



In the Matter of:

BASIL HYLTON,

ARB CASE NO. 10-078

COMPLAINANT,

ALJ CASE NO. 2010-SOX-014

v.

DATE: October 31, 2011

THE SEMINOLE TRIBE OF FLORIDA,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Basil Hylton, *pro se*, Lauderhill, Florida

For the Respondent:

Donald A. Orlovsky, Esq., *Kamen & Orlovsky, P.A.*, West Palm Beach, Florida

BEFORE: E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*; Luis A. Corchado, *Administrative Appeals Judge*; and Joanne Royce, *Administrative Appeals Judge*

FINAL DECISION AND ORDER

This case arises under Section 806, the employee whistleblower protection provision, of the Corporate and Criminal Fraud Accountability Act of 2002 (SOX), Title VIII of the Sarbanes-Oxley Act of 2002, Pub. L. 107-204 (SOX), 18 U.S.C.A. § 1514A (West Supp. 2011), and its implementing regulations at 29 C.F.R. Part 1980 (2011). On October 30, 2009, Basil Hylton filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that

The Seminole Tribe of Florida violated SOX Section 806 when it discharged him from employment. OSHA investigated Hylton's allegation and denied his complaint.

After OSHA denied his complaint, Hylton requested a hearing before an Administrative Law Judge (ALJ). On January 7, 2010, the ALJ issued a Notice of Docketing and Order to Show Cause (Order), ordering the parties to explain "why the complaint should not be dismissed for lack of jurisdiction." In response to the Order, Hylton submitted news articles discussing The Seminole Tribe's purchase of the Hard Rock Café and a press release discussing activities of the Seminole Tribe's CEO of Gaming Operations. Decision and Order Dismissing Complaint (D. & O.) at 2. The Seminole Tribe informed the ALJ that, as a sovereign tribal government, it is not only immune from Hylton's SOX claim but is also not an entity covered by Section 806. D. & O. at 2-3.

On March 1, 2010, the ALJ issued a Decision and Order Dismissing Complaint. The ALJ concluded that the Seminole Tribe "is a sovereign Indian tribe and is immune from claims such as the one presented" by Hylton. D. & O. at 3. The ALJ also concluded that, absent immunity, the Seminole Tribe is not subject to the SOX's whistleblower provisions. D. & O. at 4. Hylton appealed the ALJ's ruling to the Administrative Review Board (Board).

The Secretary of Labor has delegated her authority to issue final agency decisions under the SOX to the Board.¹ The Board reviews the ALJ's findings of fact under the substantial evidence standard² and reviews an ALJ's conclusions of law de novo.³

Section 806 of the Sarbanes-Oxley Act protects from retaliation employees of covered companies who engage in SOX-protected activity. Section 806 reads, in relevant part:

(a) *Whistleblower protection for employees of publicly traded companies.* No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company, . . . or any officer, employee, contractor, subcontractor, or agent of such company, . . . may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms

¹ 29 C.F.R. § 1980.110(a). See Secretary's Order 1-2010 (Delegation of Authority and Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010).

² 29 C.F.R. § 1980.110(b).

³ 5 U.S.C.A. § 557(b) (West 1996). See *Simpson v. United Parcel Serv.*, ARB No. 06-065, ALJ No. 2005-AIR-031, slip op. at 4 (ARB Mar. 14, 2008).

and conditions of employment because of any lawful act done by the employee --^[4]

The Seminole Tribe does not fall within any of the categories described above. It is neither a company with a class of securities registered under section 12 of the Securities Exchange Act, nor one required to file reports under section 15(d) of that act, nor a subsidiary of either. Nor has Hylton presented any information indicating that the Seminole Tribe acted as a contractor, subcontractor, or agent of such a company. Thus, the ALJ correctly held that The Seminole Tribe is not subject to the prohibitions of SOX Section 806.

In any event, the ALJ properly dismissed Hylton's claim on the principle of sovereign immunity in this case. Consequently, the ALJ having correctly concluded that the Seminole Tribe is not subject to suit under SOX Section 806, we summarily affirm the ALJ's dismissal of Hylton's complaint.

SO ORDERED.

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

⁴ 18 U.S.C.A. § 1514A. On July 21, 2010, the President signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (Dodd-Frank Act). Section 929A of the Dodd-Frank Act amended Section 806 by inserting within subsection (a) the words "including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company." This amendment does not affect the outcome of this case.