



Issue Date: 02 May 2006

CASE NUMBER: **2003-AIR-00003**

In the Matter of:

WILLIAM BRIGGS,
Complainant,

vs.

UNITED AIRLINES,
Respondent.

**DECISION AND ORDER DISMISSING COMPLAINT DUE TO RESPONDENT'S
U.S. BANKRUPTCY COURT CHAPTER 11 PLAN DISCHARGE**

This matter arises out of a claim filed under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C.A. § 42121 ("AIR 21").

PROCEDURAL HISTORY

This matter first came before me in October 2002 on appeal from the Occupational Safety and Health Administration's dismissal of the complaint for untimely filing. Respondent filed for Chapter 11 bankruptcy protection on December 9, 2002 while this matter was pending before me. On June 25, 2003, I issued an order staying this case, pursuant to the automatic bankruptcy stay of all litigation against the debtor under 11 U.S.C.A. § 362(a), pending the outcome of Respondent's bankruptcy proceeding or further court order.

At no time have I received notice that the bankruptcy court handling Respondent's Chapter 11 bankruptcy proceeding has issued any order relieving Complainant of the automatic stay of this litigation or remanding this litigation to me for further proceedings. In addition, at no time have I received any evidence that Complainant had filed a proof of claim against Respondent's bankruptcy estate with respect to this litigation. As a result, this case remained stayed pending the outcome of Respondent's Chapter 11 reorganization or further court order.

On February 22, 2006, this court received a letter notice from Complainant's counsel asking that this litigation be re-opened and a hearing scheduled to resolve the claim as Respondent "emerged from Bankruptcy on February 1, 2006."

On February 23, 2006, Respondent filed its notice of discharge from the Chapter 11 proceeding, stating that on January 20, 2006, the bankruptcy court entered an order confirming

Respondent's second amended plan of reorganization (the "reorganization plan"). The reorganization plan became effective on February 1, 2006. The notice of discharge further stated that pursuant to 11 U.S.C. § 1141(d) and the terms of the reorganization plan,

"the Bankruptcy Court's entry of the Confirmation Order discharges and releases the Debtors from Claims and Causes of Action of any nature whatsoever, ... without limitation ... that arose before the Confirmation Date, any liability (including withdrawal liability) to the extent such Claims relate to services performed by employees of the Debtors prior to the Confirmation Date and that arise from a termination of employment or a termination of any employee ... regardless of whether such termination occurred prior to or after the Confirmation Date, ... in each case whether or not (i) a Proof of Claim or Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to Section 501 of the Bankruptcy Code, (ii) a Claim or Interest based upon such debt, right, or Interest is allowed pursuant to Section 502 of the Bankruptcy Code, or (iii) the Holder of such a Claim, right, or Interest has accepted the Plan."

Finally, the Notice of Discharge provides that "pursuant to § 524(a) and the terms of the Plan, the discharge 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 debt that is discharged under the Plan."

On February 27, 2006, this case was reassigned to me to address its status after the bankruptcy court's order confirming Respondent's reorganization plan.

Also on February 27, 2006, I issued an order to show cause why this case should not be dismissed due to Respondent's apparent bankruptcy discharge (the "OSC re: Dismissal"). The OSC re: Dismissal specifically provided that :

Unless Complainant adequately responds to this Order to Show Cause by **FRIDAY, MARCH 31, 2006** and properly files and serves a memorandum of points and authorities with supporting evidence showing that Respondent's recent U.S. Bankruptcy Court discharge did not discharge Respondent of any and all liability on Complainant's AIR-21 whistleblower claim, his complaint shall be **DISMISSED**.

No later than **Friday, March 31, 2006**, Complainant shall file and serve on all other parties, a memorandum of points and authorities, **not to exceed 15 pages**, including affidavits and other documentary evidence, in support of his legal position as to why this matter should not be dismissed for the reasons referenced above.

