

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 17 August 2011

CASE NO.: 2009 AIR 29
In the Matter of

ANTHONY BATTON
Complainant

v.

RYAN INTERNATIONAL AIRLINES
Respondent

Appearances: Mr. John C. Ireland, Attorney
For the Complainant

Mr. Charles C. Jackson, Attorney
Ms. Kirsten A. Milton, Attorney
For the Respondent

Before: Richard T. Stansell-Gamm
Administrative Law Judge

**DECISION AND ORDER –
DISMISSAL OF COMPLAINT**

This case arises under the employee protection provisions 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 “the Act”), as implemented by 29 C.F.R. Part 1979. This statutory provision, in part, 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, or participated in a proceeding, relating to any violation or alleged violation of any order, regulations, or standard of the Federal Aviation Administration (“FAA”) or any other provision of Federal law relating to air carrier safety. 49 U.S.C. § 42121(a)(2) - (4).

Procedural History

On September 25, 2008, Mr. Batton filed a complaint with the Occupational Safety and Health Administration (“OSHA”), U.S. Department of Labor (“DOL”), alleging that Ryan International Airlines (“Ryan”) terminated his employment on September 2, 2008 due to his reporting violations of air safety regulations by Ryan to the FAA.

On August 26, 2009, after an investigation of Mr. Batton's complaint, the Area Director for OSHA notified the parties that she found no violation of the Act's employee protection provisions. Specifically, the area director determined that the preponderance of the evidence demonstrated that Ryan had no knowledge of Mr. Batton's protected activities at the time his employment was terminated. On September 22, 2009, Mr. Batton objected to findings and requested an administrative hearing.

Pursuant to a Notice of Hearing, dated January 22, 2010, (ALJ I),¹ I conducted a hearing on May 18, 2010 in Rockford, Illinois with Mr. Batton, Mr. Ireland, Mr. Jackson, and Ms. Milton.

Evidence Discussion

At the hearing, TR, p. 802, and during a July 22, 2010 telephone conference call, I left the record open through September 10, 2010 for the submission of post-hearing depositions of Ms. Howe and Ms. Guzman. On July 22, 2010, I received the July 9, 2010 deposition of Ms. Stephanie Howe, which I now admit into evidence as CX X. The additional deposition of Ms. Guzman was not taken.

Because the FAA investigation of Mr. Batton's complaint by Mr. White had not been completed, I also left the record open for 60 days to consider whether the FAA investigation may be admissible upon completion, TR, p. 804. Long after the expiration of the 60 day period on May 16, 2011 and June 9, 2011, I received two requests from Complainant's counsel to reopen the record for inclusion of the FAA documents recently received through a Freedom of Information Act ("FOIA") request.

On June 16, 2011, I received Respondent's counsel's numerous objections to the requests. Noting that the latest dated proffered FAA document was completed in 2009, well before the May 2010 hearing, and that the FAA documentation was not obtained until an April 4, 2011 FOIA request, Respondent maintains the Complainant has not established that the additional evidence was not readily available prior to the closing of the record. Respondent also asserts prejudice since the FAA documents were not available prior to the questioning of Mr. White, the FAA inspector, at the May 2010 hearing. Also, the FAA documents are not relevant since any identified technical violations have nothing to do with the Complainant's termination. Finally, Captain Clayton's statement to the FAA has little probative value.

Upon consideration of the parties' positions, I first note that during Mr. White's May 20, 2010 hearing testimony by telephone conference, the FAA counsel interpreted the questioning to confer with Mr. White because "the investigation into the Complaint is ongoing," TR, p. 664. Consequently, I find the FAA documentation was not available prior to the close of the hearing on May 20, 2010 and the questioning of Mr. White. Next, while the closing of the evidentiary record usually coincides the close of the hearing, as noted above, I left the record open post-hearing for several months. Although Complainant's counsel FOIA request occurred months after the record finally closed in September 2010, the FAA documentation he ultimately obtained

¹The following notations appear in this decision to identify specific evidence: CX – Complainant exhibit; RX – Respondent exhibit; ALJ – Administrative Law Judge exhibit; and, TR – Transcript of hearing.

was nevertheless unavailable at the time of the hearing. Since I have obviously not yet rendered a decision in this case, and despite counsel's delayed FOIA request, the admission of the recently obtained FAA documentation at this time rather than some time between the close of the hearing on May 20, 2010 and the close of the record on September 10, 2010 has little practical significance and permits a more complete record. Regarding relevance, the FAA investigation clearly relates to Mr. Batton's purported protected activities. However, upon review of the proffered FAA documents on relevance grounds, I believe the admission of only Mr. White's twenty-three page January 12, 2009 investigation report and his associated three page February 12, 2009 memorandum is warranted. Regarding these two documents, the Respondent's objections are overruled and the report and memorandum are admitted as CX Y. The remaining FAA documents, including witness statements, additional FAA correspondence, and investigation of collateral issues are not admitted and will be attached to the record as offered, not admitted.

Accordingly, my decision in this case is based on the testimony presented at the hearing and the following documents admitted into evidence: CX 1 to CX 6, CX 8 to CX 15, CX 21, CX 23, CX 23(a), CX 23(b), CX 24 to CX 28, CX 30, CX 31, CX 34 to CX 38, CX 38(a), CX 40 to CX 43, CX 45, CX 49, CX 50, CX A, CX B, CX D, CX E, CX F, CX H, CX I, CX J, CX K, CX L, CX N, CX P, CX U, CX X, CX Y, RX 2 to RX 23, RX 27, and RX 28.

Complainant's Statement of the Case²

Through January 2008, Mr. Batton was successfully performing his duties as a Ryan flight attendant and was offered additional training to become a lead flight attendant. In the spring of 2008, Mr. Batton was accosted by an individual on one trip and involved in another incident during recurrent training. Notably, no disciplinary action was taken. However, on July 9, 2008, after complaining to Ryan mechanics, Mr. Batton contacted the FAA concerning mechanical issues with Ryan aircraft and safety concerns, and on July 17, 2008 the FAA conducted an inspection of Ryan aircraft. Suddenly, after these events, Mr. Batton was placed under extreme scrutiny. He was removed from a flight and returned to Rockford for issuance of a discipline action. And, after his last flight in August 2008, based on a purported complaint about Mr. Batton, he was terminated by Ryan. However, testimony by Mr. Batton and another flight attendant shows that the purported misconduct leading to these disciplinary actions did not occur. Additionally, Ryan only began to assert that the pre-July 2008 events raised disciplinary issues upon OSHA's investigation of Mr. Batton's AIR 21 complaint. Clearly, this sequence of events and circumstances establish sufficient temporal proximity, as well as retaliatory intent, to establish that Mr. Batton's protected activity was the cause for his termination.

Consequently, since he has proven that his protected activity under AIR 21 lead to Ryan's termination of his employment, Mr. Batton seeks reinstatement with full pay, seniority, and benefits, back pay, front pay if applicable, compensatory damages for emotional distress, punitive damages, attorney fees and litigation costs.

²TR, p. 20-25, and closing brief, dated November 1, 2010.

Respondent's Statement of the Case³

Due to threatening and unprofessional behavior, lack of cooperation with co-workers, and failure to abide by its procedures and policies, Ryan terminated Mr. Batton's employment as a flight attendant.

As a flight attendant, to ensure the safety and service of Ryan's passengers, Mr. Batton was expected to work cooperatively with other flight crew members. However, in April 2008, Mr. Batton's supervisors received complaints about his behavior during a trip in late March 2008 when he was involved in an altercation with a another flight attendant in a hotel lobby. Subsequently, he also made a derogatory comment about another employee's national origin. In response, management counseled Mr. Batton on proper interaction with co-workers. Nevertheless, management continued to receive reports of Mr. Batton's inappropriate behavior, which lead to additional counseling on the company's expectations and a written warning at the end of July 2008. Yet, one month later, another complaint was received about Mr. Batton's persistent verbal harassment and bullying of another flight attendant. As result, Ryan ended his employment on September 2, 2008.

Notably, in regards to his burden of proof and critical elements in a whistleblower complaint, Mr. Batton's testimony concerning the timing of his complaint to the FAA and supporting documentation are suspect. More significantly, the evidentiary record establishes that Mr. Batton did not tell anyone in Ryan management of his alleged safety concerns or complaints to the FAA so that when Ryan supervisors terminated Mr. Batton's employment, they were unaware of his alleged protected activities. Consequently, Mr. Batton's claimed protected activities were not a factor in his termination and his AIR 21 employment discrimination complaint should be dismissed.

Additionally, based on Mr. Batton's increasingly serious misconduct and abusive behavior towards co-workers, Ryan has presented clear and convincing evidence that his employment would have been terminated even in the absence of alleged protected activity. Finally, Mr. Batton failed to mitigate his damages by seeking suitable re-employment.

Issues

1. Whether Mr. Batton engaged in a protected activity under the Act.
2. If Mr. Batton engaged in a protected activity, whether that protected activity was a contributing factor in the Ryan's decision to terminate his employment on September 2, 2010.
3. If Mr. Batton's protected activity was a contributing factor in the decision to terminate his employment, whether Ryan has established by clear and convincing evidence that it would have terminated Mr. Batton's employment on September 2, 1010 in the absence of the protected activity.

³TR, p. 25-28, and closing brief, dated November 1, 2010.

SUMMARY OF TESTIMONY AND DOCUMENTARY EVIDENCE

Sworn Testimony

Mr. Gino Jorgensen

(TR, p. 29-111, 726, and 727)

[Direct examination by Complainant] Mr. Jorgensen began working as flight attendant for Ryan in December 2007, following initial training. Within a couple of months, he received lead flight attendant training and was offered a lead flight attendant position. The training included security and safety lessons as required by the FAA. Ryan provides contract flights for the U.S. Department of Defense (“DOD”) on various commercial aircraft, including the Boeing 737 (“B-737”), Boeing 757 (“B-757”), and Boeing 767 (“B-767”).

Mr. Jorgensen continued to work as a lead flight attendant with the exception of a few week furlough in the spring of 2008 when his base station in Milwaukee closed. In June 2008, he came to Rockford, Illinois to resume his job.

CX U describes the duties of a flight attendant. In general, a flight attendant is responsible for the safety and service of passengers. A flight attendant reports to the aircraft captain through the in-flight supervisor. The captain is the pilot who is in command of the aircraft.

Being on time is important. And, being late for show time, when the crew is expected to start on-duty is not acceptable. A flight’s show time is set by Ryan crew schedulers. Being late adversely affects the crew’s ability to prepare the aircraft for flight and achieve a timely departure. A lead flight attendant will fill out an incident report for any unusual or safety or service related issue on board the aircraft. A crew report can be e-mailed.

In-flight supervisor, in-flight manager, and lead flight attendant are the same thing. Although Mr. Jorgensen had been a lead flight attendant, when he returned to work at Rockford after his furlough, he accepted a flight attendant position until a lead flight attendant position became available.

During a flight with Ms. Jennifer Martin in July 2008, she told Mr. Jorgensen about a complaint she received that a black flight attendant named Anthony failed to serve U.S. military personnel. He was not present when Ms. Martin received the complaint. He was not aware that Ms. Martin submitted a crew report and he didn’t sign the report. At the same time, he does verify that Ms. Martin told him about the complaint.

In 2008, Ryan employed under a hundred flight attendants. In addition to Mr. Batton, about four other African Americans were flight attendants.

The first page of CX 3 is a flight and crew report. The report involves a flight from BUD (Budapest) to KWI (Kuwait) on a B-767, which has seven seats in one row. The flight lasts between five to six hours. During flights, Ryan provides food and beverage to U.S. military

personnel. Since the flight was about five hours, a hot meal and sandwich snack probably would have been served. Usually at least six flight attendants would be onboard.

In July 2008, Mr. Jorgensen was on flight assignment with Mr. Batton in Budapest. The lead flight attendant was Mr. Pflueger. At that time, Mr. Jorgensen was on reserve as a flight attendant and at a hotel waiting to be called for a flight. While on reserve, a flight attendant must be available for telephone contact, such as in his or her hotel room.

While in Budapest, on July 18, 2008, Mr. Jorgensen learned through a computer crew scheduling program that he and the reserve flight attendants, including Mr. Pflueger and Mr. Batton, were assigned a flight for the next day with a 10:00 to 10:15 a.m. show time. Mr. Jorgensen clicked a button indicating his receipt of the assignment. At that time, due to the noise associated with construction at the hotel, Mr. Pflueger had changed hotels. Through computer messaging, Mr. Jorgensen advised Mr. Pflueger of the crew assignment. And, since Mr. Pflueger wasn't staying at the same hotel, Mr. Jorgensen offered to inform the other crew members. Mr. Pflueger accepted the offer. Mr. Jorgensen then obtained the room numbers for all the crew members and left phone messages regarding the assignment. He also had the front desk deliver written notes by slipping them under the room doors. Mr. Jorgensen finished leaving the messages and notes no later than 10:30 p.m. Upon notification, an on-call member is required to respond within 10 minutes.

The next day, Mr. Batton arrived at the designated show time. However, once airborne in an aircraft that was not carrying passengers, throwing his arms around and pointing his finger, Mr. Batton aggressively and angrily confronted Mr. Jorgensen and Mr. Pflueger about the way he had been notified. He thought the notification was improper; he didn't receive a written message and the voice mail was cut-off. Mr. Batton also objected to Mr. Pflueger using Mr. Jorgensen to provide the assignment notice because he was junior in seniority to Mr. Batton. Instead, Mr. Pflueger should have notified Mr. Batton. After the confrontation, Mr. Jorgensen advised Mr. Pflueger that he was going to write a crew report about the incident. He did not report the incident to the aircraft captain.

On July 19, 2008, after the flight, Mr. Jorgensen sent an e-mail to Ms. Guzman and Ms. Bergmann, with a copy to Mr. Pflueger, about the incident, and indicated that he did not feel safe with Mr. Batton, CX 1. Due to Mr. Batton's verbal aggression, and having felt threatened by the earlier exchange, Mr. Jorgensen indicated that he'd resign rather than crew with Mr. Batton again. He questioned whether Mr. Batton would work with him as a cohesive team, especially in an emergency. After the e-mail, Mr. Jorgensen had no further communication with Ms. Guzman about the event. Since he already sent an e-mail, Mr. Jorgensen did not also report the confrontation on a crew report. Mr. Jorgensen doesn't recall flying with Mr. Batton after that incident.

In July 2008, Air Mobility Command specified how many seats could be "blocked," or reserved, with headrest covers for crew members and resting crew members so that soldiers would not sit in the seats. Generally, at that time, three seats would be blocked in the very last row of the aircraft. Mr. Jorgensen does not recall having a conversation with Mr. Pflueger or anyone about blocking aircraft seats.

[Cross examination by Respondent] In his e-mail, Mr. Jorgensen expressed his belief that while the crew had been terrific, Mr. Batton created a hostile work environment. He felt threatened by their exchange and didn't want to be in a situation where they couldn't cooperate with each other. If an immediate, serious safety issue arose, Mr. Jorgensen would report it directly to the captain.

[Direct examination by Respondent] In February of 2010, Captain Clayton approached Mr. Jorgensen on a flight and mentioned Mr. Batton's case. Mr. Jorgensen said he couldn't talk about the litigation. Captain Clayton added he could get him out of being a defendant in litigation if Mr. Jorgensen talked to him.

Mr. Adam C. Pflueger
(TR, p. 112-150 and 460-479)

[Direct examination by Complainant] Mr. Pflueger works as an in-flight supervisor and part-time instructor for Ryan. He's been a lead flight attendant since 2003. Ryan's policy in the summer of 2008 required a pre-flight briefing where positions are assigned and general flow of the flight, as well as information from the pilot's briefing, were discussed.

On July 18, 2008, Mr. Pflueger was in Budapest with Mr. Batton on a trip that went from July 9 to July 26, 2008, CX 12. Mr. Pflueger left the assigned hotel because he was not feeling well and construction was going on at the hotel. He did not remove himself from duty due to the illness. Mr. Pflueger was on reserve at the time. When notified of their assignment, Mr. Pflueger asked Mr. Jorgensen to advise the crew members, including Mr. Batton. Since it was his responsibility, Mr. Pflueger would typically provide the assignment notice. But, he was at a different hotel and instead of making separate phone calls, he asked Mr. Jorgensen to provide notice by written message and through the in-house phone. Notice is usually provided by both phone and note. Later, Mr. Jorgensen advised that he had called everyone and left notes under their doors.

The next day, Mr. Batton was present at the show time. Some time later, Mr. Batton approached Mr. Pflueger about not being properly notified. He doesn't recall much of the conversation and is not sure where it occurred. However, Mr. Batton was "a little aggressive" by leaning in with his body and his words. Mr. Pflueger doesn't recall whether anyone else was present. He doesn't recall talking to Mr. Jorgensen or the aircraft captain about Mr. Batton's concern.

In July 2008, Ryan did not have a policy of one blocked seat per crew member. Instead, a designated number of seats were blocked, usually three to five seats. In July 2008, Mr. Pflueger believes that he had a conversation with Mr. Jorgensen in Kuwait during aircraft boarding about Mr. Batton blocking five entire rows. He's not sure of the date. Mr. Batton's action would have been a violation of Ryan policy. Mr. Pflueger instructed Mr. Jorgensen to let the passengers use the seats. He did not discuss the issue with Mr. Batton since he solved the problem by unblocking the seats. Although he wasn't "passionate" about the issue, Mr. Pflueger sent an e-mail to Ms. Guzman and Ms. Berman on July 18, 2008 about the seat blocking, CX 4, to notify Ryan of the incident so they wouldn't get a violation of the DOD contract. He

indicated that he communicated to the crew the proper procedures so the situation wouldn't happen again. No one was disciplined for the seat blocking incident.

It was easier for a crew member to pass through security wearing a uniform. In Baku, Azerbaijan, after going through security, they would change to civilian clothes. In Baku, upon departure for a commercial aircraft, Mr. Pflueger requested that the crew members wear their uniforms. However, when he was standing behind Mr. Batton in line for check-in, he noticed that Mr. Batton was wearing civilian clothes. He doesn't recall whether Ms. Howe wore civilian clothes. Another flight attendant was in civilian clothes. The crew members in civilian clothes were the last persons through security and the crew had to wait for them before boarding the bus to the aircraft. Mr. Pflueger reported the incident to the in-flight department, Ms. Guzman and Ms. Bergman, because they almost missed their flight and he had requested everyone wear their uniforms but three members decided not to comply. CX 8 is Mr. Pflueger's July 23, 2008 e-mail regarding the uniform issue and reflects his observations at the time. Mr. Batton did not continue on the last leg of the flight. CX 11 is a July 28, 2008 e-mail in which Mr. Pflueger indicates that although not a violation of the flight attendant manual ("FAM") or company policies, Mr. Pflueger felt Batton was discrediting his leadership. Mr. Pflueger also had a number of performance issues with Mr. Batton. Mr. Jorgensen had also expressed concerns about Mr. Batton's work performance.

After the notification incident, Mr. Pflueger discussed the issue with Mr. Batton who said he was not ready to take an order from someone who was junior. He also believed the notification was improper. Concerning the blocked seats, Mr. Pflueger did not discuss the issue directly with Mr. Batton. Instead, he briefed the whole crew on proper procedures.

After requesting that the crew members wear uniforms, when questioned, Mr. Pflueger indicated that they didn't have to wear their uniforms but it was "strongly encouraged." The company did not have a policy that required the crew members to wear their uniforms at check-in. However, the company does have a policy about respecting a flight lead's request and making aircraft departures on time.

[Cross examination by Respondent] During their conversation about the notification, Mr. Batton was on the offensive and his body language felt "aggressive." A pilot who overheard the conversation asked Mr. Pflueger whether Mr. Batton should be removed from the flight. Mr. Pflueger said no.

Mr. Batton made Mr. Pflueger feel uncomfortable because "I was being watched, discredited," and his body language was aggressive.

Mr. Pflueger was not aware of any FAA inspections conducted in July 2008.

Mr. Andrew Yeoman
(TR, p. 151-227)

[Direct examination by Complainant] Since December 2006, Mr. Yeoman has been employed by Ryan as a manager for Human Resources. In that capacity, he is responsible for

recruitment and employee relations. Ryan has about 2,600 employees and is organized into various departments. The in-flight services department, managed by Ms. Patrice Guzman, was responsible for flight attendants. If a department wishes to terminate an employee, they prepare the termination notice and consult with Human Resources for a review and recommendation.

Mr. Batton was terminated due to claims of intimidation, harassment, and verbal assault on crewmembers. Mr. Yeoman doesn't recall whether he was involved with the termination notice for Mr. Batton. CX 15 is the September 2, 2008 termination notice, which was provided to Mr. Batton. The termination was based on "a multiple of events that occurred from April through June of 2008." Mr. Lyle Williams, Ms. Patrice Guzman, and Ms. Julie Bergmann were present for Mr. Batton's termination. Mr. Yeoman was not present. All four individuals were "decision makers," who reviewed the "facts" of the situation and agreed with the action. Ms. Guzman was the person in charge of the flight attendant unit. Ms. Bergmann was the manager of in-flight services department. And, Mr. Williams was the Director of Human Resources.

Mr. Yeoman doesn't recall the specifics of the conversation the four managers had about Mr. Batton. The group decided to terminate his employment and Mr. Yeoman did not disagree with that decision. Mr. Batton was terminated due to his "bad work history that he presented to us from April to June, July, August" and "the pattern of behavior." Despite counseling and coaching, "nothing changed." He was unable to follow policy and procedure. His behavior was inappropriate. Mr. Yeoman doesn't recall the final event that led to termination.

Mr. Batton received a final warning letter on July 28, 2008, CX 14. Either Ms. Guzman or Ms. Bergmann prepared the letter. Mr. Yeoman was not present when the letter was presented to Mr. Batton. He does not recall his conversations with Ms. Guzman or Ms. Bergmann about the letter.

Mr. Yeoman believes there were complaints about Mr. Batton starting in April 2008 that arrived by e-mail from flight attendants. He doesn't recall the specific complaints. The complaints regarding issues with co-workers continued into June 2008. Mr. Yeoman believes there were three incidents: a) harassing his colleague, b) harassing a fellow employee overseas, and c) a racial incident with a co-worker in Miami.

Regarding the third incident, Mr. Batton was on a lunch break during a training session in Miami and eating at a Burger King. He commented to a co-worker with Cuban ethnicity that she probably felt at home in the area because of her ethnicity. The co-worker was offended by the comment and escalated her concern to the instructor who passed it on to the in-flight services manager by e-mail. Mr. Yeoman, Ms. Guzman and Ms. Bergmann met with Mr. Batton to inquire about the incident. When asked what happened, Mr. Batton presented a written statement and "referenced the same thing" but didn't believe the remark was offensive. CX 23 contains a series of e-mail from June 16 to 19, 2008, including the e-mail complaint from the co-worker. They decided that whether or not Mr. Batton intended the remark to be offensive, it was nonetheless inappropriate. Mr. Yeoman doesn't recall Mr. Batton raising an issue about someone saying something his African American ethnicity. The e-mail series also contains the instructor's opinion that he didn't think Mr. Batton meant the comment to be derogatory.

Another incident occurred in Europe or Asia with another flight attendant when Mr. Batton shared personal information about her with hotel staff that made her feel very uncomfortable. CX 24 is a July 22, 2008 series of e-mails about the incident. Mr. Yeoman doesn't recall whether he made any disciplinary decisions regarding this incident. However, Mr. Batton received a last chance warning letter on July 28, 2008. CX 25 and CX 26 are additional sets of e-mails about the incident from July 23, 2008.

The company has a procedure whereby an employee can appeal a discipline action to a functional vice president. Mr. Yeoman does not believe Mr. Batton used that procedure.

The incident with Ms. Thomas involved Mr. Batton antagonizing her during a flight, creating an uncomfortable environment. CX 31 is an e-mail series relating to the incident. Mr. Yeoman doesn't know whether other individuals provided statements. As things escalated with Mr. Batton, Mr. Yeoman involved his supervisor, Mr. Williams.

In compliance with state law, Mr. Yeoman believes Ryan provided Mr. Batton a copy of his personnel file as requested. CX 37 involves Mr. Batton's request for the personnel file. Mr. Yeoman believes he sent Mr. Batton a copy when he requested it.

CX 38 are Mr. Yeoman's notes from his meetings about the incident with Ms. Thomas. Ms. Deb O'Shiel, who was the lead flight attendant at that time, indicates that she was afraid of Mr. Batton.

[ALJ examination] Ryan has a progressive disciplinary policy, stepping from coaching/counseling to verbal warning, written warning, final written warning, and termination. Some situations may warrant moving straight to final written warning or termination. The policy is set out in the employee handbook. In a final warning letter, an employee is advised of the expected corrective action and that another incident could lead to termination.

Mr. Yeoman was not aware at the time that Mr. Batton had made any complaints to the FAA. During the disciplinary discussions in which he participated no one mentioned Mr. Batton's complaints to the FAA.

The disciplinary appeal process is outlined in the employee handbook. CX L are pages from the handbook which includes the appeal process.

Ms. Julie Bergmann
(TR, p. 227-314)

[Direct examination by Complainant] Mr. Bergmann is the manager of in-flight services. In that capacity, she monitors the everyday activities of flight attendants. For disciplinary issues, she gathers facts, usually through crew reports. She'll seek guidance from Human Resources and the director of in-flight services, who is also in charge of catering and training. She started as a flight attendant with Ryan in 2000 and became a lead flight attendant following training. Ms. Bergmann has also worked as a lead flight attendant and base coordinator.

Ms. Bergmann was aware that the FAA conducted an inspection of the in-cabin area of a Ryan aircraft in July 2008 because the FAA identified as discrepancies soda cans and drawers on the seats and floor of the aircraft. As corrective action, Ms. Guzman put out a memo to the flight attendants indicating that supplies could not be left out and had to be secured, CX 6. Ms. Bergmann had no discussion with the FAA about the inspection. Ms. Bergmann does not believe that Ms. Guzman spoke with the FAA inspectors. To her knowledge, that was the only FAA inspection conducted in July 2008.

Mr. Batton was terminated after a Guam/Hawaii flight on a trip from August 23 to 30, 2008. "He had a myriad of infractions," with harassment being the "biggest part," as well as failure to follow policy and aggressive and threatening behavior toward other flight attendants. Ms. Bergman received phone calls from crying flight attendants, including Ms. Thomas and Ms. O'Shiel about Mr. Batton. Ms. Thomas called after a trip to indicate she felt threatened and that her safety was at risk. Mr. Batton told her she was going to be broken. She felt intimidated and didn't like the racial comments. She had thought about not continuing the trip but finished it anyway. Ms. O'Shiel called the same night and was also crying. She felt unsafe and had a situation with a new flight attendant and tried to confront the problem but couldn't get a positive response. She also received a statement from Ms. Charleston and contacted Mr. Batton after the investigation started.

Ms. Bergmann received crew reports from Mr. Pflueger about Mr. Batton blocking seats and his being insubordinate. The blocking of seats was an issue because the DOD contract has established guidelines, which allow only three blocked seats. Mr. Batton had blocked several rows. Ms. Bergmann did not discuss the situation with Mr. Batton since Ms. Guzman was handling the incident. According to Mr. Miller, the Director of DOD contracts, Mr. Pflueger was responsible for the quality compliance infraction, CX 9. Ms. Bergmann did not discipline Mr. Pflueger. Other than this incident, Mr. Pflueger expressed no other complaint.

Mr. Bergmann was present with Ms. Guzman and Mr. Williams when Mr. Batton was given the final warning letter on July 28, 2008, CX 14.

Mr. Jorgensen had complained that he was having a hard time giving direction to crew members, including Mr. Batton, who was not being cooperative. In his opinion, Mr. Batton behaved as if Mr. Jorgensen did not have the right to give him direction.

The incidents with Mr. Batton began about six months before his termination. There was a verbal altercation between the lead flight attendant and Mr. Batton. Ms. Shellie Maddux also reported being uncomfortable with Mr. Batton. Regarding the hotel confrontation, Ms. Bergmann called him in and listened to his side of the story. Mr. Batton indicated that he only been trying to talk to the lead flight attendant during a card-type game and it got a little out of hand. Ms. Bergmann indicated that she would investigate the incident. Her investigation revealed that Mr. Batton was "pushing the issue, asking very personal questions, concerning one flight attendant, that it did get very heated." The other flight attendants asked them to take it outside. A series of e-mails from April 4 to 8, 2008 discuss the incident, CX 21. Mr. Batton's statement is also in CX 21. He indicated that he wasn't mad at Ms. Maddux, just disappointed. Ms. Maddux was later suspended for other reasons.

From her conversations and crew reports, Ms. Bergmann is aware of the incident in Miami with Ms. Diaz. Ms. Guzman investigated the incident.

