

U.S. Department of Labor
Office of Administrative Law Judges
211 Main Street - Suite 600
San Francisco, California 94105

(415) 974-0514
FTS 8-454-0514

CASE NO: 86-CAA-6

In the Matter of

DOUGLAS PLUMLEY
Complainant

v.

FEDERAL BUREAU OF PRISONS
Respondent

RECOMMENDED DECISION AND ORDER

This proceeding arises from an alleged violation of the Clean Air Act, 42 U.S.C. SS 7622 and the Toxic Substances Act, 15 U.S.C. SS 2622 embodied in a complaint filed by Complainant on February 18, 1986. A hearing was scheduled for June 24, 1987 at the Lompoc Penitentiary in Lompoc, California.

On June 19, 1987, the parties submitted a Joint Motion to Dismiss this claim along with an attached Settlement Agreement,

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which is hereby incorporated by reference and made a part of this Recommended Decision and Order. Based upon the aforesaid Joint Motion to Dismiss, the trial of June 24, 1987 is hereby cancelled. The undersigned recommends that based upon this Settlement Agreement, this case be dismissed with prejudice.

HENRY B. LASKY
Administrative Law Judge

Dated: JUN 22 1987

San Francisco, California

HBL:BJH

U. S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

86-CAA-6

In the matter of

DOUGLAS PLUMLEY
Complainant,

v.

FEDERAL BUREAU OF PRISONS,
Respondent.

JOINT MOTION TO DISMISS

The undersigned counsel for Complainant and counsel for Respondent hereby jointly move the Administrative Law Judge to dismiss with prejudice the above-captioned matter, based upon the parties' Settlement Agreement and to forward the attached Order and copy of Settlement Agreement as expeditiously as possible to the Secretary of Labor.

Respectfully submitted this 19th day of June, 1987.

GOVERNMENT ACCOUNTABILITY PROJECT

FEDERAL BUREAU OF PRISONS

By:

Daniel I. Oshtry
1555 Connecticut Ave. NW #202
Washington, D.C. 20036
Counsel for Complainant

By:

Barbara Berman
Trial Attorney
U.S. Dept. of Justice
General Litigation &

Legal Advice Section
PO Box 887, Ben Franklin Station
Washington, D.C. 20044

ORIGINAL of the foregoing and all attachments mailed this 19th day of June, 1987, to:

Honorable Henry B. Lasky
Office of Administrative Law Judges
U.S. Department of Labor
211 Main Street, Suite 600
San Francisco, California 94105

Daniel I. Oshtry

020A09

U. S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

86-CAA-6
In the matter of
DOUGLAS PLUMLEY
Complainant,
v.

FEDERAL BUREAU OF PRISONS,
Respondent.

SETTLEMENT AGREEMENT

This Settlement Agreement constitutes a final and comprehensive resolution of Mr. Douglas Plumley's complaint against Respondent Federal Bureau of Prisons to the Department of Labor (DOL) of February 18, 1986. Submitted simultaneously herewith is a joint motion to dismiss to the Administrative Law Judge (ALJ) based upon the full and final settlement of the parties' claims.

1. This Settlement Agreement resolves any claims raised in the complaint Complainant filed with the Department of Labor on February 18, 1986, together with any and all claims that might be asserted in any suit, cause of action, charge of discrimination, or claims against Respondent, and all representatives of Respondent, both in their official capacity and as individuals.
2. Mr. Plumley hereby releases and forever discharges Respondent, their attorneys, related companies, successors, assigns, officers, directors, managers, agents, and

employees from any and all liability arising out of the termination of his work assignment with Respondent.

3. This Settlement Agreement shall be binding on the undersigned, his agents, heirs, representatives, executors, personal representatives, successors, and assigns.

4. This Settlement Agreement shall not be construed as an admission of any wrongdoing by any of the parties, nor shall it be construed as an adjudication on the merits or claims for or against either party.

