



**Issue Date: 21 February 2008**

In the Matter of

BRIAN M. TURGEAU  
Complainant

v.

NORDAM GROUP, INC.  
Respondent

Case No. 2003-AIR-00041

### **FINAL ORDER APPROVING SETTLEMENT**

This case arose under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (“AIR 21”). On October 3, 2003, I issued an order granting the respondent’s motion for summary judgment, finding that the AIR 21 complaint was untimely. That decision was affirmed by the Administrative Review Board on November 22, 2004, but on April 27, 2006, the U.S. Court of Appeals for the 10<sup>th</sup> Circuit reversed, finding that equitable tolling was applicable. On March 19, 2007, the case was remanded to me by the Administrative Review Board in accordance with the 10<sup>th</sup> Circuit’s decision, and I scheduled a hearing on the merits of the case to take place in Tulsa, Oklahoma on October 30, 2007.

Just prior to the scheduled hearing in this case, the parties notified me that they had reached a settlement, and the hearing was cancelled. But after a reasonable amount of time passed without the settlement agreement being filed, the parties were contacted and promised to file the agreement shortly. Today, still not having received the settlement, the parties were again contacted, and within a few minutes both the settlement agreement and a document entitled *Joint Dismissal of All Claims and Counterclaims With Prejudice* (“Joint Dismissal”) were faxed to this Office.

Under 29 C.F.R. §1979.111(d), settlements in AIR 21 cases must be approved by the appropriate adjudicative officer or body. Since this case is in an adjudicatory stage before this Office, it must be approved by the presiding administrative law judge, *i.e.*, me. The parties cannot simply agree to dismiss the case. Accordingly, I must review the settlement agreement in order to determine whether to approve it.

In the settlement agreement, the complainant has given up his right to proceed against the respondent for any claims arising out of his employment with respondent, and specifically agrees to release respondent from liability for this claim. In return, complainant has received payment of a specified amount of money from the respondent. Finally, the parties agree that each shall bear its own costs and attorney's fees in connection with this litigation.

It appears to me that the complainant is receiving a relatively small sum for the settlement of a case which has already been litigated before a Federal Court of Appeals. However, I have not heard this case on the merits, and therefore have no basis to evaluate the merits of the complainant's case or measure his potential recovery assuming he was successful. Further, complainant is represented by counsel. Under these conditions,

***IT IS ORDERED*** that this settlement agreement is approved.

A

JEFFREY TURECK  
Administrative Law Judge