



Tennessee Valley Authority, Post Office Box 2000, Spring City, Tennessee 37381-2000

MAY 04 2001

10 CFR 50.4

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D. C. 20555

Gentlemen:

In the Matter of)
Tennessee Valley Authority)

Docket No.50-390

WATTS BAR NUCLEAR PLANT (WBN) UNIT 1 - DEPARTMENT OF LABOR (DOL)
CASE DOL. 1999-ERA-25 (CURTIS C. OVERALL V. TENNESSEE VALLEY
AUTHORITY)

In letters to J. A. Scalice dated July 17, 1999, and September 4, 1998, NRC requested that TVA provide copies of future filings made to DOL by TVA in connection with Curtis C. Overall's Case No. 97-ERA-53. Mr. Overall has also filed a second DOL complaint, Case No. 1999-ERA-25, which, although separate, involves issues closely related to his first complaint. TVA has provided NRC with copies of each of its filings in both cases.

For your information, TVA has enclosed its latest filings. Enclosure 1 is entitled "Reply Brief in Further Support of Respondent's Motion for Summary Decision." Enclosure 2 is entitled "Respondent Tennessee Valley Authority's Motion in Limine on Matters Arising Prior to August 24, 1998."

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Public available
per J. Cavalina

U.S. Nuclear Regulatory Commission
Page 2

MAY 04 2001

If you have any questions about these filings, please contact me
at (423) 365-1824.

Sincerely,



P. L. Pace
Manager, Site Licensing
and Industry Affairs

Enclosures

cc (Enclosures):

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ENCLOSURE 1

OFFICE OF ADMINISTRATIVE LAW JUDGES
CASE NO. 1999-ERA-25

REPLY BRIEF IN FURTHER SUPPORT OF RESPONDENT'S
MOTION FOR SUMMARY DECISION

**BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES OF AMERICA
DEPARTMENT OF LABOR**

IN THE MATTER OF)	
)	
CURTIS C. OVERALL)	
)	
Complainant)	
)	
v.)	Case No. 1999-ERA-25
)	
)	
TENNESSEE VALLEY AUTHORITY)	
)	
Respondent)	

**REPLY BRIEF IN FURTHER SUPPORT OF RESPONDENT'S
MOTION FOR SUMMARY DECISION**

This matter is currently before the Court on respondent Tennessee Valley Authority's (TVA) motion for summary decision on the grounds that complainant Curtis C. Overall (Overall) cannot establish a prima facie case of a hostile working environment, i.e., he cannot prove that any TVA employee harassed him. Furthermore, even if Overall could establish a prima facie case, TVA would have no liability for discrimination since its responses to the alleged harassment were adequate.

Overall's response is to try and bury TVA's motion beneath an avalanche of paper. He has filed an 85-page "brief," together with a voluminous set of exhibits. However, the response offers nothing of substantive value to the matter before the Court. While the facts and TVA's position are adequately and fully set forth in its main brief, we feel that a short reply would be beneficial to the Court's consideration of the issues before it.

Overall alleges that “TVA management either took, or encouraged increasingly serious actions to be taken against [him], which eventually drove him off the job site” (resp. at 2). At no point in his submission, however, does Overall produce a single piece of evidence linking the alleged harassment to TVA. Overall only offers speculation in support of his claims, yet this speculation is often refuted by his own statements.¹ The only link that Overall can offer between the alleged incidents and TVA is an inference from the “totality of the circumstances” that “[o]nly TVA management had the motivation, intent and opportunity to harass [him] through a relentless pattern of harassing calls, threatening notes, and a fake bomb” (see resp. at 2). In making this argument, Overall fails to note the fact that he himself has accused the personnel in Region II of the Nuclear Regulatory Commission (NRC) and Kim Van Doren, the NRC inspector assigned to and stationed at Watts Bar, of being involved in the alleged harassment (see C. Overall dep. at 375-78). While Overall’s accusations against NRC and Mr. Van Doren are conspicuously absent from his response, the fact remains that Overall himself does not believe that “only TVA managers or employees” would have the opportunity or motivation to commit the alleged harassment. Given that there is no evidence linking TVA to those acts and the fact that by his own admission, Overall believes that other people are responsible for at least some of the acts, there is no basis for the Court to construct the sort of inference required by Overall’s argument to make TVA responsible for these acts.