Ms. Bergmann received an e-mail complaint from another flight attendant in July 2008 that Mr. Batton was discussing her transgender situation with hotel staff in Iceland. Again, Ms. Guzman handled the investigation.

Ms. Bergmann doesn't recall Mr. Pflueger raising issues about uniforms or hotel check-in.

In July 2008, Mr. Batton was removed from a flight and flown directly back to Rockford. Ms. Bergmann has no knowledge regarding Mr. Batton's refusal to serve troops.

Ms. Bergmann is unaware of any appeals by Mr. Batton of disciplinary actions.

The incident that led to termination after the final warning letter was the intimidation of Ms. Thomas. The statements from Ms. Thomas, Ms. O'Shiel and Mr. Charleston were consistent. Ms. Bergmann did not speak with Mr. Batton about the statements because Ms. Guzman took over and handled the incident.

At the termination meeting, Mr. Batton was upset and denied the allegation. He refused to sign the termination letter. Security was present for the meeting.

At a previous meeting regarding his termination, Ms. Bergmann recommended termination because Mr. Batton was "intimidating, overpowering, and that was not a good combination on an aircraft."

CX 38 is a September 3, 2008 e-mail Ms. Bergmann sent out regarding the reporting of late arrivals to crew scheduling and references a meeting in which she was blind-sided by the fact a flight attendant was late but the incident was not reported. Ms. Bergmann doesn't recall what meeting to which she was referring.

The invitation for lead flight attendant training is open to all flight attendants. Only those flight attendants who pass a test are offered an upgrade to lead flight attendant. CX 40 is Mr. Batton's invitation to flight lead training.

CX 34 is a statement from Ms. Howe which she sent to Ms. Bergmann.

[Cross examination by Respondent] CX 31 is a crew report from Ms. Thomas. Ms. Bergmann considered the e-mail a complaint about Mr. Batton's badgering, harassment, and intimidation. Ms. Bergmann was concerned about the statement that Mr. Batton was confronting her because God told him to do so.

RX 19 is Ms. O'Shiel's August 31, 2008 e-mail statement which indicates Ms. Thomas' concern that Mr. Batton threatened to break her. Ms. O'Shiel was concerned about Mr. Batton

making these kinds of statements to a new flight attendant like Ms. Thomas. Mr. O'Shiel indicated that Mr. Batton asked that she not report the incident.

In making her termination recommendation, Ms. Bergmann considered the concerns raised by Ms. Thomas and Ms. O'Shiel.

RX 21 is Ms. Charleston's September 2, 2008 e-mail sent in the morning. Ms. Bergman also relied on its contents in agreeing to the termination action which took place in the afternoon of September 2, 2008.

Ms. Bergmann also considered Ms. Diaz's complaint, CX 23. She also considered the contents of RX 14 and Mr. Batton's response, RX 18.

Under Ryan policy, harassment and conduct unbecoming a flight attendant are "fireable" offenses.

Safety is a number one priority for Ryan.

Before Mr. Batton's termination, Ms. Bergmann never heard that he made any complaints to the FAA.

[Redirect examination] Ms. Thomas sent her report after she landed.

Ms. Bergman was not involved in the appeal process.

Prior to the termination, Ms. Bergmann was aware of Ms. Howe's statement, CX 34, but she considered it prejudiced because it didn't match the other crew reports.

Mr. Lyle R. Williams
(TR, p. 323-417 and 859-866)

[Direct examination by Complainant] Mr. Williams is the director of Human Resources for Ryan. He has 15 years of human resource experience. His responsibilities include recruiting, selecting, hiring, retention and termination. When individual personnel issues arise, Mr. Yeoman would address the concerns. If the issues became more frequent or significant, then Mr. Williams would become involved and make a judgment on the appropriateness of the action. If a disagreement develops between the operational department and Human Resources on the proper response, then the issue is evaluated to the organizational vice president.

Mr. Williams was present for the July 28th meeting with Mr. Batton when a written warning was issued. The goal of the meeting was to impress on Mr. Batton the significance of the issues and help him succeed. They shared with Mr. Batton the feedback and complaints they had been receiving, which reflected substandard performance. Some of the concerns included his not providing water to passengers, the service delivery issue. Mr. Batton disagreed with their understanding of the events. He maintained many of the incidents didn't happen. The complaints from co-workers concerned his inability to work well with others, his refusal to take

directions from flight managers and leads, and his “confrontive” and disagreeable conversations. However, since he had multiple meetings with Mr. Batton, Mr. Williams is a little confused about the specific topics in the respective meetings.

Regarding the employee confrontations, “in every case, anything we shared with him as a perceived issue, a concern of ours, he argued did not happen the way it was said to have happened.” The confrontations included the situation in Germany or Budapest in the hotel lobby.

About April 2008, the first meeting was a coaching session with Mr. Batton. A coaching discipline form was used to identify problem areas and specific corrective actions. The meeting arose due to Ms. Diaz’s complaint. Giving Mr. Batton the benefit of the doubt, they coached him on some methods and techniques for working in a diverse workplace. Mr. Batton didn’t disagree that the exchange occurred. Instead, he indicated his intention and motivation were different than the ones communicated to Mr. Williams. Mr. Williams didn’t necessarily believe either description. However, he focused on how people may misunderstand certain statements and the need to be more sensitive to issues of race and national heritage. Those were the themes of the meeting with Mr. Batton, Mr. Batton seemed receptive. A coaching session is “not necessarily discipline.” It’s “advice” rather than discipline. It’s a step in the progressive disciplinary process. But, at the time, Mr. Williams made no determination that Mr. Batton had done something wrong. At the same time, the counseling session identifies a potential problem or undesirable performance issue.

The lobby incident involved a confrontation in a European hotel. Possibly the counseling session covered that incident also. He’s not aware whether Mr. Batton was disciplined for the incident. Mr. Williams believes the incident was discussed in one of the three meetings, coaching, warning letter, and termination, he had with Mr. Batton. Shortly after the incident, Ms. Maddux was demoted from lead flight attendant. This incident contributed to her demotion.

The flight attendant position descriptions and training provide performance standards. Rather than annual reviews, their supervisors do line checks, or check rides, to ensure conformance to standards.

Between the coaching session in April and the July 2008 meeting, feedback accumulated. While the Miami incident may have involved a misunderstanding, additional input from peers and supervisors suggested there was a problem with Mr. Batton’s ability to work well with a team. The reported problems adversely reflected on the crew’s ability to react to emergencies. Flight management became very concerned. So, they decided to put Mr. Batton “on warning” to change his behavior. Ms. Guzman made the decision to move to a final warning and Mr. Batton was removed from a flight and returned to Rockford due to the notification issue in Europe. Removing Mr. Batton from the flight was unusual due to the associated expense. Mr. Williams did not disagree because some of the multiple complaints involved a pattern of aggressive and confrontational behavior and a resistance to direction.

The July 28, 2008 session was a “last chance” or “final warning” meeting. At that time, the company believed his performance was unacceptable and must change if employment was to

continue. The meeting was longer than normal. The warning letter, CX 14, identifies the following deficiencies: refusal to cooperate with others, passenger complaints, and behavior, including gossip, that violates company policy and privacy of other crew members. The letter warned that failure to comply with Ryan policies and procedures would result in immediate termination. Mr. Williams believes the gossip refers to the transgender disclosure in Iceland. Mr. Batton didn't agree that he had gossiped about the flight attendant's gender identity.

Mr. Williams investigated the notification incident and reviewed Mr. Batton's response that he believed that he was improperly notified. Flight management indicated there was nothing unacceptable or abnormal about the process used by Mr. Pflueger and Mr. Jorgensen. Mr. Williams did not believe Mr. Batton's reaction was justified. Flight management was concerned with Mr. Batton's response. Mr. Williams considered whether other flight attendants may be attempting to make Mr. Batton look bad; however, flight management indicated Mr. Pflueger and Mr. Jorgensen were credible employees

Mr. Williams was also aware that Mr. Batton had attempted, or intended, to violate the company's policy on blocking seats.

Mr. Batton subsequently responded to the warning letter on August 5, 2008 asserting the discipline was too severe and harsh, CX 27. Since Mr. Williams believed the warning was appropriate, he took no further action on the appeal. The appeal went no further. He became aware of the appeal on August 7th. Under their policy, Mr. Batton should have sent the appeal to the functional vice president, "It's not my job to elevate it." In addition, Mr. Williams considered the correspondence to be a letter of disagreement. In another case, an employee had gone directly to the vice president.

Prior to September 2, 2008, Ms. Guzman and Ms. Bergmann came to Mr. Williams with a recommendation to terminate Mr. Batton's employment due to continued performance and behavioral issues. Mr. Williams doesn't recall the specifics of their concerns. Based on the information they presented, Mr. Williams was convinced that termination was appropriate. At the meeting, Mr. Batton objected to the rationale for his termination.

Mr. Williams is engaged in about six terminations of in-flight personnel a year.

[Cross examination by Respondent] Prior to the termination, Mr. Williams read Ms. Thomas' summarization of the events between her and Mr. Batton, RX 20. His threat, harassment, and ridicule of Ms. Thomas was "the straw that broke the camel's back."

Prior to the termination action, Mr. Williams never heard that Mr. Batton had made safety complaints to the FAA. Mr. Batton never told Mr. Williams that he made safety complaints to the FAA.

[Redirect examination] Mr. Batton could have made internal safety complaints through the company's toll free phone number. Employees are also trained to use anonymous reports of any concerns. Crew reports are also available. Since 2008, Ryan has adopted the FAA's ASAP system which permits the FAA to immediately see employees' internal safety concerns.

Mr. Williams never received any inside information from the FAA. He never received a heads-up from the FAA. Other than an FAA mandated alcohol and drug program, he has no involvement with the FAA. FAA enforcement issues are handled by Ryan maintenance and quality assurance organizations.

Mr. Williams knows Mr. Mikele Leland but he doesn't work for Mr. Williams. He does not know why correspondence from the FAA to Mr. Leland was sent to a human resources fax machine on November 13, 2008, RX 50.

Captain Jeffrey A. Clayton
(TR, p. 419-460 and 480-514)

[Direct examination by Complainant] Captain Clayton works as a pilot in command for Ryan. He has flown for Ryan since 1994. He also conducts test flights after periodic maintenance before an aircraft is returned for service. Over the course of his career, the business model for Ryan has changed, moving from flying for private companies to government flying, with significant growth. The growth required more flying for the company aircraft with more maintenance.

Captain Clayton met Mr. Batton in August 2008 on their first flight together. After arriving in Kuwait by commercial air, Captain Clayton flew the leg from Kuwait to Thailand on August 28, 2008, then he deadheaded to Guam and then to Honolulu. Captain Clayton then flew the final leg from Hawaii to Rockford. During Flight # 783 from Kuwait to Thailand, the lead flight attendant was Ms. O'Shiel. The other flight attendants were Mr. Batton, Ms. Thomas, Ms. Howe and four others. Prior flight, Captain Clayton briefed the flight attendants on multiple flight procedures. None of flight attendants raised any concerns.

In Thailand, the aircraft was on the ground for an hour and a half for refueling and a crew change, both cockpit and flight attendants. A new set of flight attendants joined the flight and Captain Clayton moved to the rear of the empty aircraft, row 30 or 31. The aircraft departed on time for Guam and Captain Clayton went to sleep within the first hour. Just before the aircraft descended into Guam, Captain Clayton woke up. During the flight between Thailand and Guam, no one said anything to him about Mr. Batton. Other than a "small" conversation, Captain Clayton didn't have any detailed conversation with Ms. Thomas. Upon arrival and departure for a hotel, lead flight attendant complimented the flight attendants for doing a good job. Later, Captain Clayton saw Ms. Thomas in a gift shop. After he introduced himself, Ms. Thomas indicated that she enjoyed her work and the opportunity to travel and buy gifts for her son who was in second grade.

The next day, Captain Clayton was scheduled to deadhead from Guam to Honolulu. The working crew left the hotel half an hour early, while the other crew members, including Captain Clayton, had a show time of 6:30 p.m. However, the lead flight attendant for the deadheading flight attendants, Ms. Debra O'Shiel, had to call Ms. Thomas because she was late. Captain Clayton did not see anyone smoking outside the van. When Ms. Thomas arrived, she apologized for being late. In Captain Clayton's opinion, her being late was not a problem since they were not the working crew. However, he cautioned her that some lead flight attendant might not

accept her being late. “No one said anything else,” including Ms. O’Shiel. Mr. Batton didn’t say anything. They put their bags in a van and departed.

On this flight, Captain Clayton sat up front in the third row, Zone A (rows 1 to 9). Again, no passengers were on board. Two other individuals, his first officer and a mechanic, were also up front. Everyone else was in the rear of the aircraft. After takeoff, Captain Clayton took a short nap for about an hour. After he woke up, he moved aft and talked with Mr. Batton about his Masonic ring. They moved forward and “just had a conversation” about masons, families, and work. Mr. Batton observed that he had not seen an African American in the left seat (pilot in command position). Captain Clayton responded that he was the only one. After about 45 minutes, the lead flight attendant came forward and asked to speak with Mr. Batton. When Mr. Batton returned, he told Captain Clayton that the flight lead attendant asked him if he knew why Ms. Thomas was crying. However, when Captain Clayton walked back, he didn’t see Ms. Thomas crying. Previously, when he went back to see Mr. Batton, he passed Ms. Thomas and she was sitting by herself in Zone B (rows 10 to 26), just pass the wing, looking out the window. She wasn’t crying then. Mr. Batton had been sitting near the emergency exit row, at the beginning of Zone C (rows 27 to 36), in an aisle seat, talking to two other flight attendants, Ms. Howe and Ms. Scott. Ms. O’Shiel, the lead flight attendant, wasn’t near that location; instead, she was near the middle of the plane, Zone B.

Captain Clayton then returned to Mr. Batton and they continued their conversation about family and work. For the rest of the flight, Ms. Thomas sat by herself; and, upon arrival in Hawaii, she was quiet. During the van ride to the hotel, Mr. Batton declined eating dinner with Captain Clayton since he had some sightseeing to do. Ms. O’Shiel only talked about their show time the next day. Ms. Thomas engaged in “small talk” with other crew members. Captain Clayton did not talk to Ms. Thomas in Hawaii or during the last flight from Honolulu to Rockford. During that last flight, Ms. O’Shiel was the lead flight attendant and Captain Clayton was the pilot in command. Ms. O’Shiel did not raise any safety or security concerns with Captain Clayton.

On September 2, 2008, Mr. Batton called Captain Clayton and told him about his termination. He really didn’t know why he had been terminated.

Captain Clayton next spoke to Ms. Thomas several months later on a flight in November 2008. She had been promoted to lead flight attendant.

When Captain Clayton asked Mr. Williams why he hadn’t been notified about the situation or asked for a statement, Mr. Williams replied that it was a matter for human resources. Captain Clayton disagrees because as a pilot in command, he is responsible for the safety of passengers and crew. So, if there had been an incident onboard, he should have been notified. Although he was deadheading at the time, he believed human resources should have obtained statements from everyone on the flight. So, Captain Clayton sent a statement to human resources, the chief pilot, and OSHA, CX 35 and CX 36.

For the last two years, Captain Clayton has been friends with Mr. Batton. Prior to August 2008, they were only acquaintances.

[Cross examination by Respondent] Taking safety into consideration, Captain Clayton would write up anything that was relevant, including minute items. Ryan encourages employees to write up safety problems so the issues can be fixed.

Ms. Thomas is an African American. She is a small person, about five feet, two or three inches.

The B-757 aircraft that flew from Guam to Honolulu has a capacity of 210 people. On that flight only about 20 crew members, active and deadheading, were onboard.

In CX 35, the reference to Ms. Lynne Carlton is a mistake, the person is Ms. Lynne Charleston. Ms. O'Shiel indicated that she didn't report the issue to Captain Clayton because he was deadheading at the time. She also told Captain Clayton that Mr. Batton intimidates and scares her.

[ALJ examination] Captain Clayton never saw Mr. Batton's final warning letter and was not aware that he had been placed on notice by Ryan concerning performance issues. Mr. Batton did not show Captain Clayton the termination letter. He is unaware of the performance issues Ryan may have had with Mr. Batton before the August 2008 flight.

Mr. Anthony Batton

(TR, p. 517-647, 679-724, and 728-858)

[Direct examination] After high school, Mr. Batton joined the U.S. Army in the infantry. He then moved to communications and staff positions. He served in the invasion of Panama and in Kuwait. After leaving the Army in Germany, he stayed and worked as a security supervisor for a hotel and later worked as a head doorman at a hotel in Berlin, Germany.

When Mr. Batton returned to the United States in October 2005, he worked at a frozen vegetable plant. However, he also posted his resume online and received a call about two years later from a recruiter for Ryan. He accepted a job offer in May 2007 and completed his training in July 2007. However, after graduation, Mr. Batton had carpal tunnel surgery and started operational flying in September 2007. After being furloughed in October 2007, Mr. Batton was called back two months later. In January 2008, Ms. Bergmann called him about lead flight attendant training. After lead flight attendant training, he was not offered a lead position.

In early April 2008, in a hotel in Germany, Mr. Batton was in a small reception lounge with a bar and seating area around 10:00 p.m. with the whole flight attendant crew, including Ms. Shellie Maddux and Ms. Stephanie Howe. Two American contractors were also present. They had been waiting for a couple of days for a return flight and were in the lounge drinking cocktails. "All of a sudden, Ms. Maddux just explodes," and first jumps on Ms. Howe for wearing blue jeans on a commercial flight several months earlier and then she started yelling at Mr. Batton about a person following his lead. A couple of the flight attendants took her outside. However, she returned after smoking a cigarette and started "going off" on Mr. Batton again. When he tried to move away, she followed and called him a big f**king p***y. So, Mr. Batton

left. He didn't raise his voice at all because he didn't want to make a scene. When he returned to Rockford, he spoke to Ms. Bergmann who told him to document the incident. So, he typed a report about the incident in an e-mail format and handed it to Ms. Bergmann. Although he believed Ms. Maddux's behavior was unprofessional, Mr. Batton declined to place her on his no-fly list, which means he wouldn't be scheduled to fly with Ms. Maddux.

In June 2008, Mr. Batton was down in Miami for recurrent training with other flight attendants, including Ms. Howe and Ms. Melissa Diaz. The crew was in a Burger King for lunch. Ms. Diaz had talked about her Cuban father and how they cooked Cuban food together and she learned how to cook Cuban food. The Burger King was in the Cuban side of Miami. So, while in line to order food, Mr. Batton asked Ms. Diaz if any of her family lived in Miami. She said yes. "And, I said, man that must be pretty cool, you can really go around and get with them." Ms. Diaz "just looked at me and she walked away." When he asked the other flight attendants what he had said that was wrong, Ms. Jessica Baker responded that it was like if someone asked him if he was from Africa. Mr. Batton went to Ms. Diaz and apologized, saying that he didn't mean anything bad; he was just making a comment. Ms. Diaz said okay.

When Mr. Batton returned home to Rockford in June, Mr. Yeoman called and asked him to come into the company headquarters for a conversation. When he arrived, Mr. Williams, Ms. Bergmann, Ms. Guzman, and Ms. Yeoman were present. When they asked about the Burger King incident, he told them what happened. He wasn't trying to hurt anyone and just asked the question because Ms. Diaz had always talked about Cuban food. They also talked about the situation with Ms. Maddux and replied that everyone thinks Ms. Maddux was demoted because of him. Ms. Guzman asked him to write an e-mail to her, Ms. Bergmann, and Mr. Yeoman about the incidents. She also handed him a yellow tab with the e-mail addresses, CX 23 B. He believes the May 17 date refers to the Burger King incident. He was also asked to describe what he had been told by "Sally" about crew scheduling which Ms. Guzman indicated was incorrect and she wanted documentation about the exchange. The fourth item was optional and refers to repercussions due to the incident with Ms. Maddux. They didn't explain how Ms. Diaz took his comment or give him any guidance. Instead, they understood where he was coming from and knew he wasn't trying to hurt her and it was okay. Other than being asked to do the e-mail, he heard nothing else about the incident until September 2008.

"About April" 2008, Mr. Batton began to have concerns about aircraft mechanical issues. On a long haul trip in a B-757, every time they stopped, the mechanic would go out and add hydraulic fluid. When Mr. Batton asked the mechanic why he kept adding hydraulic fluid, the mechanic said they had a bad leak; and, to make the whole trip, he had to keep adding fluid. On one occasion, the FAA conducted an inspection of a B-757 in Rockford and went back to question a mechanic. But, Mr. Batton doesn't know what happened. Mr. Batton also noted that the pilots were more frequently calling for the mechanic to come to the cockpit. And, he started talking to a lead mechanic, Mr. Edmond Walker, on flights, telling him the situation is not right. Mr. Walker responded that the mechanics were not saying anything because they didn't want to lose their jobs. Mr. Walker told him about the FAA hotline phone number.

On July 9, 2008, Mr. Batton was scheduled to fly with troops from Norfolk, Virginia to Budapest. However, after leaving Rockford for Norfolk, due to mechanical problems with the

hydraulic system for fuel transfer, the aircraft had to return to Rockford. Pilots who were deadheading on the flight indicated that they had the same problems on an earlier flight with the aircraft. The mechanic reset the system but some of the scheduled pilots refused to go and they started arguing about flying the plane. At that point, Mr. Batton became worried about flying in the aircraft. So, he told the crew he was going into the main building to get some snacks. However, he went into the building and called the FAA whistleblower hotline. He received a recording. Mr. Batton gave his name and phone number and then said "I have some concerns on problems that we've seen having with the airlines and I need some assistance on how to go about addressing these issues." Mr. Batton didn't describe the problems because "you don't have so much time." Mr. Batton never received any response from the FAA regarding that phone call. When Mr. Batton returned to the aircraft, he departed on an 18 day trip to Budapest. The objecting pilot also flew the aircraft after he got clearance.

Mr. Batton got off the flight in Budapest and was scheduled to remain there for 18 days as a reserve crew member. His scheduled return date was July 26, 2008. During this period, he flew a few flights out of Budapest with no problems.

Mr. Batton "never heard of the issue of blocking of seats." He worked in the back galley and had nothing to do with seat blocking. He never heard of the incident until he received his personnel file. Neither Mr. Jorgensen nor Mr. Pflueger ever talked to him about it. Once after landing, Mr. Pflueger briefed the flight crew on the company policy on blocking seats. There was no discussion about seat blocking during the July 28, 2008 conversation.

Under Ryan's policy and procedure, only two people may provide notification of crew schedule change, the crew scheduler and lead flight attendant. On July 19th, they were scheduled to be off, so Mr. Batton went out to dinner with friends. When he returned around 10:00 p.m. one crew member in the hotel indicated that the lead flight attendant, Mr. Pflueger, had changed hotels. Then, when Mr. Batton went to his room, "there was half a message" on his answering machine from Mr. Jorgensen. The message only indicated that they had been added on a trip. In response, Mr. Batton called crew scheduling and received the details. Some time later, Mr. Batton received a note from Mr. Pflueger under door that informed Mr. Batton about the trip the next day. The note indicated it was written around 10:00 p.m., CX 5, but he received it at midnight. When he went down to the front desk, they said the gentleman had just come down and written the note. He asked them for a note to confirm, CX 5.

The next day, after the aircraft passed 10,000 feet and Mr. Pflueger completed his flight attendant briefing, Mr. Batton took him aside and said he had a problem with the way he had been notified. He received only half a phone message and it's not company policy. Mr. Pflueger said okay. Then, Mr. Jorgensen who started getting loud, indicating that if he didn't understand the message, he should have called crew scheduling. Mr. Batton indicated that he didn't appreciate the way he was notify and that it was not consistent with company policy. And, if Mr. Pflueger wanted to delegate, he should do so by seniority, "why would you go and tell the person of lower seniority to put [me] on the flight? Because if he gives me the wrong time and I show up wrong, then I'm late." While he didn't like the way things were done because he could have missed the flight, Mr. Batton did not raise his voice and he was not angry. While his body language was animated, he was neither aggressive nor threatening.

Mr. Batton thinks Mr. Jorgensen left half a message on purpose. “At the end, when I kind of started adding things up, when I’d seen the note with the guys at the hotel told me downstairs, yes, I thought he did.” Mr. Jorgensen had just graduated from college and he behaved as if he knew everything better than everyone else.

On July 21 or 22, 2008, Mr. Pflueger briefed the flight attendants on their trip to Baku. He wanted everyone in their uniforms when leaving for Baku. Concerned that the city was near the Iranian border, and that he didn’t want to expose himself, Mr. Batton asked why. Ms. Howe also asked why. In response, Mr. Pflueger said they could do what they wanted. Mr. Pflueger didn’t explain why he wanted them in uniform rather than civilian clothes. So, Mr. Batton wore a business suit. Ms. Howe and Ms. Garza also wore civilian clothes. They went through customs in Vienna quicker than the other flight attendants because the crew line was longer. No one was delayed. Because he was in the back of the aircraft, he got off the aircraft after some of the other crew members.

On July 23, 2008, Mr. Batton had a show time. When Mr. Batton returned to the hotel around 8:00 p.m., a note from Mr. Pflueger told him to contact Ms. Guzman. When he went to the lobby, Mr. Pflueger handed him a phone to talk to Ms. Guzman. Ms. Guzman said they were flying him back commercial and suspending him pending an investigation. She wouldn’t tell him the reason for the investigation.

Mr. Batton arrived back in Chicago on Thursday, July 24, 2008, but Ms. Guzman said everyone would not be available till Monday, July 28th.

On July 28, 2008, Mr. Batton met with Ms. Guzman, Ms. Bergmann, and Mr. Williams. Mr. Williams indicated they had heard that sometime in July Mr. Batton had told someone in a bar in Iceland that female flight attendant was actually a man. Mr. Batton denied the allegation. He’d never been in Iceland with the flight attendant. Ms. Guzman indicated they had a statement that he refused to feed troops on a flight from Budapest to Kuwait on the 27th. Mr. Batton indicated that was not possible since he was in Rockford on suspension. They refused to show him the statements and indicated they were giving him a final warning. Because the allegations were not true, he refused to sign the final warning letter. During this meeting, nothing was said about blocking seats, the uniform incident, Ms. Maddux, or the Burger King incident. They didn’t present any policy or procedures to him.

In response, Mr. Batton later typed a letter, disagreeing with the allegations and complaining about the unfairness of the situation. He delivered the letter but never received any response.

After his return to Rockford, probably “Monday,”⁴ July 28, 2008, Mr. Batton called the FAA again to indicate that he hadn’t received a response and been out of the country. On July 29, 2008, a representative called him and gave him a phone number to call. After contacting several offices, he finally spoke with Mr. Aycox in the Chicago FAA office “like probably the

⁴TR, p. 589.

first week of August”⁵ who gave him additional phone numbers. Mr. Batton called, left messages, but received no response. When Mr. Aycox later asked if he had any luck, and Mr. Batton said no, Mr. Aycox told him to type up his complaint and send it to him so he could get the complaint to the right people. Three or four days later, “around the 8th, 9th at the latest,”⁶ he sent the written complaint to the FAA

Upon review of EX A, his complaint to the FAA, Mr. Batton believes he sent the statement to the FAA “after the 24th (of August), around this time.”⁷

Mr. Batton came off suspension on July 28, 2008 and began flying again. His last trip began on the evening of August 24, 2008. The trip was scheduled to be six or seven days. He sent his complaint, EX A to the FAA by e-mail on “the 24th, before we left.”⁸ A few hours later, Mr. Aycox called and said he had received the e-mail.

When they left Rockford, on August 24, 2008, Mr. Batton was deadheading to Budapest. However, they had a mechanical problem which Mr. Batton included in his letter to the FAA, EX A. Since the incident is in his letter to the FAA, he must have sent it later.⁹ Mr. Batton was having a hard time remembering. The letter also discusses a tail scrape in Iceland and another mechanical problem arose on August 27, 2008. So, Mr. Batton must have sent the complaint, CX A, to the FAA when he came back to Rockford on August 30, 2008.¹⁰ Mr. Batton got confused. He returned around 11:00 p.m. on August 30, 2008. The next day, on August 31, 2008 in mid-afternoon, Ryan scheduling called and said he’d been removed from the scheduled flight the next day and he was told to report to the office at 3:00 p.m. on September 2, 2008. Mr. Batton knows that he sent the letter to the FAA “before I went in on the 2nd of September.”¹¹ He is unable to be anymore definitive.

