



In the Matter of:

JIRI PIK,

ARB CASE NO. 08-062

COMPLAINANT,

ALJ CASE NO. 2007-SOX-092

v.

DATE: June 30, 2009

**GOLDMAN SACHS GROUP, INC.,
and GOLDMAN SACHS
INTERNATIONAL,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Jiri Pik, *pro se*, London, England

For the Respondent:

Theodore O. Rogers, Jr., Esq., *Sullivan & Cromwell*, New York, New York

FINAL DECISION AND ORDER

This case arises under Section 806, the employee protection provision, of the Sarbanes-Oxley Act of 2002 (SOX)¹ and its implementing regulations.² Jiri Pik filed a complaint alleging that the Respondents, The Goldman Sachs Group, Inc. and Goldman

¹ 18 U.S.C.A. § 1514A (West 2006).

² 29 C.F.R. Part 1980 (2008).

Sachs International, violated the SOX by discharging him from employment.³ On February 21, 2008, an Administrative Law Judge (ALJ) issued a Decision and Order Dismissing the Complaint (D. & O.), in which he recommended dismissal of the complaint. We affirm.

BACKGROUND

It is undisputed that, at all times relevant to this case, Pik was citizen of the Czech Republic who was employed in London, England by Goldman Sachs Services Limited (GSSL), a company registered in the British Virgin Islands.⁴ GSSL is a subsidiary of the Respondents.⁵ GSSL hired Pik on June 1, 2006, to work as a quantitative analyst. On May 31, 2007, GSSL notified Pik that it was terminating his employment. The discharge took effect on June 30, 2007.⁶

On August 29, 2007, Pik filed a complaint with the Occupational Safety and Health Administration (OSHA), alleging that the Respondents violated the SOX because they suspended and discharged him in retaliation for reporting industrial espionage. Pik did not name GSSL as a respondent. OSHA dismissed his complaint. Pik appealed the dismissal to the Department of Labor's Office of Administrative Law Judges.

On October 16, 2007, the ALJ issued an Order to Show Cause, informing Pik that his appeal indicated that his case did not "fall[] within the jurisdiction of the Office of Administrative Law Judges under Section 806 of SOX."⁷ Pik responded to the Order to Show Cause by informing the ALJ that, although he worked in London, he should have been transferred to the Respondents' New York office prior to his discharge.⁸

³ Pik's complaint names "Goldman Sachs" as the Respondent. OSHA's Final Investigative Report lists "Goldman Sachs Group, Inc." and "Goldman Sachs International" as the Respondents.

⁴ Respondents' Statement of Position (in Response to the ALJ's Order to Show Cause) at 1-2, Exhibit D at 1, and Exhibit F at 1; Affidavit of Sharon Kaosk at 1-2.

⁵ Respondents' Statement of Position at 8. Respondent Goldman Sachs International is a subsidiary of The Goldman Sachs Group. Respondents' Statement of Position, Exhibit A at 1.

⁶ *Id.* at 4.

⁷ Order to Show Cause at 1.

⁸ Complainant's October 27, 2007 Response to the Order to Show Cause.

The ALJ issued a Decision and Order Dismissing the Complaint (D. & O.) on February 21, 2008. The ALJ concluded that the Section 806 employee protections did not apply to Pik's employment "because he worked in the Respondent's London office and all alleged adverse employment actions took place in London."⁹ Pik appealed.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Administrative Review Board her authority to issue final agency decisions under the SOX.¹⁰ Pursuant to the SOX and its implementing regulations, the Board reviews the ALJ's findings of fact under the substantial evidence standard.¹¹ The Board reviews an ALJ's conclusions of law de novo.¹²

DISCUSSION

Section 806 of the SOX prohibits certain covered employers from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against employees who provide information to a covered employer or a Federal agency or Congress regarding conduct that the employee reasonably believes constitutes a violation of 18 U.S.C.A. §§ 1341 (mail fraud), 1343 (wire, radio, TV fraud), 1344 (bank fraud), or 1348 (securities fraud), or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. Employees are also protected against discrimination when they have filed, testified in, participated in, or otherwise assisted in a proceeding filed or about to be filed relating to a violation of the aforesaid fraud statutes, SEC rules, or federal law.¹³

The Board addressed the issue of whether Section 806 applies to foreign nationals employed by foreign companies in *Ede v. The Swatch Group*.¹⁴ In *Ede*, the complainants

⁹ D. & O. at 2.

