

From: Checkle, Melanie
Sent: Friday, July 19, 2019 7:19 AM
To: Kowal, Mark; Price, Sarah; Lopez-Santiago, Omar; Echavarria, Alex; Luina, Scott
Cc: Mendez, Sandra; Justice, Jared; Seat, Jamin
Subject: FW: TVA/McBrearty/4-1760-18-153 (ERA Settlement)
Attachments: TVA McBrearty NRC.DOE Closure.pdf; McBrearty Final Agreement 6-18.pdf

FYI – TVA settled with McBrearty via DOL.

From: Robinson, Antione - OSHA
Sent: Tuesday, July 16, 2019 1:30 PM
To: NRC Allegation ; 'officeofenforcement@hq.doe.gov'
Cc: OSHA.DWPP
Subject: [External_Sender] TVA/McBrearty/4-1760-18-153 (ERA Settlement)

Dear Sir or Madam:

Attached are the settlement letters for the above mentioned OSHA Whistleblower case. If you have questions or require additional information feel free to contact me directly.

Regards,

Antione Robinson
Assistant Regional Administrator
Whistleblower Protection Program
(678) 237-0445
Robinson.antione@dol.gov
www.whistleblowers.gov

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1093

Mail Envelope Properties (SN6PR09MB2797F6BDA614535EC530D373F3CB0)

Subject: FW: TVA/McBrearty/4-1760-18-153 (ERA Settlement)
Sent Date: 7/19/2019 7:18:56 AM
Received Date: 7/19/2019 7:18:58 AM
From: Checkle, Melanie

Created By: Melanie.Checkle@nrc.gov

Recipients:

"Mendez, Sandra" <Sandra.Mendez-Gonzalez@nrc.gov>
Tracking Status: None
"Justice, Jared" <Jared.Justice@nrc.gov>
Tracking Status: None
"Seat, Jamin" <Jamin.Seat@nrc.gov>
Tracking Status: None
"Kowal, Mark" <Mark.Kowal@nrc.gov>
Tracking Status: None
"Price, Sarah" <Sarah.Price@nrc.gov>
Tracking Status: None
"Lopez-Santiago, Omar" <Omar.Lopez-Santiago@nrc.gov>
Tracking Status: None
"Echavarria, Alex" <Alejandro.Echavarria@nrc.gov>
Tracking Status: None
"Luina, Scott" <Scott.Luina@nrc.gov>
Tracking Status: None

Post Office: SN6PR09MB2797.namprd09.prod.outlook.com

Files	Size	Date & Time
MESSAGE	705	7/19/2019 7:18:58 AM
TVA McBrearty NRC.DOE Closure.pdf		67359
McBrearty Final Agreement 6-18.pdf		283589

Options

Priority: Normal
Return Notification: No
Reply Requested: No
Sensitivity: Normal
Expiration Date:

U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW, Room 6T50
Atlanta, Georgia 30303



July 3, 2019

NRC.Allegation@nrc.gov
officeofenforcement@hq.doe.gov

Re: Tennessee Valley Authority/McBrearty/4-1760-18-153
Energy Reorganization Act of 1974 (ERA), 42 U.S.C. §5851

Sir or Madam:

This is to advise you that the Occupational Safety and Health Administration (OSHA) has been provided notice that the parties in the Subject matter have reached a settlement. As a result of the settlement, OSHA is ceasing all investigative activity and considers this matter closed. Should you require any additional information, please feel free to contact this office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Antione Robinson".

Antione Robinson
Assistant Regional Administrator

MUTUAL SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

1. This Mutual Settlement Agreement and Release of Claims (“Agreement”) is entered into between Michael McBrearty and Tennessee Valley Authority (“TVA”).