Upon their arrival in Iceland, a hydraulic problem delayed the aircraft for a day. Mr. Batton continued to deadhead from Iceland to Budapest. After a couple of days, he ferried an aircraft from Budapest to Kuwait. In Kuwait, they had to load over 700 meals and were working quickly to get the meals packed up so the plane could get off on time. The aircraft then flew from Kuwait to Thailand. Ms. Thomas was part of the flight crew. On that flight, Mr. Batton sat in the rear jump seats with Ms. Thomas and talked about work. She had questions about the flight attendant manual. Mr. Batton did not threaten to “junior man” her, that is, call her to work from off duty because she is the junior flight attendant. Only scheduling can do that. He never told

⁵TR, p. 590.

⁶TR, p. 591.

⁷TR, p. 595.

⁸TR, p. 596.

⁹TR, p. 599.

¹⁰TR, p. 600.

¹¹TR, p. 603.

Ms. Thomas that he'd break her. He never made any of the aggressive or demeaning statements that she alleges he made.

In Thailand, the crew was scheduled to deplane and then fly a commercial aircraft back to Rockford. However, upon arrival, the lead flight attendant asked whether anyone wanted to stay onboard and deadhead to Guam and Hawaii. Some accepted but Mr. Batton wanted to see Thailand. However, before he could deplane, the aircraft doors were closed and he was on his way to Guam. Later, the lead flight attendant explained that Ryan decided everyone should deadhead back. So, Mr. Batton went to sleep and didn't talk to Ms. Thomas.

After arriving in Guam, they spent the night. The next day, in the afternoon, he briefly saw Ms. Thomas at the pool who asked if he wanted to go to dinner. Mr. Batton declined and went with another group. He did not push Ms. Thomas. They were scheduled to depart in the evening on August 28, 2008. Ms. Robbie Thomas was late for the show time. Ms. O'Shiel called her room and Ms. Thomas came down to the hotel lobby about 20 minutes later. Meanwhile, the working crew departed. Ms. Thomas apologized over and over and Ms. O'Shiel said that it was alright. Mr. Batton said nothing about her late arrival.

Initially, on the flight from Guam to Hawaii, Mr. Batton sat in Zone C, near the back row since he was in charge of cooking the meals. Ms. Howe was sitting next to him. Ms. Thomas was in Zone B. Ms. O'Shiel was on the opposite side. He didn't talk to Ms. Thomas. Later, Captain Clayton came back and then they moved to the front of the aircraft to talk. After about 45 minutes, Ms. O'Shiel came forward and asked Mr. Batton if she could ask him a question. After they moved a couple rows back, she asked Mr. Batton if he knew why Ms. Thomas was crying. Mr. Batton said he didn't know and Ms. O'Shiel replied it was because of something he said to her. So, they went back to Ms. Thomas. According to Ms. Thomas, Mr. Batton told her she didn't know how to do her job, nobody liked her, and she wasn't going to make. Mr. Batton responded that he never told her that. Ms. Thomas indicated that Ms. Howe had heard the exchange. When Ms. O'Shiel then asked Ms. Howe, she denied the statements and went to talk to Ms. Thomas. Ms. Howe returned and told them that Ms. Thomas was upset about being late and was under the impression she might get fired. Ms. O'Shiel told Mr. Batton okay and not to worry about it. Mr. Batton then returned to Captain Clayton. Since then Mr. Batton has never spoken to Ms. Thomas.

After a layover in Hawaii, they flew back to Rockford on August 30, 2008

On September 2, 2008, at 3:00 p.m., Mr. Batton met with Mr. Williams, Ms. Bergmann, Mr. Yeoman, and Ms. Guzman. Mr. Williams advised that they had decided to terminate his employment and that would be no discussion and Mr. Batton couldn't submit a statement. Mr. Batton indicated that if that flight attendant hadn't shown up late for 20 minutes, he wouldn't be there. Mr. Bergmann asked what he meant and he told them about Ms. Thomas. Then, he took a copy of the termination document, CX 15, and said he'd see them in court.

Mr. Batton did not commit the acts alleged in the termination letter. Prior to the meeting, Ms. Howe and Ms. Scott offered to provide statements.

Mr. Batton called the EEOC because he felt that he had been discriminated against because of his whistleblower complaint. "It had to be because it all started like the next day after that surprise inspection." After his July 9, 2008 phone call, there was a surprise FAA inspection of two aircraft on July 17, 2008.

After his termination, Mr. Batton received phone calls from the FAA and received a response on September 25, 2008, CX B. Mr. Batton doesn't know why the letter references a "September 9, 2008" inquiry. An FAA investigator conducted an investigation in October 2008. Later, Mr. Aycox indicated that when he tried the hotline, he didn't get a response.

During the summer of 2008, Ryan had fallen behind regarding on-time performance, which could lead to penalties under the DOD contract. If the rate fell below 80%, then Ryan would be the last provider to get contract flights. And, since Mr. Batton's flying hours went down, he believes Ryan Airlines was struggling. Company executives also encouraged everyone to work better and faster, for example CX 28. At the same time, crews were getting fatigue which lead to some errors, such as blown aircraft door slides, CX 42.

Since his termination, Mr. Batton has sought employment "everywhere." Seeking re-employment is a requisite for receipt of bi-weekly unemployment benefits of \$329. CX J sets out his efforts. Based on his background, he sought work in hospitality and customer service in the surrounding area. He used the newspaper want ads, internet resources and the state job search agency. Mr. Batton obtained a few interviews but no job offers. The unemployment rate in Rockford is 19%.

While working as a flight attendant with Ryan, Mr. Batton earned \$19 an hour and his bi-weekly pay was about \$600. His per diem for food was \$75 a day overseas for an additional \$1,500 to \$2,000 a month. Mr. Batton was also covered by health insurance and a 401(k) plan.

The employment termination has been very difficult. He had an excellent record until then. It all happened so fast. He has struggled with sleep loss and eating disorder. Mr. Batton has seen physicians at Veterans Administration ("VA") about the associated stress, CX J. He is taking anti-depression and sleep medication. He has been diagnosed with post traumatic stress disorder.

Mr. Batton denies the allegations in the statements by Ms. Charleston, Ms. Thomas, and Ms. O'Shiel. There were 20 people on that aircraft and company policy requires a statement from everyone, but Ryan didn't do that. Mr. Batton was never offered an opportunity to produce a statement or defend himself.

[Cross examination] On average, while seeking re-employment, Mr. Batton made three to four job contacts a week. Mr. Batton is still receiving unemployment compensation.

While the flight attendant contracts guarantees compensation for 75 flying hours a month, that provision does not apply if the individual is furloughed.

During his military service, Mr. Batton was in combat twice and saw a person get shot. He told his treating physicians about that experience.

Mr. Batton was out of work for about six to eight weeks due to his hand surgery.

Mr. Batton is 6' 3" and weighs about 221 pounds. He has never carried a green notebook at work.

Ms. Tammy Angel-Gorzela who is mentioned in an April 5, 2008 e-mail, RX 2, was in the bar in Germany and works as a flight attendant. He denies screaming at Ms. Maddux. Mr. Batton understands that management received that statement. In another e-mail, April 8, 2008, RX 3, Ms. Maddux indicates that the date of incident was March 25, 2008. He denies that he asked Ms. Maddux with which race she has relations.

In a June 16, 2008 e-mail, RX 4, Ms. Kathy Foss, who was in the Burger King, indicates the incident occurred in May 2008. He denies making that statement that was reported to Ms. Guzman and Mr. Yeoman. In another June 16, 2008 e-mail, RX 5, Ms. Diaz indicates that she became extremely uncomfortable talking to Mr. Batton. He disagrees. Mr. Batton acknowledges Ms. Diaz made the complaint to management. He denies Ms. Diaz's allegations that he asked soldiers to comment on her bottom. And, he didn't discuss the situation with her.

Ms. Jessica Baker is a flight attendant who was in Burger King. Ms. Jennifer Martin was a flight attendant who worked with Mr. Batton.

Mr. Batton denies that Mr. Jorgensen ever came to the rear of the aircraft and told him to unblock seats.

RX 10 in an e-mail that Mr. Jorgensen sent to Ryan management, complaining about a hostile work environment created by Mr. Batton. According to company policy, only the lead flight attendant and crew scheduling may provide notification of a schedule change. Mr. Pflueger's name was on the note slipped under his door, notifying him of a schedule change, but Mr. Pflueger didn't sign it. When he read the note about the change, he thought the information came from Mr. Pflueger, the lead flight attendant. Mr. Batton felt at risk following Mr. Jorgensen's notification at the hotel because if Mr. Jorgensen gave him the wrong information, Ryan would ask Mr. Batton why he didn't talk to his lead flight attendant or crew scheduling. Mr. Batton acknowledges that after he got Mr. Jorgensen's "half" message, he called crew scheduling for confirmation. Mr. Batton believed Mr. Jorgensen was trying to get him in trouble. Everyone was on-time for the show time. Mr. Pflueger didn't explain why he had Mr. Jorgensen make the notifications.

Mr. Pflueger said he would like everyone to wear their uniforms. He didn't mention why he thought it was a good idea. Mr. Pflueger eventually said we could do what we want. Mr. Batton did not say he wasn't going to wear his uniform. He did not wear his uniform.

Ms. Diane Dugan-Reinhardt is a Ryan flight attendant. Mr. Batton has never flown with her. Mr. Batton has been to Iceland and hotel bars. He denies talking to a bartender about the gender of Ms. Smith,¹² a Ryan flight attendant.

A July 23, 2008 e-mail, RX 14, reflects a telephone conversation Mr. Batton had with Ms. Guzman on July 19, 2008. Ms. Guzman told him that he needed to a low profile and avoid any other altercations with crew members. He denies being rude and combative during their conversation. Instead, Mr. Batton was concerned about why he was being called back to Rockford.

During the July 28, 2008 hour long meeting, management told Mr. Batton that they had received reports about him. The documentation, RX 17, references passenger complaints and a crew report. Although the document references goals for improvement, they were not discussed. He got the form at the end of the meeting and eventually read it. Although he wrote a letter denying the charges, Mr. Batton did not ask questions about the listed expectations and improvement goals. He agrees the letter indicates that management has concerns about his work performance. He knew the letter was a final warning.

In his letter to Mr. Williams and Ms. Guzman, CX 27, Mr. Batton did not mention that he presented any concerns to the FAA. He did not raise any safety issues.

Mr. Batton talked to Mr. Aycox before September 9, 2008. He believes CX D confirms that statement.

Mr. Batton “totally” denies the statements Ms. Thomas alleges that he made. Mr. Batton is aware that Ms. Thomas presented these statements to Mr. Batton.

Mr. Batton does not know Mr. Mike Fleming mentioned in RX 18.

Mr. Batton denies that he came to Ms. O’Shiel and asked her not to write him up, RX 19.

Mr. Batton denies that he told Ms. Charleston that Ms. Thomas was incompetent, RX 21.

The September 25, 2008 FAA letter to Mr. Batton, CX B, only mentions his written correspondence. It does not say anything about a phone call associated with July 9 or any phone call.

In his complaint, CX A, Mr. Batton mentioned his July 9 phone call to the FAA when he said, “after an hour or so of telephone calls, we took off heading to Norfolk.” While acknowledging that the sentence above refers to the captain making calls, Mr. Batton restated that, “It says, ‘After about an hour or so of telephone calls!’”

¹²Due to third party privacy concerns, I’ve substituted the flight attendant’s real name with “Ms. Smith.”

Mr. Batton doesn't recall when he sent the e-mail complaint to the FAA but it occurred before his September 2, 2008 termination.¹³ In his deposition, Mr. Batton stated he sent the letter around September 9, 2008.¹⁴ After he had problems with the phone numbers, he spoke to Mr. Aycox and told him what was going on. Mr. Aycox gave him two more phone numbers. A week later, when Mr. Aycox called him back, Mr. Batton still had not received a response from his calls.

RX 28 is a FAA document which indicates Mr. Batton's complaint was received through their e-mail system on September 9, 2008.

Mr. Batton can't explain the misspellings and grammar error in Mr. Aycox's August 23, 2009 letter, CX D.¹⁵ The letter is not on FAA stationary.

[ALJ examination] Incidents in Germany and Burger King and the associated statements by individuals occurred before his first phone call to the FAA in July 2008. After he made the phone, he received no response from the FAA and was away on a 15 to 18 day trip. Upon his return, he finally got in touch with an FAA official who gave him several phone numbers to call. The person didn't have any information about his early phone message.

When he made the July 9, 2008 phone call, he told another flight attendant, Ms. Lourdes Garza. He didn't tell Ms. Guzman, Mr. Williams, Mr. Pflueger, Mr. Jorgensen, Ms. Thomas, Ms. O'Shiel, Ms. Charleston, and Ms. Bergmann.

Mr. Batton wonders why Ms. Thomas said the things about him. He noted that Ms. Thomas made no complaints about him until after she was late for the show time. She was probably nervous about being late during probation and trying to find a way to keep her job. Mr. Batton doesn't know why she decided to pick on him out of all the flight attendants.

Mr. Batton doesn't know why Ms. O'Shiel would make statements against him. He believes she may have been under pressure from Ms. Bergmann. And, he believes Ms. Bergmann went after him due to his whistleblower complaints. Mr. Batton doesn't know how Ms. Bergmann became aware of his whistleblower complaints.

[Re-direct examination] In RX 2, Ms. Bergmann asked Ms. Gorzela for a statement about the March 25, 2008 incident. In RX 11, Mr. Batton believes Ms. Reinhardt was referring to the transgender flight attendant when she says the incident has the potential to blow up. According to Mr. Batton, Mr. Patrick Hereford told him that he was the person who made the

¹³TR, p. 828-829.

¹⁴TR, p. 830.

¹⁵When asked about the word "distinct" in Mr. Aycox's letter, Mr. Batton read it as "district." When I pointed out the word was not "district," Mr. Batton replied, "Well, I'm sorry if I may have spelled it wrong, if I may also spell it wrong, it says district." While Respondent's counsel asserts Mr. Batton's answer is an admission that he, rather than Mr. Aycox, wrote the letter, I found Mr. Batton's answer to be a frustrated response to the line of questioning about the letter and a possible reflection of his inability to distinguish "district" from "distinct" at that moment.

comment about the transgender flight attendant. He made that statement in front of Mr. Batton and Captain Clayton.

Mr. Aycox's letter wasn't on letterhead because Mr. Batton said he could send it to him by e-mail. Mr. Aycox sent it from his home.

Mr. Batton never saw any of the complaints that Mr. Pflueger referenced in RX 14.

Although Ms. Diaz referenced sexual harassment in RX 5, Mr. Yeoman doesn't mention that complaint in RX 8. RX 7 contains a reference to Ms. Diaz's sexual harassment complaint against another individual.

In the statements, RX 19, RX 20, and RX 21, the individuals have different recollections where Ms. Thomas and Mr. Batton were sitting and with whom.

In his termination letter, RX 17, the only previous counseling noted was his conversation with Ms. Guzman.

[ALJ examination] Mr. Batton returned to Rockford in the evening of August 30, 2008. He received a call from scheduling in the afternoon of August 31, 2008, indicating that he'd been removed from a trip. "I had been taken off the trip, and I was suspended . . . pending an investigation." Mr. Batton believes he sent the letter to the FAA before he was suspended either the evening of August 30th or the morning of August 31, 2008. "I'm not 100% sure, but I believe I did."¹⁶

Mr. Glenn G. White
(TR, p. 659-677)¹⁷

Mr. White works for the FAA and first met Mr. Batton in November or December 2008 after receiving a copy of his complaint. The incidents in his complaint covered a period from June to September 2008. Mr. Batton also sent a copy of his complaint which was similar to the version he received through FAA channels. Mr. Batton had informed Mr. White that he had made previous hotline complaints. Based on Mr. Batton's complaint, Mr. White conducted an on-site investigation of Ryan's aircraft records about mid-December 2008. He did not examine any aircraft. When he visited Ryan he did not divulge Mr. Batton's name.

Mr. Batton's complaint contained issues relating to aviation safety and potential violation of FAA rules and regulations. Mr. White did not tell anyone at Ryan that Mr. Batton had made a complaint. His contacts with Ryan would not provide any information that Mr. Batton was the reason he was conducting the inspection.

¹⁶TR, p. 856.

¹⁷Mr. White testified under oath by telephone conference call and had an FAA attorney, Mr. Christopher Stevenson, present.

Documentary Evidence¹⁸

Mr. Batton's Complaint to FAA¹⁹ (CX A and RX 28)

In a three page, undated letter to the FAA, Mr. Batton indicates that as a flight attendant for fifteen months, he has recently developed worries about Ryan regarding “a number of safety issues.” Multiple problems have arisen with the Ryan aircraft but the company has been trying to cover up the issues to avoid delays. On occasions, during flights, Mr. Batton has heard mechanics and pilots talk about aircraft problems they can't write up until they reach a certain destination or they'll face a performance penalty.

Mr. Batton explained that Ryan could not afford delays because under the DOD contract, poor performance due to delays would place Ryan at the end of list for DOD. During this period, “are [sic] performance had become so poor for to [sic] many delays in the pass [sic] few months.”

On a flight, July 9, 2008, Mr. Batton departed Rockford in a Ryan aircraft around 1800 hours (6:00 p.m.) for Norfolk, Virginia. Several flight attendants and pilots were on board. However, the aircraft returned to Rockford due to a mechanical problem. Upon landing, a mechanic “reset something on the aircraft” and said they could go out on the scheduled flight. Yet, a couple of pilots objected because they had experienced the same problem with the aircraft a couple days earlier. They were upset because the mechanic didn't find the cause of the problem. “The Captain starting make [sic] a lot of telephone calls because he did not fell [sic] that the aircraft was safe to fly,” which scared the flight attendants. “After an hour or so of phone calls, we took off headed to Norfolk.”

On an August 24, 2008 ferry flight to Norfolk, the pilot called the mechanic to the cockpit. When the mechanic returned to the rear of the aircraft, Mr. Batton asked him what was wrong and the mechanic indicated there was a panel problem associated with a wing hydraulic issue. Mr. Batton responded that “there is always a problem with these planes” and asked what was going on. The mechanic indicated there was never enough time to fix the aircraft properly since they were always on the go. After picking up troops, the aircraft flew to Iceland for re-fueling. However, upon landing in Iceland, the hydraulic problem was worse and the aircraft had to remain overnight for a repair part to be flown in. The next day, the aircraft proceeded to Budapest and experienced a tail scrap on landing. The mechanic explained that he carried white paint on the aircraft so the FAA wouldn't see the tail scrapes.

On an August 27, 2008 flight on another aircraft from Budapest to Kuwait, the pilot again called the mechanic to the cockpit before takeoff. After the plane was airborne, the mechanic returned and said there was a fuel error in the panel that he reset. Later in the trip, when the

¹⁸While I have read all the exhibits, I have only summarized the relevant portions.

¹⁹The first page of CX A contains an inked comment beside the third paragraph that says “initial call.” I do not consider that comment part of the original letter.

aircraft arrived in Thailand, “they said there was a problem but they were not going to write it up until we reach Guam.”

On the same flight, he was required to deadhead to Guam, Hawaii, and then return to Rockford. Mr. Batton believed that action caused him to have “over and [sic] 30 hour duty day.” The schedule change upset Mr. Batton because he was suppose to be home Friday afternoon and had another week long trip scheduled for the following Monday.

When the aircraft was flying from Guam to Hawaii, the mechanic said they would spend three days in Hawaii to fix the problem and test the system. However, after one day, the aircraft left Hawaii. When Mr. Batton asked the new mechanic about the problem, he replied that the other mechanic received a call from a company vice president who told him to get the aircraft back to Rockford the next day because it was needed for another trip.

Phone Numbers (CX A)

On two pages, phone numbers are listed in handwriting for Great Lakes “FAA military,” Washington, Wichita, KS, and Chicago. Two hotlines numbers are listed and Mr. Hank Rocho and Mr. Norris Aycox are mentioned.

FAA Initial Investigation (CX B, CX D, and RX 28)

An FAA data summary sheet shows Mr. Samuel Latorre, an aviation safety inspector from the FAA Chicago Flight Standards Office, conducted an investigation from September 15 to September 23, 2008 of a complaint that “was received on September 9, 2008 through the e-mail system.” During the course of his investigation, Mr. Latorre reviewed log books and interviewed the referenced mechanic. Upon completion of his investigation, Mr. Latorre talked to Mr. Batton by phone on September 24, 2008, and indicated that he would also send a letter.

In letter, dated September 25, 2008, to Mr. Batton, Mr. Latorre indicates that he is responding to “your inquiry on September 9, 2008 regarding several issues of concern” that arose during the past 15 months as a flight attendant.

Regarding the July 9, 2008 incident, a review of the aircraft logs revealed that hydraulic pump had been replaced on the aircraft and shortly after departure, the crew received system message regarding the left engine hydraulic pump. Upon return to Rockford, maintenance trouble shot the problem and determined that repair of the hydraulic indicating system could be deferred as permitted “per the Minimum Equipment List procedures.” The aircraft continued in service and the indicating system was permanently repaired on July 15, 2008.

Concerning the August 24, 2008 flight, the mechanic denied there was any hydraulic problem with the aircraft prior to departure at Rockford. The aircraft log showed no entries for that date. Upon arrival in Iceland, an entry was made regarding a hydraulic quantity problem. Although a part was ordered, the mechanic was able to rebalance the hydraulic fluid between the

systems and the part was not needed. The mechanic reported the tail strike to the crew who wrote up the incident in the aircraft log. The tail skid assembly was inspected and when no damage was noted, the log entry was signed off.

Neither the aircraft log book nor the mechanic on the flight deck indicated any maintenance issue from Budapest to Kuwait to Thailand on the trip that started on August 27, 2008. Before arrival into Hawaii, the plane developed an intermittent problem with the fuel quantity indicator system. The issue was noted in the log book. In Hawaii, the mechanic checked the system but could not duplicate the issue. On the flight from Hawaii to Rockford, the fuel indicator was intermittent again and maintenance was deferred while the aircraft remained in service until it was permanently repaired on September 5, 2008.

In light of the above evaluations, the FAA found insufficient evidence to proceed with enforcement action and considered the matter closed.

August 23, 2009 Letter²⁰
(CX D)

In an August 23, 2009, unsigned letter, with no letter head, Mr. Norris Aycox responds to Mr. Batton from home. According to Mr. Aycox, “From what I recall, you contacted my office in July or August 2008” after failing to receive any responses from various FAA hotline phone numbers. When Mr. Aycox tried the phone numbers and left messages, he failed to receive a response after a week.

“In August or September 2008, I assigned Inspector Latorre to communicate with you for detailed information.” After an investigation, Mr. Latorre was unable to substantiate the allegations. However, Mr. Batton’s concerns were “elevated and being investigated by a different region/office.” The investigation was on-going and Mr. Aycox’s office was not involved.

FAA Letter
(CX E)

In May 14, 2009 letter, Mr. Ron Rifenberg, Manager of the FAA Whistleblower Program, advised Mr. Batton that a “preliminary” investigation into his safety allegations “has established that a violation of an order, regulation, or standard relating to air carrier safety “may” have occurred. As a result, the FAA was taking appropriate corrective or enforcement action.

²⁰The contents of this letter are consistent with Mr. Aycox’s interrogatory answers, (CX F).

Interrogatory Responses (CX F)

In his interrogatory responses, Mr. Norris Aycox states that he has no knowledge how Ryan became aware of Mr. Batton's complaints. After reviewing the results of his office's investigation into Mr. Batton complaints, Mr. Aycox recalls that Mr. Batton contacted his office "sometime in July 2008." Mr. Batton was trying to get in touch with the FAA to tell them about Ryan and some of the things they were doing which in his opinion were wrong and contrary to federal regulations." Mr. Aycox referred Mr. Batton to phone numbers for other offices who monitored Ryan. A week later, Mr. Batton advised that he was having problems with the phone numbers. According to Mr. Aycox, Mr. Batton shared a number of issues, "including that Ryan fired him for being late, one time." Mr. Aycox believed the best process was for Mr. Batton to share his concerns by a hotline or phone contact.

After Mr. Batton contacted him and stated that he was having problems with the phone numbers, Mr. Aycox also tried the phone numbers and received no response. As a result, after receiving permission, Mr. Aycox assigned Mr. Latorre to conduct an investigation.

When asked about his contacts with Ryan about Mr. Batton and his complaints, Mr. Aycox responded, "As far as I can recall, I have never been [sic] any communications with Ryan International Airlines about Mr. Batton."

Treatment Notes (CX I)

On October 22, 2009, Mr. Batton presented at a Veterans Administration hospital with depression, loss of appetite, and inability to sleep.

On November 17, 2009, a psychiatrist, Dr. S. Chakilum, evaluated Mr. Batton for depression. For the past six months, Mr. Batton had been occupied with his litigation. He was having problems concentrating on anything else and unable to sleep. According to Dr. Chakilum, although Mr. Batton technically qualified for a diagnosis of major depression, his clinical presentation suggested an adjustment disorder. They discussed coping strategies and Mr. Batton was referred for general therapy.

On December 1, 2009, Mr. Batton presented to Dr. Joanne Langley, a psychologist, with depression and fatigue due to stress associated with his employment termination and whistleblower litigation. For the first time in his life, he was unable to support himself and experiencing post traumatic stress syndrome symptoms.

In a December 16, 2009 visit, Dr. Langley noted that Mr. Batton continued to be frustrated with his situation and was anxious about his financial situation. He was feeling less depressed and attempting to move forward with his life. The diagnosis was "adjustment, with depression and anxiety, chronic." Medication helped Mr. Batton's depression.

Work Search Record
(CX J)

From September 4, 2008 to April 16, 2010, Mr. Batton had two to five internet employment contacts per week, for various positions, including data entry, security officer, driver, warehouseman, hospitality, customer service, and front desk.

In 2007, Mr. Batton earned \$2,214.45 from Ryan. In 2008, through September 2, he earned \$12,436.04.

In 2009, Mr. Batton's unemployment benefits totaled \$9,603.00.

Flight Attendant Manual Excerpts
(CX K, CX L, CX P, and CX 14)

In the air, the chain of command on Ryan aircraft is captain/pilot in command, in-flight relief officer, first officer/second in command/flight engineer, lead flight attendant, and flight attendant. Flight attendants are responsible for passenger safety and comfort. Flight attendants are to report "any incident that might become a hazardous situation." "All situations should be resolved by the lead flight attendant and/or cabin crew." All flight attendants are under the direct supervision of, and are responsible to, the captain.

A flight attendant is considered to be late if not signed in at the designated place at the show time or meeting time. "Note: 1st No Show - Written Warning with Counsel, 2nd No Show - Termination."

Committed to a safe workplace environment, Ryan requires all employees to be treated with courtesy and respect at all times. Conduct that "threatens, intimidates, or coerces another employee, a customer, or a member of the public at any time, including off-duty periods, will not be tolerated." The prohibition includes harassment based on sex, race, age, or any characteristic protected by law. Ryan encourages employees to bring their disputes or differences with other employees to the attention of their supervisors.

The company's problem resolution process moves from supervisor to Human Resources to functional vice president.

Before a flight, the in-flight representative will provide a safety briefing to the flight attendants.

The rules of conduct include prohibitions against fighting while on company business, insubordination, on or off-duty, conduct which reflects negatively on the company, refusal to cooperate with other employees, making false, malicious, or vicious statements about an employee, failure to cooperate as a "team player," and "any aggressive, intimidating, or threatening physical or verbal action" taken towards a fellow crew member. . ." The purpose of the prohibitions is to ensure a "effective and friendly work force and work environment." Failure to comply with company rules or a violation of the prohibitions may lead to

administrative corrective action, up to and including termination of employment. The progressive discipline steps include a letter of concern and a letter of warning.

Flight Attendant Polices and Procedures (CX N)

In a January 10, 2008 “working document,” Ryan sets out policies and procedures for its flight attendants. “A duty day will not exceed 20 hours without upper management approval and the flight attendant’s concurrence that it can be done safely.” A full time position includes a minimum of 75 hours of credit per 28 day period. Deadhead time is paid at the rate of an hour of credit per two hours of deadheading.

Ryan expects its employees to be “mature, reasonable, and behave in a professional, business-like manner appropriate to the workplace.”

During the 120 day introductory period, a flight attendant must in full compliance with Ryan polices and procedures.

Ryan supports the use of progressive discipline for unsatisfactory job performance and misconduct. The corrective actions range from verbal warning to written warning/counsel to final written warning. “Failure to demonstrate and maintain immediate corrective action will result in further disciplinary action up to and including termination of employment.”

A flight attendant is considered late if he or she reports for duty after the scheduled show time.

Flight Attendant Position Description (CX U)

A Ryan flight attendant is responsible for providing customer service to passengers by performing or assisting in performance of all safety, passenger service, and crew preparation duties. Another section includes the following requirement: “Must be able to work well with others as part of a team.”

