

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 26 July 2004

CASE NOS.: 2003-AIR-37 and 2003-AIR-42

In the matter of:

LEO F. VANE, JR.,
Complainant,

v.

AMERICAN EAGLE AIRLINES INC.,
Respondent.

**RECOMMENDED ORDER GRANTING
WITHDRAWAL OF COMPLAINT**

These proceedings arise under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121 (“AIR21”), and the applicable regulations issued thereunder at 29 C.F.R. Part 1979.

On July 2, 2004, I issued an order requiring the parties to file a status report within fifteen days from the date of the order regarding a grievance proceeding initiated by Complainant against Respondent, for which these cases had been temporarily stayed at the parties’ mutual request. I further ordered the parties to state whether they wished to proceed to formal hearing in the above-captioned matters.

On July 19, 2004, Respondent American Eagle Airlines, Inc. filed a status report in compliance with my order. No timely response to the order was received from Complainant.

On July 21, 2004, I issued an order to show cause why Complainant’s requests for hearing should not be dismissed as abandoned.

In a letter dated July 16, 2004, which was not received by the Office of Administrative Law Judges until July 23, 2004, Complainant’s counsel acknowledged that Complainant had been reinstated to his position as a Captain at American Eagle Airlines pursuant to an August 31, 2003 decision in his grievance proceeding. A copy of the forty-six page decision by the System Board of Adjustment, comprised of a neutral member, a member designated by Respondent, and a member designated by the Air Line Pilots Association, was attached to the correspondence. Based on various facts and findings set forth in the decision, Complainant’s grievance was sustained and the following award was made:

Award: The grievance is sustained in accordance with the above findings. The Carrier is directed to reinstate Captain Vane to his former position, and to make

him whole in terms of lost wages and benefits. The Carrier is further directed to expunge the Final Advisory from Captain Vane's personnel record.

In re American Eagle Airlines, Inc. and Air Line Pilots Association, Case No. EGL 121-1103/Vane at 46 (Aug. 31, 2003).

Section 1979.111 of Title 29, C.F.R. allows for withdrawal of a complaint when the complainant files a written request asking that the complaint be withdrawn. 29 C.F.R. § 1979.111 (2003). The regulation states, in relevant part:

(c) At any time before the findings or order [of the Assistant Secretary of Labor for Occupational Health and Safety] become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether the withdrawal will be approved. If the objections are withdrawn because of settlement, the settlement shall be approved in accordance with paragraph (d) of this section.

29 C.F.R. § 1979.111 (c) (2003).

In light of the August 31, 2003 decision in Complainant's grievance proceeding awarding reinstatement of Complainant to his former position, as well as other specified relief, it appears that the issues raised by Complainant in the instant cases are moot. Therefore, based on Complainant's written request,

IT IS HEREBY ORDERED that Complainant's requests for withdrawal of the complaints filed in the above-captioned matters be APPROVED.

A

STEPHEN L. PURCELL
Administrative Law Judge

Washington, D.C.