

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of )  
 DAVID A. RIVERA )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 L.R. FREE, INC. )  
 Respondent, )  
 )  
 and )  
 )  
 DIRECTOR, DEPARTMENT OF LABOR )  
 AND INDUSTRIAL RELATIONS, )  
 Appellee. )

CASE NO. OSAB 94-065  
 (93-007)

FILED  
 LIR APPEALS BOARD  
 STATE OF HAWAII  
 95 MAY 22 A 7:55

DECISION AND ORDER

This occupational safety and health case is before the Board on appeal by Complainant, DAVID A. RIVERA, from the decision of the DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, dated February 8, 1994, dismissing his Complaint.

Respondent filed a Motion To Dismiss Appeal on April 27, 1995.

For the reasons stated below, we grant Respondent's Motion To Dismiss Appeal.

FINDINGS OF FACT

1. DAVID A. RIVERA, Complainant, was employed by L.R. FREE, INC., Respondent, as a laborer in the company's California operations. He came to Hawaii in January 1993 to work in the Hurricane Iniki reconstruction efforts on behalf of his employer.

2. On January 26, 1993, Complainant wrote his employer a letter which included a notice of resignation, effective

February 28, 1993. On January 27, 1993, Respondent's President accepted Complainant's notice of resignation.

3. On February 17, 1993, Complainant allegedly expressed to his immediate supervisor and a co-worker, fears of being harmed by a California gang member. Complainant allegedly departed for California early the next morning. Thereafter, Complainant was notified that he was being terminated from employment for abandoning his job without authorization to do so.

4. Complainant subsequently filed a civil complaint with the Hawaii Civil Rights Commission, alleging wrongful termination on the basis of his race. Said complaint was converted to a civil complaint in the State of Hawaii, and it also alleged wrongful termination in retaliation for Complainant's refusal to handle asbestos material while working in Hawaii.

5. Complainant also filed the subject Complaint with the Department of Labor and Industrial Relations. The allegations in the subject Complaint are the same as those which were made in the civil complaint in the State of Hawaii.

6. On March 8, 1995, Complainant signed a Release and Settlement Agreement, settling the civil complaint and releasing Respondent of all claims arising out of Complainant's employment with Respondent. On March 10, 1995, the parties in the civil action filed a Stipulation for Dismissal with Prejudice of all Claims and all Parties, terminating the civil matter permanently.

7. The Release and Settlement Agreement provides that:

...For and in consideration of the matters set forth ... all parties

hereby release, remise and forever discharge each other from and on account of any and all claims, actions, causes of action, claims for relief, liability, liabilities, costs, expenses, compensations, fees, demands, injuries, losses, loss of services, loss of profits ... connected with or in any manner involving, concerning or relating to any of the following:

b. Any and all other contracts, agreements and understandings, oral, written or otherwise, by and between the parties including, but not limited to, the commencement, termination and duration of the employment of Releasor by Releasees; the terms and conditions of such employment and termination of employment; ...

Paragraphs 6, 6(b).

Complete Bar. Acceptance of the consideration above-mentioned and execution of this Release is a complete and final bar to any and all claims, actions, causes of action, claims for relief, liability, liabilities, costs, expenses, fees, demands, injuries, losses and damages of whatever name or nature the parties may have against each other in any manner involving, concerning or relating to the matters covered by this Release forever and finally compromises, settles and terminates any and all disputes, claims, claims for injury, loss, damage, costs, expenses and fees of whatever nature, known or unknown, in any manner involving, concerning or relating to the matters covered by this Release.

Paragraph 7(d).

8. On April 27, 1995, a copy of a Notice of Hearing of Motion was sent to Complainant at his last known address of 98-1268

Kaahumanu Street, C3 170, Pearl City, Hawaii 96782. The hearing was scheduled for May 11, 1995, at 9:00 a.m. The Board did not receive any communication from Complainant prior to the hearing. Complainant did not appear at the hearing on May 11, 1995.

#### CONCLUSIONS OF LAW

Complainant voluntarily signed a Release and Settlement Agreement ("Agreement") on March 8, 1995, which resolved the civil complaint and released Respondent of all claims arising out of Complainant's employment with Respondent.

Paragraph 6 of the Agreement specifically provides that the parties discharge each other from all claims, actions, and causes of action connected with the commencement, termination, and duration of Complainant's employment by Respondent. Paragraph 7 of the Agreement explains that execution of the Agreement is a complete and final bar to any and all claims, actions, and causes of action the parties may have against each other relating to Complainant's employment.

On March 10, 1995, the parties in the civil action filed a Stipulation for Dismissal with Prejudice of all Claims and all Parties, terminating the civil matter permanently.

Complainant's subject Complaint with the Department of Labor and Industrial Relations and his appeal before the Board allege wrongful termination. We conclude that the Agreement Complainant voluntarily executed in the civil action released Respondent of all claims arising out of Complainant's employment with Respondent, including the claim of wrongful termination

