
SECRETARY OF LABOR,

Complainant,

v.

OSHRC Docket No. 99-1566

ORMET PRIMARY ALUMINUM
CORPORATION, HANNIBAL
REDUCTION DIVISION,

:

Respondent,

USWA LOCAL 5724,
Authorized Employee
Representative.

DECISION

Before: ROGERS, Chairman; VISSCHER and WEISBERG, Commissioners.

BY THE COMMISSION:

On April 10, 2000, Judge Ann Z. Cook issued an order approving a settlement agreement regarding a serious citation issued to Ormet Primary Aluminum Corporation (“Ormet”).¹ The settlement agreement was submitted to the judge for approval on March 24, 2000, and signed by both Ormet and the Secretary of Labor. The United Steelworkers of America (“Union”), who had elected party status in the case, had refused to sign the agreement.

¹ In the approval order, the judge specifically stated that “no objection to the settlement has been filed.”

Copies of the settlement agreement were sent by the Secretary to the Union on March 17, 2000. In a letter dated March 21, 2000, and on which the judge was copied, the Union notified the Secretary of its refusal to sign the agreement and stated specific objections to two citation items which had been withdrawn by the Secretary pursuant to the agreement. The Secretary referenced the Union's correspondence in her March 24, 2000, letter to the judge, in which approval of the settlement agreement was requested:

By letter directed to the undersigned, dated March 21, 2000, and on which you were copied, you should have received notice that although given the opportunity to do so, the Authorized Employee Representative has elected not to sign the Agreement.

However, the judge did not receive her copy of the Union's letter until April 20, 2000, ten days after the agreement was approved.² On April 25, 2000, the Union's objections were forwarded by the judge to the Commission's Executive Secretary, who circulated the Union's letter to Commission members as a petition for discretionary review. On April 26, 2000, the case was directed for review.

Commission Rule 100, 29 C.F.R. § 2200.100, governs the handling of settlement agreements. Subsection © of Rule 100 specifically states that where party status has been elected by an authorized employee representative,

an order terminating the litigation before the Commission because of the settlement shall not be issued until at least 10 days after service or posting to consider any...authorized employee representative's objection to the reasonableness of the abatement time. The...authorized employee representative shall file any such objection within this time.

Here, the judge's approval of the settlement agreement was issued well beyond the required ten-day period, but prior to receipt of her copy of the Union's letter. Because we are unable to determine the date the Union's letter stating its objections was mailed to the judge, we accord the Union the benefit of any doubt as to its timeliness, especially where the record

² It is not clear why receipt of the judge's copy of the Union's letter was delayed. We note that the envelope in which this correspondence arrived at the Commission was not retained for the case file. Therefore, we cannot determine when the Union actually mailed the judge her copy of its letter.

shows that the Secretary received her copy of the letter within the allotted time for filing objections. Although we also recognize, as noted by our dissenting colleague, that the Union's objections pertain to the Secretary's withdrawal of two citation items, we note that the Union's objections were sent to the judge and it was the judge who approved the settlement agreement without having an opportunity to consider them. Under these circumstances, we conclude that the judge should be given an opportunity to rule on the Union's letter. Therefore, in accordance with our usual practice in such cases, we remand the case to the judge for consideration of the Union's objections in light of extant case law. *See Cuyahoga Valley Ry. Co. v. United Transp. Union*, 474 U.S. 3 (1985).

/s/ _____
Thomasina V. Rogers
Chairman

/s/ _____
Stuart E. Weisberg
Commissioner

Dated: September 21, 2000

VISSCHER, Commissioner, dissenting:

In a letter dated March 21, 2000, a representative of the United Steel Workers of America advised the Regional Solicitor that his union was refusing to sign the settlement agreement in this case because it provided for the Secretary's withdrawal of two citation items. The letter states no other objection to the settlement agreement. In *Cuyahoga Valley Ry. Co. v. United Transportation Union*, 474 U.S. 3 (1985), the Supreme Court ruled that the Commission lacks authority to review a decision by the Secretary to withdraw a citation, and reversed a Commission decision to reinstate a citation that was based upon a union's objection.