Any response pleading from Respondent must be filed and served on or before **Friday April 29, 2006, if necessary, and is also limited to 15 total pages**.

No further reply briefing shall be allowed by any party or considered by me.

If Complainant fails to adequately respond to this Order to Show Cause by March 31, 2006, his complaint and request for appeal shall be DISMISSED for want of prosecution and/or mootness. (Emphasis in original).

On March 7, 2006, Complainant's counsel requested an extension of time to March 13, 2006 to respond to Respondent's notice of discharge. Since the case had been stayed in 2003, Complainant's counsel had apparently relocated her law offices and had not yet received the OSC re: Dismissal containing the March 31, 2006 deadline for her response.

Also on March 7, 2006, Respondent's counsel faxed a letter to Complainant's counsel with the OSC re: Dismissal as an enclosure, informing her that she had more time than she thought, until March 31, 2006, to file Complainant's response to avoid dismissal of his complaint for want of prosecution and/or mootness.

On March 29, 2006, Complainant faxed me what I viewed as an *ex parte* communication stating that he is representing himself because he had not heard from his lawyer and that he concluded that she had abandoned him as a client. He further stated, in response to my OSC re: Dismissal, that his complaint should go forward because "[R]espondent is no longer bankrupt so the case should continue. My [Complainant's] argument is based on the fact that Public Safety Regulations supersede bankruptcy (Federal Aviation Regulations, AIR21 etc)."

On March 29, 2006, I issued a letter to Complainant admonishing him from any further *ex parte* communications with me from any of his lawyers or by himself as a *pro se* complainant. I sent copies of my letter and Complainant's letter to his lawyer, Respondent's counsel, and others on the service list.

On March 30, 2006, Complainant's counsel, Billie Pirnier Garde, faxed to me her Notice of Withdrawal of her appearance as counsel for Complainant, stating that due to a "breakdown in the attorney-client relationship", it was necessary for her to withdraw immediately as Complainant's counsel. She further stated that Complainant "has stated his desire to proceed with this matter."

On April 24, 2006, Respondent's counsel filed a letter stating that since Complainant had not filed any evidentiary response to the OSC re: Dismissal, Respondent was not intending to file any response since "it does not appear that there is anything before you which would make a 'response' pleading from [Respondent] 'necessary' at this time." (Emphasis in originals).

As of this date, Complainant has not filed any a memorandum of points and authorities including affidavits or other documentary evidence or anything else that can be construed as supporting his legal position that this matter should not be dismissed as a discharged claim through Respondent's confirmed reorganization plan.

FINDINGS OF FACT

As Complainant has failed to submit any evidence, pleadings, or exhibits as of April 27, 2006, the following findings of fact are based solely on Complainant's failure to timely respond to my OSC re: Dismissal and Respondent's notice of discharge and the applicable provisions of 11 U.S.C. § 1141(d).

I find that while Complainant's attorney has withdrawn from this case effective on March 30, 2006, I have allowed Complainant adequate time to proceed on his own *pro se* or retain substitute counsel to provide evidentiary support to his argument that his claim has not been discharged under 11 U.S.C. § 1141(d) and that I am not enjoined from continuing to proceed to trial under 11 U.S.C. § 524.

Complainant has known since late February of this year that his case could be dismissed as a result of the bankruptcy court order confirming Respondent's reorganization plan. Moreover, it is approximately one month since Complainant's lawyer withdrew from his representation and two months since I issued my OSC re: Dismissal. I further find that Complainant has failed to provide *any* evidence that his claim remains viable *after* Respondent's recent bankruptcy discharge. Despite my warning that his failure to properly respond would result in dismissal of his complaint, Complainant has failed to comply with my OSC re: Dismissal. Therefore, I dismiss his claim for failing to comply with my lawful order and for causing undue delay.

