

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

SEP 11 2003

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

\_\_\_\_\_)  
TIMOTHY PIGFORD, et al., )  
) )  
Plaintiffs, )  
) )  
v. )  
) )  
ANN M. VENEMAN, Secretary, )  
United States Department of Agriculture, )  
) )  
Defendant. )  
\_\_\_\_\_)

Civil Action No. 97-1978 (PLF) ✓

\_\_\_\_\_)  
CECIL BREWINGTON, et al., )  
) )  
Plaintiffs, )  
) )  
v. )  
) )  
ANN M. VENEMAN, Secretary, )  
United States Department of Agriculture, )  
) )  
Defendant. )  
\_\_\_\_\_)

Civil Action No. 98-1693 (PLF)

MEMORANDUM OPINION AND ORDER

On July 13, 1999, claimant Clarence Hardy submitted a letter to the Court seeking review of a non-final decision by the Arbitrator in Mr. Hardy's Track B case. Because the Court determined that it could not consider Mr. Hardy's submission, the Court forwarded the letter to class counsel Alexander Pires by letter of August 13, 1999. Then on February 7, 2000, Mr. Hardy filed a motion seeking review of the Arbitrator's January 27, 2000 final decision dismissing Mr. Hardy's Track B claim. On February 22, 2000, the government filed a response to the motion. The Court never ruled on this motion.

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By Order of March 9, 2000, the Court denied the motion of another Track B claimant, Michael Patterson, who, like Mr. Hardy, had sought review of an Arbitrator decision in his Track B case. See Order of March 9, 2000 at 2. In that Order, the Court held that any claimant seeking review of a non-final ruling in a Track B case must direct that request to the Arbitrator, Michael Lewis, and that any claimant seeking review of a final ruling in a Track B case must direct that request to the Monitor, Randi Ilyse Roth. See id. After the Order was issued, the Court mistakenly concluded that Mr. Hardy's motion had been addressed. Because the Court had never ruled on the motion directly, however, it actually remained unresolved until recently brought to the Court's attention by the Monitor.

If the Court had ruled promptly on Mr. Hardy's motion, the Court would have denied the motion for the reasons stated in the March 9, 2000 Order and directed Mr. Hardy to file a petition with the Monitor pursuant to Paragraph 12 of the Consent Decree. At the time of Mr. Hardy's motion, in early 2000, there was no deadline in effect regarding the submission of petitions for Monitor review. Subsequently, however, the parties negotiated and the Court approved a set of deadlines for all such petitions. See Stipulation and Order of July 14, 2000. Under the terms of that Stipulation and Order, Mr. Hardy's deadline would have been 120 days from the date of the July 14, 2000 Order, that is November 13, 2000. Therefore, if Mr. Hardy's motion had been denied in early 2000, he would have had a chance to submit a timely petition for Monitor review. Now Mr. Hardy's deadline for petitioning for Monitor review has passed. The Court concludes, however, that Mr. Hardy should not be penalized for the Court's failure to issue a prompt decision on his motion. Accordingly, it is hereby

ORDERED that Clarence Hardy's motion for review of the Arbitrator's final decision dismissing Mr. Hardy's Track B claim on January 27, 2000 [211] is DENIED; it is

FURTHER ORDERED that if Mr. Hardy wishes to seek review of the Arbitrator's final decision he may direct a petition to the Monitor within 120 days of the date of this Order; and it is

FURTHER ORDERED that the Facilitator shall promptly send to Mr. Hardy a Form Petition for Monitor Review and a copy of the booklet "Questions and Answers about Monitor Review of Decisions" (June 2002), which answers common questions about the petition for Monitor review process.

SO ORDERED.

  
PAUL L. FRIEDMAN  
United States District Judge

DATE: 9/11/03

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