Deposition of Ms. Stephanie Howe (CX X)

[Direct examination by Complainant] In a July 9, 2010 deposition, Ms. Stephanie Howe, testified under subpoena that she is currently a flight attendant with Ryan. In a September 2, 2008 e-mail to Ms. Bergmann, sent at 1:14 p.m., Ms. Howe recalled the events that occurred on a ferry flight from Guam to Hawaii. She wrote the e-mail because Ms. Bergmann called her and asked her to write down anything unusual that may have happened on the flight.

Near the end of August 2008, she with on a crew with Mr. Batton. They were scheduled to fly commercial from Thailand back to Rockford. However, the crew decided to stay on the Ryan aircraft since it was empty and being ferried back to Rockford. She only remembers “bits

and pieces” of the trip. In Guam, the crew “all got along” during their layover. The next day, one flight attendant, Ms. Robbie Thomas, was late, so they waited for her and then rode in a van. The ferry flight next went from Guam to Hawaii. Ms. Thomas was “a little nervous about being late, but nobody made an issue of it.” On the flight, while Ms. Howe was either “sleeping, or reading or doing something,” the lead flight attendant, Ms. Deb O’Shiel, asked her to come to the back galley. She said Ms. Thomas was upset. Because Ms. Howe is a “very compassionate” person and Ms. Thomas was a new flight attendant, Ms. O’Shiel asked her to talk to Ms. Thomas.

Ms. Thomas was sitting next to a window. After asking, Ms. Howe sat next to her and said that the flight attendant job can be hard at first. Ms. Thomas said she was shocked and very disappointed how people were acting on her trips. “I don’t know exactly what that meant. She never got into detail.” Ms. Howe doesn’t recall Ms. Thomas mentioning any names. Ms. Howe let her talk it out for about five to ten minutes and was under the impression that Ms. Thomas was homesick. Ms. Howe also told Ms. Thomas that being late happens once in a while and she shouldn’t worry about it. Ms. Howe doesn’t recall anyone talking to Ms. Thomas while Ms. Howe was sitting with her.

After her conversation, Ms. Howe returned to Ms. O’Shiel in the back galley who said Ms. Thomas was upset with Mr. Batton. “I do not recall, but obviously that happened.” She was surprised because on the working legs, she was in the back galley with Mr. Batton and Ms. Thomas and “never saw any friction between the two.” She heard from other people that Ms. Thomas had asked Mr. Batton to go to dinner.

Ms. Thomas never indicated that she felt intimidated by Mr. Batton during their trip. She did not hear him make statements to Ms. Thomas that he was going to break her. She doesn’t recall Mr. Batton telling her that he thought Ms. Thomas was too soft and not going to make it. She doesn’t recall any comments about seniority. She doesn’t recall any conflict between Mr. Batton and Ms. Thomas.

During the Guam to Hawaii and Hawaii to Rockford legs of the trip, Ms. Thomas kept to herself and slept. She observed Mr. Batton and Captain Clayton sitting together looking at a computer.

Ms. Howe doesn’t recall saying anything specific about Mr. Batton to Ms. Thomas. However, Ms. O’Shiel told her Ms. Thomas was upset with Mr. Batton. So, “I might have probably, you know, been a mediator, so to say, and trying to make her feel better, comfort her again. I don’t know why she was upset.” Ms. Thomas was upset. Ms. Howe interpreted it as being home sick. She does not remember Ms. Thomas crying.

Ms. Howe does not recall having a conversation with Ms. Charleston on the Guam to Hawaii leg. She doesn’t recall Ms. Charleston asking Ms. Thomas if she was alright while Ms. Howe was sitting with her.

Other than Ms. O’Shiel’s statement that Ms. Thomas was upset with Mr. Batton, Ms. Howe doesn’t recall anyone discussing Mr. Batton bullying Ms. Thomas.

Ms. Howe “never lied to back up” Mr. Batton. “My interpretation is obviously clearly different than Ms. Thomas’.” She doesn’t recall trying to talk Ms. Thomas out of reporting Mr. Batton.

Ms. Howe doesn’t recall a conversation between Ms. Thomas and Mr. Batton in the aft jump seats. When Ms. O’Shiel asked about such an exchange, she “probably said I don’t recall seeing or hearing anything negatively said or any negativity between anybody.” She does not recall admitting that Mr. Batton said the alleged statements. She doesn’t recall Mr. Batton saying that he had feared for his job or that he was crying.

Ms. Howe met Mr. Batton during flight attendant training. They are friends but did not have a personal relationship.

On one multi-day trip, a confrontation occurred in a hotel lobby. Most of the flight attendants and Mr. Batton returned from dinner and were in the hotel lobby. Ms. Maddux joined them. Ms. Maddux became riled and loud. She confronted Ms. Howe and the conversation was uncomfortable. The flight attendants, including Mr. Batton, moved to another area of the lobby. Ms. Maddux followed, and they moved again and then decided to go to their rooms. At the time, Ms. Maddux was a lead flight attendant. Ms. Jessica Lueke and Ms. Tammy Angel-Gorzela were present.

In the spring of 2008, during a trip, the flight attendants stayed overnight. However, rather than go to their hotel rooms, the lead flight attendant, “Toni” had a conference with the flight attendants. The lead flight attendant asked if everyone could get along and be professional for the rest of the trip. Ms. Howe believes there had been a conflict between Ms. Maddux and Mr. Batton on the trip. “They obviously didn’t get along very well.”

Although Ms. Howe was in the Burger King in Miami during the training session, she did not witness the incident between Mr. Batton and Ms. Diaz. Later, Mr. Batton told Ms. Howe that he said something that upset Ms. Diaz. He didn’t mean to upset her but she took it the wrong way.

On a trip that started on July 9, 2008, she was crewed with Mr. Batton, Mr. Jorgensen, and Mr. Pflueger. Initially, their plane had to return to Rockford due to a mechanical problem. Neither Mr. Batton nor anyone else talked to her about it. At one point during the 18 day trip, a government contract inspector came on board. Ms. Howe vaguely recalls something about the blocking of seats, but the lead flight attendant, Mr. Pflueger took care of it.

When on standby as a reserve crew member, usually the lead flight attendant provides notice of a schedule change. She is not aware of any specific policy. While on reserve in Budapest in July 2008, after she returned from dinner between 7 and 9 p.m., Ms. Howe received notice of a schedule change by a letter from Mr. Jorgensen that was placed under her door. Mr. Batton was “a little confused” as to how the notification was handled because Mr. Pflueger, the lead flight attendant, had not provided the notice. She believes Mr. Batton asked Mr. Pflueger about the notification the next day in the hotel lobby. Later, Mr. Batton was removed from the

trip and sent home early. Mr. Batton told her that he was confused and shocked; he didn't understand why he was being sent back to Rockford.

At the time of the commercial flight to Baku, the company policy was that you could wear your uniform or business attire. Ms. Howe, Ms. Garza, and Mr. Batton wore business attire. Mr. Pflueger had sort of given an order that they should wear their uniforms. But since Ms. Howe always wore business attire on commercial flights, she questioned him. She doesn't recall his response, but she wore business attire on that flight. They were not late and did not cause anyone to be late.

If a flight attendant didn't serve troops on a flight, Ms. Howe believes a lead flight attendant would ask what was going on.

In the summer of 2008, the working conditions at Ryan were "fine." In general, all airlines are always worried about on-time performance. There was no out of the ordinary pressure at Ryan.

One flight attendant who blew the aircraft door slide was terminated. Another flight attendant who also inflated a door slide went to refresher training. Ms. Howe also was involved in a incident where the slide pack fell out. She received refresher training and was suspended without pay for a month.

Ms. Howe didn't attend the May 2010 hearing because she wasn't aware of when and where the hearing was taking place. Her non-attendance had nothing to do with any concern about her employment with Ryan.

[Cross examination by Respondent] Ms. Howe does not know why Mr. Batton's employment was terminated.

Although Mr. Pflueger had sort of ordered the flight attendants to wear their uniforms, Ms. Howe did not do so because the company did not have that requirement. A lead flight attendant may give instructions on a flight during working hours.

During the Guam to Hawaii flight, Ms. Howe was not at the side of either Ms. O'Shiel or Ms. Thomas or Ms. Charleston during the entire flight. She wasn't involved in every conversation that Ms. O'Shiel or Ms. Thomas or Ms. Charleston had. She was asleep for most of the six to eight hour flight.

Ms. Howe doesn't recall whether Mr. Batton got off the airplane after its return to Rockford on July 9, 2008.

**FAA Whistleblower Complaint Report &
Memorandum
(CX Y)**

In a January 21, 2009 report, Mr. Glenn G. White addresses the various issues raised in Mr. Batton's whistleblower complaint as well as an allegation during a November 21, 2008 telephone conversation that on one occasion a Ryan aircraft was damaged during refueling due to an incorrect nozzle pressure.

Mr. White first notes that Ryan holds an FAA certificate for operation as an air carrier and primarily provides transportation for the DOD and other government agencies. Its base of operation is Rockford, Illinois.

Mr. White interviewed numerous individuals, conducted a facility inspection, and reviewed company and aircraft documents and maintenance records. A comparison of aircraft maintenance logs with maintenance control turnover log ("MCL") gave an appearance that the practice of not documenting aircraft discrepancies was systemic. For example, a rudder leak was known to maintenance personnel but not documented in the aircraft records. And, while a mechanic denied any problems in the preliminary investigation, the MCL annotates that the same mechanic reported the rudder leak, which turned out to be within limits.

Although he was unable to substantiate all of Mr. Batton's complaints, Mr. White recommends follow-up action since Ryan "is not documenting aircraft maintenance and is falsifying aircraft maintenance releases by signifying the aircraft is airworthy when knowing the aircraft is not airworthy." In a February 12, 2009 memorandum, Mr. White summarized his investigative report.

**Mr. Jorgensen's E-Mail – July 19, 2008
(CX 1 and RX 10)**

On July 19, 2008, Mr. Jorgensen sends Ms. Guzman an e-mail about his concerns regarding Mr. Batton.

Mr. Jorgensen went out with a crew on July 9, 2008 that included Mr. Pflueger, as lead flight attendant, and Mr. Batton. While on reserve on July 18, 2008 in Budapest, around 10:00 p.m., Mr. Jorgensen checked crew scheduling online and discovered that the crew had been given a flight for the next day with a show time of 10:15 a.m. Since Mr. Pflueger was ill and staying in the hotel next door, Mr. Jorgensen called him to let him know of the assignment and offered to notify the other flight attendants who were staying in the same hotel with Mr. Jorgensen. Mr. Jorgensen telephoned every flight attendant and left voice messages for the four attendants he didn't talk to. As an additional courtesy, he left four messages at the front desk so they could deliver the notes to the four attendant with whom he had left voice messages.

The next morning, July 19, 2008, everyone was present at the 10:15 a.m. show time. At the aircraft, after Mr. Pflueger's crew briefing, Mr. Batton argued with Mr. Pflueger and Mr. Jorgensen about not getting notification until after midnight. Although he received the voice

message that Mr. Jorgensen left at 2230 (10:30 p.m.), he didn't get the whole message. Mr. Jorgensen thought at that point, Mr. Batton should have contacted Mr. Pflueger or crew scheduling. Mr. Batton also didn't get the note until after midnight. Mr. Jorgensen wrote the note at 2245 (10:45 pm.) and doesn't know when the hotel delivered it. When Mr. Pflueger asked the crew whether they were uncomfortable about the notification, no one else had a problem. Mr. Batton continued to argue, causing "a great deal of discomfort" among the crew. Mr. Batton stated he felt like he was being personally attacked. Mr. Jorgensen felt Mr. Batton was calling him a liar when he said he wrote the note at 2245. Mr. Batton insisted Mr. Jorgensen had no right to contact him because he was junior to Mr. Batton and not the lead flight attendant. Mr. Jorgensen felt insulted and regretted volunteering.

In Mr. Jorgensen's opinion, Mr. Batton did not work well with others and created a very uncomfortable working environment. He always challenges Mr. Pflueger and second guesses him. Mr. Jorgensen no longer felt comfortable or safe working with Mr. Batton. He would resign if forced to work with Mr. Batton again.

On July 21, 2008, Ms. Guzman responded, thanking Mr. Jorgensen for his "thorough" and timely report. She was particularly took serious his comments about feeling uncomfortable and unsafe working with Mr. Batton. She requested an appointment with him upon his return to the states.

On July 23, 2008, Mr. Jorgensen replied that he'd be back on July 26th but had vacation planned. He expressed a willingness to discuss the situation over the phone.

Rockford Seniority List (CX 2)

On the July 23, 2008 RFD (Rockford) seniority list, Mr. Batton ranks 11 positions above Mr. Jorgensen. Ms. Robbet Thomas is the second most junior flight attendant. Ms. Dianne Reinhart, Ms. Debra O'Shiel, and Mr. Adam Pflueger are ranked as in-flight managers (lead flight attendants).

June 27, 2008²¹ Flight Attendant Crew Report (CX 3 and RX 15)

Ms. Jennifer Martin writes a flight attendant crew report indicating that while waiting for departure on a trip from BUD (Budapest) to KWI (Kuwait), the troops were extremely thirsty and hungry. They asked where she was on their last flight because several troops in C & D

²¹The copied version of the original report is missing the left portion of the date and the remaining portion appears to be "06/08." Above the incomplete date block, the following annotation is present on the copy, "7-27-08." And, Mr. Jorgensen testified Ms. Martin told him about the complaint in July 2008. However, upon comparison, the "2" in "7-27-08" and Ms. Martin's "2" in her seat number entry of "25-33," do not appear to be in the same handwriting. Further, and more significantly, the fax date at the bottom of the copied report reads "27/06/2008." Additionally, Mr. Batton was actually in Rockford on July 27, 2008. Finally, the troops' complaints specifically referenced an African American named "Anthony" on their previous flight, and Mr. Batton's flight schedule, CX 45, shows that on June 26, 2008, he flew from Scott Air Force Base to Keflavik, Iceland. Upon consideration of all these factors, I find Ms. Martin actually submitted her report on June 27, 2008.

zones (rows 25-33) had asked an African American flight attendant named Anthony for snacks or water, but he said no. They also commented that he was mean. Throughout Ms. Martin's flight, the soldiers in C & D zones were asking for extra meals and snacks.

Mr. Pflueger's E-Mail – July 18, 2008
(CX 4 and RX 9)

In a July 18, 2008 e-mail to Ms. Guzman, Mr. Pflueger reports that on a Flight # 0767 from IUD (Al Udeid Air Base, Doha, Qatar)²² to BUD (Budapest), Mr. Pflueger received a call from Mr. Jorgensen about which seats to block off. Previously, Mr. Pflueger had directed that four seats in row 36 be blocked off for maintenance personnel and a representative and row 37 for crew rest). However, Mr. Jorgensen reported Mr. Batton had directed that the five back rows be blocked off for crew rest. Mr. Pflueger directed Mr. Jorgensen to follow his previous instructions. Mr. Pflueger didn't see what Mr. Batton had done but was informed that Mr. Batton stated that he looks out for his fellow crew members. During the next crew briefing, as corrective action, Mr. Pflueger emphasized that seats could be blocked only for maintenance, representative, d/h (deadheading) crew members, and working crew members, with one blocked seat per person. When questioned by DOD QA (quality assurance), Mr. Pflueger indicated that he had blocked off the last nine seats.

Note – July 18, 2008
(CX 5)

A July 18, 2008 message on Marriott Budapest notepaper to "Anthony" in Room 606, from "Adam P.", with a time of 2245 (10:45 p.m.), advises that "they have been added on a trip to Kuwait tomorrow morning . . . show time is 10:15 AM in the lobby." The note indicates Mr. Batton should call Adam at an Intercontinental Hotel phone number if he had any questions. The note closes with "Room 544."

Another handwritten notes says, "Mr. Jorgensen live [sic] a message at the desk around 23:35 (11:35 p.m.), 18/07/2008."

Ryan Memorandum – July 17, 2008
(CX 6 and RX 27)

In a July 17, 2008 memorandum to all flight attendants, sent by e-mail to Ryan flight attendants on July 21, 2008, Ms. Guzman and Ms. Bergmann present corrective actions associated with an FAA surprise performance inspection of two aircraft. The in-cabin inspection revealed an unreported bin malfunction, unsecured food and water drawers and baskets in the last rows that the cleaning crew had been instructed to leave in place by the flight attendants, and emergency equipment missing from a designated bin. Ms. Guzman and Ms. Bergmann emphasize the importance of prompt and proper reporting of bin malfunctions, proper storage of food and water containers, and proper storage of emergency equipment in placarded bins.

²²I take judicial notice of the three letter designator for this airfield.

Mr. Pflueger's E-Mail – July 23, 2008
(CX 8 and RX 16)

In a July 23, 2008, 9:21 a.m., e-mail, Mr. Pflueger advises Ms. Guzman and Ms. Bergmann about an issue. Mr. Pflueger requested that all flight attendants wear their uniforms on the commercial flight to BAK (Baku) on July 22, 2008. When Ms. Howe and Mr. Batton asked why, Mr. Pflueger said they could do what they wanted. For the flight, they wore plain clothes. Later, the ones not in uniform got caught up in security at VIE (Vienna) and the other members had to wait.

Next, upon arrival at the hotel, they were told no rooms were available. Without discussing the situation with Mr. Pflueger or crew scheduling, Mr. Batton called someone in the hotel's sales office and later said to other crews members that he had taken care of the problem. Mr. Pflueger believed Mr. Batton's action were indicative of an inability to work as a crew member and interfered with Mr. Pflueger's team building efforts.

Mr. Pflueger expressed a concern that Mr. Batton was capable of creating "an uncomfortable or unsafe environment for me and my crew." Mr. Pflueger believed Mr. Batton might retaliate against him or anyone who crossed him.

Ms. Miller's E-Mail – July 17, 2008
(CX 9)

In a July 17, 2008 e-mail, Ms. Dusty Miller, Ryan's director of DOD programs, advises Ms. Guzman that a DOD quality inspector had reported that working crews are blocking seats in anticipation of a deadhead crew boarding. The in-flight supervisor was Mr. Pflueger. Under their contract, DOD buys all the aircraft seats with the exception of three seats clearly blocked for crew rest purposes. Only at the military's discretion may Ryan save transportation costs by using the remaining open seats to move crew members, other than the working crew. Ms. Miller has raised this issue in the past. Ms. Miller requests a written explanation for the contract violation and noted that the military was assessing a quality infraction against Ryan for the violation. She specifically wanted to know who gave Mr. Pflueger the authority to block seats.

In response, Ms. Guzman indicates that she would be putting out an memorandum on the subject, calling Mr. Pflueger for a statement, and sending an instructor out to do check rides as soon as possible to resolve the issue.

Ryan Memorandum – August 7, 2008
(CX 9)

In a memorandum to all crew members, Mr. Tom Fay, Vice President of Flight Operations, advises all crew members that on DOD flights only three seats may be blocked for flight attendant crew rest, as well as one seat to a mechanic and one seat for a load coordinator. "Deadheading crewmembers may only take available empty seats after the military has boarded. It is not appropriate for deadheading crewmembers to expect to be seated in any of the blocked seats."

Note – July 23, 2008
(CX 10)

In a July 23, 2008 message on Marriott Budapest notepaper, with a time of 2058 (8:58 p.m.), “Adam” tells Mr. Batton that Ms. Guzman wants him to contact her right away.

Mr. Pflueger’s E-Mail – July 28, 2008
(CX 11)

In a July 28, 2008, 11:05 a.m., e-mail to Ms. Guzman and Ms. Bergmann, Mr. Pflueger provides a follow-up of his concerns about Mr. Batton. Although Mr. Batton has not directly violated the FAM policies and procedures, Mr. Pflueger believes he deliberately attempted to discredit Mr. Pflueger’s leadership and reputation. As an example, Mr. Batton asked Mr. Pflueger how long he had been with Ryan in management. After Mr. Pflueger’s response, Mr. Batton indicated that he had six more years of management experience than Mr. Pflueger. Mr. Batton said several times that if he were in charge, he’d do things a different way. Due to Mr. Batton’s challenges, Mr. Pflueger had to remind the crew twice that he was the only lead flight attendant for the trip. Mr. Pflueger thanked them for their guidance and recommendations on resolution of his problems with Mr. Batton.

Crew List
(CX 12)

On a trip scheduled for July 9 through July 26, 2008, Mr. Batton’s crew included Mr. Pflueger, as lead flight attendant, Mr. Jorgensen, and Ms. Howe. On July 15, 2008, Flight # 0767 had a scheduled departure time of 0900 (9:00 a.m.) from IUD to BUD. On July 20, 2008, early morning, the crew flew to BAK (Baku). After one day off, the crew departed BAK on July 22, 2008.

Coaching/Discipline Form
(CX 14 and RX 17)

On a July 28, 2008 Ryan Coaching/Discipline Form, Ms. Guzman issues Mr. Batton a “final warning.” As previous counseling, Ms. Guzman notes that she had a telephone conversation with Mr. Batton on July 19, 2008 advising him of numerous performance concerns and a developing pattern and told of the need both for a mandatory meeting upon his return and to keep a low profile. However, “within days of that conversation,” additional concerns arose involving his refusal to cooperate with other employees, documented passenger complaints in crew reports, and gossip that violated company policy, privacy rights, as well as, the well being and reputation of other crew members. The specific reasons for the final warning were violations of company policy and creating an uncomfortable work environment. Ms. Guzman attached excerpts from the FAM with the following annotations:

Rule 27. Refusal to cooperate with other employees: “per crew reports/phone calls from (not clear, probably) leads.”

Rule 31. Making false, vicious, or malicious comments about a Ryan employee: “Melissa Diaz” and Ms. Smith.

Rule 37. Refusal to cooperate as a “team player: “per crew reports and emails form leads/fellow crew members.”

Rule 41. Aggressive, intimidating, or threatening physical or verbal action taken towards a fellow crew member or supervisor: “Melissa Diaz” and Ms. Smith.

As performance goals, Ms. Guzman offers Mr. Batton the chance to review Ryan and FAM policies and procedures, “ask questions for clarification,” and seek guidance and assistance for moving forward to turn the situation around and to succeed. Mr. Batton must be very clear about the company’s expectations and the onus was on him to “attain this clarity immediately utilizing all resources including me/Julie (Ms. Bergmann).”

Mr. Batton’s failure to comply with all Ryan policies and procedures “will result in immediate termination.” His failure to uphold Ryan’s “high standards of professional, moral, and ethical conduct and behavior at all times will result in immediate termination.” And, failure to follow the directions of any person in in-flight management “will lead to immediate termination.”

The form documents that Mr. Williams, Ms. Bergmann, and Ms. Guzman discussed the problems with Mr. Batton.

The space for Mr. Batton’s comments is blank and the form indicates that he refused to sign the document.

Coaching/Discipline Form (CX 15 and RX 22)

On a September 2, 2008 Ryan Coaching/Discipline Form, Ms. Bergman and Ms. Guzman terminate Mr. Batton’s employment with Ryan. As previous counseling, the form references a July 28, 2008 final warning. The cited reasons are violations of company policy and intimidation, harassment, and verbal assault of a crew member while on and off duty during an August 24 through 30, 2008 trip. Additionally, due to the “distinctive” pattern of behavior, fellow crew members do not want to fly with him; they are intimidated, scared, and do not feel safe around him. An attached FAM except has circles around the following rules of conduct 12 (misuse of time), 13 (insubordination), 23 (disregard of safety rules), 24 (detrimental conduct), 27 (refusal to cooperate with other employees), 28 (dependability failure), 37 (failure as a team player), 39 (failure to uphold a positive attitude), and 41 (aggressive, intimidating, or threatening physical or verbal behavior towards another crew member). A bold inked arrow also points to rule 41.

The form indicates there will be no further discussion. Refusing to sign the form, Mr. Anthony walked out at 1536 (3:36 p.m.) stating he will get an attorney. The meeting started at 1500 (3:00 p.m.) with Mr. Williams, Ms. Bergmann, and Ms. Guzman.

Documentation – Lounge/Lobby Incident, March 2008²³
(CX 21, RX 2, and RX 3)

In an April 4, 2008 e-mail to Ms. Bergmann, Ms. Jessica Luecke reports that in a lobby, Ms. Maddux started yelling at Mr. Batton based on things someone told her that he had said about her. Mr. Batton responded they could talk outside but Ms. Maddux kept yelling and called him a name. Mr. Batton and Ms. Howe moved away and Ms. Maddux went outside for a moment. However, she came back in and followed Mr. Batton and the other flight crew members to the other side of the lobby. Then, the crew members went to their rooms. Ms. Luecke indicates Ms. Maddux should have had the conversation in private and Mr. Batton attempted to pull her off to the side.

In a statement apparently presented to Ms. Guzman on April 4, 2008, Mr. Batton recalls that on March 25 2008, he was in a hotel lobby with other crew members including Ms. Maddux. After about an hour of conversation, “all out of the blue,” Ms. Maddux started to attack him “for no reason,” calling him all sorts of names. She asserted that he started problems with other crew members. Other crew members asked her to calm down and he offered to talk to her in private. She believed Mr. Batton had said something that he didn’t like about her. Mr. Batton walked away but Ms. Maddux followed and again caused a big scene. At that point, Mr. Batton paid his bar bill and left. According to Ms. Guzman’s annotation, Mr. Batton was not mad at Ms. Maddux, only disappointed. This is the second time this situation has occurred and he doesn’t want to work under these conditions.

In an April 5, 2008 e-mail to Ms. Bergmann, Ms. Angel-Gorzela states that she was in the hotel lobby for drinks around 2200 (10:00 p.m.) with other flight attendants. They asked Ms. Maddux to come down and join them. “Suddenly” Ms. Maddux and Mr. Batton “were screaming at each other.” While not sure of the issue, it appeared to be related to a past conflict. When neither Ms. Maddux nor Mr. Batton would calm down, Ms. Angel-Gorzela and the other flight attendants moved away. She stayed downstairs until the argument ceased.

In an April 7, 2008, 1:55 p.m., e-mail to Ms. Guzman, Ms. Maddux states that she is stunned that an argument she had off duty would warrant suspension, especially in the absence of any prior disciplinary action. On March 25, 2008, while off duty, Ms. Maddux was invited down to the hotel lounge by other crew members for drinks. During a question game, Ms. Maddux became “extremely” offended by Mr. Batton’s response to her answer, “which then escalated into an argument.” During the argument, prior work performance issues arose involving Ms. Howe and she joined in. After the argument fizzled, they went their separate ways. The remaining portions of the trip were completed in a professional manner without incident. Ms. Maddux offered to provide more detail if the statement did not exonerate her.

In an April 7, 2008, 3:52 p.m. e-mail to Ms. Maddux, Ms. Guzman acknowledges that the immediate suspension was accelerated discipline. However, she considered the allegations severe. To be fair, Ms. Guzman asked for more details regarding the specific contents of the Mr.

²³This exhibit includes additional e-mails concerning an alleged safety violation that occurred on March 27, 2008 involving Mr. Batton and Ms. Maddux which shows continued tension between them two days after the hotel lobby exchange.

Batton's comments that extremely offended Ms. Maddux. Referencing multiple FAM rules of conduct, Ms. Guzman also emphasizes that even though she may have been off-duty, Ms. Maddux remained a representative of Ryan and was expected to maintain high standards, especially when socializing with other crew members.

In an April 8, 2008 e-mail to Ms. Guzman, Ms. Maddux further explains that the incident started when she was playing a question game and asked about relations with another race. After she responded, Mr. Batton moved forward and "aggressively" and repeatedly asked for more information about the specific race in a loud voice. Intimidated, Ms. Maddux answered. Mr. Batton then asked if she a problem with him. Ms. Maddux said she didn't like how Mr. Batton came at her and his talking negative about her to other crew members. She also mentioned an incident involving Ms. Howe and company policy involving appropriate attire for commercial flights came up. At that point, Ms. Howe objected. After Ms. Maddux tried to explain her position, she noticed everyone had moved away. Mr. Batton and Ms. Howe moved off too. Then, when she continued to hear Mr. Batton talked negatively about her, she asked him to quit. When Mr. Batton interfered with Ms. Maddux's attempt to talk to Ms. Howe, Ms. Maddux objected that he couldn't dictate who she would talk to. Ms. Howe then indicated she didn't want to talk to Ms. Maddux. At that point, "the argument fizzled out" and Mr. Batton and Ms. Howe went up stairs. Although tension remained during the remainder of the trip, nothing unpleasant occurred. Ms. Maddux can't imagine why the argument merited suspension and she notes that under the FAM, "possible acts of defamation may have occurred."

