



Issue Date: 01 March 2010

CASE NO: 2009-AIR-00013

In the Matter of:

MICHAEL ALEWINE, *et al.*,
Complainant,

v.

SOUTHERN AIR, INC.
Respondent.

**DECISION AND ORDER APPROVING
SETTLEMENT AND DISMISSING COMPLAINT**

This matter arises under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121 (“AIR 21”). On February 22, 2010, Complainants filed a settlement agreement entitled “Settlement and Confidentiality Agreement and Release of Claims.” On February 24, 2010, I issued an order disapproving the settlement agreement because paragraph 27 of the agreement appeared to prohibit Complainants from voluntarily communicating any information regarding alleged violations of air safety regulations to the Federal Aviation Administration, the U.S. Department of Labor, or any other appropriate governmental entity. Therefore, I found the settlement agreement contrary to public policy and ordered the parties to either file an amended Settlement Agreement within thirty days or notify me that a settlement agreement was no longer possible, in which case the matter would be rescheduled for a formal hearing.

On February 26, 2010, counsel for Complainants filed an Addendum to the settlement agreement on behalf of all parties, signed by all counsel of record. The Addendum added the following provision to paragraph 27:

Notwithstanding the above, nothing in this Agreement shall preclude a Crewmember from communicating any information regarding alleged violations of air safety regulations to the FAA, Department of Labor, or any other appropriate governmental entity. The Parties agree that Southern Air shall not be precluded from responding to any such allegations.

Pursuant to 29 C.F.R. § 1979.111(d)(2), I must review the terms and conditions of the settlement agreement and determine if the agreement is a fair, adequate, and reasonable settlement of Complainants’ AIR 21 complaints of retaliation. In light of the provision in the Addendum clarifying that Complainants are not prohibited from voluntarily communicating any

information regarding alleged violations of air safety regulations to state or federal agencies, I find that the agreement is fair, adequate, and reasonable.

In addition, I have considered Respondent's request to treat the entire settlement agreement as confidential financial information.¹ That request will be granted. The contents of the settlement may be disclosed, however, under the provisions of the Freedom of Information Act, but only in accordance with the regulations set forth at 29 C.F.R. § 70.26.

Finally, to the extent the Settlement and Confidentiality Agreement and Release of Claims submitted by the parties contains provisions that may relate to any other AIR21 administrative complaint, or any action by Complainants or Respondent under any other statute, or in any other court, this Decision and Order makes no determination regarding the propriety of these provisions.²

Order

1. Based on the foregoing, IT IS HEREBY ORDERED that the Settlement Agreement and Release of Claims filed on February 22, 2010 and the Addendum filed February 26, 2010, are APPROVED.
2. IT IS FURTHER ORDERED that the complaint filed by Complainants in 2009-AIR-00013 are DISMISSED WITH PREJUDICE.
3. IT IS FURTHER ORDERED that the Settlement Agreement shall be treated as confidential subject to the provisions of 29 C.F.R. § 70.26.

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STEPHEN L. PURCELL
Associate Chief Judge

Washington, D.C.

¹ In her cover letter submitted with the parties' settlement agreement, Kathryn Emmett, Complainants' counsel, noted that Respondent regards the entire Settlement and Confidentiality Agreement as confidential and privileged financial and business information. The agreement itself contains various non-disclosure provisions, e.g., the provisions referenced in my prior order disapproving the settlement agreement.

² The settlement agreement submitted by the parties references other administrative complaints filed with the Office of Administrative Law Judges and lawsuits filed in United States District Court for the District of Connecticut and the Superior Court of Connecticut. My authority over settlement agreements is limited to the statutes that are within the jurisdiction of the Office of Administrative Law Judges as defined by the applicable statute and to cases in which I am the presiding administrative law judge. Therefore, my approval is limited to this case, and I approve the agreement only insofar as it pertains to Complainants' AIR 21 claims in Case No. 2009-AIR-00013, the case which is presently before me.