

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

ORDER

This case arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992)^{2/}. The parties have requested dismissal of the complaint with prejudice and submitted a Joint Motion for Dismissal and a Memorandum of Understanding and Agreement in support of such request.

Since the request for approval of the settlement is based on an agreement entered into by the parties, we must review it to determine whether the terms are a fair, adequate and reasonable

^{1/} On April 17, 1996, Secretary's Order 2-96 was signed delegating jurisdiction to issue final agency decisions under the environmental whistleblower statutes and the regulations at 29 C.F.R. Part 24, to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996)(copy attached).

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order and regulations under which this Board now issues final agency decisions. A copy of the final procedural revisions to the regulations (61 Fed. Reg. 19982), implementing this reorganization is also attached.

^{2/} Section 2902 of the Comprehensive National Energy Policy Act of 1992, Pub. L. No. 102-86, 106 Stat. 2776, amended the ERA for claims filed on or after the date of enactment, October 24, 1992. See Section 2092(i) of Pub. L. 102-486. This complaint was filed in 1990 and therefore the 1992 amendments do not apply.

settlement of the complaint. 42 U.S.C. § 5851(b)(2)(A)(1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

Paragraph 1 of the Agreement indicates that Respondent will pay a specified amount to Complainant. Paragraph 3 indicates that the Complainant releases Respondent from all of his monetary claims, including any claim for attorney's fees, expenses and/or costs. There is no indication of the actual amount of money to be paid to the Complainant pursuant to the proposed settlement. **The Board must know the amount Complainant will receive in order to determine if the settlement agreement is fair, adequate and reasonable.** This amount affects not only the Complainant's individual interest, but impacts on the public interest as well, because if the amount is not fair, adequate and reasonable, other employees may be discouraged from reporting safety violations. *See Plumlee v. Aleyeska Pipeline Service Co.*, 92-TSC-7, Sec. Dec. and Order, Aug. 6, 1993, slip op. at 5.

Likewise, the Agreement does not specify the amount of attorney's fees to be paid. As long as the parties are in agreement as to the amount of the attorney's fees to be paid, it is not necessary for the Board to review the amount with the specificity usually required by the lodestar method. *Hensley v. Eckerhart*, 461 U.S. 424 (1983). If a dispute arises between the parties with regard to the appropriateness of the amount of attorney's fees, a subsequent order requiring an itemization of such fees may be necessary.

The parties are required to file a joint response to this Order within ten (10) days. If the parties cannot agree upon a joint response, Complainant's counsel is to submit the required information within ten (10) days from the issuance of this Order. In that event, Respondent may submit a response within fifteen (15) days of the issuance of this Order.

SO ORDERED.

For the Administrative Review Board:

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