



Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

Mark O. Medford
Vice President, Engineering & Technical Services

April 5, 1995

Mr. Stewart D. Ebnetter, Regional Administrator
U.S. Nuclear Regulatory Commission
Region II
101 Marietta Street, NW, Suite 2900
Atlanta, Georgia 30323

Dear Mr. Ebnetter:

In the Matter of the Application of) Docket Nos. 50-390
Tennessee Valley Authority) 50-391

COMPLAINT OF ALLEGED DISCRIMINATION AND REQUEST FOR WITHHOLDING FROM
PUBLIC DISCLOSURE

This letter and its enclosures respond to your letter dated February 27, 1995, concerning the complaint filed with the U.S. Department of Labor (DOL) by Robert O. Klock, a former contract worker at the Watts Bar Nuclear Plant (WBN). In a telephone conversation between Bruce S. Schofield of TVA and Johns P. Jaudon of your staff on March 13, 1995, the time to respond to NRC's letter was extended until April 5, 1995, which is 30 days from the date of TVA's receipt of the letter.

The Wage and Hour Division of DOL decided on January 17, 1995, that discrimination as defined by Section 211 of the Energy Reorganization Act was a factor in the actions which comprise Mr. Klock's complaint. TVA has appealed the adverse Wage and Hour determination and a hearing began before an Administrative Law Judge on April 4, 1995. Enclosure 1 provides TVA's response to the questions raised in your letter regarding this matter.

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Mr. Stewart D. Ebnetter

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As indicated in Enclosure 1, the circumstances which resulted in Mr. Klock's complaint were investigated by TVA's Office of the Inspector General (OIG). After a thorough investigation of the circumstances surrounding the complaint, the OIG found that TVA did not terminate Mr. Klock for reporting a safety concern. Enclosure 2 is the OIG Report of Administrative Inquiry provided to TVA management. TVA's response to the first question raised in your letter is based on the findings of TVA's OIG.

Enclosure 2 to this letter contains the identities of individuals interviewed by TVA's OIG during its investigation of Mr. Klock's complaint. This information is of the type customarily held in confidence by TVA, and its public disclosure would constitute a clearly unwarranted invasion of personal privacy. Accordingly, pursuant to the provisions of 10 CFR 2.790(a)(6), TVA requests that the full text of Enclosure 2 be withheld from public disclosure, not be placed in the NRC Public Document Room and otherwise not be disclosed to the public. However, and in accordance with your instructions, TVA has prepared a redacted version of Enclosure 2 (Enclosure 3) from which material has been deleted based on Freedom of Information Act standards. The deletions have been made primarily to protect the personal privacy of the persons identified. In accordance with your further instructions, the redacted material is bracketed in the full text version of Enclosure 2.

Any questions may be directed to me at (615) 751-4776.

Sincerely,



Mark O. Medford

Enclosures

50-390

TVA

WATT'S BAR 1

COMPLAINT OF ALLEGED DISCRIMINATION AND
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DISCLOSURE.

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ENCLOSURE 1

Question 1: Provide the basis for the employment action regarding the former employee and include a copy of any investigation report you have regarding the circumstances of the action.

TVA's Office of the Inspector General (OIG) initiated an investigation upon the request from the President, TVA Nuclear, of a Section 211 complaint, dated July 12, 1994, filed by Robert O. Klock with the Wage and Hour Division of the U.S. Department of Labor (DOL). The OIG's Report of Administrative Inquiry (OIG File No. 2D-143, dated February 7, 1995) is contained in Enclosure 2.

The OIG's investigation did not substantiate Mr. Klock's allegation that TVA terminated him for reporting a concern to the NRC regarding a valve alignment problem prior to the conduct of the integrated leak rate test (ILRT) at Unit 1 of the Watts Bar Nuclear Plant (WBN). After a full investigation of the facts and circumstances surrounding the complaint, the OIG found that TVA's decision to terminate Mr. Klock's services was based upon information from his supervisor that Mr. Klock took vacation without obtaining approval for vacation leave and failed to report to work as scheduled. The OIG determined that TVA did not terminate Mr. Klock because he reported safety concerns. The main points addressed in the OIG's investigation are discussed below.

As part of its investigation, the OIG determined that contrary to Mr. Klock's assertions, TVA did not intend to continue his services after the ILRT had ended. The evidence collected during the investigation showed that before any issue arose about a valve alignment problem, TVA had decided that Mr. Klock was difficult to manage, particularly with regard to the excessive use of overtime, and that his services would not be needed after completion of the ILRT.

The OIG also failed to validate Mr. Klock's assertions that TVA had promised him further work. Although there was some work that Mr. Klock could have done after the completion of the ILRT, the OIG found insufficient evidence to support his claim that he had been promised continued work at TVA. In fact, after examining several instances in which Mr. Klock alleged that representations of future employment were made or witnessed by numerous individuals, none of those individuals interviewed by the OIG corroborated his claims.

Insofar as Mr. Klock's reporting of a valve alignment problem to the NRC was concerned, the OIG concluded that the evidence did not show that TVA's termination decision was based upon his raising this issue. According to both the TVA manager who made the decision to terminate Mr. Klock, as well as Mr. Klock's supervisor, they did not know, at the time Mr. Klock's services were terminated, that he had raised an issue with the NRC. Further, that same TVA manager stated that his primary interest was in resolving the problem and that he was not concerned about who raised it.

