



Issue Date: 08 March 2005

In the Matter of:

MARK S. SASSMAN, SR.,
Complainant

Case No. 2005-AIR-4

v.

UNITED AIRLINES, and
ALLIANT CREDIT UNION,
Respondents

ORDER DISMISSING COMPLAINT

This case arises under the employee protection provision of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106-181, 49 U.S.C. § 42121 ("AIR 21" or "Act"). This statutory provision prohibits an air carrier, or contractor or subcontractor of an air carrier, from discharging or otherwise discriminating against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration (FAA) or any other provision of Federal law relating to air carrier safety; or filed, testified, assisted or participated in a proceeding relating to a violation or alleged violation relating to air carrier safety. On December 9, 2004, I issued a notice to the Respondents that the complaint was pending, and an order to the Complainant to show cause why his complaint should not be dismissed because it failed to state a claim for which relief can be granted, and because it was untimely. On January 27, 2005, Respondent United Airlines served a motion to dismiss because the Complainant had failed to respond to the order to show cause. On January 31, 2005, the Complainant responded that he had never received the order to show cause, and requested that all documents be served on him by certified mail. Respondent Alliant Credit Union supported United Airlines' motion to dismiss. On February 4, 2005, I denied the Complainant's request for service by certified mail, and also denied the Respondents' motion to dismiss, giving the Complainant additional time to respond to the order to show cause. The Complainant has now filed his response to the order to show cause, and Respondent United Airlines has replied. As more than 15 days have passed since the Complainant filed his response to the order to show cause, pursuant to 29 CFR §§ 18.4 and 18.6, the matter is now ripe for ruling.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Complainant, Mark S. Sassman, Sr., is a former employee of United Airlines who filed a whistleblower complaint against United Airlines with the U.S. Department of Labor on January 3, 2001. The complaint was stayed due to United Airlines' bankruptcy. *See* Order Staying Proceedings issued by Administrative Law Judge Robert L. Hillyard on January 23, 2003, in the case of *Sassman v. United Airlines*, 2001-AIR-7, found on the web-site of the Office of Administrative Law Judges at <http://www.oalj.dol.gov/public/wblower/decsn/01air07a.htm>.
2. On July 1, 2004, Mr. Sassman wrote a letter addressed to the Department of Labor OSHA, Indiana Government Center – South, 402 West Washington Street, Room W195, Indianapolis, Indiana 46204, an agency of the State of Indiana. The stated purposes of the letter were to dispute the validity of a debt, and to file a complaint under AIR 21. The subject matter of the letter concerned attempts by Respondent Alliant Credit Union, formerly United Airlines Credit Union, commencing in January 2002, to collect arrearages on a loan made by the Credit Union to Mr. Sassman for purchase of a van.
3. On September 20, 2004, Mr. Sassman wrote to the Secretary of Labor, complaining that he had heard nothing from the U.S. Department of Labor concerning his complaint allegedly filed on July 1, 2004. Mr. Sassman enclosed a copy of the July 2004 letter with his letter to the Secretary.
4. On October 14, 2004, a representative for the Chicago Regional Administrator of the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor, replied to Mr. Sassman's letter to the Secretary of Labor, advising him that his July 2004 complaint had been filed with a state agency, was untimely as it did not meet the 90-day filing requirement of AIR 21, and failed to present a prima facie showing that protected behavior was a contributing factor to an unfavorable personnel action, but that the conduct complained of might constitute additional damages in his existing complaint against United Airlines. He was advised that if he wished to file another whistleblower complaint under AIR 21, he should submit a written complaint to the Indianapolis Area Office of OSHA.
5. On October 27, 2004, Mr. Sassman wrote to the Chief Administrative Law Judge for the U.S. Department of Labor to file objections to the October 14, 2004, "decision" by the Department of Labor.
6. The complaint addressed to the State of Indiana dated July 1, 2004, fails to state a claim for which relief can be granted pursuant to AIR 21 because it does not articulate an unfavorable personnel action.
7. The allegations in the July 1, 2004 letter are untimely as they occurred more than 90 days before the letter was written, and the Complainant has shown no grounds for equitable tolling or application of a theory of continuing violation.

ORDER

IT IS THEREFORE ORDERED that this case is DISMISSED.

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ALICE M. CRAFT
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 timely filed 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 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. To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge. 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 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).