

Alfred E. Ramey v. U.S. General Accounting Office

Docket No. 40-209-17-83

Date of Decision: August 20, 1986

Cite as: Ramey v. GAO (8/20/86)

Before: Jaffe, Chairman; Brown, Feigenbaum, James and Kaufmann, Members

Stays

Board Regulations

DECISION OF THE PAB

This matter is before the Board on Respondent's motion to stay the operation of the Board's Final Decision in this case. Respondent has asked that the Board's order that Petitioner be reinstated immediately with full back pay be held in abeyance while the case is on appeal.

The Rules and Regulations of the PAB do not provide for stays pending appeal of a final decision of the Board. However, our rules do provide that where a matter is not specifically addressed, "the Board will be guided, but not controlled by the Federal Rules of Civil Procedure." 4 CFR §28.1(d). The standards set by the Federal courts for granting a stay from a decision of an administrative tribunal require consideration of four factors: 1) a strong showing that the movant will succeed on the merits of its appeal; 2) a showing that the movant will suffer irreparable harm if the stay is denied; 3) the stay will not substantially harm other parties to the proceedings; 4) the stay would not harm the public interest. Wisconsin Gas Co. v. Federal Energy Regulatory Commission, 758 F.2d 669 (D.C. Cir. 1985); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers v. Federal Power Commission, 259 F.2d 921, 925 (D.C. Cir. 1958).

In analyzing these factors, the courts have placed primary emphasis on the likelihood of success on the merits. Coleman v. PACCAR, Inc., 424 U.S. 1301 (1975) (Rehnquist, Circuit Justice, *in chambers*); Demjanjuk v. Meese, 784 F.2d 1114 (D.C. Cir. 1986); Wisconsin Gas Co. v. FERC, *supra*; Blankenship v. Boyle 447 F.2d 1280 (1971). In stay requests before administrative tribunals, the "success on appeal" factor usually augurs strongly against movants, however, because, in granting a stay, the tribunal would be required to conclude that it was incorrect in its determination on the merits. Therefore, courts have adopted the general rule that administrative tribunals "may stay their own orders when they have ruled on an admittedly difficult [or complex] legal question and when the equities of the case suggest that the *status quo* should be maintained." Washington Metropolitan Area Transit Commission, *supra*, at 844. However, where an analysis of the other three factors strongly supports the granting of a stay, the "success on appeal" factor is less important. *Id.* at 843.

For the following reasons, we are not persuaded that the Board's order in this case should be stayed pending appeal of that order by GAO.

First, the Board has considered the merits of this case, and we do not think our decision in favor of Petitioner is in error. Moreover, we fail to see where the merits of this case present a complex or disputed area of law. In our view, this case presented strong evidence of reprisal and the case law regarding reprisal for protected EEO activities is very well settled. Contrary to the contentions of GAO, the fact that the Board affirmed the interlocutory action of the Hearing Officer in revoking the stay of Petitioner's removal, pending receipt of a decision by the Hearing Officer on the merits and pending review by the Board of the entire record, viewed as a whole, does not, in our view, constitute inconsistent factfinding which renders GAO likely to prevail on the merits. The Board's interlocutory review of the Hearing Officer's revocation of the stay was, of necessity, less comprehensive than the record review which the Board ultimately conducted.

We are equally unpersuaded that compliance with the Board's order will cause irreparable harm to the Agency. The Agency's argument with regard to this criterion is primarily one of cost. Economic loss does not, in and of itself, constitute irreparable harm unless the monetary loss threatens the very existence of the movant's business. Wisconsin Gas Co. v. FERC, *supra*, at 674; Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., *supra*, at 843 n.2; Virginia Petroleum Jobbers Assoc. v. FPC, *supra*, at 925. Being forced to re-hire one computer specialist and pay him back wages can hardly be classified as irreparable harm. The Agency's argument that it is subject to cutbacks in staff allocations in the coming year is disputed by Petitioner's opposition to the motion for stay. Even if true, the harm alleged by the Agency does not rise, in our opinion, to the level sufficient to grant the Agency's motion for a stay.

On the other hand, the Petitioner, as a party to these proceedings, will likely be harmed by any further delay. Obviously, Petitioner has an interest in receiving the relief to which he is entitled, and any further delay by the Agency in compliance with our orders would seriously prejudice the Petitioner, as it would any aggrieved employee. See, American Federation of Government Employees v. Federal Labor Relations Authority, 772 F.2d 751 (D.C. Cir. 1985). The continuing denial of Petitioner's right to employment, even during the period of denial, is a real injury to Petitioner. "Where statutory civil rights of employees have been violated, irreparable injury may be presumed from the loss of human dignity which such violations engender." EEOC v. County of Los Angeles, 531 F.Supp. 122, 125 (C.D. Cal. 1982), quoting Manhart v. Los Angeles Department of Water and Power, 387 F.Supp. 980, 984 (C.D. Cal. 1975), *aff'd*, 553 F.2d 581 (9th Cir. 1976).

Finally, we do not think that the public interest will be served by granting the Agency's motion for a stay. There is an overriding societal interest in terminating prohibited personnel practices, particularly in cases of unlawful reprisal for resort to the courts and administrative agencies.

The purpose of our ordering that Petitioner be reinstated with full back pay is to make him whole for a proven violation of Title VII. To further delay relief to Petitioner would subject Petitioner to the continued violation of his Title VII rights as well as injure the public interest by frustrating the central statutory scheme of Title VII. Albemarle Paper Co. v. Moody, 422 U.S. 405, 421 (1975).

For the above reasons, Respondent's motion for a stay of the Board's Final Decision and order pending appeal is denied.