



In the Matter of:

CLARENCE O. REYNOLDS,

ARB CASE NO. 96-034

COMPLAINANT,

ALJ CASE NO. 94-ERA-47

v.

DATE: MAR 31 1997

**NORTHEAST NUCLEAR ENERGY
COMPANY,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD¹

FINAL DECISION AND ORDER

Before us for review is the Recommended Decision and Order (R. D. and O.) issued on December 1, 1995, by the Administrative Law Judge (ALJ) in this case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. § 5851 (1988 and Supp. V) (ERA). Complainant Clarence O. Reynolds alleged that Respondent Northeast Nuclear Energy Company (NNECO) violated the ERA by firing Reynolds in retaliation for engaging in activity protected by that statute. Following a 10 day hearing on the merits the ALJ issued a Recommended Decision and Order, in which he concluded that Reynolds failed to establish a *prima facie* case that his protected activity was the likely reason for his discharge; and "[t]he overwhelming weight of the evidence" proved that "Respondent's sole motive for terminating Complainant was its conclusion that Complainant's egregious conduct on June 17, 1994, the final straw in his relationship with the Respondent, warranted termination." R. D. & O. at 38. The ALJ therefor recommended that the complaint be dismissed with prejudice.

¹ On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996). Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions. Final procedural revisions to the regulations implementing this reorganization were also promulgated on that date. 61 Fed. Reg. 19982.

The ALJ's ultimate conclusion that this case should be dismissed is factually and legally sound.² However, we must briefly note two minor errors. We emphasize that these errors do not affect the ultimate conclusion that Reynolds was not retaliated against in violation of the ERA.

First, since this case was fully tried on the merits, it was not necessary for the ALJ to determine whether Reynolds presented a *prima facie* case. *U.S.P.S. Bd. of Governors v. Aikens*, 460 U.S. 711, 713 (1983); *Carroll v. Bechtel Power Corp.*, Case No. 91-ERA-0046, Final Dec. and Order, Feb. 15, 1995, slip op. at 11 n.9, *aff'd sub nom. Bechtel Corp. v. U.S. Dep't of Labor*, 78 F.3d 352 (8th Cir. 1996). Once NNECO produced evidence that Reynolds was subjected to adverse action for a legitimate, nondiscriminatory reason, it no longer served any analytical purpose to answer the question whether Reynolds presented a *prima facie* case. Instead the relevant inquiry is whether Reynolds prevailed by a preponderance of the evidence on the ultimate question of liability. If he did not, it matters not at all whether he presented a *prima facie* case.

We also reject the statement that "[t]here is a dispute regarding whether or not purely internal complaints to management constitute protected activity" R. D. & O. at 17 n.5. Although such a legal dispute did exist prior to 1992, in that year the ERA was amended explicitly to include an employee's notification to his employer of an alleged violation of the ERA within the ambit of activity protected by the ERA whistleblower provision. *See* Section 2902(a) of the Comprehensive National Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776, 3123.

In all other respects the ALJ's decision is well reasoned and correct on the law. Therefore, we adopt the attached R. D. & O. and DISMISS this complaint.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member

² We emphasize, however, that it is unnecessary to include lengthy summaries of the parties' positions in an R. D. & O. *See* R. D. & O., at 2-15.