



**Issue Date: 24 April 2006**

**CASE NO. 2005-AIR-00001**

In the Matter of:

**PAUL D. ASMUS,**  
Complainant,

vs.

**UNITED AIRLINES, INC.,**  
Respondent.

### **ORDER DISMISSING CLAIM**

Paul Asmus (the Complainant) filed two of three claims against United Airlines (United) on July 3, 2002, and September 17, 2002, alleging retaliation in violation of the whistleblower protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121. On December 9, 2002, United filed for Chapter 11 bankruptcy protection. The following month, United furloughed the Complainant. On February 13, 2003, the Complainant filed his third claim, again alleging retaliation. A hearing on the merits of all three claims was set for November 23, 2004, but on November 3, 2004, I granted United Airlines' motion for a stay pursuant to 11 U.S.C. § 362(a)(1).

On January 20, 2006, the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, issued an Order Confirming the Debtors' Second Amended Plan of Reorganization, pursuant to Chapter 11 of the United States Bankruptcy Code.<sup>1</sup> This Confirmation Order conclusively discharged all of the Complainant's claims.<sup>2</sup> It incorporates the part of the Second Amended Plan of Reorganization that permanently enjoins claims holders, like the Complainant, from "commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claim."<sup>3</sup>

---

<sup>1</sup> This Confirmation Order may be obtained at the following web address: <http://www.pd-ual.com>, or by written request to Poorman-Douglas Corporation, ATTN: UAL Balloting, 10300 SW Allen Boulevard, Beaverton, Oregon 97005; telephone (877) 752-5527.

<sup>2</sup> The Complainant's claim filed after United filed for Chapter 11 bankruptcy protection is treated no differently than the claims filed beforehand. This final claim focused on the Complainant's furlough, which was justified by the Complainant's pre-bankruptcy conduct – specifically his 2001 and 2002 performance evaluations.

<sup>3</sup> *Id.*; Appendix 2 of the Respondent's response to Order to Show Cause.

The effect of this Confirmation Order comports with Sections 524<sup>4</sup> and 1141<sup>5</sup> of the United States Bankruptcy Code. This plan became effective on February 1, 2006.

United Airlines filed its notice of discharge with this Court on March 6, 2006. In light of the Confirmation Order, I issued an Order to Show Cause why this matter should not be dismissed. The Complainant timely responded, and insisted that if his claim is dismissed before he is allowed a hearing on the merits, then he will have no opportunity to “clear his name.”

The Confirmation Order serves as an injunction against the commencement or continuation of an action that is covered under the Second Amended Plan of Reorganization. While this may appear to the Complainant as rough justice, the law is clear that his claims were discharged by this plan that went into effect over two months ago.

Therefore, this claim is **DISMISSED**.

**SO ORDERED.**

**A**

RUSSELL D. PULVER  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS.** To appeal, you must file a Petition for Review (“Petition”) with the Administrative Review Board (“Board”) within ten (10) business days of the date of issuance the administrative law judge’s decision. The Board’s address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Your Petition is considered filed on the date of its postmark, facsimile transmission, or E-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1979.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 20 C.F.R. § 1979.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street, NW, Suite 400-North, Washington, D.C. 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, 200 Constitution Avenue, Washington, D.C. 20210. *See* 29 C.F.R. § 1979.110(a).

---

<sup>4</sup> 11 U.S.C. § 524(a) provides:

a discharge in a case under this title . . . (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act to collect, recover, or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived.

<sup>5</sup> 11 U.S.C. § 1141(c) provides that after confirmation of a plan, the property is free and clear of all claims. *See also* 11 U.S.C. § 1141(d)(1)(A).

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110. Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1979.109© and 1979.110(a) and (b).