Documentation – Burger King Incident²⁴
(CX 23, CX 23a, CX 23b, and RX 4 to RX 8)

In a June 16, 2008, 6:43 a.m., e-mail to Ms. Bergmann, Ms. Cathy Foss states that while at lunch at Burger King on June 15, 2008 during recurrent training in Miami, while standing in line behind Ms. Diaz, Ms. Jessica Baker, and Ms. Foss, Mr. Batton asked Ms. Diaz if she had family in Miami. When Ms. Diaz replied, "yes," Mr. Batton said, "you must feel pretty at home around all these Cubans," and then laughed. Ms. Foss believed the comment was inappropriate and Ms. Diaz was upset.

In a June 16, 2008, 7:29 a.m., e-mail to Ms. Bergmann, Ms. Guzman forwards Ms. Foss' e-mail and advises that on Sunday (June 15, 2008) Ms. Diaz called Ms. Guzman. Ms. Diaz was upset by Mr. Batton's comment. Ms. Guzman indicates that she will obtain statements from Ms. Diaz and Ms. Baker.

In a June 16, 2008, 7:46 p.m., e-mail to Ms. Guzman, which was then forwarded to Ms. Bergmann, Ms. Jessica Baker describes hearing Mr. Batton ask Ms. Diaz if she had family in Miami and if she felt comfortable with all the Cubans around. Ms. Diaz didn't respond and moved away. In a conference call the next day, Ms. Baker discussed the incident with Mr. Yeoman, Ms. Guzman, and Mr. Williams.

In a June 16 2008, 2:38 p.m., e-mail to Ms. Bergmann, Ms. Melissa Diaz attached a formal complaint against Mr. Batton. According to Ms. Diaz, on two separate occasions, Mr.

²⁴This exhibit also includes a June 17, 2008 e-mail to Mr. Yeoman from Mr. Batton about scheduling irregularities.

Batton made her “extremely uncomfortable.” Most recently, on June 15, 2008, during a lunch break, while standing in line for food, Mr. Batton asked her if she had family in Florida. While she replied yes, he said, “Well, you must feel right at home with all these Cubans here.” Shocked by the derogatory remark, Ms. Diaz just walked away. Previously, on a May 17, 2008 flight, Mr. Batton kept asking soldiers if they thought she was cute and attractive in front of her. After he asked a soldier to comment on her “ass,” she told him it was not a joke. While recognizing the seriousness of sexual harassment, since Mr. Batton stopped after she mentioned her objection, Ms. Diaz asked the lead flight attendant not to write it up. However, now that Mr. Batton’s comments have turned to racial harassment, Ms. Diaz believed she needed to let upper management know about the two situations.

In June 16, 2008 e-mail to Mr. Andrew Yeoman and Ms. Guzman, Ms. Bergmann forwarded Mr. Diaz’s complaint.

In a June 17, 2008 e-mail to Mr. Andrew Yeoman, Mr. Mike Fleming indicates that both Ms. Diaz and Mr. Batton separately reported his comment. Mr. Batton stated that he didn’t mean the comment in a derogatory way.

In a June 17, 2008 e-mail to Mr. Andrew Yeoman, Mr. Batton recalls that after Ms. Diaz indicated she had family in Miami, he said “it must be great because we are in the Cuban part of town.” He made the remark because she had talked about eating Cuban food at home. Ms. Diaz said ok and walked away. When Mr. Batton asked what was wrong, Ms. Baker asked how he would feel if someone asked if he’d like to be in Africa. Mr. Batton thought the question was rude. However, he apologized to Ms. Diaz and told her he didn’t mean anything bad or mean.

In a June 17, 2008 e-mail to himself, Mr. Yeoman documents a conference call with himself, Ms. Jessica Baker, Mr. Williams, and Ms. Guzman. According to Ms. Baker, while standing in line at Burger King during a lunch break, she heard Mr. Batton ask Ms. Diaz if she had family in Miami. When she replied yes, Mr. Batton asked if she felt more comfortable in Miami with all the Cubans around. Looking uncomfortable, Ms. Diaz shrugged her shoulders. Ms. Baker believed Mr. Batton’s comment was both rude and weird. She asked Mr. Batton if he would like it if he were in Africa and asked if he felt more comfortable there.

In a June 19, 2008 e-mail to himself, Mr. Yeoman chronicles Ms. Diaz’s June 17, 2008 meeting with himself, Ms. Guzman, and Mr. Williams. At the meeting, Ms. Diaz, expressed her belief that Mr. Batton’s comment was racial, derogatory, and unnecessary. She reported the exchange to the training instructor, Mr. Mike Fleming, who advised her to send a report to Ms. Bergman. In addition to the Burger King comment, Ms. Diaz described a situation on a flight when Mr. Batton asked a passenger who was leaving the lavatory if he found her attractive and would date her. Ms. Diaz told Mr. Batton to stop since she felt uncomfortable. The lead flight attendant indicated the incident didn’t need to be written up and Ms. Diaz let the incident go so they wouldn’t lose a flight attendant.

In another June 19, 2008 e-mail to himself, Mr. Yeoman commemorates a June 17, 2008 meeting with himself, Mr. Batton, Mr. Williams, and Ms. Guzman. Mr. Batton did not know why he was called in. When told that the meeting involved an incident that had occurred, Mr.

Batton replied the incident in Miami. According to Mr. Batton, Ms. Diaz always talked about her Cuban life and father. So, while standing in line to order food, Mr. Batton said it must be cool being in that part of town. Ms. Diaz just looked at him and walked away. When he asked what did he say that was wrong, Ms. Baker asked him if he'd like to hear such a comment while in Africa. Mr. Batton apologized to Ms. Diaz, hoping he didn't offend her. He also mentioned the incident to his instructor.

Documentation – Iceland Incident
(CX 24, CX 25, and RX 11 to RX 13)

In a July 22, 2008, 5:28 p.m., e-mail to Ms. Guzman, Ms. Bergmann, and Mr. Yeoman, Ms. Dianne Reinhart thanks Ms. Guzman for talking with her and Ms. Smith. Ms. Reinhart is concerned because her crew will be trading aircraft twice with Mr. Batton's crew. Although Ms. Smith wants to handle the situation within channels, Ms. Reinhart believes the situation has a potential to "blow up." Consequently, Ms. Reinhart requests that Mr. Batton be pulled from the trip and sent back by commercial flight. Ms. Reinhart has spoken to Mr. Pflueger and he agrees with the change.

In a July 22, 2008, 6:02 p.m., e-mail to Ms. Guzman, referencing her prior telephone conversation, Ms. Smith describes an incident that occurred in Iceland that offended her. On July 19, 2008, an Icelandic friend informed her that a Ryan flight attendant by the name of Mr. Anthony Batton had been talking about her. At the time, friend didn't indicate what Mr. Batton had said. However, on July 22, 2008, after thinking about it, and discussing the situation with her lead flight attendant, and in light of the company policy against doing anything harmful or unfavorable, upon landing in Iceland, Ms. Smith again spoke with her friend who asked not to be identified. He didn't want to say what Mr. Batton had said, but Ms. Smith knew her personal life was out in Iceland. Ms. Smith was very upset since she didn't know Mr. Batton and he knew nothing about what she had been through. Ms. Smith believed she worked in a professional environment but now felt like an outsider. She believed Mr. Batton had broken several company rules.

In a July 23, 2008, 7:53 a.m., e-mail to Ms. Guzman, Ms. Smith provides additional information, indicating that she approached the owner of a restaurant who told her that Mr. Anthony Batton had come up to him in the restaurant in front of everyone and observed that the owner had met Ms. Smith. When the owner said yes, Mr. Batton asked whether he knew that Ms. Smith was a different gender. The owner did not respond. According to the owner, Mr. Batton talks about the other crew members all the time. Knowing what Mr. Batton had said made Ms. Smith sick and she objected to Mr. Batton talking about her personal life. She was very emotionally upset.

In a July 23, 2008, 10:23 a.m., e-mail to Mr. Yeoman, Mr. Williams, and Ms. Bergmann, Ms. Guzman forwards Ms. Smith's statement. She reflects on an earlier meeting with Ms. Smith and observes that hearing Ms. Batton's name "so short on the heels of the Melissa Diaz complaint gave us pause." Ms. Guzman observes that Ms. Smith is on a different crew than Mr. Batton's crew and has no knowledge of the other incidents with Mr. Batton and the "complaints and documentation that are coming from Anthony's lead Adam Pflueger almost daily now." Ms.

Guzman recommended immediate suspension, pending an investigation and getting Mr. Batton back to Rockford for a meeting by Friday or Monday.

In a July 23, 2008 10:25 a.m. e-mail to Ms. Guzman, Mr. Yeoman approves placing Mr. Batton on immediate suspension. He prefers a Monday meeting.

In a July 23, 2008, 1:35 p.m., e-mail, Ms. Guzman advises scheduling that she is having a problem getting the logistics resolved and plans to call Mr. Batton soon to notify him of his suspension pending investigation.

On July 23, 2008, at 3:35 p.m. Ms. Guzman makes a reservation for Mr. Batton to travel on July 24, 2008. She also has his schedule cleared so he will be available in Rockford through July 29, 2008.

On July 25, 2008, Mr. Jan Soltys, a Ryan compliance coordinator, forwards a copy to Mr. Yeoman of an April 10, 2008 e-mail that he previously sent to Mr. Yeoman, recalling a conversation he had with Mr. Batton on a flight. Mr. Batton reported that Ms. Smith was causing uncomfortable situations related to gender on flights with troops. And, on one flight, a captain ordered her to sit the entire flight.

In the morning of July 28, 2008, Ms. Guzman forwards copies of Mr. Pflueger's e-mails from July 18 and July 23, 2008.

Ms. Guzman's E-Mail – July 23, 2008
(CX 26 and RX 14)

In a July 23, 2008 e-mail to Mr. Yeoman, Mr. Williams, and Ms. Bergman, Ms. Guzman provides an update on developments concerning Mr. Batton. Ms. Guzman explains that she had difficulty contacting Mr. Batton in Budapest regarding his removal from the flight schedule. Eventually, Mr. Pflueger observed him in the hotel lobby and placed him in phone contact with Ms. Guzman. After reminding him of their July 19, 2008 telephone exchange and her advice that he keep a low profile, Ms. Guzman advised that additional concerns about his behavior had arisen such that she had no choice but to bring him back to Rockford for a discussion. Mr. Batton responded that the situation was unbelievable. However, the seriousness of the allegations required his expedited return. Although Mr. Batton wanted to meet right away upon his return Thursday, Ms. Guzman indicated the Human Resources team would not be available until the following Monday.

Later, when Mr. Batton called about a logistical change, he observed that scheduling's recent failure to act on his bid package must mean everyone knew about his situation except him. Ms. Guzman denied that scheduling had known anything because his status was confidential. When Mr. Batton seemed not to believe her, Ms. Guzman "firmly stated" that his status change was only a few hours old and only in-flight management and Human Resources knew of his situation. In her opinion, Mr. Batton was "combative and rude." And, she felt that she was receiving a "small sampling of the abuse and badgering" that Mr. Pflueger had been exposed to over the course of their 18 day trip. For a couple weeks, Ms. Guzman and Ms. Bergmann had

been receiving reports of Mr. Batton's "misconduct" with hotel personnel and restaurant and hotel employees from Mr. Pflueger.

In light of the problems with Mr. Batton and his crew, Ms. Guzman had sent an instructor to Budapest as immediate corrective action to serve as a buffer between Mr. Batton and the other crew members, including Mr. Jorgensen, who were fearful of Mr. Batton. She had hoped to "realign" Mr. Batton's behavior during her July 19, 2008 phone call. "Regrettably," his "conduct and behavior declined so quickly" that the instructor and Mr. Batton would miss each other.

Mr. Batton's Response – August 5, 2008

(CX 27)

In a letter dated August 5, 2008 to Mr. Williams, Mr. Batton responds to the final warning letter. He thanks Mr. Williams for their conversation the week earlier. Nevertheless, Mr. Batton has issues and concerns, particularly, about the untrue statements other crew members made about him.

Mr. Batton states, "There is nothing that I would do to jeopardize my job." He would never treat the troops badly considering their service to the country and his background as a veteran. He also strongly disagrees that he is not a team player. Mr. Batton gives more than 100% to ensure everything goes as smoothly as possible for everyone. Mr. Batton believes his job performance for the past 14 months shows how much he values his job and Ryan.

Since he understands Ryan's policies and procedures, and because this is the first incident with Human Resources, Mr. Batton believes he should have received a "first verbal warning instead of a final warning." He'd appreciate Ryan consider the action to be a first verbal warning.

Ms. Guzman's Letter – August 8, 2008

(CX 28)

In an August 8, 2008 letter to all flight attendants, Ms. Guzman notes that Ryan's on-time performance for June and July have dropped to 80% and 71%, well below the contractual requirement of a rolling three month average of 85%. Continued low performance will place Ryan into "last use" status for DOD contracts, with adverse consequences. To prevent dropping below 85%, Ryan needs an on-time performance of at least 91% for August. She urges flight attendant to have "laser" focus, perform as quickly, and yet effectively and accurately, as possible, and commit to robust time management.

Crew List

(CX 30 and RX 27)

On a trip scheduled for August 24 through August 30, 2008, Mr. Batton's crew included Ms. Debra O'Shiel as lead flight attendant, Ms. Howe, and Ms. Robbett Johnson Thomas. The crew was scheduled to return to RFD (Rockford) by commercial air on August 29, 2008 from

UTP (Thailand). However, the crew flew on Ryan aircraft from Thailand to Guam to Hawaii to Rockford, arriving on Saturday, August 30, 2008 at 2215 (10:15 p.m.).

Ms. Thomas' E-Mail – September 1, 2008
(CX 31 and RX 20)

In a September 1, 2008, 7:46 a.m., e-mail to Ms. Bergmann, Ms. Robbie Thomas claims that she felt intimidated by Mr. Batton from the beginning to end of their recent trip. Mr. Batton began the trip by telling Ms. Thomas that she was weak and wouldn't make it on the job. He also indicated that he would break her. Ms. Thomas ignored the comments. He warned her to be careful because she was an African American and encouraged her to talk to other African American employees because Ryan had written up them all up. When Ms. Thomas responded that she thought that was a stupid idea, Mr. Batton's attitude changed for the worst. He told Ms. Angela Scott and Ms. Howe that she wasn't going to make it because she was too soft. Mr. Batton also asserted that he doesn't take any mess from lead flight attendants and that he had access to scheduling for special requests. Mr. Batton called her slow and said she read as if she went to school on the little yellow bus. Mr. Batton also stated that due to his seniority, Ms. Thomas had to do whatever he told her.

Upon departure from Guam, while she was on the right side of the plane, Mr. Batton "kept walking past just staring at me." He sat next to her and said that he was going to ride her until she broke because she didn't understand how things worked. He mentioned names of lead flight attendants that will scream in her face and other crew members who would make her cry. Ms. Thomas asked him to leave her alone. Mr. Batton left. When he later returned, Ms. Thomas move to different seat. He continued to walk up and down the aisle. Mr. Batton approached her again and asked what was wrong. She asked him to leave her alone. But, Mr. Batton said he had duty to her husband and talked to her because she needed a friend. "Overcome by rage," Ms. Thomas started to cry due to his negativity. When she asked why he thought she was weak, Mr. Batton indicated that she didn't understand that the crew didn't like her but she would get use to it. While the crew members appeared cordial, they were really phony and prejudiced. Mr. Batton stated that he had talked to Captain Clayton because when he was lying down God told him to confront Ms. Thomas. Ms. Thomas again stated that she didn't want to talk to him and asked him to leave her alone.

Ms. Thomas felt attacked by Mr. Batton and started to second guess her reaction and how she handled things because she wanted to remain professional and not make a scene. However, Ms. O'Shiel saw her and asked what was wrong. Ms. Thomas responded that Mr. Batton was talking crazy and she was mad. She then told Ms. O'Shiel what Mr. Batton said. Ms. O'Shiel confronted Mr. Batton but he denied everything. Ms. Thomas looked at him and said he did say those things. She also told Ms. O'Shiel that he had said some of those things in front of Ms. Howe. However, Ms. Howe denied hearing him say anything. When Ms. O'Shiel went to the front of the aircraft, Ms. Howe "ran to my seat" and said that Mr. Batton didn't mean to hurt her feelings and he just had that kind of personality. Ms. Howe told Ms. Thomas to call her if she needed to talk. Ms. Howe also said that she would talk to Mr. Batton and tell him not to come off so strong. When Ms. Thomas asked Ms. Howe why she hadn't told the truth to Ms. O'Shiel, Ms. Thomas got up and returned to her seat with Mr. Batton. Ten minutes later, Mr. Batton

apologized to Ms. Thomas. He said he was just trying to make her understand how people were going to treat her because she was African American. He also said she was ruining his career because the company was out to get him and believed what other people said rather than him. Mr. Batton then went to Ms. Scott and stated the crew was going to have to back him up because he knew the lead flight attendants were out to get him.

When they arrived in Hawaii, Mr. Batton didn't say anything else to Ms. Thomas. When Ms. O'Shiel asked what Ms. Thomas wanted to do about the situation, Ms. Thomas responded that she didn't want to get anyone in trouble, but she felt unsafe around Mr. Batton. On their return trip to Rockford, Mr. Batton just stared at her.

Ms. Thomas felt Mr. Batton was bullying her for no apparent reason. She believed she had been doing her job well. She didn't believe she could fly with Mr. Batton because he would make it difficult since she didn't share his views.

On September 2, 2008, at 9:24 a.m., Ms. Bergmann forwarded Ms. Thomas' e-mail to Ms. Guzman, Mr. Williams, and Mr. Yeoman.

Ms. Howe's E-Mail – September 1, 2008
(CX 34)

In a 1:14 p.m., September 2, 2008 e-mail to Mr. Bergman, Ms. Howe states that during the working legs of her trip "everyone was getting along." On the ferry flight to Hawaii, Ms. O'Shiel asked her to the back galley. Mr. Batton was there. Ms. O'Shiel asked Ms. Howe to talk to Ms. Thomas who was upset. For the past five days, Ms. Howe had not noticed that Ms. Thomas was upset. She assumed from previous conversations that she was home sick.

During their conversation, Ms. Thomas mentioned people not liking her and she had never seen on her other trips how people were acting. She wanted to commercial home from Hawaii. She mentioned being late for the show time that morning. Ms. Howe responded that it happened to everyone and not worry about it. She told Ms. Thomas that while the job was hard, it would get better. Ms. Howe listened in "a very understanding way." She told Ms. Thomas to call her if she needed to talk.

Ms. Howe told Ms. O'Shiel that their conversation went well. Ms. O'Shiel mentioned that Ms. Thomas was upset with Mr. Batton. Ms. Howe "was surprised to hear this because I had been in back with Anthony and Robbie many times and they seemed to get along great." She believes Ms. Thomas even asked him to dinner.

Captain Clayton's Letters
(CX 35 and CX 36)

In a letter to an OSHA investigator commemorating a May 4, 2009 phone conversation, Captain Clayton states the incident on flight that occurred on the August 24 to 30, 2008 trip never happened. Or if it did, no one reported any complaints to him as captain on the trip. According to Mr. Batton, initially, he had no idea why his employment was terminated. Later,

Mr. Batton reported that Ms. O'Shiel and Ms. Carlton (Ms. Charleston) had written him up. Captain Clayton questioned how they could have written Mr. Batton up since no one told Captain Clayton they had a problem. When he spoke with Ms. O'Shiel, she indicated that only after a discussion with her husband upon return home did she report Mr. Batton. She said Mr. Batton intimidates people. Captain Clayton asked why she didn't report that to him. No one in Human Resources talked to Captain Clayton about the trip. When he spoke with Mr. Williams, he indicated the complaint was confidential.

In a May 8, 2009 letter to Mr. Williams, Captain Clayton recalls that on the flight from Guam to Hawaii, Ms. O'Shiel asked Mr. Batton to come to the back galley. When Mr. Batton returned, he told Captain Clayton that she asked him if he knew why Ms. Thomas was upset. Mr. Batton did not know why she was upset. Notably, earlier, when the crew had arrived in Guam, and Captain Clayton asked if anyone had any issues or concerns, no one replied. In fact, Ms. O'Shiel complimented the crew on their good job performance.

Personnel File Release
(CX 37)

On September 22, 2008, with Mr. Batton's written approval, Mr. Batton's attorney requested Ryan for a copy of his personnel record. Counsel repeated the request on November 4, 2008. On November 26, 2008, counsel filed a complaint with the state labor department for release of Mr. Batton's personnel records. On December 23, 2008, Ryan's counsel provided a copy of Mr. Batton's personnel file.

Mr. Yeoman's Notes
(CX 38)

In terse, cryptic, and undated handwriting notes, Mr. Yeoman documents conversations with Ms. O'Shiel involving Ms. Thomas' complaint. She had no problems with Captain Clayton. In the second conversation, Ms. O'Shiel indicates that she is afraid of Mr. Batton. Three crew reports were submitted. Ms. Thomas was in tears. On September 9, 2008, Ms. O'Shiel indicates Captain Clayton called her and reprimanded her for not filing a crew report on the incident.

Ms. Bergmann's E-Mail – September 3, 2008
(CX 38a and RX 27)

In a September 3, 2008 e-mail to multiple lead flight attendants, Ms. Bergman stresses that any flight attendant or lead flight attendant who is late for show time must be reported to crew scheduling and the in-flight department. Ms. Bergmann notes that during a meeting she was "blindsided" by an unreported incident of a flight attendant being late for a show time.

Ms. Bergmann's E-Mails – January 14, 2008
(CX 40)

In a January 14, 2008 e-mail to multiple employees, including Mr. Batton, Ms. Bergmann informs them of a lead flight attendant class to be conducted on January 17, 2008. In another e-mail the same day, Ms. Bergmann specifically asks Mr. Batton if he plans to attend the class.

Ms. Maddux's E-Mail – October 20, 2009
(CX 41)

In an October 20, 2009 e-mail, Ms. Maddux discusses the grievance she is filing against Ryan regarding adverse personnel action and her request for reinstatement as a lead flight attendant. Addressing one allegation, Ms. Maddux discusses being written up in April 2008 for a verbal altercation with Mr. Batton. At the time, Ms. Bergmann seemed uninterested in the fact that Ms. Maddux was responding to inappropriate sexual harassment by Mr. Batton.

Ms. Guzman Memorandum – June 30, 2008
(CX 42)

In a June 30, 2008 memorandum to flight attendants and pilots, Ms. Guzman advises of a blown slide incident and emphasizes the potential serious harm that can result from the inadvertent release of the slides. In response, a prevention program is initiated with new standard operating procedures which emphasizes crew cross checks.

Mr. Fay's E-Mail
(CX 43)

In July 3, 2008, Ms. Bergmann forwards to all flight attendants, Mr. Fay's e-mail indicating that all the company's B-757s are operational and an additional B-767 has been added to the fleet. Despite the increased aircraft availability, increased demand by the military, has led to all of Ryan's capacity being booked for July. Since "pushing all our resources to the max," renders the company vulnerable to delay, Mr. Fay urges the crew members do prevent avoidable delays by checking on each other to ensue they are on time.

Mr. Batton's Flight Attendant Schedule
(CX A and CX 45)

Mr. Batton's flight schedule shows his employment as a Ryan flight attendant from December 24, 2007 through September 2, 2008 at 1700 (5:00 p.m.).

On June 25, 2008, Mr. Batton flies from Rockford to BLV (Scott Air Force Base). The same evening, he proceeds to YYL (Goose Bay, Newfoundland) and arrives in KEF (Keflavik, Iceland) on the afternoon of June 26, 2008. On June 27 and 28, 2008, Mr. Batton remains in Keflavik, Iceland on reserve status.

On Saturday, August 30, 2008, Mr. Batton flies from Honolulu to Rockford and arrives at 2215 hours (10:15 p.m.).

FAA Inspections
(CX 49 and CX 50)

Between January 1, 2008 to December 31, 2009, the FAA conducts 95 surveillance inspections of Ryan. Between January 1 to September 30, 2008, “spot” aircraft inspections, record reviews, and crew proficiency checks occur on January 8, January 9, February 5, February 12, February 21, February 26, March 3, March 7, March 11, March 26, April 15, April 16, April 29, May 21, May 27, June 4, June 6, June 18, June 30, July 2, July 17, July 18, July 22, July 23, August 5, August 27, August 28, September 9, and September 25, 2008.

Of the ten reported enforcement actions, five actions occurred between February and May 2008. No actions arose in June or July 2008. Three actions occurred on August 3, 9, and 26, 2008, relating to maintenance and record keeping. The other two actions arose in December 2008 and July 2009.

Ms. Guzman’s E-Mail – August 8, 2008
(RX 18)

In an August 8, 2008 e-mail to Mr. Williams, Mr. Yeoman, and Ms. Bergmann, Ms. Guzman responds to Mr. Batton’s August 5, 2008 letter. After acknowledging Mr. Batton’s right to dispute the allegations in the final warning letter, Ms. Guzman takes issue with his position that he should have only received an initial verbal warning. Ms. Guzman points out that at the July 28, 2008 meeting, they expressed their reasons for an accelerated disciplinary process that resulted in the final warning letter. She observes that the complaints received by Ms. Smith, Ms. Diaz, and Ms. Maddux had been forwarded to Human Resources. Noting that he was not individually disciplined for each these events, and acknowledging that although the events were explained to him, the absence of documentation may have caused him to fail to understand the gravity of the situations, Ms. Guzman believes his letter shows that Mr. Batton “fails to see the connection between the myriad of behavioral problems we have had to draw to his attention, in conjunction with the job performance concerns I have had to address with him in the past several weeks when he was on Adam Pflueger’s crew.”

Under these circumstances, Ms. Guzman did not feel it was appropriate that she respond to his letter. Ms. Guzman remained concerned because the instructor she had sent out to fly with Mr. Pflueger’s crew, Mr. Mike Fleming, reported that nearly every crew member mentioned how difficult and unpleasant it is to work with Mr. Batton.

While the sexual harassment charges were beyond the scope of her expertise, Ms. Guzman also remained “very concerned” how the three flight attendants must feel because they have never heard back from management that their serious concerns have been addressed.

Ms. O'Shiel's E-Mail – August 31, 2008
(RX 19)

In an August 31, 2008 e-mail to Ms. Guzman and Ms. Bergmann, Ms. Debra O'Shiel recounts the events she observed regarding Mr. Batton's sexual harassment of Ms. Thomas. On a ferry flight from Guam to Hawaii, after just waking up, Ms. O'Shiel glanced across the plane to Ms. Thomas and saw that she was crying. When Ms. O'Shiel went to her and asked what was wrong, Ms. Thomas was initially reluctant. Finally, she indicated that back in the galley with Mr. Batton and Ms. Howe, Mr. Batton had said some very disturbing things to her. Mr. Batton told her to watch her back because Ryan was out to get African Americans, none of the crew would like her, and she wasn't going to make it.

Ms. O'Shiel then asked Mr. Batton what he had said and he replied that he was just trying to help Ms. Thomas be a good flight attendant. He recommended that they talk to her so they went to where Ms. Thomas was sitting. Ms. O'Shiel then asked Mr. Batton and Ms. Thomas what was going on. Looking directly at Ms. O'Shiel, Ms. Thomas repeated what Mr. Batton had said. In response, while looking down, Mr. Batton replied to both Ms. Thomas and Ms. O'Shiel that was not what he said. Based on their respective body languages, Ms. O'Shiel believed Ms. Thomas. Mr. Batton then insisted they go back and asked Ms. Howe. When they did, Ms. Howe supported Mr. Batton. Ms. Howe indicated they were just trying to get Ms. Thomas to understand how bad it was to work for Ryan. Ms. O'Shiel then asked Ms. Howe to talk to Ms. Thomas and she did for about half an hour. She also saw Mr. Batton talking to Ms. Howe again. Ms. Thomas still appeared visibly shaken.

On the flight from Hawaii to Rockford, Ms. O'Shiel sat with Ms. Thomas and asked if she wanted to write up the incident. Ms. Thomas was reluctant but Ms. O'Shiel encouraged her to tell her exactly what happened. Ms. Thomas responded that she felt intimidated by, and was afraid of, Mr. Batton. He told her the company hated all African Americans and he would break her. While working in the back galley, Mr. Batton said that he was in charge and junior manning her. As a result, she had to do what he said. Unaware of the problem, Ms. O'Shiel told Ms. Thomas that she would not tolerate that behavior. Ms. Thomas indicated that when she confronted Ms. Howe again, she admitted that Mr. Batton had said those things.