Overall cites *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998), for the proposition that the Court should evaluate these alleged acts using the viewpoint of a reasonable person in Overall’s position (resp. at 82). Overall misapprehends the Supreme Court’s guidance on this point. In *Oncale*, the Court

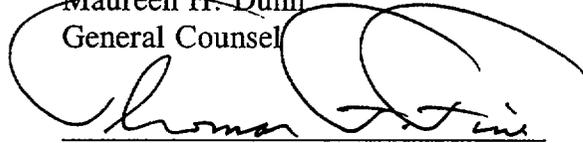
¹ For example, Overall’s assertion that only a TVA employee or manager could have known of Overall’s work telephone number is absurd, given that he has admitted that his number is published in TVA’s directory (C. Overall dep. at 344) (excerpt attached).

focused on the context of the situation in which the alleged harassing action occurred. 523 U.S. at 81 (noting that acts which would constitute harassment in one situation would not be harassment in another). The Court specifically noted that “[c]ommon sense” should guide the trier of fact in determining whether an act was harassment. 523 U.S. at 82. In this case, Overall has alleged numerous acts as harassment which common sense would dictate were anything but harassment. These include telephone calls from people concerned about his situation (C. Overall dep. at 375-78), being woken up from an afternoon nap by one such phone call (C. Overall dep. at 376), not receiving a personal welcome when returning to the worksite (C. Overall dep. at 120), requests by his supervisor to state whether there are technical issues involving a nuclear reactor that he has not told his supervisor about (C. Overall dep. at 108-09, 403), and generally unremarkable traffic encounters (C. Overall dep. at 91, 254, 318-19). Overall’s characterization of such innocuous events as harassment indicates his hypersensitivity and such hypersensitivity, by definition, precludes this Court from adapting his viewpoint as that of a reasonable person.

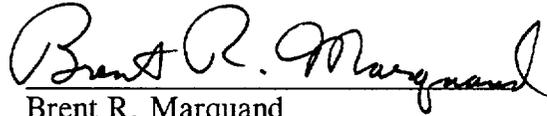
Based on the foregoing and TVA's previous submission, TVA's motion for summary decision should be granted and an order recommending dismissal of the complaint should be entered.

Respectfully submitted,

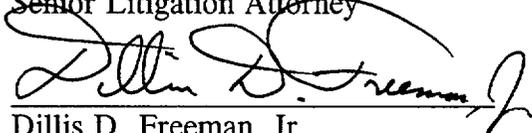
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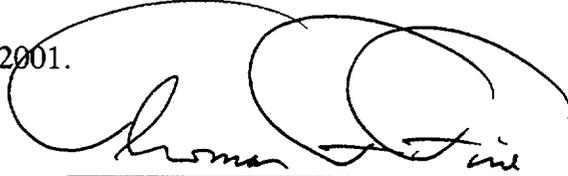
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing reply brief has been served upon complainant by mailing a copy thereof to:

Lynne Bernabei, Esq.
Bernabei & Katz, PLLC
1773 T Street, NW
Washington, D.C. 20009-7139

This 17th day of April, 2001.

A handwritten signature in black ink, appearing to read "Roman J. Fine". The signature is written in a cursive style with large, sweeping loops.

Attorney for Respondent

BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES OF AMERICA
DEPARTMENT OF LABOR

IN THE MATTER OF)
)
CURTIS C. OVERALL)
)
)
Complainant)
)
vs.) Case No. 1999-ERA-25
)
TENNESSEE VALLEY AUTHORITY)
)
)
Respondent)

ORIGINAL

APPEARANCES

LYNNE BERNABEI,
Attorney for the Complainant

BRENT R. MARQUAND and
DILLIS D. FREEMAN, JR.,
Attorneys for the Respondent

DEPOSITION OF CURTIS C. OVERALL
Volume III

August 9, 2000

LESLIE A. OWENS
TRUESDEL & RUSK COURT REPORTING
7047 DUNCAN'S GLEN DRIVE, KNOXVILLE, TN 37919
865-450-9772

1 number of employees who would have access to TVA work phones?

2 A Well, they would know -- there's a limited
3 amount of people at TVA that know my particular number.

4 Q Well, it's on the TVA directory, isn't it?

5 A But there's only a certain amount of people
6 who usually call me on a routine basis.

7 Q Your number is on an online directory.

8 A Yes, I know. I'm well aware of the
9 mainframe and I'm well aware of the TVA directory system,
10 yes.

11 Q Everybody who's got access to TVA who's got
12 a computer has access to your work phone number, don't they?

13 A I can't deny that. But the individuals I'm
14 referring to, the ones that call you the most, the ones you
15 know the most, are more apt to call those numbers, are more
16 apt to come to see me. I think you understand what I'm
17 saying.

