

U.S. Department of Labor

Office of Administrative Law Judges
2 Executive Campus, Suite 450
Cherry Hill, NJ 08002

(856) 486-3800
(856) 486-3806 (FAX)



Issue Date: 20 June 2006

CASE NO.: 2004-ERA-00009

ARB CASE NO.: 04-101

In the Matter of

OSCAR SHIRANI,
Complainant

v.

CALVERT CLIFFS NUCLEAR POWER
PLANT, INC. (CONSTELLATION ENERGY
GROUP),
Respondent.

RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AND
DISMISSING COMPLAINT WITH PREJUDICE

This proceeding arises under the employee protection provisions of the Energy Reorganization Act ["ERA"], 42 U.S.C. Section 5851. The implementing regulations that govern this matter appear at 29 C.F.R. Part 24.1-9. The pertinent ERA provisions protect employees from discrimination and retaliation with regard to the terms and conditions of their employment for filing "whistleblower" complaints or for taking other action relating to the fulfillment of environmental health and safety or other requirements of statutes relating thereto. This Decision and Order is also governed by those provisions, and the provisions of 29 C.F.R. Part 18.

On October 15, 2003, Oscar Shirani ("Complainant") filed a complaint of discrimination with the Occupational Safety and Health Administration ("OSHA") of the United States Department of Labor, under Section 211 of the ERA. OSHA dismissed the complaint, and Complainant appealed that determination to the Department of Labor's Office of Administrative Law Judges ("OALJ"). The case was assigned to me, and by Order issued April 28, 2004, I dismissed Complainant's appeal and request for a hearing in a Decision that found that OALJ lacked jurisdiction to hear the case because the appeal was not perfected. Complainant petitioned the Administrative Review Board ("ARB") for review of my Decision and Order. By Order and Decision issued October 31, 2005, the ARB reversed my finding and remanded the case to me.

Subsequently, the parties jointly moved for appointment of a settlement judge, which motion was granted. On April 26, 2006, Administrative Law Judge William S. Colwell issued a notice of conclusion of settlement judge proceedings. On June 16, 2006, the parties filed a copy of their settlement Agreement for approval by me.

I have carefully reviewed the terms of the Agreement and the assertions of the parties regarding the need for confidentiality. I find that the Agreement conforms with 29 C.F.R. § 70.26 and accept it in accordance with the confidentiality procedures set forth therein, in consideration of the request of the parties that the Agreement be exempted from production under any request made under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Although the Department of Labor is responsible for making determinations regarding the application of FOIA and exemptions from disclosure, I find that the parties are entitled to pre-disclosure notice, as defined by 29 C.F.R. § 70.26.

FINDINGS OF FACT

I make the following findings:

1. The Agreement is fair, adequate and reasonable on its face;
2. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits; and
3. The Agreement reflects the entire understanding between the parties and fully settles all controversies arising from the circumstances underlying the claims under the Act.

ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. The Agreement between the parties is APPROVED, and the parties shall comply with the terms thereof;
2. The complaint of OSCAR SHIRANI is DISMISSED WITH PREJUDICE;
3. The terms of the Agreement shall not be disclosed by any party or OALJ, either specifically or generally, pursuant to 29 C.F.R. § 70.26.

A

Janice K. Bullard
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) that is received by the Administrative Review Board (“Board”) within ten (10) business days of the date of issuance of the administrative law judge’s Recommended Decision and Order. The Board’s address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file your Petition with the Board, you must serve it on all parties to the case as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001. *See* 29 C.F.R. § 24.8(a). You must also serve copies of the Petition and briefs on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If no Petition is timely filed, the administrative law judge’s recommended decision becomes the final order of the Secretary of Labor. *See* 29 C.F.R. § 24.7(d).