



Issue Date: 10 March 2005

CASE NO.: 2005-AIR-11

In the Matter of:

MICHAEL DRISCOLL,
Complainant

v.

SPIRIT AIRLINES, INC.,
Respondent

**DECISION AND ORDER APPROVING
WITHDRAWAL OF OBJECTIONS**

The above-captioned claim arose from a complaint filed under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 42 U.S.C. § 42121 (“AIR Act”). A hearing is scheduled for April 12, 2005, and continuing, as necessary, through April 15, 2005, in Detroit, Michigan.

Michael Driscoll filed his complaint with the Occupational Safety and Health Administration (OSHA) alleging that Spirit Airlines violated whistleblower protection provisions by letter dated December 16, 2004. On January 7, 2005, the Occupational Safety and Health Administration dismissed Mr. Driscoll’s December 16, 2004 complaint. OSHA determined that the complaint was not timely filed and did not contain equitable principles to justify tolling. On January 16, 2005, the Complainant objected to such findings and requested a hearing before the Office of Administrative Law Judges. As such, on January 25, 2005, the undersigned issued a Notice of Hearing.

On February 24, 2005, Respondent, Spirit Airlines, through counsel, filed a Motion to Dismiss. On March 8, 2005, prior to a ruling by this Court on the Motion to Dismiss, Complainant notified the undersigned, by telephone call and letter, that he no longer seeks to pursue his request for a hearing before the Office of Administrative Law Judges.

Twenty-nine C.F.R. § 1979.111 provides that, at any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written request for withdrawal with the administrative law judge. Such withdrawals must be approved by the Administrative Law Judge. As the Complainant is proceeding *pro se*, I construe his request for “dismissal” and “closing” of the claim as a request for withdrawal of his objections to the January 7, 2005 Occupational Safety and Health Administration’s findings. I find that there is good cause for the withdrawal and approve the Complainant’s request.

ORDER

WHEREFORE, IT IS HEREBY ORDERED that, the Complainant's objections to the January 7, 2005 OSHA findings are WITHDRAWN. The January 7, 2005 findings shall constitute the final order of the Secretary of Labor. IT IS FURTHER ORDERED that the hearing set for April 12, 2005, is CANCELLED.

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RICHARD A. MORGAN
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This decision shall become the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110, unless a petition for review is filed within ten (10) business days of the date of the decision of the administrative law judge with the Administrative Review Board ("Board"), US Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, and within 30 days of the filing of the petition, the ARB issues an order notifying the parties that the case has been accepted for review. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b).