Further, because Complainant has not responded to Respondent's notice of discharge with: (1) evidence showing that his claim remains viable after Respondent's reorganization plan and is excepted from discharge; or (2) with any other pleadings from Respondent's Chapter 11 bankruptcy proceeding, such as a proof of claim or an acknowledgment that Complainant's claim has been considered for treatment in Respondent's disclosure statement or reorganization plan, I dismiss the claim as moot and fully discharged under 11 U.S.C. § 1141(d).

CONCLUSIONS OF LAW

I. The Complaint Should Be Dismissed Due to Complainant's Failure to Comply With a Lawful Order and Undue Delay

Despite the explicit warning of dismissal in my OSC re: Dismissal, Complainant has failed to timely comply with the March 31, 2006 filing deadline for his response. Under 29 C.F.R. § 18.6(d)(2)(v), an administrative law judge has the authority to strike all or part of a pleading, motion, or other submission of a party who fails to comply with an order concerning that pleading or motion.

In addition, the authority to dismiss a case also comes from an administrative law judge's inherent power to manage and control his or her docket and to prevent undue delays in the orderly and expeditious disposition of pending cases. *See Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962).

Despite my explicit warning that his failure to do so would result in the dismissal of his case, Complainant has not responded to my OSC re: Dismissal as of the date of this Order. As the deadline contained therein has passed, I find Complainant has failed to comply with my February 27, 2006 order. Because the OSC re: Dismissal related to Complainant's whistleblower complaint, his failure to comply gives me the authority to dismiss his complaint under 29 C.F.R. § 18.6(d)(2)(v). Therefore, his complaint shall be dismissed for failure to comply with an order that related to his complaint.

Moreover, I further interpret local regulations 29 C.F.R. § 18.6(d)(2)(v) as providing me with discretion to find that Complainant's failure to comply with my OSC re: Dismissal constitutes his "consent" to granting Respondent's earlier request for dismissal due to its bankruptcy discharge. *See U.S. v. Real Property Located in Incline Village*, 47 F.3d 1511, 1519 (9th Cir. 1995) (case dismissed pursuant to local district court rule allowing implied consent to dismissal for failing to file a pleading).

II. Dismissal Is Proper Because Complainant Has Failed to Present Sufficient Evidence to Raise the Inference That His Claim Was Excepted from Respondent's Discharge

Assuming *arguendo* that the complaint should not be dismissed due to Complainant's failure to timely comply with my OSC re: Dismissal and to prevent undue delay, dismissal is proper because Complainant has failed to present sufficient evidence to raise the inference that his claim is excepted from Respondent's Chapter 11 bankruptcy discharge under 11 U.S.C. § 1141(d). Complainant has not responded to the OSC re: Dismissal. He has failed to prove or demonstrate that his claim remains viable after confirmation of Respondent's reorganization plan. Finally, Respondent has come forward with a strong statutory argument that Complainant's claim was discharged under 11 U.S.C. § 1141(d) and that I am enjoined from going forward with trial in this case under 11 U.S.C. § 524(a).

CONCLUSION

I find that Complainant's claim should be dismissed based on his failure to comply with my lawful order, which has resulted in undue delay in the disposition of this case and other cases on my docket. I further find that Respondent is entitled to dismissal of the instant whistleblower complaint because Complainant has failed to make any showing to raise the inference that his claim is excepted from Respondent's Chapter 11 bankruptcy discharge under 11 U.S.C. § 1141(d).

DECISION AND ORDER

For the reasons stated above:

IT IS ORDERED that Complainant William Briggs' AIR 21 whistleblower complaint against United Air Lines, Inc., OALJ Case No. 2003-AIR-00003, is **DISMISSED With Prejudice** and without cost or attorneys' fees to either party.

A

GERALD M. ETCHINGHAM
Administrative Law Judge

San Francisco, California

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 of 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, NW, Washington DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, 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* 29 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, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 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, Washington, DC 20210. *See* 29 C.F.R. § 1979.110(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