Mr. Batton came to Ms. O'Shiel in tears and pleaded with her not to write up the incident. He felt the company was prejudiced against him. Ms. O'Shiel replied that she only held a prejudice against crew members who didn't do their job, were unkind to other crew members, had nothing good to say about the company, and were disrespectful to other persons' feelings. Mr. Batton told Ms. O'Shiel that she couldn't write up the incident because it could end his career. At that point, wanting to avoid a confrontation and afraid of retaliation, Ms. O'Shiel said she probably would not write it up. However, while reluctant to get someone fired, Ms. O'Shiel kept thinking what Mr. Batton had said to a new employee. And, Mr. Batton scares her.

Ms. Charleston's E-Mail – September 2, 2008
(RX 21)

In a 10:21 a.m., September 2, 2008 e-mail to Ms. Bergmann, Ms. Lynne Charleston reports her observations of Ms. Thomas and Mr. Batton. Based on flights with her, Ms. Charleston considered Ms. Thomas to be a competent and intelligent flight attendant. They had talked about families. Ms. Charleston also met Mr. Batton poolside in Guam and they talked briefly about working with Ryan; all the comments were positive.

On a flight from Guam to Hawaii with Ms. O'Shiel's crew, Ms. Charleston saw Ms. Thomas sitting on the opposite side of the aircraft from Ms. O'Shiel. Ms. Howe was talking to Ms. Thomas who was crying. When Ms. Charleston bent over and asked if everything was alright, Ms. Howe immediately responded that Ms. Thomas was fine. But, Ms. Thomas kept crying and then after a few seconds nodded everything was ok. So Ms. Charleston left.

Later, when Ms. Thomas was still crying, Ms. Charleston offered to let her call home from the aircraft. Ms. Thomas said she didn't need anything.

During the flight, Ms. Charleston observed Ms. Howe and Mr. Batton sit with Ms. Thomas. She believed they were helping Ms. Thomas. However, towards the end of the flight, Ms. O'Shiel came to Ms. Charleston and told her that Mr. Batton had said some very unkind and awful things to Ms. Thomas, including that she was incompetent and shouldn't be a flight attendant. Ms. Charleston doesn't recall any other details, but she got the impression Mr. Batton was bullying Ms. Thomas. Ms. Charleston had been impressed with Ms. Thomas and was surprised to learn she was a new flight attendant. Ms. Charleston and Ms. O'Shiel agreed to keep an eye on Ms. Thomas in Hawaii and include her in their off-duty plans. Ms. O'Shiel also said she'd ask Ms. Thomas what she wanted to do about the situation. Before the flight landed, Ms. Charleston talked to Ms. Thomas and let her know that Ms. O'Shiel had told her what was going on because Ms. Charleston was on the working crew. Ms. Thomas reiterated that Mr. Batton had said hurtful and mean things about her. She was incompetent, junior to him, and had to do anything he said. She started to cry and said that Ms. Howe was present when all this was said but she was Mr. Batton's friend. Ms. Howe was trying to smooth things over and talk Ms. Thomas out of reporting Mr. Batton's comments so he wouldn't lose his job. Ms. Thomas feared for her job because it was her word against Mr. Batton and Ms. Howe. Ms. Charleston replied that she believed Ms. Thomas. Ms. Thomas believed Ms. O'Shiel believed her too. Ms. Charleston told Ms. Thomas to let her know if anything else went on and that bullying would not be tolerated.

Upon arrival in Hawaii, Ms. Charleston kept a close watch on Ms. Thomas. Periodically, Mr. Batton attempted to get physically close to Ms. Thomas but she moved away. The next day, Ms. Thomas told Ms. Charleston that there had been a brief confrontation in an elevator but she was able to avoid Mr. Batton. At the crew bus, seeing Ms. Thomas "shrink" as Mr. Batton moved toward her, Ms. Charleston put herself between Mr. Batton and Ms. Thomas. Based on her observations, Ms. Charleston had no doubt that Ms. Thomas was frightened of Mr. Batton.

On an August 31, 2008 flight with Ms. Charleston, Ms. Thomas appeared to have regained her composure. Ms. Thomas said she was feeling better and had decided to file a report. Ms. Charleston indicated that Ms. O'Shiel had asked her to also file a report.

At 11:18 a.m., Ms. Bergmann forwards Ms. Charleston's e-mail to Mr. Williams, Mr. Yeoman, and Ms. Guzman.

Ms. Guzman's E-Mail – September 2, 2008
(RX 23)

In a 9:55 a.m., September 2, 2008 e-mail to Mr. Williams, Mr. Yeoman, and Ms. Bergman, after reading Ms. Thomas' statement, Ms. Guzman concludes Mr. Batton is a threat and highly recommended security personnel be present to escort him from the building.

Deposition of Ms. Robbet Johnson Thomas
(RX 27)

[Direct Examination by Complainant] In a January 11, 2010 deposition, Ms. Thomas testified under oath that she is a Ryan lead flight attendant. She started working for Ryan in July 2008. She trained for her lead flight attendant position sometime in the fall of 2008, which is a promotion. Ms. Bergmann called her sometime in September 2008 and offered lead flight attendant training because they had four positions to fill. She also sent an e-mail. The class had about five students. However, she did not receive one of the four positions and did not become a permanent lead flight attendant until February 2009. Prior to that she was an upgradeable lead flight attendant. She didn't become permanent until another position became available and she passed a written knowledge test.

While deadheading, a flight attendant is not part of the working crew. Flight attendants report problems to the lead flight attendant. Lead flight attendants report problems to the aircraft captain. After an incident is taken to the lead flight attendant, then the crew completes a crew report.

Briefings are conducted before every flight and cover safety, service and the flight plan. Generally, Ryan conducts flights for the military and charter flights. The majority are military flights which have specific meal and beverage plans depending on whether the flight is domestic or international, and its duration.

Before the August 24, 2008 flight, Ms. Thomas worked three to four Ryan flights as a flight attendant, including a week long trip. Ms. Thomas never saw the e-mail and memorandum regarding the July 17, 2008 FAA in-cabin inspection since her hire date was July 18, 2008.

For the trip departing August 24, 2008, the route was Rockford to Iceland to Budapest to Kuwait to Thailand to Guam to Hawaii to Rockford. Ms. Thomas deadheaded to Budapest, worked from Budapest to Thailand and deadheaded back to Rockford. The working flight from Budapest to Kuwait was a working flight with troops. The working flight from Kuwait to Thailand was an empty ferry flight. Originally, after picking up a new crew in Thailand, Ms.

Thomas' crew was scheduled to fly commercial back to Chicago. From Thailand to Rockford, Ms. Charleston was on the working crew. Ms. Thomas spent two nights in Budapest.

On the working, military flight from Budapest to Kuwait, which lasted about five and a half hours, Ms. Thomas was assigned to the back. Mr. Batton engaged in "small" talk, saying that he didn't think Ms. Thomas would make it as a flight attendant and referring to her as the junior man. When she took out her flight attendant manual to look up "junior man," she learned that junior man is a scheduling term for operational assignments based on seniority. The term had nothing to do with working a flight as a flight attendant. He told that she had to do whatever he told her. Mr. Batton asked her questions out of the manual because he said she didn't appear to be too bright. He then told her that since she was an African American she needed to watch her back since Ryan was prejudiced. He identified flight leads to look out for and told her that she need to talk to all the African Americans because they all had been written up and suffered some type of disciplinary action. After that exchange, Mr. Batton continued to tell her that she was weak and not going to last three months. He was going to break her in and make her aware of how the company was really prejudiced. On occasion, in addition to three other flight attendants and Ms. Scott, another African American flight attendant, Ms. Howe was also in the back. Ms. Scott told Ms. Thomas just to ignore Mr. Batton and Ms. Howe agreed with everything he said. On that flight, Mr. Batton said he only talked to Ms. Scott and Ms. Thomas because they were African American and Ms. Howe because she was his friend from training. Mr. Batton spent most of his time in the back because he was the galley person.

The flight from Kuwait to Thailand was a ferry leg. Mr. Batton continued his constant conversation about the company and that Ms. Thomas didn't appear to be enough of an African American. Ms. Thomas didn't ask him to stop. She responded that whatever issues he had, they were his issues and not hers. Ms. Scott continued to say ignore Mr. Batton and Ms. Howe just laughed. Upon arrival in Thailand, Mr. Batton told Ms. Thomas that she had to stay on the aircraft and take care of the garbage, which she considered another example of junior manning her. The lead flight attendant, Ms. O'Shiel, received a call from scheduling to determine whether the crew wanted to commercial from Thailand or deadhead. Ms. Thomas and another female flight attendant wanted to get off in Thailand but Ms. O'Shiel was uncomfortable with them leaving by themselves, so they deadheaded back. They were informed there would be no layover in Thailand. Ms. Thomas doesn't recall a debriefing by Ms. O'Shiel.

When the working crew came onboard in Thailand, the lead flight attendant was Ms. Charleston. On the flight, Mr. Batton periodically walked up and continued with his conversation about the company and different incidents with other people. Ms. Thomas didn't pay much attention. They arrived in Guam in the evening and stayed overnight in a hotel.

The next day at the pool, Ms. Thomas was talking to Ms. O'Shiel and Ms. Scott when Mr. Batton and Ms. Howe walked up and joined the conversation. Mr. Batton pushed her and "jokingly" said, "Move, I don't like you." Ms. Thomas responded that she was getting ready to go anyway and left. Ms. Thomas ate dinner in her room and didn't ask Mr. Batton to dinner. Later, as she was in her room getting ready to leave, Ms. Thomas received a phone call from Ms. O'Shiel who told her everyone was in the lobby ready to go. Ms. Thomas had heard a different show time. She went downstairs, checked out, and went to the crew van. When she put her bag

in the back, Mr. Batton commented on her being late and Ms. Thomas apologized to everyone. Ms. O'Shiel and Captain Clayton said she was alright. Mr. Batton asked how she could have heard a different show time than everyone else. Captain Clayton said she was okay with Ms. O'Shiel but other lead flight attendants would confront her for being late. Ms. Thomas was never disciplined for being late.

From Guam to Hawaii, Ms. Thomas was deadheading again. The working crew was again lead by Ms. Charleston. On this flight, Ms. Thomas sat in the B section. Mr. Batton again talked to her and started off by asking how she could have gotten the wrong show time. She asked Mr. Batton to leave her alone, changed seats, and listened to her ipod and looked out the window. Mr. Batton continued to walk by and tap or poke her to get her attention. Mr. Batton continued on about how the crew didn't like her, that she was fooling herself. After walking to the front, Mr. Batton came back and said that he was just talking to Captain Clayton about her. Mr. Batton said that he had a duty to Ms. Thomas' husband; he needed to talk to her. She asked him to leave her alone. Mr. Batton returned again and told her that while in bed God had told him to check on her. Ms. Thomas replied that she was very upset because Mr. Batton didn't know her and had no basis to judge her and say mean things to her. Mr. Batton replied that she didn't understand how people and the company are. He was trying to tell her because she was a sister that she needed to watch her back. Her skin wasn't tough enough, she was weak, and she wasn't tough enough. He then mentioned other flight attendants and listed people that would get in her face. Ms. Thomas said she had enough and again asked to be left alone. Mr. Batton left.

Either Ms. O'Shiel or Ms. Charleston walked by and asked what was wrong since she was crying. She told Ms. O'Shiel what Mr. Batton had said. Ms. O'Shiel then went back to tell Mr. Batton to leave Ms. Thomas alone. Ms. O'Shiel returned and said Mr. Batton was denying everything and Ms. Howe had nothing to say. Ms. Thomas did not hear the conversation between Ms. O'Shiel, Mr. Batton, and Ms. Howe.

After Ms. O'Shiel left, Ms. Howe came to Ms. Thomas and said that Mr. Batton just talks that way and comes up a little strong. Ms. Howe said she'd talk to him. Ms. Thomas said no, she didn't want Mr. Batton to say anything to her. Ms. Howe offered her help if needed when they got to Hawaii and left. Ms. Howe did not deny Ms. Thomas' version of the events. While Ms. Howe was talking, Captain Clayton walked by and said Mr. Batton wasn't worth it. Later, Ms. Scott sat by her and said she was sorry that she hadn't said anything earlier.

Mr. Batton then returned and said he was just trying to look out for her. He said he was so sorry. At that point, Ms. O'Shiel came up and asked why he was bothering Ms. Thomas again. Mr. Batton started crying and saying that he didn't need to be written up for this situation because he would lose his job. Mr. Batton sat next to Ms. Thomas and cried "hysterically." He then stood up and said that he was going to lose his job and asked how she could take food off his table. Ms. Thomas replied that she was not trying to make him lose his job. She didn't know anything about him. Ms. O'Shiel then told Mr. Batton to leave.

In Hawaii, Ms. Thomas only saw Mr. Batton and Ms. Howe in passing while leaving an elevator. Ms. Howe and Ms. Thomas exchanged greetings; nothing else was said. Mr. Batton said nothing. Ms. O'Shiel insisted that they go out together. Ms. Charleston also asked her if

she was okay. Ms. O'Shiel said she would have to report the incident and indicated that Ms. Thomas should also submit a report. Ms. Charleston also stated that as the lead flight attendant on the working crew she'd have to file a report too. Nothing else unusual happened on the return to Rockford. Ms. O'Shiel and Ms. Charleston kept checking on her. Ms. Thomas just wanted to go home.

The day after arriving in Rockford, and while getting ready to depart on her next trip, Ms. Bergmann called. Sounding concerned, Ms. Bergmann said that she had just received a crew report and needed an e-mailed statement from Ms. Thomas once she reached Iceland. Ms. Bergmann just said she needed Ms. Thomas to describe what happened. Ms. Bergmann did not tell Ms. Thomas what to write. In Iceland, she e-mailed her statement to Ms. Bergmann. About a week later, Ms. Thomas was called into a meeting with Ms. Bergmann, Ms. Guzman, and Mr. Yeoman and went through the whole incident again. They apologized because Ms. Thomas said she believed she had chosen the wrong career and was ready to quit. She wasn't trying to get anyone in trouble. They indicated that it was not her fault and wanted to talk to her to assure her they were aware of the problem and wanted to make sure she was okay. Regarding Mr. Batton, they only said that he had been taken off the next trip.

Concerning her fear of Mr. Batton, Ms. Thomas "had no idea what Mr. Batton was going to do." She doesn't recall thinking that he was going to physically harm anyone on the crew. She believes Mr. Batton's initial comments while working with him in the galley were intimidating and racist. On the flight from Thailand to Guam, his comments were annoying. From Guam to Hawaii, his comments were both annoying and intimidating.

According to Mr. Batton, he and Captain Clayton were really good friends.

Ms. Thomas believes the chain of command was followed in reporting the incident since she reported the problem to Ms. O'Shiel who reported the issue to the lead flight attendant of the working crew, Ms. Charleston. She wasn't told to fill out a crew report.

Ms. Thomas was not aware if Mr. Batton reported any issues to the FAA. Ms. Thomas has not had any conversations with Ms. Maddux, Ms. Diaz, Ms. Martin, Mr. Jorgensen, Ms. Reinhart, Ms. Smith, or Mr. Pflueger about Mr. Batton.

Mr. Batton never physically assaulted Ms. Thomas. He verbally assaulted her.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Credibility and Probative Weight

Mr. Anthony Batton

During the course of his testimony, Mr. Batton was generally earnest and usually straight forward in his responses. In particular, Mr. Batton's pain associated with his loss of employment and the associated financial and personal consequences is genuine and his perceived grievance against the Respondent is sincere. However, due to his changing and widely varied testimony regarding the timing of a critical event which is ultimately contradicted by probative documentary evidence, and one particular exchange between Mr. Batton and Respondent's counsel at the hearing, I have diminished confidence in the accuracy of Mr. Batton's testimony on key aspects of his case.

One of the significant factual issues in this case involves the date when Mr. Batton e-mailed his AIR 21 complaint to the FAA, CX A, since he asserts that particular protected activity was a contributing factor in Ryan's decision to terminate his employment on September 2, 2008. Initially, during direct examination, Mr. Batton estimated that he sent the e-mail by August 9, 2008, "at the latest." Next, upon review of the contents of his written AIR 21 complaint, Mr. Batton indicated that his memory was refreshed and testified that he sent his complaint by e-mail to the FAA after August 24, 2008, "around this time." When again questioned about the date, Mr. Batton responded, "around the 24th, yes, the 24th, before we left. We left that evening." Yet, after further discussing the events contained in his AIR 21 complaint, which included an incident that occurred on August 27, 2008, and indicating that he was confused and having a hard time remembering, Mr. Batton stated that he must have sent the complaint by e-mail to the FAA after he returned to Rockford on August 30, 2008. Stating that he was unable to be any more specific, Mr. Batton concluded that he sent the e-mail to the FAA either the evening of August 30, 2008, after his 10:15 p.m. arrival in Rockford, or the morning of August 31st, before he was removed from the schedule later that day, but certainly before he went into the meeting at Ryan on September 2, 2008 when his employment was terminated.

Significantly, however, the FAA investigative report concerning Mr. Batton's AIR 21 complaint indicates that his e-mail was actually received by the Chicago FAA office through their e-mail system on September 9, 2008, RX 28, a week after Ryan terminated his employment. The initial FAA response to his complaint further references his inquiry on September 9, 2008, CX B, CX D, and RX 28. While Mr. Batton testified that he didn't know why the FAA used the September 9, 2008 date, he also acknowledged that at his previous deposition he testified that he sent the complaint to the FAA around September 9, 2008.

Further, during his hearing testimony, Mr. Batton became unreasonably adamant when confronted with evidence that possibly impeached his assertion that he called the FAA on July 9, 2008. When asked during cross examination where in his AIR 21 complaint, CX A, he specially mentioned making a phone call to the FAA on July 9, 2008, Mr. Batton highlighted the sentence which said "after an hour or so of telephone calls, we took off heading to Norfolk." When Respondent's counsel attempted to point out that two sentences above that phrase the complaint

referenced the aircraft captain making the phone calls, Mr. Batton aggressively restated, “It says, ‘After about an hour or so of telephone calls!’” However, when read together the two sentences clearly indicate that the captain made many phone calls over the course of an hour before they departed and makes no mention of Mr. Batton making a phone call.

Other Witnesses

The remaining witnesses, including Mr. Pflueger, Mr. Jorgensen, Mr. Williams, Ms. Bergmann, and Captain Clayton, generally provided credible testimony, with fairly straightforward responses and little equivocation. However, some conflicts in testimony and inconsistencies may require that I occasionally discuss in detail my assessment of such testimonial conflict. Such comments will be placed within double brackets ([[]]) in the following specific findings.

Stipulations of Fact

At the hearing, the parties stipulated to the following facts: a) from July 2007 and through to September 2008, Mr. Batton was an employee of Ryan International Airlines; and, b) Ryan International Airlines is subject to FAA rules and regulations (TR, p. 17-18).

Specific Findings

May 2007 – September 2008

Ryan primarily provides contract flight service to DOD on various commercial aircraft including B-757s and B-767s. Under the provisions of the DOD contract, Ryan provides meals and beverages based on the characteristic of the flight, domestic or international, and flight duration.

As a company holding an FAA certificate for operations as an air carrier, Ryan is subject to the FAA’s safety regulations and procedures. Ryan has a toll free phone number for internal safety complaints.

Ryan employs about a hundred flight attendants. Of that number, about four individuals are African Americans. According to the Ryan FAM, flight attendants are responsible for the safety and service of passengers. A flight attendant reports to the lead flight attendant, who in turn reports to the aircraft captain. While lead flight attendant training is offered to all flight attendants, only flight attendants who subsequently pass a test are offered the position.

Ryan has a progressive disciplinary policy, which is set out in the employee handbook. Under this policy, discipline may progress from coaching and counseling, to verbal warning, to written warning, to final written warning, to termination. Some situations may warrant moving straight to final warning or termination. “Failure to demonstrate and maintain immediate corrective action will result in further disciplinary action up to and including termination of employment.”

Under the FAM, the chain of command on Ryan aircraft goes from the captain/pilot in command, to first officer, to lead flight attendant, to flight attendant. Accordingly, flight attendants are under the direct supervision of the captain. Flight attendants are responsible for passenger safety and comfort and are required to report any incident that might become a hazardous situation. A Ryan flight attendant “must be able to work well with others as part of a team.” A flight attendant is considered to be late if not signed in at the designated place at show time. The first no show will may lead to a written warning; the second no show may result in termination. All Ryan employees are to be treated with courtesy and respect at all times. Conduct that “threatens, intimidates, or coerces another employee, a customer, or a member of the public at any time, including off-duty periods, will not be tolerated.” This prohibition includes harassment based on sex, race, or any characteristic protected by law. To ensure an effective work environment, the flight attendant rules of conduct include prohibitions against refusal to cooperate with other employees, making false, malicious, or vicious statements about an employee, failure to cooperate as a “team player,” and “any aggressive, intimidating, or threatening physical or verbal action taken towards a fellow crew member. . .” Failure to comply with company rules or a violation of the prohibitions may lead to administrative corrective action, up to and including termination of employment.

July 2007

Having accepted a job offer, Mr. Batton completes flight attendant training and then takes a leave of absence for carpal tunnel surgery.

September 2007

Mr. Batton starts flying as a flight attendant for Ryan. He earns \$19 an hour and is guaranteed 75 flying hours a monthly. His bi-weekly pay is about \$600. His per diem for food is \$75 a day overseas for an additional \$1,500 to \$2,000 a month. Mr. Batton is also covered by health insurance and a 401(k) plan.

October 2007

Mr. Batton starts a two month furlough.

December 2007

Mr. Batton resumes flying as a flight attendant for Ryan. At the end of 2007, his earnings from Ryan total \$2,214.45.

January 2008

Ms. Bergman contacts Mr. Batton about lead flight attendant training. Based on her encouragement, Mr. Batton attends the training but is not offered a lead flight attendant position.

January through September 2008

The FAA conducts two to four “spot” aircraft inspections, record reviews, and crew proficiency checks at Ryan a month.

March 25, 2008

[[Due to the varied accounts, a review of each witness’ recollection is warranted.

Ms. Shellie Maddux

In two e-mails, April 7 and April 8, 2008, to Ms. Guzman, Ms. Maddux states that while having drinks with Mr. Batton and other flight attendants, she became extremely offended during a question game when she was asked a question about relations with another race and Mr. Batton moved forward and “aggressively” and repeatedly asked for more information about the specific race in a loud voice. Mr. Batton then asked if she had a problem with him. When she responded that she did not like how Mr. Batton talked negative about her to other crew members, their exchange escalated into an argument involving work performance issues, including an incident with Ms. Howe. At that time, everyone moved away including Mr. Batton and Ms. Howe. When she heard Mr. Batton continue to talk negatively about her, Ms. Maddux asked him to stop. And, when Mr. Batton interfered with her effort to talk to Ms. Howe, Ms. Maddux objected that he couldn’t dictate to whom she talked. At that point, the argument fizzled out and everyone left for their rooms.

Mr. Anthony Batton

In an April 4, 2008 statement to Ms. Guzman, Mr. Batton states he was having drinks in a hotel lobby with other crew members including Ms. Maddux. After about an hour of conversation, “all out of the blue,” Ms. Maddux started to attack him “for no reason,” calling him all sorts of names. She asserted that he started problems with other crew members. Other crew members asked her to calm down. Ms. Maddux believed Mr. Batton had said something that he didn’t like about her. Mr. Batton walked away but Ms. Maddux followed and again caused a big scene. At that point, Mr. Batton left.

In a subsequent meeting with Ms. Bergmann, Mr. Batton indicated that he was only talking to Ms. Maddux during a card game and the conversation got out of hand.

At the hearing, Mr. Batton testified that in a German hotel lounge, while he was having drinks with Ms. Maddux, Ms. Howe and two contractors, Ms. Maddux exploded and went after Mr. Batton. Some flight attendants took her outside to calm down, but she returned and followed Mr. Batton. He didn’t raise his voice and didn’t make a scene. Mr. Batton did not scream at Ms. Maddux. He did not ask her a personal question about relations with another race.

Ms. Stephanie Howe

In her deposition, Ms. Howe recalled that Ms. Maddux came down and joined the flight attendants. She became loud and confronted Ms. Howe. Since the conversation was

uncomfortable, the flight attendants moved away. However, Ms. Maddux followed. Based on an earlier trip, she believes Mr. Batton and Ms. Maddux did not get along very well.

Ms. Jessica Luecke

In an April 4, 2008 e-mail to Ms. Bergmann, Ms. Luecke states that in a hotel lobby, Ms. Maddux started yelling at Mr. Batton based on things someone told her that he had said about her. Mr. Batton responded they could talk outside but Ms. Maddux kept yelling and called him a name. Mr. Batton and Ms. Howe moved away and Ms. Maddux went outside for a moment. However, she came back in and followed Mr. Batton and the other flight crew members to the other side of the lobby.

Ms. Tammy Angel-Gorzela

In an April 5, 2008 e-mail to Ms. Bergmann, Ms. Angel-Gorzela indicates that she was in a hotel lobby for drinks around 10:00 p.m. with other flight attendants. They asked Ms. Maddux to come down and join them. "Suddenly" Ms. Maddux and Mr. Batton "were screaming at each other." While not sure of the issue, it appeared to be related to a past conflict. When neither Ms. Maddux nor Mr. Batton would calm down, Ms. Angel-Gorzela and the other flight attendants moved away.

Discussion

Two significant disputes arise from these diverse accounts regarding the contents of their exchange and whether both Ms. Maddux and Mr. Batton were loud and screaming.

Concerning the contents of the discussion, although she was present, Ms. Howe did not provide any information about the specifics. Ms. Maddux asserted Mr. Batton's aggressive questioning about relations with other races initiated the confrontation. Denying he asked any question about relations, Mr. Batton stated Ms. Maddux had no reason to go after him. In evaluation this testimonial standoff, I again have diminished confidence in Mr. Batton's denial. At the same time, given the demonstrated confrontational nature of their interaction at the hotel and in light of Ms. Luecke's statement about Ms. Maddux's name calling, her expressed animosity toward Mr. Batton raises a concern about the reliability of her recollection. Consequently, I am unable to establish the actual contents of the exchange between Mr. Batton and Ms. Maddux.

In terms of their demonstrated reactions, the recollections of Ms. Howe, Ms. Luecke, and Ms. Angel-Gorzela establish that Ms. Maddux was loud and belligerent. Concerning Mr. Batton's demeanor, and setting aside Mr. Batton's denial, Ms. Howe indicated that only Ms. Maddux was loud and Ms. Luecke concurred that Ms. Maddux was the only one yelling. On the other hand, Ms. Angel-Gorzela recalled that both Mr. Batton and Ms. Maddux were screaming at each other. In this situation, the consensus of Ms. Howe and Ms. Luecke that only Ms. Maddux was loud and yelling outweighs the recollection of Ms. Angel-Gorzela.]]

Event

In a German hotel lounge, while having drinks, Ms. Maddux and Mr. Batton become involved in an argument. During the course of their exchange, Ms. Maddux becomes loud and yells at Mr. Batton.

April 7, 2008

Ms. Guzman, Ms. Bergmann, and Mr. Williams review statements and e-mails concerning the March 25, 2008 hotel exchange between Ms. Maddux and Mr. Batton. Ms. Guzman considers the allegation severe enough to warrant immediate suspension of Ms. Maddux as accelerated discipline.²⁵ In an e-mail to Ms. Maddux, responding to her objection to a suspension due to an off-duty argument, Ms. Guzman emphasizes that even though she may have been off-duty, Ms. Maddux remained a representative of Ryan and was expected to maintain high standards, especially when socializing with other crew members.

May 17, 2008

[[In a June 16, 2008 e-mail discussing the incident at Burger King, and during a June 17, 2008 meeting with Mr. Yeoman, Ms. Guzman, and Mr. Williams, Ms. Diaz also states that during a May 17, 2008 flight, in her presence, Mr. Batton asked a soldier-passenger when he was leaving the airplane lavatory if he thought she was cute and would date her. When he also asked a passenger to comment on her rear, Ms. Diaz told Mr. Batton she did not consider the comment a joke and asked him to stop. Since Mr. Batton stopped after hearing her objection, and she didn't want the crew to lose a flight attendant, Ms. Diaz did not report the incident at the time. However, due to the subsequent racial comment at the Burger King, she decided to let management know about his earlier comments about Ms. Diaz.

At the hearing, Mr. Batton denied making any comments about Ms. Diaz's appearance. He did not have a discussion about the subject with her.

Given my previous credibility determination, I have diminished confidence in the veracity of Mr. Batton's denial that he made the alleged comments on the May 17, 2008 flight. In considering Ms. Diaz's statement, I recognize that she delayed reporting Mr. Batton's comments for a month, and presented her delayed concern after being upset about Mr. Batton's comment to her at the Burger King a month later. Nevertheless, Ms. Diaz gave a reasonable explanation for the delayed report, provided witness names (Ms. Howe and the lead flight attendant, Ms. Toni Blisset), and set out a fairly specific account of Mr. Batton's comments about her appearance on the May 17, 2008 flight. Consequently, I find Ms. Diaz's e-mail and statement to the management sufficient to establish the events occurred as she described.]]