18 Q I'm trying to understand what you said.
19 You said there was a limited number of people with access to
20 work phones. Well, everybody has got access to a phone in
21 TVA, don't they?

22 A As I said, I can't deny that.

23 Q And they've got access to your TVA phone
24 number?

25 A They've got access to my TVA phone number.

1 I'm not sure. It was from my counsel.

2 Q The firm of Bernabei & Katz?

3 A Yeah, that's the firm.

4 Q All right. Do you have any other source of
5 information about this other than your counsel?

6 A Not at this time.

7 Q So the information you provided to me is
8 information that was provided solely by your counsel?

9 A That's the way it was given to me.

10 Q What other information was provided to your
11 counsel about this conversation?

12 A I have given you all the information that
13 was provided to me.

14 Q Do you know when that conference was?

15 A No, I do not. It may have been in -- I
16 don't want to speculate. No, sir, I don't know.

17 MR. MARQUAND: I have no further questions.

18 AND FURTHER DEPONENT SAITH NOT.

19 CURTIS OVERALL

20 BY: Leslie A. Owens
21 Court Reporter
22 Leslie A. Owens

23 Sworn to before me this

24 9th day of August, 2000.

25 Leslie A. Owens

Notary Public
My Commission Expires: 11/4/2002

ENCLOSURE 2

OFFICE OF ADMINISTRATIVE LAW JUDGES
CASE NO. 1999-ERA-25

RESPONDENT TENNESSEE VALLEY AUTHORITY'S
MOTION IN LIMINE ON MATTERS ARISING
PRIOR TO AUGUST 24, 1998

**BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES OF AMERICA
DEPARTMENT OF LABOR**

IN THE MATTER OF

CURTIS C. OVERALL)

Complainant)

v.)

Case No. 1999-ERA-25

TENNESSEE VALLEY AUTHORITY)

Respondent)

**RESPONDENT TENNESSEE VALLEY AUTHORITY'S
MOTION IN LIMINE ON MATTERS ARISING
PRIOR TO AUGUST 24, 1998**

Pursuant to 29 C.F.R. § 18.403 (2000), respondent Tennessee Valley Authority (TVA) moves to exclude any evidence complainant may seek to offer on matters arising before August 24, 1998. The grounds for this motion are set out below.

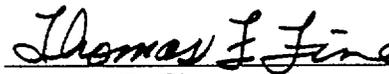
The complaint in this case was filed on February 19, 1999, under Section 211 of the Energy Reorganization Act of 1974, 42 U.S.C. § 5851 (1994) (ERA). The ERA specifically provides that any complaint under that statute must be filed "within 180 days after such violation [of the ERA] occurs" (42 U.S.C. § 5851(b)(1)). Claims arising from allegedly discriminatory events which occurred more than 180 days before filing a complaint are untimely. *Hill v. TVA*, No. 87-ERA-23 (Apr. 21, 1994), *aff'd sub nom. Hill v. United States Dep't of Labor*,

65 F.3d 1331 (6th Cir. 1995); *School Dist. v. Marshall*, 657 F.2d 16 (3d Cir. 1981);
English v. Whitfield, 858 F.2d 957, 961-62 (4th Cir. 1988).

Accordingly, any attempt by complainant to litigate any incidents of alleged harassment or reprisal which occurred before August 24, 1998, 180 days prior to his filing the complaint, would be improper since any such incidents would be time-barred. Under these circumstances, any evidence which complainant may seek to introduce at the hearing on pre-August 24, 1998, incidents of alleged harassment or reprisal should be excluded.

Respectfully submitted,

Maureen H. Dunn
General Counsel



Thomas F. Fine
Assistant General Counsel
Tennessee Bar No. 867



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Senior Litigation Attorney
Tennessee Bar No. 4717



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Telephone No. 865-632-2061

Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion in limine has been served upon complainant by mailing a copy thereof to:

Lynne Bernabei, Esq.
Bernabei & Katz, PLLC
1773 T Street, NW
Washington, D.C. 20009-7139

This 13th day of April, 2001.



Attorney for Respondents