The majority is willing to assume that the March 21 letter, which was not even addressed to the Commission, was intended to state objections to the settlement agreement as provided for in Rule 100© of the Commission's Rules of Procedure, 29 C.F.R. § 2200.100(c). Even if they are correct, this case would clearly be controlled by the *Cuyahoga* decision. As the Commission cannot reinstate a withdrawn citation, I see no reason that the judge's decision to approve the settlement agreement should not be affirmed by the Commission.

/s/

Gary L. Visscher
Commissioner

Dated: September 21, 2000

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

Docket Nos. 99-1566

ORMET PRIMARY ALUMINUM CORP.,

Respondent.

ORDER APPROVING SETTLEMENT AGREEMENT

The Commission has jurisdiction over the subject matter of the case and over the parties by virtue of the filing of a timely notice of contest.

The stipulated settlement between the parties filed on **March 24, 2000**, has been considered. The parties certify that affected employees were properly notified of the settlement on or about March 17, 2000. No objection to the settlement has been filed.

The settlement is approved under 5 U.S.C. § 554(c)(1) and Commission Rule 100.¹ The terms of the stipulated settlement are incorporated, in their entirety, by reference in this order.

ANN Z. COOK
Judge

DATED: 10 APR 2000
Washington, D.C.

¹ Rules of Procedure of the Occupational Safety and Health Review Commission, 29 CF.R. §§ 2201.1 - .212, as amended, 55 Fed. Reg. 22789 - 4 (June 4, 1990).

Before The
Occupational Safety And Health Review Commission
United States Of America

SECRETARY OF LABOR,
Complainant,

vs.

OSHRC Docket No. 99-1566
Inspection No. 112540570

ORMET PRIMARY ALUMINUM CORPORATION,
HANNIBAL REDUCTION DIVISION,
Respondent,

and

USWA LOCAL 5724,
Authorized Employee Representative.

STIPULATION AND SETTLEMENT AGREEMENT

In full disposition and settlement of the issues in this proceeding, it is hereby stipulated and agreed by Complainant, Secretary of Labor, and Respondent, Ormet Primary Aluminum Corporation, Hannibal Reduction Division, that:

1. Citation 1, Item 1 shall be affirmed as a serious violation with a penalty of \$ 1,700.00.
2. Citation 1, Item 2 shall be affirmed as a serious violation with a penalty of \$1,275.00.
3. Citation 1, Item 3 shall be affirmed as a serious violation w-with a penalty of \$ 1,700.00.
4. Citation 1, Item 4 shall be withdrawn and vacated by the Secretary.
5. Citation 1, Item 5 shall be withdrawn and vacated by the Secretary.

6. Respondent represents that the violations set forth in Citation 1, Items 1- 3 have been abated.
7. Respondent hereby withdraws its notice of contest and the parties agree to the entry of a final order consistent with the terms of this Stipulation and Settlement Agreement.
8. Respondent agrees that the total amended penalty of \$4,675.00 shall be paid within 30 days after the entry of a final order approving this settlement.
- 9 Respondent hereby certifies that a copy of this Settlement Agreement will be posted at its worksite within three days of the execution of this Agreement to afford notice to affected employees
10. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.
11. It is acknowledged that the parties are entering into this Stipulation and Settlement Agreement only to resolve this matter as expeditiously as possible and to avoid protracted litigation. It is hereby stipulated that nothing contained in this Stipulation and Settlement Agreement shall be construed as an admission by Respondent of any violation of the Occupational Safety and Health Act of 1970 or the standards or regulations promulgated thereunder, nor an admission of the allegations or conclusions contained in the citation which this Stipulation and Settlement Agreement covers. Respondent's execution of this Stipulation and Settlement Agreement shall not be deemed or construed as an admission of fault or liability and shall not affect any rights or defenses which Respondent may have in any claim or proceeding, whether civil, criminal or administrative, which now exists or may arise hereafter and be pursued by any person, agency, entity or party, nor shall this Stipulation and Settlement Agreement nor any order of the Occupational Safety and Health Review

