



In the Matter of:

LINDA ROBERTS,

ARB CASE NO. 98-136

COMPLAINANT,

ALJ CASE NO. 96-ERA-24

v.

DATE: July 8, 1998

**BATTELLE MEMORIAL INSTITUTE,
ET AL.,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

REMAND ORDER

In this case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. §5851 (1988 and Supp. IV 1992), this Board dismissed the complaint because it was not timely filed. *Roberts v. Battelle Memorial Institute, et al.*, ARB Case No. 97-038, Final Dec. and Ord., June 4, 1997. The Board found that a January 12, 1995 letter from complainant to the Department of Energy, which was not in the administrative record, did not constitute a timely complaint under the ERA. The Board reasoned that the letter did not state an ERA complaint because the Department of Labor ultimately treated it as a complaint under the Executive Order prohibiting employment discrimination on the basis of race, color, religion, sex, and national origin.

A second letter from Complainant to the Department of Energy, dated January 27, 1995, had raised a whistleblower complaint under the ERA, but was filed outside the 180 day time limit for filing a complaint under the statute.

On judicial review, the United States Court of Appeals for the Sixth Circuit held that the Board's finding that the complaint was untimely was not supported by substantial evidence. *Roberts v. United States Dep't of Labor*, No. 97-3819 (6th Cir. June 23, 1998). The Court focused on the lack of information in the record concerning the content of the January 12, 1995 letter, and held that "the only evidence of record that supports the Board's determination that the January 12, 1995, letter did not constitute a complaint under the Energy Reorganization Act is not substantial. Under these circumstances, we conclude that a remand is warranted so that the nature of the letter can be more precisely determined."

Accordingly, we **VACATE** the Board's June 4, 1997 Final Decision and Order in this case and **REMAND** the case to the Administrative Law Judge for further proceedings consistent with the order of the Sixth Circuit, which is attached.

SO ORDERED.

KARL J. SANDSTROM
Chair

PAUL GREENBERG
Member

CYNTHIA L. ATTWOOD
Acting Member