During a flight, as a passenger-soldier is departing the aircraft lavatory, Mr. Batton asks him in front of Ms. Diaz if he thinks she is attractive and would date her. Mr. Batton asks

²⁵During the hearing, Ms. Bergmann recalled that Ms. Maddux was later suspended for other reasons. Mr. Williams testified that Ms. Maddux was suspended for this incident. The e-mail correspondence at the time between Ms. Guzman and Ms. Maddux references an immediate suspension for the March 25, 2008 confrontation.

another passenger to comment on Ms. Diaz's rear. Ms. Diaz tells Mr. Batton she does not consider the comment a joke and asks him to stop. Mr. Batton does not make any further comments about her appearance.

June 15, 2008

[[One discrepancy exists regarding the actual contents of Mr. Batton's comment to Ms. Diaz. Based on their consistent recollections, I rely on that statements of Ms. Diaz, Ms. Foss, and Ms. Baker, rather than Mr. Batton's slightly different recounted version, to establish the contents of his exchange with Ms. Diaz.]]

On lunch break during recurrent training in Miami, Florida, while standing in line at a Burger King, considering her previous comments about her Cuban background, Mr. Batton first asks Ms. Melissa Diaz if she has family in Miami. When she replies yes, Mr. Batton responds that she must feel right at home with all these Cubans around. Considering the comment derogatory and feeling extremely uncomfortable, Ms. Diaz walks away. Mr. Batton asks what did he say? Ms. Jessica Baker asks if he would like it if he were in Africa and asked if he felt more comfortable there. Mr. Batton then apologizes to Ms. Diaz.

Ms. Diaz and Mr. Batton reported the exchange to the training instructor, Mr. Mike Fleming. Mr. Batton indicates that he didn't mean the comment in a derogatory way. Mr. Fleming advises Ms. Diaz to send a report to Ms. Bergman.

Later, Ms. Diaz calls Ms. Guzman and tells her about the exchange and that she was upset about the comment. Ms. Guzman asks Ms. Diaz for a statement.

June 16, 2008

Ms. Foss and Ms. Baker submit statements to Ms. Bergmann and Ms. Guzman about the Burger King exchange.

Ms. Diaz also sends an e-mail to Ms. Bergman. In addition to the Burger King incident, Ms. Diaz reports the events that occurred on the May 17, 2008 flight. Since Mr. Batton stopped the comments, she didn't report the flight incident. However, because Mr. Batton's comments have developed into racial harassment, she wanted management to know what he said on that flight. Based on these two events, Ms. Diaz indicates that Mr. Batton makes her extremely uncomfortable.

June 17, 2008

[[At the hearing, Mr. Williams testified that a coaching session with Mr. Batton occurred in "April 2008" due to Ms. Diaz's complaint. They used a coaching discipline form to identify problem areas and specific corrective actions. Mr. William further indicated that he focused on the need to be more sensitive to issues of race and national heritage; and Mr. Batton was receptive. Mr. Batton denies that any guidance was provided at the management meeting regarding Ms. Diaz. In resolving this dispute, I note that Mr. Williams also acknowledged at the

hearing that he was a little confused about the specific topics at the respective meetings with Mr. Batton. In light of that acknowledgment, I consider Mr. Williams' recollection about the details of the June 17, 2008 meeting insufficient to establish that Mr. Batton was counseled about interpersonal communications.]]

Mr. Fleming and Mr. Batton submits statements regarding the Burger King incident.

Ms. Diaz has a meeting with Mr. Yeoman, Ms. Guzman, and Mr. Williams to discuss the Burger King incident. She also describes the events on the May 17, 2008 flight when Mr. Batton asked a passenger if he found her attractive and would date her. Ms. Diaz asked him to stop. The lead flight attendant indicated the incident didn't need to be written up and Ms. Diaz let the incident go so they wouldn't lose a flight attendant.

Mr. Batton has a meeting the Mr. Yeoman, Mr. Williams, and Ms. Guzman. Initially unaware about the purpose of the meeting, Mr. Batton eventually explains what happened at the Burger King and states that he didn't mean for the remark to be offensive. They ask Mr. Batton to submit a statement. While recognizing that Mr. Batton may not have meant the statement to be offensive, Mr. Yeoman, Mr. Williams, and Ms. Guzman conclude his remark was inappropriate. They do not discuss Ms. Diaz' allegations about the May 17, 2008 flight.

June 27, 2008

[[Mr. Batton challenges Ms. Martin's crew report about his non-service of passenger-soldiers for two reasons. First, since Ms. Martin's report is dated July 27, 2008, the incident did not involve him because he was in Rockford on suspension on that day. Yet, as previously discussed, I have determined that Ms. Martin wrote her report on June 27, 2008.

Second, Mr. Batton adamantly stated that as a military veteran, he would never refuse to serve, or be mean to, military members on his flights. Given Mr. Batton's ten year service in the U.S. Army and his status as a combat veteran, this particular response requires additional consideration despite my earlier determination about Mr. Batton's credibility. At the same time, the record contains no indication why Ms. Martin would file a false crew report and the complaining troops would misidentify Mr. Batton as the offending flight attendant. Upon balance of these conflicting considerations, I conclude that the preponderance of the probative evidence only establishes that Ms. Martin received complaints from troops about Mr. Batton and she submitted a crew report regarding their concerns.]]

Ms. Jennifer Martin submits a flight attendant crew report indicating that while waiting for departure on a trip from Budapest to Kuwait, the troops were extremely thirsty and hungry and complained that an African American flight attendant named Anthony had refused their requests for snacks or water.

July 3, 2008

The flight attendants are advised by Mr. Fay and Ms. Bergmann that the company is booked to capacity for the month of July. Mr. Fay urges the crew members to do all they can to prevent avoidable delays.

Sometime before July 9, 2008

[[At the hearing, Mr. Batton described a conversation he had during a flight sometime in April 2008 with Mr. Walker, a lead mechanic, regarding his observations and concerns about Ryan aircraft mechanical issues. Portions of his testimony concerning his observations of aircraft problems, his associated concerns, and receipt of the FAA hotline phone number from Mr. Walker are corroborated by other evidence. Specifically, the second FAA investigation disclosed that a Ryan plane was flying with a known leak in the rudder, albeit within limits. FAA records also establish that the FAA conducted periodic inspections of Ryan aircraft throughout 2008. And, as discussed later in greater detail, Mr. Aycox's statements indicate Mr. Batton eventually attempted to contact the FAA through a hotline phone number. However, due to previously discussed reliability concerns, Mr. Batton's testimony standing alone is insufficient to also establish that Mr. Walker told him that Ryan mechanics were not reporting aircraft mechanical issues due to concern about their jobs. Additionally, while the logical sequence of events would place this conversation sometime before July 9, 2008, when Mr. Batton first actually attempted to contact the FAA through its hotline, I am unable to rely on Mr. Batton's assertion that his conversation with Mr. Walker occurred around April 2008.]]

Mr. Batton begins to have concerns about aircraft mechanical issues during long haul flights in Ryan B-757s. On one flight, he sees a mechanic go out and add hydraulic fluid at the rear of the aircraft. The mechanic tells Mr. Batton that because the aircraft has a bad leak he needs to keep adding hydraulic fluid to keep the aircraft going. He also observes an FAA inspector question a mechanic during an FAA inspection in Rockford. Additionally, Mr. Batton sees mechanics being called more frequently by pilots to the cockpit. Eventually, during a flight, Mr. Batton talks to a lead mechanic, Mr. Edmond Walker, about his observations, saying the situation is not right. Mr. Walker gives Mr. Batton the number for the FAA hotline.

July 9, 2008

After departing Rockford for Norfolk, a mechanical problem forces the aircraft to return to Rockford. Upon landing, a mechanic resets the system and indicates the plane is ready to go. However, having experienced the same problem on the same aircraft earlier, some pilots on the aircraft become upset because the mechanic has not fixed the problem and they object to the aircraft continuing to fly. The captain makes several phone calls and after about an hour the aircraft takes off for Norfolk.

[[As previously discussed, I have diminished confidence in the accuracy of Mr. Batton's testimony on significant events. However, in this case, Mr. Batton's testimony that he was unsuccessful in contacting the FAA on July 9, 2009 is partially corroborated by Mr. Aycox's statement that he also experienced trouble getting through on the FAA hotlines later in August

2008. Further, due to the documented return of the aircraft to Rockford due to a recurrent mechanical problem on July 9th, Mr. Batton's testimony about his reaction to that situation has collateral support. At the same time, I find Mr. Batton's testimony standing alone to be insufficient to establish that he also told another flight attendant that he called the FAA on July 9, 2008.]]

Due to the issues raised by the pilots and their concerns about an unrepaired mechanical problem and the captain's response, Mr. Batton becomes worried about flying in the airplane. He tell his crew members that he is going to the main building to get some snacks. Once in the building, Mr. Batton calls an FAA whistleblower hotline and receives a recorded message. Due to limited recording time, Mr. Batton leaves a message stating only that he has concerns and needs assistance in addressing the issues. Mr. Batton does not describe the problems he has observed.

July 15, 2008

[[In a July 17, 2008 e-mail to Ms. Guzman, Mr. Pflueger indicates that Mr. Jorgensen called him about seat blocking of Flight # 0767 (July 15, 2008) because Mr. Batton said to block off the back five rows. Mr. Pflueger didn't see what Mr. Batton had done. In his hearing testimony, Mr. Pflueger believes he received a call from Mr. Jorgensen that Mr. Batton had blocked off the last five rows of seats. He instructed Mr. Jorgensen to unblock the seats and comply with his earlier instructions.

When questioned during the hearing, Mr. Jorgensen did not recall talking to Mr. Pflueger about Mr. Batton block seats.

Mr. Batton testified that he worked in the back galley and had nothing to do with seat blocking. He never heard of this incident until after his termination. Neither Mr. Jorgensen nor Mr. Pflueger talked to him about it. Once after landing, Mr. Pflueger briefed the crew on company policy for seat blocking.

In her deposition, Ms. Howe recalled that a government inspector came on board and had an issue concerning seat blocking. Mr. Pflueger, the lead flight attendant, took care of the situation.

In considering the conflicting accounts, I consider Mr. Pflueger's credible hearing testimony, coupled with his nearly contemporaneous e-mail statement about the incident, more convincing than Mr. Jorgensen's inability to recall or Mr. Batton's denial. At the same time, Mr. Pflueger's testimony doesn't establish that Mr. Batton improperly blocked five rows of seats on Flight # 0767. Instead, his testimony and e-mail simply establish that based on the information he received, he believed Mr. Batton was responsible and eventually reported that situation to Ms. Guzman.]]

Prior to departure from Qatar on Flight # 0767, Mr. Pflueger is advised by Mr. Jorgensen that the five rear rows have been blocked by Mr. Batton. Mr. Pflueger tells Mr. Jorgensen to follow his earlier instruction that only four seats were to be blocked. At the next flight briefing,

Mr. Pflueger instructed the flight attendants on seat blocking. Afterwards, a government representative asked him about Ryan's policy on seat blocking.

July 17, 2008

In response to an in-cabin FAA inspection, Ms. Guzman and Ms. Bergmann issue a memorandum to flight attendants, noting the discrepancies and emphasizing prompt reporting of malfunctions and proper storage of emergency equipment and food and water containers.

Ms. Miller, Ryan's director for DOD programs, advises Ms. Guzman by e-mail that a DOD inspector has assessed a quality infraction against Ryan due to a contract inflation associated with improper seat blocking. She requests a written explanation on who gave the lead flight attendant, Mr. Pflueger, authority to block the seats. Ms. Guzman responds that she will send out an memorandum on the subject and ask Mr. Pflueger for a statement. She also expresses an intention to send a flight instructor out to the crew for check rides.

July 18, 2008

Mr. Pflueger sends an e-mail to Ms. Guzman about the seat blocking incident. Mr. Pflueger indicates that on Flight # 0767 for IUD to BUD, during preflight, he directed that four seats be blocked off. However, he received a call from Mr. Jorgensen about seat blocking because Mr. Batton had advised him to block off the back five rows. Mr. Pflueger told Mr. Jorgensen to follow his previous instructions. At the next flight briefing, Mr. Pflueger instructed the flight attendants on seat blocking. Afterwards, a government representative asked him about the policy on seat blocking. Mr. Pflueger's corrective action was communicate the proper procedure to his flight attendant crew.

In the evening, with the exception of Mr. Pflueger, Mr. Jorgensen and other flight attendants are staying in a Budapest hotel as reserve crew members. Mr. Pflueger is staying in another nearby hotel. Mr. Jorgensen learns from the crew scheduling website that the flight attendant crew has a flight assignment for the next day. By text message, he offers to help Mr. Pflueger notify the flight attendants since Mr. Pflueger is staying in a different hotel. Mr. Pflueger accepts his offer.

Mr. Jorgensen calls the flight attendant's room phones and leaves voice messages for individuals, including Mr. Batton, who don't answer.

Around 10:00 p.m., Mr. Batton arrives in his room and receives an incomplete phone message from Mr. Jorgensen which indicates they had been added to a trip. In response, Mr. Batton calls crew scheduling and obtains the details, including the show time.

Between 10:45 p.m. and 11:35 p.m.,²⁶ Mr. Jorgensen leaves notes for the crew members about the next day assignment with the front desk for distribution.

Around midnight, Mr. Batton receives a note under room door, informing him of the trip assignment and the show time.

July 19, 2008

[[While generally agreeing on its contents, the three participants in the conversation about Mr. Batton's concerns about improper notification have different characterizations of his demeanor. Mr. Pflueger considered Mr. Batton to be a little aggressive with his words and on the offensive in body language. Mr. Jorgensen believed Mr. Batton was aggressive and personally attacked him. According to Mr. Batton, while his body language may have been "animated," he was neither raised his voice nor became angry. This testimonial dispute does not lend itself to a factual resolution since it essentially relates to the respective parties' perspectives. At the same time, Mr. Batton acknowledged that his body language was animated and he certainly was not happy about his notification for the flight.]]

At the Budapest hotel, all the flight attendants, including Mr. Batton, are on time at the 10:15 a.m. show time.

On the aircraft, after departure, upset about his flight notification, and animated, Mr. Batton confronts Mr. Pflueger and Mr. Jorgensen. Mr. Batton objects to his receipt of an incomplete voice mail, Mr. Pflueger's use of a junior flight attendant to notify him, and receipt of the notification note after midnight. He states that if Mr. Pflueger wanted to delegate authority for notification, he should do it by seniority; he wasn't ready to take orders from someone junior to him. Mr. Pflueger perceives Mr. Batton as a little aggressive and offensive in body language. Mr. Jorgensen perceives Mr. Batton as being aggressive and believes Mr. Batton is calling him a liar concerning the timing of the notification note.

Following the exchange, feeling threatened by Mr. Batton's verbal abuse, Mr. Jorgensen sends an e-mail to Ms. Guzman and Ms. Bergman about the notification situation and Mr. Batton's reactions. Believing Mr. Batton was calling him a liar about leaving the note at 10:45 p.m., Mr. Jorgensen felt personally attacked. Mr. Jorgensen also shares his opinion that Mr. Batton does not work well with the other crew members and creates a very uncomfortable work environment. In particular, Mr. Batton was challenging and second guessing the lead flight attendant. Mr. Jorgensen states after the confrontation with Mr. Batton he no longer feels comfortable or safe working with Mr. Batton and believes he will resign if forced to ever work with Mr. Batton again.

²⁶In his July 19, 2008 e-mail, Mr. Jorgensen states that he left the notes with the front desk at 10:45 p.m. At the hearing, Mr. Jorgensen testified he dropped off the messages at 10:30 p.m. A copy of the note indicates that it was written at 10:45 p.m. In her July 2010 deposition, Ms. Howe testified she received the note between 7:00 p.m. and 8:00 p.m. According to Mr. Batton, after the note was slipped under his door around the midnight, he asked the front desk when they received the note and he was told that the person had just written the note. A handwritten note annotates that Mr. Jorgensen left the note at the front desk around 11:35 p.m. Based on this conflicting evidence, I conclude that Mr. Jorgensen dropped off the note between 10:45 p.m. and 11:35 p.m.

In a phone conversation with Mr. Batton, Ms. Guzman discusses potential performance issues, and a developing pattern associated with his work on Mr. Pflueger's crew that have recently come to her attention. She intends to meet with him on his return and advises Mr. Batton to keep a low profile and avoid any altercations with crew members for the rest of his trip.

July 21, 2008

In response to Mr. Jorgensen's e-mail, Ms. Guzman replies by email, stating that she takes seriously his comments about feeling uncomfortable and unsafe flying with Mr. Batton. She asks to see him when he returns from his present trip.

July 22, 2008

To expedite clearing security, Mr. Pflueger asks his flight attendants, including Ms. Howe and Mr. Batton to wear their uniforms on a commercial flight. When Mr. Howe and Mr. Batton question why, Mr. Pflueger responds that they may do what they want. Ms. Howe, Mr. Batton, and another flight attendant wear civilian clothes on the flight.

At a hotel, when crew rooms are unavailable, Mr. Batton calls a person in the sales office and later tells crew members that he took care of the situation.

[[Although he had been in Iceland on several trips and visited hotel bars, Mr. Batton denies that he ever talked to a bartender about a flight attendant's gender and that he was ever in Iceland with Ms. Smith. He also asserts that another flight attendant admitted in front of Captain Clayton that he, and not Mr. Batton, had actually made the comment.

In considering Mr. Batton's denial, I first note that in addition to my diminished confidence in the accuracy of his testimony, Ms. Smith does not allege the comments she heard were said by Mr. Batton while they were crewed together in Iceland. And, when Captain Clayton was called to testify, he was not asked about the purported admission by another flight attendant. Similarly, the record contains no evidence developed prior to the hearing that Mr. Batton or Captain Clayton provided that flight attendant's name to either Ms. Smith or Ryan supervisors.

While the record contains insufficient evidence of a bias or prejudice on her part, Ms. Smith's knowledge of Mr. Batton's alleged gender comment came solely from a friend in Iceland who did not want to be identified and was not willing to make a statement. Under these circumstances, insufficient probative evidence exists in the record before me to establish that Mr. Batton actually made a comment in Iceland about Ms. Smith's gender. On the other hand, the evidentiary record establishes that Ms. Smith believed Mr. Batton had made such a comment, was very upset about the gender comment, and eventually reported her grievance to Ms. Reinhardt and Ms. Guzman.]]

A restaurant owner in Iceland, who is Ms. Smith's friend, tells her that Mr. Batton had been talking about her. When pressed, the friend declines to repeat what was specifically said,

but Ms. Smith concludes that her personal life has been revealed publicly in Iceland. She is very upset and believes Mr. Batton has violated several company policies. Ms. Smith discusses the situation with her lead flight attendant, Ms. Dianne Reinhardt. In turn, they contact Ms. Guzman about the issue.

In a 5:28 p.m. e-mail to Ms. Guzman and Ms. Bergmann, Ms. Reinhardt thanks Ms. Guzman for talking with Ms. Smith. She expresses concern that her crew, which includes Ms. Smith, is scheduled to trade aircraft twice with Mr. Batton's crew. Believing the situation between Ms. Smith and Mr. Batton has the potential to blow up, she recommends that Ms. Bergmann pull Mr. Batton from his trip and send him back to Rockford. According to Ms. Reinhardt, Mr. Batton's lead flight attendant, Mr. Pflueger, concurs with the change.

In a 6:02 p.m. e-mail to Ms. Guzman, Ms. Bergmann, and Mr. Yeoman, Ms. Smith recounts what she had learned from her Icelandic friend about Mr. Batton discussing her personal life.

July 23, 2008

In a 7:53 a.m., e-mail to Ms. Guzman, Ms. Smith provides additional information, indicating that she approached the owner of a restaurant who told her that Mr. Anthony Batton had come up to him in the restaurant in front of everyone and observed that the owner had met Ms. Smith. When the owner said yes, Mr. Batton asked whether he knew that Ms. Smith was a different gender. Ms. Smith states that she objects to Mr. Batton's talking about her personal life and is very emotionally upset.

Meanwhile, in a 9:21 a.m. e-mail to Ms. Guzman, Mr. Pflueger provides an update on issues he is experiencing as the lead flight attendant on his current trip. He describes his request that the flight attendants wear their uniforms on a commercial flight, the response by Ms. Howe and Mr. Batton, and how Mr. Batton took over at a hotel when an issue arose about room availability without allowing the lead flight attendant to handle the situation. Mr. Pflueger believes Mr. Batton's actions are indicative of his inability to work as a crew member and interfered with his team building efforts. He expresses his concern that Mr. Batton creates an uncomfortable and unsafe environment for him and his flight attendant crew.

In a 10:23 a.m. e-mail to Mr. Yeoman, Mr. Williams, and Ms. Bergmann, Ms. Guzman forwards Ms. Smith's statement. She reflects on an earlier meeting with Ms. Smith and observes that hearing Mr. Batton's name "so short on the heels of the Melissa Diaz complaint gave us pause." Ms. Guzman observes that Ms. Smith is on a different crew than Mr. Batton's crew and has no knowledge of the other incidents with Mr. Batton and the "complaints and documentation that are coming from Anthony's lead Adam Pflueger almost daily now." Ms. Guzman recommends immediate suspension, pending an investigation and getting Mr. Batton back to Rockford for a meeting by Friday or Monday (June 25 and June 28, 2008).

In a 10:25 a.m. e-mail to Ms. Guzman, Mr. Yeoman approves placing Mr. Batton on immediate suspension. He prefers a Monday meeting.

In a 1:35 p.m. e-mail, Ms. Guzman advises scheduling that she is having a problem getting the logistics resolved and plans to call Mr. Batton soon to notify him of his suspension pending investigation.

At 3:35 p.m., Ms. Guzman makes a reservation for Mr. Batton to travel on July 24, 2008. She also has his schedule revised so he is available in Rockford through July 29, 2008.

At 8:58 p.m. (local time in Budapest), Mr. Pflueger leaves a note for Mr. Batton advising that Ms. Guzman needs to talk to him right away.

Upon return to the hotel, Mr. Batton receives Ms. Guzman's note. When he goes to the hotel lobby, Mr. Pflueger hands him a phone and he talks to Ms. Guzman. Mrs. Guzman tells Mr. Batton that he is being suspended and removed from the flight schedule pending an investigation. Reminding him of their earlier conversation on July 19th, but without providing specifics, she indicates additional concerns about his behavior have arisen and she has no choice but to bring him back to Rockford immediately. Mr. Batton expresses disbelief and requests a meeting on Thursday (July 24, 2008). However, due to unavailability, Ms. Guzman schedules the meeting for July 28th.

[[According to Ms. Guzman, during her second phone call with Mr. Batton, he became combative and rude. Mr. Batton asserts that he was not rude and combative during his conversation with Ms. Guzman. He was just concerned about being returned to Rockford early. This disagreement involves a matter of personal interpretation and I find Ms. Guzman's statement sufficient to establish that she perceived Mr. Batton as combative and rude during her second phone discussion with him.]]

In a second phone conversation with Mr. Batton about logistics, Ms. Guzman attempted to assure him that only in-flight management and Human Resources were aware of his situation. As Mr. Batton expresses continued doubt, Ms. Guzman perceives his response as combative and rude and believes she is personally experiencing some of the badgering other individuals have complained about. She considers Mr. Batton's quick decline since July 19th regrettable.

July 24, 2008

Mr. Batton returns to Rockford.

July 28, 2008

In the morning of July 28, 2008, Ms. Guzman forwards copies of Mr. Pflueger's e-mails from July 18 and July 23, 2008.

In an 11:05 a.m. e-mail to Ms. Guzman and Ms. Bergmann, Mr. Pflueger provides a follow-up of his experiences with Mr. Batton. While Mr. Batton has not directly violated the FAM policies and procedures, Mr. Pflueger believes he has deliberately attempted to discredit Mr. Pflueger's leadership and reputation. As an example, Mr. Batton asked Mr. Pflueger how long he had been with Ryan in management. After Mr. Pflueger's response, Mr. Batton

indicated that he had six more years of management experience than Mr. Pflueger. Mr. Batton said several times that if he was in charge, he'd do things a different way. Due to Mr. Batton's challenges, Mr. Pflueger had to remind the crew twice that he was the only lead flight attendant of the trip. Mr. Pflueger thanks Ms. Guzman and Ms. Bergmann for their guidance and recommendations on resolution of his problems with Mr. Batton.

Mr. Batton meets with Ms. Bergmann, Ms. Guzman, and Mr. Williams. Mr. Williams asserts that sometime in July Mr. Batton told someone in a bar in Iceland about a flight attendant's gender. Mr. Batton denies the allegation. Ms. Guzman references his non-service to troops on the 27th. Mr. Batton responds that was impossible since he was on suspension at that time. Ms. Guzman presents him with a final warning letter.

On the Ryan Coaching/Discipline Form, a "final warning," Ms. Guzman references her phone call with Mr. Batton on July 19, 2008 about numerous performance concerns and the need to keep a low profile. She then observes that in the following days additional concerns arose involving his refusal to cooperate with other employees, documented passenger complaints in crew reports, and gossip that violated company policy, privacy rights, as well as, the well being and reputation of other crew members. Ms. Guzman cites violations of the following FAM rules: Rule 27, refusal to cooperate with other employees based on lead flight attendant and flight attendant reports; Rule 31, making false, vicious, or malicious comments about a Ryan employee, specifically Ms. Diaz and Ms. Smith; Rule 37, refusal to cooperate as a team player, based on reports from lead flight attendants and flight attendants; Rule 41, aggressive, intimidating, or threatening physical or verbal action taken towards a fellow crew member or supervisor, specifically, Ms. Diaz and Ms. Smith. Ms. Guzman offers Mr. Batton the opportunity to review the FAM policies and procedures, obtain clarification, and seek guidance and assistance. She further advises that Mr. Batton's failure to uphold Ryan's "high standards of professional, moral, and ethical conduct and behavior at all times will result in immediate termination."

Mr. Batton refuses to sign the final warning form. After his meeting at Ryan, Mr. Batton comes off suspension.

July 28 through August 7, 2008

[[Mr. Batton's testimony about his numerous phone calls to FAA hotlines from July 28 through early August 2008 and the contents of his discussions with Mr. Aycox are corroborated by Mr. Aycox's recollection of Mr. Batton's contacts with him during this time frame, which included Mr. Batton's unsuccessful attempts with FAA hotlines and message systems, and stated concerns about Ryan, as well as Mr. Aycox's own failed attempts to get a response from the FAA phone numbers.]]

Mr. Batton calls several FAA phone numbers to indicate that he never got a response to his July 9, 2008 message. Eventually, Mr. Aycox in the Chicago FAA office contacts Mr. Batton and gives him additional FAA phone numbers to call. Mr. Batton then places several calls and leaves messages, but receives no response. About a week later, Mr. Batton advises Mr. Aycox that he hasn't gotten a response from the FAA phone contacts. Mr. Batton also tells Mr.

Aycox that in his opinion Ryan is doing things that are wrong and contrary to federal regulations. Mr. Aycox tells him to write up his complaint and send it to him so he could get it to the correct FAA office that monitored Ryan. In the meantime, due to his own inability to get a response from the FAA phone contacts, Mr. Aycox seeks permission for his office to conduct an investigation into Mr. Batton's concerns. Mr. Aycox does not have any communications with Ryan regarding Mr. Batton.

August 5, 2008

Mr. Batton submits a letter to Mr. Williams in response to the final warning letter. While appreciative of their conversation on July 28, 2008, Mr. Batton remains concerned about the untrue statements other crew members had made about him. He would never treat passenger troops poorly and strongly disagrees that he is not a team player. Mr. Batton believes his job performance demonstrates his value to Ryan. Acknowledging an understanding of Ryan policies and procedures, Mr. Batton believes he should have received a first warning, rather than a final warning.

August 7, 2008

Ryan issues a memorandum to all crew members on proper seat blocking procedures.

In an e-mail to Mr. Williams, Mr. Yeoman, and Ms. Bergmann, Ms. Guzman indicates that she does not feel it is appropriate to respond to Mr. Batton's August 5 2008 letter. While acknowledging Mr. Batton's dispute regarding the allegations, she believes the final warning letter sufficiently sets out the basis for the accelerated discipline. While due to the absence of individual counseling and documentation, Mr. Batton may have failed to previously understand the gravity of the prior events, Ms. Guzman asserts his response shows a failure to see the connection between his pattern of behavior problems in conjunction with performance issues while on Mr. Pflueger's crew she recently discussed with him. Additionally, the instructor she sent out to Mr. Pflueger's crew indicated every member of the crew found it difficult to work with him.