5. Mr. Plumley agrees to not use UNICOR equipment for non- UNICOR-related purposes in the future.

6. Respondent will transfer Mr. Plumley from Lompoc-Federal Penitentiary to Terminal Island Federal Correctional Institution between July 5 and July 15, 1987. Mr. Plumley will be placed among the general prison population. Consistent with this transfer, Mr. Plumley will be at institutional security level four.

7. Respondent agrees to forward Attachment A to the Federal Parole Board within ten days of the parties' execution of this Agreement.

8. Respondent agrees to place a copy of this Agreement, including Attachment A, into Mr. Plumley's central prison file within ten days of the parties' execution of this Settlement Agreement.

9. Upon Mr. Plumley's transfer to Terminal Island Federal Correctional Institution, Respondent agrees to place Mr. Plumley in a clerical UNICOR position as soon as one becomes available, at pay grade level one, with the longevity he normally would have accrued had he not been terminated.

10. Within ten days of the parties, execution of this Settlement Agreement, Respondent agrees to compensate complainant for the back pay Complainant would have received had he not been terminated. This amount totals \$2,045.51. Respondent also agrees to restore to Mr. Plumley lost longevity status of seven months during the period of March 1986 through September 1986; restoration of 53 days Industry Good Time (or Earned Good Time) from March 1986 through June 1987; restoration of 30 days Statutory Good Time taken as a result of Mr. Plumley's incident report of February 14, 1986; and restoration of 16 days vacation time from March 1986 through May 1987 which would have normally accrued.

11. Within ten days of the parties' execution of this Settlement Agreement, recognizing that time is of the essence, Respondent will initiate payment of \$27,000.00 attorneys' fees, plus \$3,000.00 in costs to the Government Accountability Project. The total amount for attorneys' fees and/or costs shall be \$30,000.00. The Government Accountability Project will receive this check within 120 days of the execution of this settlement agreement.

This Settlement Agreement constitutes the sole and entire agreement between the parties hereto and supersedes any and all understandings and agreements made prior hereto, and shall constitute, along with the other papers filed in this case, the only agreement to be discussed with the news media. There are no collateral understandings, representations, or agreements other than those contained herein. It is understood and agreed that the execution of this Agreement by Respondent is not to be construed as an admission of liability on its part to Complainant, but is a compromise and settlement of disputed claims.

DATED this 11th day of June, 1987.

APPROVED AS TO FORM:

Daniel I. Oshtry
Stephen M. Kohn
Attorneys for Complainant

COMPLAINANT
Douglas Plumley

Barbara Berman
U.S. Department of Justice
Criminal Division
P.O. Box 887, Ben Franklin Sta.
Washington, D.C. 20530

RESPONDENT
Ira Kirschbaum
Assistant General Counsel
Federal Bureau of Prisons
320 First Street, N.W.
HOLC Building, Room #754
Washington, D.C. 20534

U.S. Department of Justice
Federal Bureau of Prisons

Office of the Director
Washington, DC 20534

JUN 18 1987

Bejamin F. Baer
Chairman
U.S. Parole Commission
Park Place Building
5550 Friendship Blvd.
Bethesda, MD 20815

Re: Douglas Plumley, Register No. 76087-012;

Plumley v. Bureau of Prisons, Case No. 86-CAA-6

Dear Mr. Baer:

The Bureau of Prisons has very recently entered into a Settlement Agreement in the above referenced lawsuit, in which Mr. Plumley challenged the disciplinary action taken against him on February 18, 1986 based on the charge "Using Any Equipment Or Machinery Which Is Not Authorized" (Code 318). As part of the Settlement Agreement, Mr. Plumley will be reinstated to a similar UNICOR job, and will be given back pay and benefits which would have accrued, just as though he had not been found guilty of this offense and removed from his UNICOR job.

The purpose of this letter is to request that at Mr. Plumley's upcoming interim statutory review, which we understand is now scheduled for September 1988, his presumptive parole date be recalculated without reference to this particular incident.

Sincerely,

J. Michael Quinlan
Deputy Director