

UNITED STATES OF AMERICA

MERIT SYSTEMS PROTECTION BOARD

SPECIAL COUNSEL,)
)
 Petitioner,)
)
 v.) Docket No. HQ12068410017
)
 JEANETTE EVANS-HAMILTON,) Date: 18 DEC 1984
)
 Respondent.)
)
 _____)

FINAL ORDER

Special Counsel charged respondent with commission of two personnel practices prohibited by section 2302(b) of the Civil Service Reform Act of 1978 (5 U.S.C. § 2302(b)). The parties moved jointly for approval of a settlement agreement. For purposes of settlement respondent admits she violated section 2302(b)(5) by influencing an applicant to withdraw from competition for a position to improve the prospects of another person. She agrees to forego a hearing. Special Counsel agrees to dismiss the second charge with prejudice upon acceptance of the settlement. The parties agree that a 30-day suspension without pay is an appropriate discipline.

The presiding administrative law judge recommends that the Board accept the agreement, grant the joint motion, and enter a final order consistent with its provisions. The Board approves

the settlement, grants the joint motion for settlement, and imposes a 30-day suspension without pay.^{1/}

Accordingly, the Board DIRECTS the respondent's employing agency to suspend respondent for a period of 30 days without pay. Within 60 days from the date of this order, the Special Counsel shall report to the Board on compliance with this order.

SO ORDERED.

FOR THE BOARD:



Stephen E. Manrose
Acting Clerk of the Board

Washington, D.C.

^{1/} The Board notes that the agreement is made a part of the record and is thus enforceable as between the parties. See, e. g., John W. King, 3 MSPB 28 (1980), and other cases in which the Board approves settlements between an employer and employee in adverse action proceedings initiated by the employing agency. In this disciplinary action brought by the Special Counsel the employing agency, however, is not a party to the agreement. Therefore, the Board must exercise its penalty authority to direct the agency to effect the penalty that the Board has approved. See Special Counsel v. Verrot, MSPB Docket No. HQ12068310014 (Nov. 11, 1983).

The Board also notes that this case charges a violation of the Civil Service Reform Act. The penalty is therefore governed by the provisions of 5 U.S.C. § 1207(b). The Board's order in Special Counsel v. Zanjani, MSPB Docket No. HQ12068310023 (May 30, 1984 (Remand Order)), referred to by the presiding administrative law judge, is not relevant to the exercise of the Board's penalty authority in this case. The Zanjani proceeding charged a violation of the the Hatch Act (5 U.S.C. § 7324), not the Civil Service Reform Act. Any penalty authority exercised by the Board in a proceeding charging a violation of section 7324 must comply with the penalty provisions of the Hatch Act (5 U.S.C. § 7325). See Special Counsel v. Dukes, 8 MSPB 218 (1981) and Special Counsel v. Morgan, MSPB Docket No. HQ12068210028 (Oct. 26, 1983).