



In the Matter of:

**IRENE ESPINOSA,**

**ARB CASE NO. 98-098**

**COMPLAINANT,**

**ALJ CASE NO. 96-WPC-2**

**v.**

**DATE: August 18, 1998**

**ALLIEDSIGNAL, INC.,**

**RESPONDENT.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**ORDER DISAPPROVING SETTLEMENT  
AND REMANDING CASE**

This case arises under the Clean Air Act (CAA), 42 U.S.C. §7622 (1994), and the Water Pollution Control Act (WPCA), 33 U.S.C. §1367 (1994). The parties submitted a Release and Settlement Agreement to the Administrative Law Judge (ALJ) seeking approval of the settlement and dismissal of the complaint. The ALJ issued a Recommended Decision and Order on March 6, 1998, approving the settlement. For the reasons discussed below, we decline to adopt the Recommended Decision and Order, and remand the case to the ALJ for further proceedings.

Complainant Irene Espinosa (Espinosa) was employed by Respondent AlliedSignal, Inc. (AlliedSignal) until some time in early 1995. The exact date of Espinosa's termination is unclear, with the parties claiming at different times that her date of termination was February 27, April 30 or May 2, 1995. It is undisputed that on May 31, 1995, Espinosa filed a complaint with the Wage and Hour Division alleging that she was terminated by AlliedSignal for reporting violations of the CAA and WPCA to enforcement authorities. Separately, in September, 1995, Espinosa filed charges against AlliedSignal before the U.S. Equal Employment Opportunity Commission and the Broward County (Florida) Human Rights Commission, alleging violations of federal, state and local civil rights laws.

The environmental whistleblower complaint before the Labor Department initially was assigned to ALJ Christine McKenna but was subsequently reassigned to ALJ Fletcher Campbell. Espinosa was represented by attorneys Carroll Ayers and Susan Byrd (Ayers and Byrd).

The date of Espinosa's termination is especially significant, because it determines whether her complaint was filed within the 30-day time limitation under the statutes. Based on the materials

before us, it appears that the issue of Espinosa's termination date was raised early in the proceeding before the Labor Department by AlliedSignal, which moved for summary judgment on the environmental claims alleging that Espinosa's May 31, 1995 complaint had been filed beyond the 30-day time limitation and thus was untimely. Summary judgment was not granted, however.

A trial date was scheduled for April 29, 1997. Two days before trial (*i.e.*, on April 27, 1997) AlliedSignal and Espinosa (represented by Ayers and Byrd) reached a settlement (Settlement I) under which AlliedSignal would have paid \$180,000 in settlement of all of Espinosa's claims, including the CAA and WPCA claims (the "whistleblower claims") as well as the civil rights claims under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, and Florida and Broward County anti-discrimination laws (the "discrimination claims"). The ALJ was contacted by counsel for both parties, and was advised that the scheduled evidentiary hearing into the whistleblower claims could be canceled in light of the settlement agreement. However, Settlement I was never finalized. Instead, the following day (April 28, 1997) ALJ Campbell received a fax from Espinosa denying that she had agreed to the settlement terms. The hearing was postponed, and soon thereafter Espinosa engaged a new attorney, Kenneth Whitman, to replace Ayers and Byrd.<sup>1/</sup>

AlliedSignal revived the issue of Espinosa's termination date following the failure of the first settlement effort. During the latter part of the summer, the ALJ ordered the deposition of attorney Byrd in connection with the timeliness issue.

At the request of the parties, ALJ Donald Mosser was designated as a settlement judge to convene new settlement negotiations which took place on October 8, 1997 in Fort Lauderdale, Florida. These negotiations resulted in two separate settlement agreements. Espinosa's whistleblower claims were settled for \$25,000 (Settlement II) and the discrimination claims were settled for \$150,000 (Settlement III).<sup>2/</sup> In its introductory section, Settlement II (the whistleblower claims settlement) states that it is AlliedSignal's position that the time limitation for filing the whistleblower claims had run and that "Espinosa in recognition of the statute of limitations issue, *supported by recent developments, including the deposition of Susan Byrd*, believes that it is in her best interest to accept the amount set forth herein as a fair, adequate and reasonable settlement of the claims asserted in the Department of Labor Proceeding [sic] under the particular circumstances of this case." Settlement II at 1-2 (emphasis added). Presumably, the rationale for the relatively low value assigned to the whistleblower settlement is that AlliedSignal's challenge to the timeliness of the claim had merit, and that Espinosa recognized that she was not likely to prevail if the whistleblower claims were litigated.<sup>3/</sup>

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<sup>1/</sup> Ayers and Byrd have continued to participate in this matter as parties in interest.

<sup>2/</sup> According to Settlement III, on October 8, 1997, Espinosa also suggested that she might file additional claims against AlliedSignal under Florida law for intentional infliction of emotional distress. However, it does not appear that any such tort claims were filed with a court or other agency of government.

<sup>3/</sup> Ayers and Byrd have objected to the splitting of the original \$180,000 settlement  
(continued..)

According to a memorandum prepared by the Administrative Law Judge, both Complainant's second attorney (Whitman) and counsel for AlliedSignal have alleged that documents submitted to the ALJ by the Ayers and Byrd firm regarding the date of Espinosa's termination were fraudulent. Through counsel, Espinosa has alleged that a document submitted by Ayers and Byrd that was represented as having been signed by her did not actually bear her signature. Stated differently, AlliedSignal and Whitman have alleged that materials submitted by Ayers and Byrd were bogus.

On March 6, 1998, the ALJ issued his Recommended Decision and Order Approving Settlement Agreement.

While the ALJ's Recommended Decision and Order was pending approval before this Board, Ayers and Byrd filed a motion on July 9, 1998, opposing approval of the settlement.<sup>4/</sup> In their motion, Ayers and Byrd challenge any allegations that they had submitted fraudulent documents in the case. Specifically, with regard to Espinosa's denial that she had signed a key document dealing with her date of termination (and thus key to the timeliness of her whistleblower complaint), Ayers and Byrd assert that Espinosa has been deposed in connection with Ayers and Byrd's lawsuit against Espinosa and AlliedSignal over attorney fees, now pending in Massachusetts, and that Espinosa has acknowledged under oath that the disputed signature on the document is hers. In short, both sides suggest that the other is engaged in improper behavior in this proceeding.

Addressing the need for litigants to act with integrity in matters before the federal courts, the Supreme Court has noted that courts have the inherent power to regulate the conduct of the persons appearing before them. *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), *reh'g denied* 501 U.S. 1269 (1969); *Universal Oil Products Co. v. Roof Refining Co.*, 328 U.S. 575, 580 (1946); *see also Shepherd v. American Broadcasting Cos., Inc.*, 62 F.3d 1469, 1472-75 (D.C. Cir. 1995). The issue of fraudulent misrepresentations by parties or their counsel is especially troubling, because "tampering with the administration of justice ... involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public." *Chambers* at 44, quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944).

Based upon the materials before us, it would appear that at least one of the litigants in this case (or their counsel) have made material misrepresentations to the Department with regard to Espinosa's whistleblower claims under the environmental statutes. The imperative for all parties to be truthful in their representations before a tribunal is no less urgent in the administrative law context than before the federal courts. The Secretary's regulations governing practice before the Office of

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<sup>3/</sup>(...continued)

(Settlement I) into two separate agreements apportioning only \$25,000 to the whistleblower claims (Settlement II) and \$150,00 to the civil rights and other state law claims (Settlement III). Ayers and Byrd assert that the splitting of the financial settlement was devised to defraud them of their recovery of attorney fees on the whistleblower claims.

<sup>4/</sup> The pleading is styled as the Motion of Parties in Interest Susan R. Byrd and Carroll E. Ayers to Supplement Their Petition for Attorneys Fees Based Upon Newly Discovered Evidence and Opposition to Approval of the Recommendation of the Administrative Law Judge.

Administrative Law Judges mandate that “[a]ll persons appearing in proceedings before administrative law judges are expected to act with integrity, and in an ethical manner.” 29 C.F.R. §18.36(a). This requirement applies not only to counsel participating in the litigation, but also to the parties themselves.

This Board views with the strongest concern any suggestion that a party or an attorney participating in a proceeding may have committed a fraud upon this tribunal. Although the Board is not in a position to determine the facts that underlie these conflicting representations, we will not approve a settlement under this cloud. We therefore decline to adopt the Recommended Decision and Order, and we **REMAND** the case to the ALJ for reconsideration and the taking of any additional evidence deemed necessary to reevaluate the proposed settlement.

**SO ORDERED.**

**PAUL GREENBERG**  
Member

**CYNTHIA L. ATTWOOD**  
Acting Member