The OIG also concluded that Mr. Klock should have been permitted to speak with TVA Concerns Resolution Staff (CRS) on July 11, 1994, the day he returned to the WBN site following his unauthorized vacation and he was subsequently removed from the site. CRS contacted Mr. Klock at home on the afternoon of July 11 to request that he return to the site for an exit interview that Friday, July 15, 1994. Additionally, CRS sent an exit interview form in the mail after he failed to make his scheduled exit appointment on July 15. However, OIG found that TVA's procedures entitled Mr. Klock to an in-person interview by CRS on July 11.

However, in examining the circumstances that led to Mr. Klock being removed from the site on July 11, the OIG determined there was insufficient evidence to conclude that the TVA manager who asked that Mr. Klock be removed from the site did so because he raised the valve alignment problem to the NRC. Rather, the OIG report discussed the fact that the TVA manager was concerned about Mr. Klock's unauthorized presence on the site due to that manager's prior experience with a problem involving unauthorized contractors onsite at another facility. The manager also expected that the contractor manager accompanying Mr. Klock would follow the appropriate exit interview procedure. Also, the OIG concluded that TVA took subsequent corrective actions to ensure that such procedural violations no longer occur.

The OIG's findings as discussed generally above and as fully detailed in its Report of Administrative Inquiry (Enclosure 2) provide a full explanation of the basis for TVA's employment action, concluding that TVA did not take adverse action against Mr. Klock for raising a safety concern. As we indicated in our cover letter, TVA has appealed the adverse Wage and Hour determination consistent with our strong belief that Mr. Klock was not discriminated against in violation of Section 211 of the Energy Reorganization Act.

Question 2: Describe the actions, if any, taken or planned to assure that this employment action does not have a chilling effect in discouraging other licensee or contractor employees from raising perceived safety concerns.

TVA believes that any time a complaint of discrimination is filed, regardless of merit, the issue must be addressed as to whether the situation could discourage others from raising safety or quality issues. TVA took prompt action in this particular instance to assess the impact of the events surrounding Mr. Klock's complaint. Though we are convinced that Mr. Klock did not suffer any adverse employment action as a result of his raising a concern, we did consider whether the events surrounding his termination, including the procedural problem which occurred by not permitting him to participate in an exit interview before his removal from the site, could have been perceived as having a chilling effect. In order to assess the possibility of a chilling effect, TVA's CRS conducted a survey within a month of Mr. Klock's removal from the site. This survey sampled 20 of the 135 non-supervisory TVA and contract employees within the WBN Startup & Test organization (15 percent). The survey was also weighted to include a greater sample size of workers employed by the contractor which employed Mr. Klock (35 percent) than the actual percentage employed by that contractor within the Startup & Test organization at the time of the survey (19 percent).

The results of the survey demonstrate that the events surrounding Mr. Klock's termination and removal from the site had no chilling effect in discouraging Startup & Test employees from raising perceived safety concerns. Of the 20 employees surveyed, 18 (90 percent) stated that they felt comfortable raising problems to their immediate supervisor, their supervisor's boss, as well as to CRS. One individual felt comfortable raising problems to his supervisor and his supervisor's boss, but felt uncomfortable going outside the management chain to CRS. This individual did state, however, that he would go to CRS if the issue was important enough. Only one individual expressed discomfort in raising a problem, attributing his reluctance to media accounts of problems generally encountered by whistleblowers.

Within a month of Mr. Klock's removal from the site, TVA also took action to address the problem that led to his not being able to exit properly. On August 2, 1994, TVA's Vice President of New Plant Completion issued a memorandum to 29 key WBN managers informing them of their responsibility for ensuring that the check-out process for contract employees is properly followed. The memorandum stressed the importance of making sure that contract employees receive the opportunity to identify any unresolved safety or quality issues by participating in exit interviews. In addition, TVA wrote letters to the 36 contractor companies performing contractor managed work as well as those providing professional support personnel at WBN. These letters reminded the contractors that TVA requires compliance with check-out procedures, including the opportunity for contractor employees to identify any unresolved safety or quality issues by participating in an exit interview.

TVA believes that these actions effectively addressed the potential for any chilling effect and further ensured that the procedural problem identified with the check-out process was adequately addressed.

In view of these efforts and their results, TVA does not plan to take any further specific action in response to Mr. Klock's termination complaint. We will continue striving to improve established communications channels and other means to emphasize the importance of raising safety and quality matters. As you know, TVA has recently described to NRC the progress that has been made in improving the work environment at WBN. In our letter to you dated February 16, 1995, regarding NRC Office of Investigations Report No. 2-93-075R, we described the results of a July 1994 TVA OIG survey in which 15 percent of the TVA employees and contractors at each nuclear plant site and TVA Nuclear corporate offices were interviewed. At WBN in particular, the OIG determined that 98 percent of the TVA employees and contractors felt free to report nuclear safety or quality problems to their immediate supervisor. Though the WBN survey field work was accomplished in June 1994, the month prior to Mr. Klock's termination, we believe that this survey, along with the subsequent CRS Startup & Test organization survey, provide consistent measures of a healthy work environment at WBN that is free of any chilling effects.

In recent meetings and discussions between TVA and NRC regarding the status of WBN, including the above-mentioned letter of February 16, 1995, we have also had the opportunity to present data to NRC regarding the declining number of WBN employee concerns and Section 210/211 DOL complaints, as well as the overall decline in a variety of complaints filed within TVA Nuclear. We believe these improvements resulted in large part from our ongoing efforts to improve communication between managers and employees, increased manager/supervisor training stressing avoidance of intimidation and harassment, as well as increased management involvement in employee relations issues.

Based upon the above, TVA believes that it has taken effective action to assure that the events surrounding Mr. Klock's termination did not have a chilling effect in discouraging others from raising safety concerns.