¹⁰ Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002); 29 C.F.R. § 1980.110.

¹¹ 29 C.F.R. § 1980.110(b).

¹² *Cf. Yellow Freight Sys., Inc. v. Reich*, 8 F.3d 980, 986 (4th Cir. 1993) (analogous provision of Surface Transportation Assistance Act); *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1063 (5th Cir. 1991) (same).

¹³ 18 U.S.C.A. § 1514A(a).

¹⁴ ARB No. 05-053, ALJ Nos. 2004-SOX-068, -069 (ARB June 27, 2007).

were residents of foreign countries employed by foreign subsidiaries of the Swatch Group, a Swiss Corporation, in Switzerland, Hong Kong, and Singapore. Neither of the two complainants had worked in the United States for the Swatch Group. Citing to the decision of the First Circuit Court of Appeals in *Carnero v. Boston Scientific Corp.*, which states that Section 806 “does not reflect the necessary clear expression of congressional intent to extend its reach beyond our nation’s borders,”¹⁵ we held that Section 806 does not protect residents of foreign countries employed by foreign companies operating in those countries.¹⁶

Pik’s employment status was the same as that of the employees in *Ede* and *Carnero*. He was a foreign national employed by GSSL, a foreign corporation, outside of the United States.¹⁷ Pik did not challenge these dispositive facts in his response to the Order to Show Cause. The ALJ found that Section 806 did not apply to Pik,¹⁸ and we concur.

Pik appears to argue in his brief before us that the ALJ had jurisdiction over his claim because he should have been transferred to the Respondents’ New York office prior to his discharge.¹⁹ But that transfer did not happen, and Pik does not explain what effect the transfer would have had on the jurisdictional issue raised in the ALJ’s Order to Show Cause and addressed in his Decision and Order.

The brief Pik submitted to the Board also states, without elaboration, that “Respondent is an integrated employer for the purposes of coverage.”²⁰ Pik did not present this argument to the ALJ in his response to the Order to Show Cause, and we do not consider arguments raised for the first time on appeal.²¹

¹⁵ *Carnero v. Boston Scientific Corp.*, 433 F.3d 1, 18 (1st Cir. 2006).

¹⁶ *Ede*, slip op at 4. *See also Salian v. Reedhycalog UK*, ARB No. 07-080, ALJ No. 2007-SOX-020, slip op. at 7-8 (ARB Dec. 31, 2008) (SOX’s whistleblower protection provision inapplicable to a resident of India working in the United Arab Emirates for a United Kingdom-based subsidiary of a publicly-traded company based in the United States).

¹⁷ Respondents’ Statement of Position, Affidavit of Sharon Kaosk at 1-2, Exhibit A at 1, Exhibit D at 1, and Exhibit F at 1.

¹⁸ D. & O. at 2.

¹⁹ Complainant’s Initial Brief at 5-8.

²⁰ *Id.* at 2.

²¹ *Nixon v. Stewart & Stevenson Servs, Inc.*, ARB No. 05-066, ALJ No. 2005-SOX-001, slip op. at 9 (ARB Sept. 28, 2007), citing *Harris v. Allstates Freight Sys.*, ARB No. 05-146, ALJ No. 2004-STA-017, slip op. at 3 (ARB Dec. 29, 2005); *Farmer v. Alaska Dep’t of Trans. & Pub. Facilities*, ARB No. 04-002, ALJ No. 2003-ERA-011, slip op. at 6 (ARB Dec.

Finally, Pik argues that the ALJ erred by failing to issue subpoenas and conduct a de novo hearing on his complaint, and he asks the Board to do so now.²² But the facts necessary to resolve this case, i.e., that Pik was a foreign national employed by a foreign corporation outside of the United States, were before the ALJ when he issued his Decision and Order.

CONCLUSION

Because Pik was a foreign national who worked exclusively outside the United States for a foreign company, we affirm the ALJ's recommendation and **DISMISS** this complaint.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

17, 2004); *Honardoost v. PECO Energy Co.*, ARB No. 01-030, ALJ No. 2000-ERA-036, slip op. at 6 n.3 (ARB Mar. 25, 2003).

²² *Id.* at 9-12, 15-18.