



In the Matter of:

**SYED M.A. HASAN,**

**ARB CASE NO. 01-001**

**COMPLAINANT,**

**ALJ CASE NO. 2000-ERA-7**

**v.**

**DATE: April 30, 2001**

**SARGENT AND LUNDY,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD<sup>1/</sup>**

**Appearances:**

*For the Complainant:*

Syed M.A. Hasan, *pro se*, Madison, Alabama

*For the Respondent:*

Harry Sangerman, P.C., *McDermott, Will & Emory*, Chicago, Illinois

**ORDER OF REMAND**

**BACKGROUND**

This case arises under the employee protection provisions of the Energy Reorganization Act ("ERA"), which prohibit an employer from discriminating against or otherwise taking unfavorable personnel action against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee engaged in protected whistleblowing activity. 42 U.S.C.A. §5851 (West 1995). This is the second case that Complainant Syed Hasan has filed against Respondent and one of many cases that he has filed against other companies for failing to hire, retain, or rehire him.<sup>2/</sup>

---

<sup>1/</sup> 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).

<sup>2/</sup> *Hasan v. Commonwealth Edison Co.*, ARB Nos. 01-002, 01-003; ALJ Nos. 2000-ERA-8, 2000-ERA-11 (ARB Apr. 23, 2001); *Hasan v. Commonwealth Edison Co.*, ARB No. 01-005, ALJ No. 2000- (continued...)

On November 15, 1999, Hasan filed a complaint with the Occupational Safety and Health Administration (“OSHA”)<sup>3/</sup> alleging that Respondent refused to hire him because he raised safety concerns while employed by Commonwealth Edison at its La Salle Nuclear plant. OSHA found no merit to Hasan’s complaint. Hasan objected to that determination and the case was referred to an Administrative Law Judge (“ALJ”) for disposition.

After allowing the parties an opportunity to engage in discovery, the ALJ, *sua sponte*, recognized that the complaint might be defective in that Hasan had not stated a claim upon which relief could be granted. Therefore, by Order dated July 25, 2000, the ALJ directed Hasan to show cause why his complaint should not be dismissed. In response, Hasan asserted that, if the ALJ studied every sentence of the pleadings that he had filed in this matter, the ALJ would realize that he had alleged a *prima facie* case of retaliatory action by Respondent. The ALJ, however, concluded that Hasan had not alleged facts sufficient to establish all of the elements of a *prima facie* case and, by Order (“RD&O”) issued October 5, 2000, recommended that the complaint be dismissed. This appeal followed.

## JURISDICTION

We have jurisdiction pursuant to 42 U.S.C.A. §5851 and 29 C.F.R. §24.8.

## STANDARD OF REVIEW

Under the Administrative Procedure Act, we have plenary power to review an ALJ’s factual and legal conclusions *de novo*. See 5 U.S.C.A. §557(b) (West 1996); *Masek v. Cadle Co.*, ARB No. 97-069, ALJ No. 95-WPC-1, slip op. at 7 (ARB Apr. 28, 2000).

---

<sup>2/</sup>(...continued)

ERA-13 (ARB Apr. 23, 2001); *Hasan v. Burns & Roe Enterprises, Inc.*, ARB No. 00-080, ALJ No. 2000-ERA-6 (ARB Jan. 30, 2001); *Hasan v. Commonwealth Edison Co.*, ARB No. 00-028; ALJ No. 2000-ERA-1, (ARB Dec. 29, 2000); *Hasan v. Intergraph Corp.*, ARB No. 97-016; ALJ No. 96-ERA-17, (ARB Aug. 6, 1997); *Hasan v. Bechtel Power Corp.*, No. 94-ERA-21 (Sec’y Mar. 16, 1995); *Hasan v. Bechtel Power Corp.*, No. 93-ERA-40 (Sec’y Feb. 13, 1995); *Hasan v. System Energy Resources, Inc.*, No. 89-ERA-36 (Sec’y Sept. 23, 1992); *Hasan v. Nuclear Power Services, Inc.*, No. 86-ERA-24 (Sec’y June 26, 1991); *Hasan v. Florida Power & Light Co.*, ARB No. 01-004, ALJ No. 2000-ERA-12 (ALJ Oct. 5, 2000); *Hasan v. Stone & Webster Engineers and Constructors, Inc.*, ARB No. 01-007, ALJ No. 2000-ERA-10 (ALJ Oct. 5, 2000); *Hasan v. Wolfe Creek Nuclear Operating Corp.*, ARB No. 01-006, ALJ No. 2000-ERA-14 (ALJ Oct. 5, 2000); *Hasan v. Sargent & Lundy*, No. 96-ERA-27 (ALJ Nov. 4, 1996); *Hasan v. Bechtel Power Corp.*, No. 93-ERA-22 (ALJ Dec. 8, 1994); *Hasan v. Nuclear Power Services Inc.*, No. 86-ERA-36 (ALJ July 27, 1989).