DEFINITIONS

2. “Claim” means any allegation of discrimination, whether under 10 C.F.R. § 50.7, the Energy Reorganization Act (ERA), 42 U.S.C. § 5851, et seq., or any other applicable federal or state law or regulation) that Mr. McBrearty has, or may have, as of the effective date of this Agreement with respect to any of TVA’s nuclear facilities or the operations of TVA’s nuclear program. This includes, but is not limited to, Mr. McBrearty’s allegations that are currently before the United States Department of Labor (DOL OSHA Complaint No. 4-1760-18-153).

3. “Mr. McBrearty’s Counsel” means the law firm of Bernabei & Kabat, PLLC.

RECITALS

4. Mr. McBrearty was formerly employed at TVA. He resigned in August 2018.

5. On September 26, 2018, Mr. McBrearty filed his DOL-OSHA Complaint No. 4-1760-18-153, arising from his allegations that he was, among other things, subject to retaliation for whistleblowing activities.

6. TVA denies that it violated any law or regulation, including but not limited to, 10 C.F.R. § 50.7 and the ERA, 42 U.S.C. § 5851, et seq. However, in the interest of avoiding prolonged litigation and unnecessary expenses, TVA and Mr. McBrearty agree to resolve Mr. McBrearty’s claims as set forth in this Agreement.

7. Based upon Mr. McBrearty’s and TVA’s knowledge of the relevant facts and applicable legal principles, and taking into account the contested legal and factual issues involved, including TVA’s and Mr. McBrearty’s assessment of the uncertain and protracted

nature of litigation, TVA and Mr. McBrearty agree that a settlement on the terms set forth in this Agreement is fair, reasonable, and adequate.

WAIVER, RELEASE, AND SETTLEMENT

8. Mr. McBrearty expressly waives, releases, and forever discharges in any forum any and all claims for any personal remedy that were brought or could have been brought against TVA or the TVA Board of Directors and each of their corporate affiliates, predecessors, successors, subsidiaries, divisions, assigns, officers, directors, shareholders, partners, representatives, employees, former employees, attorneys, insurers, and agents as of the effective date of this Agreement. This includes, but is not limited to, any and all claims for breach of contract, harassment, hostile work environment, retaliation, discrimination, past wages under applicable law, back wages, front wages, liquidated damages, compensatory damages, punitive damages, retirement benefit adjustments, penalties, interest, costs, attorneys' fees, or for any other remedies available at law or equity allegedly owed to Mr. McBrearty. Provided, however, that Mr. McBrearty's voluntary waiver and release of any and all personal remedies shall not be construed to prohibit him from reporting any suspected instance of illegal activity of any nature, any nuclear safety concern, any workplace safety concern, or any public concern to the Nuclear Regulatory Commission (NRC), the DOL, or any other federal or state governmental agency, and shall not be construed to otherwise prohibit Mr. McBrearty from participating in any federal or state administrative, judicial, or legislative proceeding or investigation.

9. In consideration for the waiver, release, and settlement of any and all claims for any personal remedy that were or could have been brought against TVA as of the effective date of this Agreement (as set forth in paragraph 18), TVA shall pay a Gross Settlement Amount of

\$198,500. Payment of the Gross Settlement Amount will be made promptly and as described in paragraphs 11-14 of this Agreement.

10. Upon the effective date of this Agreement (as set forth in paragraph 18), the waiver, release, and settlement of the claims (set forth in paragraph 8) will be binding on Mr. McBrearty, his attorneys, agents, spouses, executors, representatives, heirs, successors, and assigns. The waiver and release shall inure to the benefit of TVA, its past and present Board of Directors, officers, agents, employees, successors, assigns, and contractors.

COMPUTATION, DISTRIBUTION, AND TAXATION OF PAYMENTS

11. Of the Gross Settlement Amount, TVA shall pay \$93,750 as wages. TVA will issue an IRS form W-2 for this payment. The payment will be made by direct deposit, in accordance with the banking information provided separately to TVA by Mr. McBrearty's counsel. The payment will be subject to FICA deductions and federal income tax withholding at the supplemental wage withholding rate of 25 percent. Income tax withholdings will also be made pursuant to any applicable state and/or local withholding codes or regulations.