Commission entered pursuant to this Stipulation and Settlement Agreement be offered, used or admitted in evidence in any proceeding or litigation, whether civil, criminal, or administrative, either State or Federal jurisdictions, now pending or hereafter brought; provided, however, that this Stipulation and Settlement Agreement may become the final order of the Occupational Safety and Health Review Commission and OSHA may use and enforce it in any subsequent proceedings brought directly under the provisions of the Occupational Safety and Health Act of 1970).

12. This Stipulation and Settlement Agreement is being executed in quadruplicate originals this 14th day of March, 2000.

FOR RESPONDENT:

FOR COMPLAINANT:

/s/

John C. Artz, Esq.
Polito & Smock, P.C.
444 Liberty Avenue, Suite 400
Pittsburgh, PA 15222-1220
Cleveland, OH 44199
Counsel for Respondent

Patrick L. DePace, Esq.
U.S. Department of Labor
881 Federal Office Building
1240 East Ninth Street

Counsel for Complainant

FOR AUTHORIZED EMPLOYEE
REPRESENTATIVE

OF COUNSEL:

Henry L. Solano
Solicitor of Labor

M. Gordon Morris
USWA District 1, Local 5724
105 Union Drive
Clarington, OH 43915

Richard J. Fiore
Regional Solicitor

Benjamin T. Chinni
Associate Regional Solicitor

NOTICE

Any party (including any authorized employee representative of affected employees and any affected employee not represented by an authorized representative) who has any objection to the entry of an order as set forth should communicate such objections within ten (10) days of the posting of this Agreement to:

Judge Ann Z. Cook

Occupational Safety and Health
Review Commission
One Lafayette Center
1120 20th Street, N.W. - Room 990
Washington, DC 20036-3419

A copy of said objection should also be sent to:

Patrick L. DePace, Esq.
Trial Attorney
U.S. Department of Labor
Office of the Solicitor
881 Federal Office Building
1240 East Ninth Street
Cleveland, OH 44199

and

John C Artz, Esq.
Polito & Smock, P.C.
444 Liberty Avenue, Suite 400
Pittsburgh, PA 15222- 1220

COPY

United Steelworkers of America District 1- Local Union No. 5724

**105 Union Drive
Clarington, Ohio 43915**

Phone: (740) 458-1345

Fax: (740) 458-1347

March 21, 2000

Patrick L. DePace, Esq
U. S. Department of Labor
Office of the Solicitor
881 Federal Office Building
1240 East Ninth Street
Cleveland, OH 44199

Re: Secretary of Labor v. Ornet Primary Aluminum Corp.
OSHRC Docket No. 99-1566

Dear Mr. Depace:

The Union refuses to sign off on this agreement because we do not feel it is in the best interest of our employees. We can agree to Citation I, Item 1, Citation 1, Item 2, and Citation 1, Item 3.

Regarding Citation 1, Item 4, the hazard and the exposure was there when the compliance officer cited them. I don't understand how you can just vacate it and say it didn't happen. We feel the Company will continue with this practice.

As for Citation 1, Item 5, I understand that it may have been cited incorrectly, and O.S.H.A. feels it can not win it in Court, but we still have a hazard and there is still exposure to that hazard. The Company will not work with us on this.

complaint regarding this hazard. We would appreciate help in correcting this problem. Thank-you!

Sincerely,

CHARLIE ROBERTS
Chairman, Safety Committee
L. U. 5724

CR/e

Cc: Judge Ann .Z. Cook
John C. Artz, Esq.
Deborah J. Zubaty, Area Director