



In the Matter of:

STEVEN M. JONES,

COMPLAINANT,

v.

EG&G DEFENSE MATERIALS, INC.,

RESPONDENT.

ARB CASE NO. 01-039

ALJ CASE NO. 95-CAA-3

DATE: March 13, 2001

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

Appearances:

For the Complainant:

Scott A. Hagen, Esq., *Ray, Quinney & Nebeker, Salt Lake City, Utah*

For the Respondent:

Lois A. Baar, Esq., Michael A. Zody, Esq., *Parsons, Behle & Latimer, Salt Lake City, Utah*

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING CASE WITH PREJUDICE**

This case arose when Complainant Steven W. Jones filed a complaint alleging that his employer, Respondent EG&G Defense Materials, Inc. (EG&G), violated the whistleblower protection provisions of the Clean Air Act, 42 U.S.C. §7622 (1994)(CAA); the Toxic Substances Control Act, 15 U.S.C. §2622 (1994) (TSCA); and the Resource Conservation and Recovery Act, (also known as the Solid Waste Disposal Act), 42 U.S.C. §6971 (1994)(SWDA).

An Administrative Law Judge issued a Recommended Decision and Order (R. D. & O.) upholding Jones' claim and ordering EG&G to reinstate Jones with full back pay and to pay compensatory and punitive damages and attorneys' fees. EG&G appealed the R. D. & O to the Administrative Review Board (ARB) pursuant to 29 C.F.R. §24.8 (2000).

^{1/} This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

The ARB, in a Final Decision and Order, substantially affirmed the R. D. & O., but reduced the compensatory damage award and eliminated the punitive damage award. *Jones v. EG&G Defense Materials, Inc.*, ARB No. 97-129, ALJ No. 95-CAA-3 (ARB Sept. 29, 1998). EG&G appealed the ARB's decision to the U.S. Court of Appeals for the Tenth Circuit.

On February 16, 2001, the Court of Appeals issued an order granting the parties' joint motion for remand to the ARB "for the limited purpose of review and approval of a settlement agreement among the parties" and directing the ARB to "file its determination on review of the settlement within 30 days" of the court's order.

The CAA and the TSCA require the Secretary of Labor to enter into or otherwise approve a settlement. *See* 42 U.S.C. §7622(b)(2)(A) (CAA); 15 U.S.C. §2622(b)(2)(A) (TSCA).^{2/} The Secretary, in turn, has delegated to the ARB her authority to approve settlements of cases that are pending before the Board at the time the parties enter into the settlement. Secretary's Order 2-96, 61 Fed. Reg. 19978 (May 3, 1996); 29 C.F.R. §24.8.

The ARB requires all parties requesting settlement approval of cases arising under the CAA and TSCA to provide the settlement documentation for any other claims arising from the same factual circumstances forming the basis of the federal claim, or to certify that the parties entered into no other such settlement agreements. *Beliveau v. Naval Undersea Warfare Center*, ARB Nos. 00-073, 01-017, 01-019; ALJ Nos. 97-SDW-1, 97-SDW-4, 97-SDW-6; slip. op. at 2 (ARB Nov. 30, 2000). Accordingly, the parties have certified that the agreement constitutes the entire and only settlement agreement with respect to Jones' claims under the environmental acts at issue in this case. Settlement Agreement at 4, ¶ 15.

We find the overall settlement terms to be reasonable, but include our interpretation of one of its provisions. Paragraph 12 of the agreement provides that the agreement "shall be interpreted in accordance with the laws of the state of Utah." We construe this provision to except the authority of the Administrative Review Board and any Federal court which shall be governed in all respects by the laws and regulations of the United States. *Pawloski v. Hewlett-Packard Co.*, ARB No. 99-089, ALJ Case No. 97-TSC-3, slip op. at 3 (ARB May 5, 2000).

As so construed, we find the agreement is a fair, adequate and reasonable settlement of the complaint. Accordingly, we **APPROVE** the agreement and **DISMISS** the case with prejudice.

SO ORDERED.

PAUL GREENBERG
Chair

CYNTHIA L. ATTWOOD
Member

^{2/} The SWDA does not require the Secretary to approve a settlement.