



In the Matter of:

MATTHEW VANNOY,
COMPLAINANT,

ARB CASE NO. 09-118

ALJ CASE NO. 2008-SOX-064

v.

DATE: September 27, 2013

CELANESE CORPORATION,
RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Thad M. Guyer, Esq., *T.M. Guyer & Friends, P.C.*, Medford, Oregon

For the Respondent:

Charles M. Poplstein, Esq., Brian A. Lamping, Esq., *Thompson, Coburn LLP*, St. Louis, Missouri

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; Lisa Wilson Edwards, *Administrative Appeals Judge*

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

This case arises under the employee protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C.A § 1514A (Thomson/West Supp. 2013) (SOX), and its implementing regulations, 29 C.F.R. Part 1980 (2012). Matthew Vannoy filed a complaint with the Occupational Safety and Health Administration (OSHA) on January 25, 2008, alleging that his employer, Celanese Corporation (Celanese) violated SOX when it terminated his employment.

Vannoy requested a hearing before an Administrative Law Judge (ALJ). Prior to hearing, Celanese moved for summary decision and dismissal of the complaint, which the ALJ granted on June 24, 2009. Vannoy petitioned the Administrative Review Board (ARB) for review. On September 28, 2011, the ARB entered an order reversing the ALJ's decision, and remanded for further proceedings. On July 24, 2013, after an evidentiary hearing, the ALJ entered a Decision and Order on Remand determining that Celanese's adverse action against Vannoy violated SOX, and ordered relief. Celanese petitioned the ARB for review.

On September 17, 2013, prior to a decision, the parties filed with ARB a Joint Motion To Approve Settlement And Vacate The Administrative Law Judge's Decision And Order On Remand, and appended a copy of the settlement agreement signed by the parties. The parties stipulated for dismissal of the complaint with prejudice.

Regulations administering the SOX specify that "at any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board." 29 C.F.R. § 1980.111(d)(2). "A copy of the settlement will be filed with the administrative law judge or the Board as the case may be." *Id.* "Any settlement approved by . . . the administrative law judge, or the Board, will constitute the final order of the Secretary and may be enforced pursuant to Sec. 1980.113." 29 C.F.R. § 1980.111(e). The ARB reviews settlement agreements to determine whether an agreement is "fair, adequate, and reasonable." *Carciero v. Sodexo Alliance, S.A.*, ARB No. 09-067, ALJ No. 2008-SOX-012, slip op. at 3 (ARB Sept. 30, 2010).

The parties move the ARB to vacate the ALJ's July 24, 2013, Decision and Order as a prerequisite for the settlement. See Joint Motion at ¶ 6 (requesting that ALJ's July 24, 2013, Order in this case be vacated and removed "from any website or database affiliated with the United State Department of Labor or record of published opinions."); see also Settlement Agreement at ¶ 3. The ALJ's order is precedent, however, it is not our practice to vacate an underlying ALJ decision in the context of reviewing a settlement agreement pursuant to 29 C.F.R. § 1980.111(d)(2).

Our examination of the Settlement Agreement reveals that the terms are intended to settle not only Vannoy's SOX complaint, but any other matters arising under any other laws. See, e.g., Settlement Agreement at ¶ 2. The ARB's authority to review settlement agreements is limited to the statutes within the Board's jurisdiction and is determined by the applicable statutes. In this case, our review of the Settlement Agreement is limited to ascertaining whether its terms fairly, adequately, and reasonably settle this SOX case over which we have jurisdiction. See, e.g., *Ambrose v. U.S. Foodservice, Inc.*, ARB No. 06-096, ALJ No. 2005-SOX-105, slip op. at 2-3 (ARB Sept. 28, 2007).

The parties further request that the terms of the Settlement Agreement remain confidential, and that only a redacted copy of the agreement be maintained in Department of Labor records. The parties' submissions, including the Settlement Agreement, become part of the record of the case and the record is subject to the Freedom of Information Act (FOIA). 5

U.S.C.A § 552. The FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act. Department of Labor regulations set out the procedures for responding to FOIA requests and for appeals by requestors from denials of such requests. Thus disclosure of the non-redacted Settlement Agreement that will be maintained in DOL records will be subject to FOIA and any other federal disclosure requirements. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-007, slip op. at 3 (ARB Jan. 31, 2011).

Finally, the Settlement Agreement provides that it shall be governed and construed pursuant to laws of the State of Texas. Settlement Agreement at ¶ 10. We construe 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. *Anderson*, ARB No. 10-070, slip op. at 4.

The Settlement Agreement includes a severability clause that reads: “This Agreement is severable. Therefore, if any portion of this Agreement is deemed to be unenforceable, the remaining provisions of this Agreement will survive and be deemed valid and fully enforceable.” Settlement Agreement at ¶ 11. With the exceptions set out herein, we determine that the terms of the Settlement Agreement fairly, adequately, and reasonably settle this SOX case.

CONCLUSION

The joint motion to vacate the ALJ’s July 24, 2013, Decision and Order is **DENIED**. Subject to the exceptions set out herein, the Settlement Agreement is **APPROVED**, and the case is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

LISA WILSON EDWARDS
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge