



In the Matter of:

**ROGER J. BACKEN**

**ARB CASE NO. 97-021**

**COMPLAINANT,**

**ALJ CASE NO. 96-ERA-18**

**v.**

**DATE: December 12, 1996**

**ENERGY OPERATIONS, INC.,**

**RESPONDENT.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD<sup>1/</sup>

### **ORDER**

This case arises under the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992). The parties submitted a Joint Motion to Approve Settlement Agreement to the Administrative Law Judge (ALJ) seeking approval of the settlement and dismissal of the complaint. The ALJ issued a Recommended Order of Dismissal on November 18, 1996 approving the settlement.

Paragraph 3 of the Agreement indicates that Respondent will pay a specified amount to Complainant for all of his monetary claims, including any claim for attorney's fees and costs.<sup>2/</sup> There is no indication as to the actual amount of money to be paid to the Complainant pursuant

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<sup>1/</sup> 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.

<sup>2/</sup> Likewise, the Agreement does not specify the amount of attorney's fees to be paid. As long as the parties are in agreement as to the amount of the attorney's fees to be paid, it is not necessary for the Board to review the amount with the specificity usually required by the lodestar method. *Hensley v. Eckerhart*, 461 U.S. 424 (1983). If a dispute arises between the parties with regard to the appropriateness of the amount of attorney's fees, a subsequent order requiring an itemization of such fees may be necessary.

to the proposed settlement. **The Board must know the amount Complainant will receive in order to determine if the settlement agreement is fair, adequate and reasonable.** This amount affects not only the Complainant's individual interest, but impacts on the public interest as well, because if the amount is not fair, adequate and reasonable, other employees may be discouraged from reporting safety violations. *See Plumlee v. Alyeska Pipeline Service Co.*, 92-TSC-7, Sec. Dec. and Order, Aug. 6, 1993, slip op. at 5; *Biddy v. Alyeska Pipeline Service Company*, ARB Case Nos. 96-109, 97-015, Order, May 31, 1996, slip op. at 1-2.

Additionally, the Board now requires that all parties requesting settlement approval of cases arising under the employee protection provisions of the environmental protection statutes provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or to certify that no other such settlement agreements were entered into between the parties. *Biddy v. Alyeska Pipeline Service Company*, ARB Case Nos. 96-109, 97-015, Final Order Approving Settlement and Dismissing Complaint, Dec. 3, 1996, slip op. at 3.

The parties are required to file a joint response to this Order within ten (10) days. If the parties cannot agree upon a joint response, Complainant's counsel is to submit the required information within ten (10) days from the issuance of this Order. Respondent may submit a response within fifteen (15) days of the issuance of this Order.

**SO ORDERED.**

**DAVID A. O'BRIEN**

Chair

**KARL J. SANDSTROM**

Member

**JOYCE D. MILLER**

Alternate Member