



**Issue Date: 01 June 2005**

Case No.: 2005-SOX-00017

In the Matter of:

**DAVID WINDHAUSER**  
Complainant

v.

**TRANE, AN OPERATING DIVISION  
OF AMERICAN STANDARD, INC.**  
Respondent

**ORDER OF IMPOSITION OF ADMINISTRATIVE MONETARY SANCTIONS  
UPON RESPONDENT  
AND DISMISSAL OF CASE**

Respondent argues that the sole consequence of its failure to obtain a stay of the Occupational Safety and Health Administration's (OSHA's) order of reinstatement is the retention of Complainant's and the Government's right to seek District Court enforcement of that order.<sup>1</sup> Its risk assessment in filing the stay motion does not include the prospect of compliance with the order to reinstate upon stay denial. But, the statute mandates reinstatement absent a stay!<sup>2</sup> Nevertheless, Respondent reads the statute as requiring reinstatement only upon a District Court order directing reinstatement, and a stay denial is without meaning absent such direction. Unless and until a District Court enforces reinstatement, its failed motion for a stay, in Respondent's view, somehow preserves a stay that never existed in the first place. In effect, Respondent passively enjoys a stay, at least until District Court enforcement, without ever having obtained one. Indeed, a denial of its motion to stay may be said to have created a passive stay until District Court enforcement.

This reading of the statute's intent, gutting the reinstatement provision in the statute, turns the statute on its head, and is absurd on its face. Upon stay denial, the unsuccessful movant is left, as from the date of the order of reinstatement, with the same, ongoing obligation to reinstate. This obligation begins with OSHA's order, and continues throughout the proceeding, up until and beyond a stay denial. The logical result of a stay denial is an offer of reinstatement,

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<sup>1</sup> No other consequence, such as monetary administrative sanctions, should attach, per Respondent, because the statute otherwise provides for this consequence of possible District Court enforcement.

<sup>2</sup> In fact, the statute automatically stays all other directed remedies including payment of back wages upon the filing of a request for hearing, but demands immediate reinstatement despite such filing, and offers an opportunity for a stay.

although it may be argued that failure to reinstate from the date of the order up to the reasonably immediate filing of a motion to stay, should be excused. To not impose some administrative sanction to discourage this casual, astounding, and very nearly arrogant defiance of the law, presumably on advice of counsel, would mean to acquiesce in that absurdity, and ignore the clear Congressional intent to seriously protect and enforce the public interest where an initial investigation discloses a wrongful discharge of a would-be whistleblower, by requiring immediate reinstatement to the job.

The statute's grant of authority to an Administrative Law Judge to deny a motion to stay reinstatement, perforce, inherently grants authority to preserve the integrity of that denial through imposition of administrative sanctions.

Because Respondent failed to offer to reinstate Complainant to his former position of Controller as duly ordered by OSHA on November 15, 2004, and

Because Respondent had not, as of the date of settlement of this case, April 21, 2005, obtained a stay of such order of reinstatement, and

In light of Respondent's disregard and contempt of the subject law, 18 U.S.C. § 1514A and 29 CFR § 1980.106(b)(1),<sup>3</sup> designed to encourage whistleblowers who may be fearful of retaliation and/or harassment, to disclose fraud and other corporate abuses; and

In light of Congress' unequivocal intent to protect such whistleblowers and provide preliminary relief ensuring that subsequent litigation does not delay a return to work nor deprive the whistleblower of the financial means necessary to proceed with the effort to obtain final redress:

I find that a meaningful and forceful response<sup>4</sup> to such intransigence is necessary to preserve the integrity of and implement such Congressional intent. Accordingly, it is hereby

ORDERED, that Respondent shall pay to Complainant the sum of \$70,800,<sup>5</sup> and it is further

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<sup>3</sup> My denial of a stay of reinstatement was ignored, as was the refusal by the Administrative Review Board (ARB) to entertain the interlocutory appeal of that denial. No offer of reinstatement was ever made. Query, whether such conduct would have continued through an ARB, District Court, Circuit Court, or U.S. Supreme Court affirmation of such denial?

<sup>4</sup> This response is the sole objective of the monetary administrative sanction herein imposed, notwithstanding the use of any language suggesting an award of backwages as subsequently contained herein.

<sup>5</sup> Complainant has stated under oath that his yearly salary at Respondent was \$60,000 in addition to a potential bonus of \$25,000 (EX-A to Complainant's Memorandum of Law opposing Respondent's motion for stay, filed January 18, 2005). Approximately five (5) months elapsed from the date of the order of reinstatement by OSHA, which was issued on November 15, 2004, to the date of settlement of this case. Five-twelfths of the yearly \$85,000 earnings equals \$35,400. This amount is doubled in general accord with civil money penalties prescribed under

ORDERED, that payment under this order shall be made over and above any amounts designated in the settlement agreement reached herein between the parties.

This matter is DISMISSED.

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RALPH A. ROMANO  
Administrative Law Judge

Cherry Hill, New Jersey

**NOTICE OF APPEAL RIGHTS:** To appeal you must file a petition for review (Petition) within ten business days of the date of the administrative law judge's decision with the Administrative Review Board ("Board"), U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. Your Petition must specifically identify the findings, conclusions or orders you object to. You waive any objections you do not raise specifically.

At the time you file the Petition with the Board you must serve it on all parties, and the Chief Administrative Law Judge; the Assistant Secretary, Occupational Safety and Health Administration; and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If you do not file a timely Petition, this decision of the administrative law judge becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.110. Even if you do file a Petition, this decision of the administrative law judge becomes the final order of the Secretary of Labor unless the Board issues an order within 30 days after you file your Petition notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).

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other remedial acts administered by the United States Department of Labor. *See, for example*, 29 U.S.C. § 626(b); 29 U.S.C. § 216(b).