<sup>3/</sup> OSHA is the agency within the Department of Labor charged with investigating ERA whistleblower complaints. See 29 C.F.R. §§24.4, 24.5 (2000).

## DISCUSSION

In the RD&O, the ALJ stated:

Complainant has the initial burden of proof in an environmental whistleblower proceeding to make a *prima facie* case which shows that: (1) complainant engaged in a protected activity; (2) complainant was subjected to adverse action; (3) respondent was aware of the protected activity when it took the adverse action; and (4) the evidence is sufficient to raise a reasonable inference that the protected activity was the likely reason for the adverse action.

RD&O at 2.

The ALJ then went on to state that, although Hasan alleged facts sufficient to establish the first two elements of a *prima facie* case, he did not allege facts sufficient to establish the third element. Specifically, the ALJ stated:

Complainant's statements, taken as true, do not amount to a *prima facie* case that Respondent had knowledge of Complainant's protected activity. Complainant does not allege that any employee responsible for, or having input in, the hiring practices of Respondent had any knowledge of his protected activity. The only people Complainant alleges to have knowledge of his protected activity are former colleagues working with him at the plant. Moreover, he does not say which company these individuals work for.

*Id.* at 4.

Hasan, appearing *pro se*, takes issue with this finding asserting, *inter alia*, that he did allege facts sufficient to establish that Respondent was aware of his protected activity. At the outset, we note that *pro se* pleadings should be construed liberally. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972). Although Hasan's pleadings are inartfully drafted, we have been able to discern the basis of his argument.

Attached to Hasan's Response to Show Cause Order is a document labeled "Attachment 1." Attachment 1 is an excerpt from Respondent's answers to Hasan's interrogatories. Question 10 of the interrogatories asks Respondent to identify all persons who participated in the decision not to hire him. Respondent replied that the persons who participated in the decision not to hire him (within the 180-day period prior to the filing of his complaint) are: Constantine Petropolis, Peter Meehan, Lawrence Jacques, A.K. Singh, and Sean Hagen.

In his response to the show cause order, Hasan states "I did discuss my safety concerns (engaged in ERA-protected activity) pertaining to La Salle site (during January 1999, and March 1999) with Mr. A.K. Singh and Sean Hagen of Sargent and Lundy." Response to Show Cause

Order (filed August 9, 2000) at 3. However, Hasan did not specifically assert that Singh and Hagen participated in the decision not to hire him apparently because he expected the ALJ to read “Attachment 1” and realize that Respondent had already conceded this point in its response to his interrogatories.<sup>4/</sup>

There is no indication in the RD&O that the ALJ ever considered Hasan’s assertion that Singh and Hagen were aware of his protected activities and participated in the decision not to hire him. Thus, it is premature to dismiss this case for failure to state a claim upon which relief can be granted. Accordingly, we remand this matter to the ALJ for further consideration consistent with this Order.<sup>5/</sup>

**SO ORDERED.**

**CYNTHIA L. ATTWOOD**

Member

**RICHARD A. BEVERLY**

Alternate Member

---

<sup>4/</sup> Although the ALJ is required to construe a *pro se* complainant’s pleadings liberally, he is not obligated to develop arguments on behalf of the complainant. *See Rice v. Nova Biomedical Corp.*, 38 F.3d 909, 917-18 (7th Cir. 1994), *cert. denied*, 514 U.S. 1111 (1995) (suggesting that courts need not develop arguments on behalf of litigants who have not done so); *TJ’s South, Inc. v. Town of Lowell*, 895 F.Supp. 1124 (N.D. Ind. 1995)

<sup>5/</sup> Hasan has raised a number of other arguments in this case. The Board finds those arguments without merit and do not warrant a separate discussion in this Order.