12. Of the Gross Settlement Amount, TVA shall pay \$93,750 to Mr. McBrearty as compensatory damages. This payment will be made by direct deposit, in accordance with the banking information provided separately to TVA by Mr. McBrearty's counsel. TVA will issue an IRS form 1099 for this payment.

13. Of the Gross Settlement Amount, TVA shall further pay \$11,000 to Mr. McBrearty's Counsel as attorneys' fees and litigation expenses. This amount totals the remaining portion of the Gross Settlement Amount. TVA will separately issue an IRS form 1099 for this payment.

14. TVA will mail the check for the amount described in paragraph 13 to

Mr. McBrearty's Counsel at the address below:

Bernabei & Kabat, PLLC
1400 16th Street N.W., Suite 500
Washington, D.C. 20036-2223

15. TVA will not make any further payments under this Agreement and

Mr. McBrearty will not be entitled to receive any additional money or other consideration from TVA on account of any claims resolved by this Agreement, as defined in paragraph 8, above.

16. Mr. McBrearty agrees that he is solely responsible for the payment of all taxes and other related contributions due to be paid by him as the result of this Agreement. Mr. McBrearty therefore agrees to defend, indemnify, and hold TVA, its past and present Board of Directors, officers, agents, employees, successors, assigns, and contractors harmless against any claims which may be asserted against him by any taxing or other governmental authority for taxes, withholding taxes, penalties, and any other assessment that might be asserted or levied by any tax or other government authority against him arising from or relating to any payment under paragraphs 11-14 of this Agreement.

MISCELLANEOUS PROVISIONS

17. TVA agrees to submit a copy of this Agreement to the DOL to seek approval within seven (7) business days after the Agreement has been signed by TVA, Mr. McBrearty, and Mr. McBrearty's Counsel. TVA and Mr. McBrearty agree that they will not raise with the DOL any objection to any term of this Agreement, and that they will otherwise cooperate with the DOL as necessary to effectuate approval of this Agreement. If the DOL does not approve any provision of this Agreement, this Agreement will be null and void. Provided, however, that TVA and Mr. McBrearty will make their best efforts to renegotiate any unapproved term(s) of

this Agreement. If the parties are able to renegotiate alternative mutually acceptable terms that meet and overcome any objections expressed by the DOL, they will resubmit a revised Agreement to the DOL within five (5) business days.

18. This Agreement is effective only after it has been signed by TVA, Mr. McBrearty, and Mr. McBrearty's Counsel, and approved by the DOL.

19. This Agreement is governed by federal law.

20. This Agreement shall not be construed as an admission of liability by TVA or constitute an adjudication or finding on the merits of any claims by Mr. McBrearty. This Agreement and any discussions about this Agreement shall not be admissible in any proceeding as evidence of an admission by TVA of any violation of any policies, law, or regulation. This Agreement may be introduced in any proceeding to enforce the Agreement.

21. Any breach of this Agreement shall be enforceable in the United States District Court for the Eastern District of Tennessee.

22. This Settlement Agreement is confidential and shall not be disclosed to anyone except as follows: (i) to Mr. McBrearty's spouse, attorneys, and tax advisors; (ii) to TVA's attorneys, accountants, contractors, and Human Resources, to the extent necessary to enforce this Agreement; (iii) as required under applicable law, regulation, or rule; (iv) as compelled by a court order; (v) to the NRC at TVA's discretion; (vi) to the extent necessary to enforce this Agreement; or (vii) as agreed by both parties in writing. If Mr. McBrearty receives legal process or an order purporting to require disclosure of this Agreement or any of its terms, he agrees to notify TVA's Office of the General Counsel to give TVA an opportunity to object prior to any disclosure. If TVA receives legal process or an order purporting to require disclosure of this Agreement or any of its terms, TVA agrees to notify both Mr. McBrearty and Bernabei & Kabat

PLLC, to give Mr. McBrearty an opportunity to object prior to any disclosure. Both TVA and Mr. McBrearty agree that this Agreement contains personal and private information, the disclosure of which could cause harm to the interest of TVA and/or Mr. McBrearty and either or both parties will object to the release of this Agreement or any of its terms under the Freedom of Information Act.

