

February 19, 1994

FACT SHEET
FOR DISCRIMINATION CASES

COMPLAINANT [COMP]: Goldstein, Ronald ERA NO.: 86-ERA-036

LICENSEE/FACILITY: Houston Lighting & Power
(South Texas Project)
EBASCO Constructors, Inc.

NRC REGION: 4

DESCRIPTION OF PROTECTED ACTIVITY: Bringing concerns to HL&P
Quality Assurance and SAFETEAM with regard to quality of
construction activities, e.g.,

- (1) failure to follow a requirement that all EBASCO field
personnel were to submit 'control' documents at the end of
each work shift,
 - (2) inadequate desk space (for RG) to keep records and write
reports,
 - (3) attempt to replace RG,
 - (4) pipe alteration w/o following correct safety inspection
procedure, and
 - (5) damaging a piece of equipment (flux mapping skid).
- (see ALJ decision, 3/3/88, p. 3)

DESCRIPTION OF ALLEGED DISCRIMINATION: poor performance
evaluations and eventual layoff

DATE OF DISCRIMINATION: April 11, 1986 (specific date set out in
ALJ, 3/3/88, p. 11, and SOL Order, 4/7/92, p. 1)

DATE OF COMPLAINT:

DATE COMPLAINT RECEIVED BY DOL:

LICENSEE'S EXPLANATION OF ACTION:

DISCUSSION: [REDACTED] "decided [in
September 1985] to remove Goldstein from a list of potential
candidates for a December [1985] layoff because he knew Quality
Assurance was in the process of investigating Goldstein's quality
concerns" (see ALJ, dated 3/3/88, p. 7).

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EBASCO filed suit in the 5th Circuit Court of Appeals, arguing among other things that internal reports are not a protected activity. In her opinion of 4/7/92, the SOL stated "I continue to be persuaded that reporting violations of the ERA internally to one's employer is a protected activity" (p. 6), citing a number of precedents associated with other related legislation, and disagreeing with the 5th Circuit Court in Brown v. Root.

ACTIONS TAKEN TO MAKE COMPLAINANT WHOLE:

CULPABLE LICENSEE MANAGER(S) [CLM]: (INCLUDE NAME, TITLE, AND WHETHER CLM IS STILL WITH LICENSEE AND IN WHAT CAPACITY IF KNOWN)

[REDACTED]

ACTIONS TAKEN AGAINST CLM:

SETTLED: **DATE SETTLED:**

SETTLEMENT CONDITIONS:

DISTRICT DIRECTOR'S DECISION: June 16, 1986 - no discrimination

DOL ALJ DECISION: March 3, 1988

Performance evaluations were used to create list of candidates for layoff ("because of the company's cash-flow problems", see ALJ, 3/3/88, p. 7). "However, it became clear that most of the guidelines were actually subjective, and the key was the supervisor doing the evaluating. As a result, since [REDACTED] did the evaluating of Goldstein . . . prior to the April 1986 layoff, and since earlier disputes had occurred between [REDACTED] and Goldstein, it was a foregone conclusion that Goldstein would receive one of the lowest evaluations" [emphasis added] (see ALJ, 3/3/88, p. 7).

EBASCO showed that RG was a disruptive employee and RG failed to prove that these reasons were pretextual; however, ALJ also found that EBASCO was motivated by RG's quality complaints, "that EBASCO had dual motives" for the layoff (see ALJ, 3/3/88, p. 12).

"EBASCO did not . . . prove that it would have laid off Goldstein even in the absence of the protected conduct." (see ALJ, 3/3/88, p. 12).

SECRETARY OF LABOR DECISION: April 7, 1992 - affirmed ALJ's RDO.

"I continue to be persuaded that reporting violations of the ERA

internally to one's employer is a protected activity" (p. 6), citing a number of precedents associated with other related legislation, and disagreeing with the 5th Circuit Court in Brown v. Root.

EBASCO requested a stay of the SOL's order, which was rejected by SOL on August 31, 1992.

EBASCO appealed the SOL's decision to the 5th Circuit Court, and RG's attorney complained that EBASCO's failure to comply with the SOL's order was in itself a separate act of discrimination.

February 19, 1993 - 5th Circuit Court granted EBASCO's petition for review, vacated the SOL's order, and remanded the matter for further consideration, finding that internal reports are not protected activity.

August 16, 1993 - SOL issued Order dismissing case.

DOL ALJ REVISED DECISION (IF APPLICABLE):

NRC ACTIONS TAKEN:

DISCUSSED WITH OI?:

CHILLING EFFECT LETTER [CEL] SENT?: March 29, 1988

Licensee responded on April 19, 1988, citing RG's performance evaluation as the reason he was included in the RIF and saying there was no chilling effect. This response also enclosed results of EBASCO and SAFETEAM investigations.

ENFORCEMENT ACTION ISSUED (INCLUDE EA NO.):

CLOSEOUT ACTION (OTHER THAN ENFORCEMENT): May 4, 1993 NRC closed by letter to licensee, accepting 5th Circuit's decision and not issuing an enforcement action.

March 30, 1993 - NRC letter to DOL Deputy Solicitor, requesting that the Fifth Circuit stop applying its Brown & Root rule and supporting DOL in case of reconsideration in

this case.

REMARKS:

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