23. Mr. McBrearty and TVA agree that any statement or response to an inquiry concerning the Agreement made to any third party through any medium, either orally or in writing, including but not limited to, electronic mail, television or radio, computer networks or Internet bulletin boards, blogs, social media, or any other form of communication (excluding those identified in paragraph 22 who may be told of the Agreement) will be limited to the substance of the following: “We have amicably resolved the litigation. I am not at liberty to comment further.”

24. Mr. McBrearty agrees that he has expressed to TVA’s attorneys all concerns he has, or may have, as of the effective date of this Agreement, with respect to any of TVA’s nuclear facilities or the operations of TVA’s nuclear program. Mr. McBrearty further represents that, as of the date of his signature to this Agreement, he has not filed an ERA complaint with the DOL with respect to his employment at any TVA site and/or any of TVA’s nuclear facilities or the operations of TVA’s nuclear program, or any other complaint other than DOL-OSHA Complaint No. 4-1760-18-153.

25. Mr. McBrearty shall not knowingly disparage, criticize, or otherwise make any material derogatory statements concerning TVA, its officers, Board of Directors, Joseph Shea and/or Erin Henderson. TVA mutually agrees that it will not knowingly disparage, criticize, or otherwise make any material derogatory statements concerning Mr. McBrearty and, further, that

it shall inform Joseph Shea and Erin Henderson of this paragraph's restrictions; provided, however, that the foregoing restrictions shall not apply to any statements made permissible under paragraph 8 of this Agreement, or to any statements truthfully made in response to a subpoena or compulsory legal or investigatory process.

26. Mr. McBrearty agrees that he will never seek or accept work as a TVA annual employee or contractor or at a TVA facility. This no-rehire provision shall not apply if TVA should acquire a facility or entity where Mr. McBrearty is employed.

27. Within ten (10) business days of receiving payment of the Gross Settlement Amount as described in paragraphs 11-14 above, Mr. McBrearty's Counsel shall dismiss or withdraw DOL-OSHA Complaint No. 4-1760-18-153 with prejudice, with each party bearing its own costs, expenses, and attorney's fees, notwithstanding the payment described in paragraph 13 above.

28. This Agreement contains the entire agreement between the parties with regard to the matters set forth herein, supersedes any prior written or oral agreements, and is binding upon and inures to the benefit of the persons and entities set forth in paragraph 10 of this Agreement and the respective assigns and successors of each.

29. A scanned copy of this Agreement shall be as valid as an original. This Agreement may be executed in one or more counterparts, all of which together shall constitute a single instrument.

30. All parties participated equally in drafting this Agreement and it shall not be construed against any party.

31. Each signatory to this Agreement represents that they have read this Agreement and have executed the Agreement freely and without duress of any kind.

32. TVA and Mr. McBrearty expressly stipulate that the consideration set forth in this Agreement is adequate for the rights and claims waived, and for the obligations this Agreement imposes on them. Mr. McBrearty agrees and acknowledges that TVA has promised to pay the consideration set forth in paragraphs 11-14 in collective exchange for all releases, waivers, and promises made by Mr. McBrearty in this Agreement.

33. This Agreement may be modified only by a subsequent written agreement signed by both parties.

This Agreement has been executed by the Parties, or their duly authorized representatives below.



Michael McBrearty
Complainant

17 June 2019
Date



Alan Kabat
Attorney for Complainant

17 June 2019
Date



Sherry A. Quirk
Executive Vice President and General Counsel
Tennessee Valley Authority

Jun 18, 2019
Date