August 8, 2008

Noting a recent drop in on-time performance, Ms. Guzman emphasizes that under the contract, continued poor performance will jeopardized the ability to obtain DOD contract flights. She urges flight attendants to work as effectively and accurately as possible through robust time management.

August 24 and 25, 2008

[[Both FAA investigations generally corroborate Mr. Batton's account of the problems the aircraft going into Iceland experienced and the confirmed the tail scrape incident. However, other aspects of his statement, including his report that a Ryan mechanic said they do not have enough time to fix the aircraft properly, by itself, is insufficient to establish that exchange.]]

On a flight, the captain calls a mechanic to the cockpit. Upon his return, Mr. Batton asks the mechanic what was wrong. The mechanic indicates there is a problem with the hydraulics. When the aircraft eventually reaches Iceland, the hydraulic problem is worse and the aircraft remains overnight for repair. The next day, upon landing in Budapest, the aircraft experiences a tail scrape.

August 27, 2008

[[The FAA preliminary investigation confirmed some portions of Mr. Batton's complaint about the flights on this date, while also providing contrary evidence. Specifically, going into Hawaii, the plane had a fuel quantity error and after only one day, the aircraft returned to Rockford. However, contrary to Mr. Batton's assertions, the mechanic indicated the absence of any fuel quantity indicator issue on the flight to Thailand.²⁷ And, the mechanic reported that once in Hawaii, he could not duplicate the fuel quantity issue so the aircraft was cleared. Additionally, due to reliability concerns, Mr. Batton's recollection alone does not establish that the mechanic stated the problem would not be written up until later and a company vice president ordered the aircraft's return to Rockford the next day.]]

Prior to arriving in Hawaii, a Ryan mechanic tells Mr. Batton about a fuel quantity panel error on the aircraft which he expects will take three days to repair and test. After one day in Hawaii, the aircraft returns to Rockford.

August 25 to August 29, 2008

[[In light of their sharply divergent recollections, a determination of what occurred between Mr. Batton and Ms. Thomas during this trip, which included the flight between Guam and Honolulu requires an assessment of multiple conflicting recollections by several people on the trip, and the flight from Guam to Honolulu.

Ms. Robbet Johnson Thomas

In a September 1, 2008 e-mail to Ms. Bergmann, Ms. Robbie Thomas claims that she felt intimidated by Mr. Batton from the beginning to end of their recent trip. Mr. Batton began the trip by telling Ms. Thomas that she was weak and wouldn't make it on the job. He also indicated that he would break her. Ms. Thomas ignored the comments. He warned her to be careful because she was an African American and encouraged her to talk to other African American employees because Ryan had written up them all up. He told Ms. Angela Scott and Ms. Howe that she wasn't going to make it because she was too soft. Mr. Batten also stated that due to his seniority, Ms. Thomas had to do whatever he told her.

On the flight from Guam to Hawaii, Mr. Batton said that he was going to ride her until she broke because she didn't understand how things worked. Ms. Thomas asked him to leave her alone. Mr. Batton left. When he later returned, Mr. Batton asked what was wrong. She asked him to leave her alone. But, Mr. Batton said he had duty to her husband and talked to her

²⁷The second FAA investigation revealed that Ryan had earlier released the aircraft on August 25, 2008 for flight with an known maintenance discrepancy regarding the fuel quantity indicator.

because she needed a friend. “Overcome by rage,” Ms. Thomas started to cry due to his negativity. When she asked why he thought she was weak, Mr. Batton indicated that she didn’t understand that the crew didn’t like her but she would get used to it. While the crew members appeared cordial, they were really phony and prejudiced. Mr. Batton stated that he had talked to Captain Clayton because when he was lying down God told him to confront Ms. Thomas. Ms. Thomas again stated that she didn’t want to talk to him and asked him to leave her alone.

Ms. Thomas felt attacked by Mr. Batton. Ms. O’Shiel saw her and asked what was wrong. Ms. Thomas responded that Mr. Batton was talking crazy and she was mad. She then told Ms. O’Shiel what Mr. Batton said. Ms. O’Shiel confronted Mr. Batton but he denied everything. Ms. Howe also denied hearing him say anything. When Ms. O’Shiel went to the front of the aircraft, Ms. Howe “ran to my seat” and said that Mr. Batton didn’t mean to hurt her feelings and he just had that kind of personality. Ten minutes later, Mr. Batton apologized to Ms. Thomas. He said he was just trying to make her understand how people were going to treat her because she was African American. He also said she was ruining his career because the company was out to get him and believed what other people said rather than him.

After their arrival in Hawaii, Ms. O’Shiel asked what Ms. Thomas wanted to do about the situation. Ms. Thomas didn’t want to get anyone in trouble, but she felt unsafe around Mr. Batton. Ms. Thomas felt Mr. Batton was bullying her for no apparent reason. She believed she had been doing her job well. She didn’t believe she could fly with Mr. Batton because he would make it difficult since she didn’t share his views.

In her January 2010 deposition, Ms. Thomas testified that after two nights in Budapest, she worked a flight from Budapest to Kuwait with troops and an empty ferry flight from Kuwait to Thailand. During these two flights, Ms. Thomas worked with Mr. Batton in the aft section of the aircraft. Ms. O’Shiel was the lead flight attendant. Occasionally, other flight attendants, including Ms. Scott and Ms. Howe, were present. Mr. Batton and Ms. Thomas engaged in “small” talk, saying that he didn’t think Ms. Thomas would make it as a flight attendant and referring to her as the junior man. When she took out her flight attendant manual to look up “junior man,” she learned that “junior man” is a scheduling term for operational assignments based on seniority. The term had nothing to do with working a flight as a flight attendant. Mr. Batton also told her that since she was an African American she needed to watch her back since Ryan was prejudiced. After that exchange, Mr. Batton continued to tell her that she was weak and not going to last three months. He was going to break her in and make her aware of how the company was really prejudiced. Ms. Scott told Ms. Thomas just to ignore Mr. Batton and Ms. Howe agreed with everything he said. On the flight from Kuwait to Thailand, Mr. Batton continued his constant conversation about the company and that Ms. Thomas didn’t appear to be enough of an African American. Ms. Thomas didn’t ask him to stop. She responded that whatever issues he had, they were his issues and not hers.

In Thailand, Ms. Charleston’s flight attendant crew came on duty. On the flight from Thailand to Guam, Mr. Batton periodically walked up and continued with his conversation about the company. Ms. Thomas didn’t pay much attention. They arrived in Guam for a layover. Although Ms. Thomas saw Mr. Batton at a pool, she ate dinner in her room and didn’t ask Mr.

Batton to dinner. The next day, having heard a different show time, Ms. Thomas was late for the show time. Ms. O'Shiel and Captain Clayton said her being late was okay.

On the flight from Guam to Hawaii, Ms. Thomas was deadheading again, sitting in the center section. Mr. Batton came by and asked how she could have gotten the wrong show time. He later said the crew didn't like her, that she was fooling herself. After talking to Captain Clayton, Mr. Batton returned and said he had a duty to Ms. Thomas' husband to talk to her. She asked him to leave her alone. He again returned and God had told him to check on her. Ms. Thomas replied that she was very upset because Mr. Batton didn't know her and had no basis to judge her and say mean things to her. Mr. Batton replied that she didn't understand how people and the company are. He was trying to tell her because she was a sister that she needed to watch her back. Her skin wasn't tough enough, she was weak, and she wasn't tough enough.

Ms. O'Shiel noticed she was crying and she told her what Mr. Batton had said. After talking to Mr. Batton, Ms. O'Shiel said he denied everything and Ms. Howe had nothing to say. After Ms. O'Shiel left, Ms. Howe came to Ms. Thomas and said that Mr. Batton just talks that way and comes up a little strong. Ms. Howe offered her help if needed when they got to Hawaii and left. While Ms. Howe was talking, Captain Clayton walked by and said Mr. Batton wasn't worth it. Later, Ms. Scott sat by her and said she was sorry that she hadn't said anything earlier. Mr. Batton then returned and said he was just trying to look out for her. He said he was so sorry. At that point, Ms. O'Shiel came up and asked why he was bothering Ms. Thomas again. Mr. Batton started crying and saying that he didn't need to be written up for this situation because he would lose his job. Mr. Batton said that he was going to lose his job. Ms. O'Shiel then told Mr. Batton to leave.

In Hawaii, Ms. O'Shiel said she would have to report the incident and indicated that Ms. Thomas should submit a report too. Ms. Charleston also stated that as the lead flight attendant on the working crew she'd have to file a report too.

In assessing the probative value of Ms. Thomas' statements, I first observe that the contents of her September 2008 e-mail report and January 2010 deposition are generally consistent. Next, the record contains insufficient evidence to demonstrate that Ms. Thomas fabricated her exchanges with Mr. Batton due to bias or prejudice against Mr. Batton. Additionally, while I have considered that Ms. Thomas was later promoted to lead flight attendant, her testimony about the timing of her lead flight attendant training, her completion of the lead flight attendant examination and the delay associated with obtaining a permanent lead flight attendant slot in February 2009 appears to reflect a reasonable progression rather than situation where she has obtained personal gain at Mr. Batton's expense. Next, since before the flight Ms. Thomas had not displayed any concerns about Mr. Batton's interactions with her, I have also considered that Ms. Thomas' demonstrative emotions on the flight from Guam to Hawaii may have been attributable to her late arrival for the show time rather than anything Mr. Batton may have said to her; and that she fabricated blame on Mr. Batton to avert focus on her deficiency. However, before departure, both her lead flight attendant, Ms. O'Shiel, and Captain Clayton told her there was no problem and she should not worry about being late. In that situation, contrary to Ms. Howe's belief, Ms. Thomas's agitated emotional state on flight seems more consistent with the reason she provide to Ms. O'Shiel and Ms. Charleston rather than a

concern about being late. And, rather than being an attempt to shift focus because she had been late, Ms. Thomas' complaint about Mr. Batton actually drew scrutiny to Ms. Thomas and what occurred in Guam. Consequently, I conclude that Ms. Thomas' statements and deposition are credible.

Ms. Debra O'Shiel

In an August 31, 2008 e-mail to Ms. Guzman and Ms. Bergmann, Ms. Debra O'Shiel recounts the events she observed regarding Mr. Batton's sexual harassment of Ms. Thomas on August 29, 2008. On a ferry flight from Guam to Hawaii, after just waking up, Ms. O'Shiel glanced across the plane to Ms. Thomas and saw that she was crying. When Ms. O'Shiel went to her and asked what was wrong, Ms. Thomas was initially reluctant. Finally, she indicated that back in the galley with Mr. Batton and Ms. Howe, Mr. Batton had said some very disturbing things to her. Mr. Batton told her to watch her back because Ryan was out to get African Americans, none of the crew would like her, and she wasn't going to make it. Ms. O'Shiel then asked Mr. Batton what he had said and he replied that he was just trying to help Ms. Thomas be a good flight attendant. He recommended that they talk to her so they went to where Ms. Thomas was sitting. Ms. O'Shiel then asked Mr. Batton and Ms. Thomas what was going on. Ms. Thomas reported what Mr. Batton had said and Mr. Batton denied making the statements. Based on their respective body languages, Ms. O'Shiel believed Ms. Thomas. Mr. Batton then insisted they go back and ask Ms. Howe. Ms. Howe supported Mr. Batton. Ms. Howe indicated they were just trying to get Ms. Thomas to understand how bad it was to work for Ryan. Ms. O'Shiel then asked Ms. Howe to talk to Ms. Thomas and she did for about half an hour. She also saw Mr. Batton talking to Ms. Howe again. Ms. Thomas still appeared visibly shaken.

On the flight from Hawaii to Rockford, Ms. O'Shiel sat with Ms. Thomas and asked if she wanted to write up the incident. Ms. Thomas was reluctant but Ms. O'Shiel encouraged her to tell her exactly what happened. Ms. Thomas responded that she felt intimidated by, and was afraid of, Mr. Batton. He told her the company hated all African Americans and he would break her. While working in the back galley, Mr. Batton said that he was in charge and junior manning her. As a result, she had to do what he said. Unaware of the problem, Ms. O'Shiel told Ms. Thomas that she would not tolerate that behavior.

Mr. Batton came to Ms. O'Shiel in tears and pleaded with her not to write up the incident. He felt the company was prejudiced against him. Ms. O'Shiel replied that she only held a prejudice against crew members who didn't do their job, were unkind to other crew members, had nothing good to say about the company, and were disrespectful to other persons' feelings. Mr. Batton told Ms. O'Shiel that she couldn't write up the incident because it could end his career. At that point, wanting to avoid a confrontation and afraid of retaliation, Ms. O'Shiel said she probably would not write it up. However, while reluctant to get someone fired, Ms. O'Shiel kept thinking what Mr. Batton had said to a new employee. And, Mr. Batton scared her.

Given the straightforward recitation of the events she observed, and the absence of any evidence of bias towards either Mr. Batton or Ms. Thomas, coupled with her duty as the lead flight attendant for both Mr. Batton and Ms. Thomas, Ms. O'Shiel's statement provides credible

evidence of the events that occurred on the flight from Guam to Honolulu and the following flight back to Rockford.

Ms. Lynne Charleston

In a 10:21 a.m., September 2, 2008 e-mail to Ms. Bergmann, Ms. Lynne Charleston reports her observations of Ms. Thomas and Mr. Batton. Based on flights with her, Ms. Charleston considered Ms. Thomas to be a competent and intelligent flight attendant. Ms. Charleston also met Mr. Batton poolside in Guam and they talked briefly about working with Ryan; all the comments were positive. On a flight from Guam to Hawaii with Ms. O'Shiel's crew, Ms. Charleston saw Ms. Howe was talking to Ms. Thomas who was crying. When Ms. Charleston bent over and asked if everything was alright, Ms. Howe immediately responded that Ms. Thomas was fine. But, Ms. Thomas kept crying and then after a few seconds nodded everything was ok. Later, when Ms. Thomas was still crying, Ms. Charleston offered to let her call home from the aircraft. Ms. Thomas said she didn't need anything.

During the flight, Ms. Charleston observed Ms. Howe and Mr. Batton sit with Ms. Thomas. She believed they were helping Ms. Thomas. However, towards the end of the flight, Ms. O'Shiel came to Ms. Charleston and told her that Mr. Batton had said some very unkind and awful things to Ms. Thomas, including that she was incompetent and shouldn't be a flight attendant. Ms. Charleston doesn't recall any other details, but she got the impression Mr. Batton was bullying Ms. Thomas. Ms. Charleston had been impressed with Ms. Thomas and was surprised to learn she was a new flight attendant. Ms. Charleston and Ms. O'Shiel agreed to keep an eye on Ms. Thomas in Hawaii and include her in their off-duty plans. Ms. O'Shiel also said she'd ask Ms. Thomas what she wanted to do about the situation. Before the flight landed, Ms. Charleston talked to Ms. Thomas and let her know that Ms. O'Shiel had told her what was going on because Ms. Charleston was on the working crew. Ms. Thomas reiterated that Mr. Batton had said hurtful and mean things about her. She was incompetent, junior to him, and had to do anything he said. She started to cry and said that Ms. Howe was present when all this was said but she was Mr. Batton's friend. Ms. Howe was trying to smooth things over and talk Ms. Thomas out of reporting Mr. Batton's comments so he wouldn't lose his job. Ms. Thomas feared for her job because it was her word against Mr. Batton and Ms. Howe. Ms. Charleston told Ms. Thomas to let her know if anything else went on and that bullying would not be tolerated.

Upon arrival in Hawaii, Ms. Charleston kept a close watch on Ms. Thomas. Periodically, Mr. Batton attempted to get physically close to Ms. Thomas but she moved away. The next day, Ms. Thomas told Ms. Charleston that there had been a brief confrontation in an elevator but she was able to avoid Mr. Batton. At the crew bus, seeing Ms. Thomas "shrink" as Mr. Batton moved toward her, Ms. Charleston put herself between Mr. Batton and Ms. Thomas. Based on her observations, Ms. Charleston had no doubt that Ms. Thomas was frightened of Mr. Batton.

On an August 31, 2008 flight with Ms. Charleston, Ms. Thomas appeared to have regained her composure. Ms. Thomas said she was feeling better and had decided to file a report. Ms. Charleston indicated that Ms. O'Shiel had asked her to also file a report.

Again, based on the nearly contemporaneous and detailed account, and in the absence of any demonstrated bias, I find Ms. Charleston's statement provides credible evidence of the events she observed.

Captain Jeffrey Clayton

At the hearing, Captain Clayton noted that on previous flights that he commanded on that trip, no one presented him with any safety or crew conflict concerns. And, while in Guam, Ms. Thomas had indicated that she was enjoying her work and the opportunity to travel. Additionally, during the Guam to Honolulu flight, Captain Clayton did not observe Mr. Batton with Ms. Thomas and never saw her crying. After Mr. Batton had talked to Ms. O'Shiel, he told Captain Clayton that he didn't know why Ms. Thomas was upset. Further, although he was a pilot in command for the deadheading crew, no one told him about any problems on that flight.

During the course of his hearing testimony, Captain Clayton was a credible witness. However, concerning his eyewitness account about the Guam to Honolulu flight, Captain Clayton testified that he slept for about an hour after departure from Guam and then spent 45 minutes talking to Mr. Batton up in front of the aircraft. As such, he was not in position to observe the interaction between Mr. Batton and Ms. Thomas during the first hour of the flight or observe Ms. Thomas' demeanor. Consequently, Captain Clayton's testimony about what he saw on that flight has diminished probative value due to his limited availability as a witness during the first portion of the flight.

Ms. Stephanie Howe

In her initial e-mail on September 2, 2008, Ms. Howe observed that Ms. Thomas and Mr. Batton appeared to have been getting along. And, she believed Ms. Thomas had asked Mr. Batton to dinner. During the flight from Guam to Hawaii, Ms. O'Shiel asked her to talk to Ms. Thomas who was upset. During their conversation, Ms. Thomas mentioned people not liking her and she had never seen on her other trips how people were acting. She mentioned being late for the show time that morning. After the conversation, Ms. Howe was informed by Ms. O'Shiel that Ms. Thomas was upset with Mr. Batton, which surprised Ms. Howe. In her subsequent deposition, Ms. Howe reiterates that the flight attendants were getting along during the trip. She again recalled that Ms. O'Shiel asked her to talk to Ms. Thomas because she was upset. Ms. Thomas stated that she was shocked and very disappointed how people were acting on the trip. Ms. Howe doesn't recall the mention of any names or remember seeing Ms. Howe cry. Ms. Howe also doesn't recall: a) any friction or conflict between Mr. Batton and Ms. Howe, b) Mr. Batton saying Ms. Thomas was soft and not going to make it, c) Mr. Batton making any comments about seniority, d) any conversation with Ms. Charleston, e) anyone discussing that Mr. Batton was bullying Ms. Thomas, f) an attempt by her to talk Ms. Thomas out of reporting Mr. Batton, and g) Mr. Batton being afraid he'd lose her job.

In considering Ms. Howe's presentations, notably absent in her initial e-mail on September 2, 2008 e-mail requested by Ms. Bergmann is any indication at that time that she had any knowledge of what Ms. Thomas claimed Mr. Batton had said to her and Mr. Batton's denial. Instead, Ms. Howe stated that when she went to talk to Ms. Thomas, she thought the problem

might be homesickness. Whereas, Ms. Thomas, Ms. O'Shiel, and even Mr. Batton indicate that Ms. Howe was both well aware of Mr. Batton's alleged adverse statements to Ms. Thomas and supported Mr. Batton's denial of the alleged statements. Two years later, in her July 2010 deposition, after indicating that she only remembers "bit and pieces" of the trip, Ms. Howe testimony is generally presented in terms of an inability to recall rather than, with one exception, a definitive recollection that several statements and events did not occur. Consequently, her initial silence on a critical aspect of the exchange between Ms. Thomas and Mr. Batton on the flight from Guam to Hawaii – what Ms. Thomas claimed Mr. Batton had said and his denial – and her subsequent inability to recall at her deposition lessen the relative probative value of her testimony.

Mr. Anthony Batton

According to Mr. Batton, on the flight from Kuwait to Thailand, as working flight attendant, he and Ms. Thomas sat in the back jump seats periodically and talked about work. Ms. Thomas asked questions about the flight manual. He did not threaten to junior man her, which means being called in to work from off duty because she is the junior flight attendant, since only scheduling can do that. He never said he'd break her. He never made demeaning or aggressive statements. During their layover in Guam, at the pool, Ms. Thomas said she was hungry and asked Mr. Batton to dinner, but he declined. He didn't push Ms. Thomas. The next morning, Ms. Thomas was late for show time and Ms. O'Shiel called her. Ms. Thomas apologized and Ms. O'Shiel said it was okay. Mr. Batton did not talk to her. On flight from Guam to Hawaii, Mr. Batton initially sat in the back since he was in charge of he galley. Ms. Thomas and Ms. O'Shiel were in the middle of the aircraft on opposite sides. Later, Mr. Batton went up and talked to Captain Clayton. Forty-five minutes later, Ms. O'Shiel asked Mr. Batton to come back a few seats and asked him if he knew why Ms. Thomas was crying. When he said no, she indicated it was because of something he said. They both went back to see Ms. Thomas who said Mr. Batton told her that she didn't know how to do her job, nobody liked her, and she wasn't going to make it. Mr. Batton denied those statements. Since Ms. Thomas said Ms. Howe had heard his statements, Ms. O'Shiel asked her and she denied the statements and then went to talk to Ms. Thomas. Mr. Batton denies he asked Ms. O'Shiel not to write him up. And, he denies he told Ms. Charleston that he thought Ms. Thomas was incompetent.

While his testimony that he neither harassed, intimidated, nor made derogatory comments may receive some support from Ms. Howe's testimony, Ms. Howe's testimony has diminished probative value, and for the reasons I have previously discussed, I have diminished confidence in the accuracy of Mr. Batton's testimony regarding key aspects of this case, such as, his exchanges with Ms. Thomas.

Discussion

In summary, due to his limited opportunity to observe the early portions of the flight from Guam to Honolulu, Captain Clayton's testimony doesn't support either version of the events presented by Mr. Batton and Ms. Thomas. Captain Clayton's observation of Ms. Thomas prior to the flight and the absence of complaints on the flights he commanded prior to the Guam to Honolulu flight are not inconsistent with either Ms. Thomas' testimony that until the Guam to

Honolulu she ignored Mr. Batton's comments or Mr. Batton's denial that he had been harassing her during the trip. The absence of a report to Captain Clayton regarding the Guam to Honolulu flight does not show that Ms. Thomas was not upset on the flight since Ms. O'Shiel explained that Captain Clayton was not part of the working crew on that flight and Ms. O'Shiel had not yet decided to report the incident. Consequently, those observations provide little assistance in resolving the dispute about what Mr. Batton may or may not have said to Ms. Thomas.

Although Ms. Howe's testimony provides some support for Mr. Batton, her less than specific recollection of what Mr. Batton did not say and did not do have less probative value.

Generally consistent with the testimonies of Ms. Thomas and Mr. Batton, Ms. O'Shiel's statement confirms that Ms. Thomas was emotionally upset with Mr. Batton and crying on the flight from Guam to Honolulu. Although the timing of the event is unclear, Ms. O'Shiel's testimony also supports Ms. Thomas' recollection that Mr. Batton became upset and asked not to be reported. However, since her recollection also includes both Ms. Thomas' assertions about Mr. Batton's statement and his denial, and she did not actually hear their conversations, testimony does not assist in determining what they said to each other.

Similarly, since Ms. Charleston did not hear the exchanges, her statement only establishes that Ms. Thomas was visibly upset during the Guam to Hawaii flight about something Mr. Batton said and that Ms. Thomas appeared to be intimidated by his physical presence in Hawaii after the flight.

Consequently, in determining the content of their exchanges while working the two flights from Budapest to Thailand and the Guam to Honolulu flight, I turn to my previous respective credibility assessments of Mr. Batton's testimony and Ms. Thomas' recollections to conclude that Ms Thomas' statement is more accurate and probative.]]

Events

On August 27, 2008, Ms. O'Shiel, lead flight attendant, Mr. Batton, Ms. Howe, and Ms. Thomas are assigned as the working flight attendant crew on a flight from Budapest to Kuwait. During the flight, a fuel panel problem occurs and the mechanic resets the system. The crew continues on a second flight to Thailand.

During these flights, Mr. Batton and Ms. Thomas work in the aft section of the aircraft. During the course of their small talk, Mr. Batton tells Ms. Thomas that she is weak and will not make it on the job. Mr. Batton indicates that he is going to break her in and make her aware of how the company was really prejudiced and warns her to be careful because she was an African American. He also asserts that due to his seniority, Ms. Thomas had to do whatever he told her. She responds that whatever issues he has, they are his issues and not hers.

Mr. Batton is forced to deadhead from Thailand to Guam which Mr. Batton believes will cause him to go over his 30 hour duty day.

After a layover in Guam, Ms. Thomas is late for the show time. Ms. O'Shiel and Captain Clayton tell her it's no problem and she shouldn't worry about the situation.

On the flight from Guam to Hawaii, Ms. O'Shiel's flight attendant crew is deadheading. Mr. Batton again tells Ms. Thomas that he is going ride her because she didn't understand how things worked. Ms. Thomas asks him to leave her alone. When he later returns, Mr. Batton says that he has duty to her husband and is talking to her because she needs a friend. Ms. Thomas asks him to leave her alone. When she asks why he thought she was weak, Mr. Batton indicates that she doesn't understand that the crew doesn't like her but she will get used to it. While the crew members appear cordial, they are really phony and prejudiced. Mr. Batton stated that he had talked to Captain Clayton because when he was lying down God told him to confront Ms. Thomas. She asks him to leave her alone. Feeling attacked and overcome by his negativity, Ms. Thomas starts to cry. When Ms. O'Shiel asks her what is wrong, Mr. Thomas tells her about Mr. Batton's comments. When Ms. O'Shiel confronts Mr. Batton, he denies the statements. Ms. Howe denies she heard any adverse comments. Ms. Howe sits with Ms. Thomas of awhile, and tells her that Mr. Batton didn't mean to hurt her feelings and he just had that kind of personality. Later, upset, Mr. Batton asks Ms. Thomas and Ms. O'Shiel not to report him because he would lose his job.

On the flight to Honolulu, the aircraft mechanic states they will spend three days in Hawaii to fix and test the fuel system.

August 30, 2008

At 10:15 p.m., Captain Clayton, Ms. O'Shiel, Ms. Thomas, Ms. Howe, and Mr. Batton return to Rockford.

Later that night, Ms. Bergmann receives phone calls from Ms. O'Shiel and Ms. Thomas, who are both were crying. Ms. Thomas felt threatened and intimidated by Mr. Batton and believed her safety was at risk. Ms. O'Shiel also felt unsafe. She was upset because she tried to confront the problem but couldn't get a positive response.

August 31, 2008

In a 3:17 p.m. e-mail to Ms. Guzman and Ms. Bergmann, Ms. O'Shiel recounts the events she observed on the flight from Guam to Hawaii.

Mr. Batton is informed that he is off the schedule and directed to report to Ryan on September 2, 2008.

September 1, 2008

In a 7:46 a.m., e-mail to Ms. Bergmann, Ms. Thomas recounts her experiences with Mr. Batton and their exchanges on the recent trip, which included the flight from Guam to Hawaii. She claim to have felt intimated by Mr. Batton.

September 2, 2008

In a 9:24 a.m. e-mail, Ms. Bergmann forwards Ms. Thomas' e-mail to Ms. Guzman, Mr. Williams, and Mr. Yeoman.

In a 9:55 a.m. e-mail to Mr. Williams, Mr. Yeoman, and Ms. Bergmann, based on Ms. Thomas' report, Ms. Guzman concludes Mr. Batton is a threat and recommends security be present to escort him from the building.

In a 10:21 a.m. e-mail to Ms. Bergmann, Ms. Charleston reports what she observed on the flight from Guam to Hawaii and the remaining portions of the trip to Rockford.

At 11:18 a.m., Ms. Bergmann forwards Ms. Charleston's e-mail to Mr. Williams, Mr. Yeoman, and Ms. Guzman.

At 1:14 p.m., due to Ms. Bergmann's request, Ms. Howe provides an e-mail of her recollection of the events that occurred on the flight from Guam to Hawaii.

At 3:00 p.m. Mr. Batton meets with Mr. Williams, Ms. Bergmann, and Ms. Guzman with security present. Mr. Williams tells Mr. Batton that Ryan is terminating his employment and there will be no discussion. Mr. Batton is upset and replies that if a flight attendant hadn't been late for a show time, he wouldn't be at the meeting. They present him with a termination letter which he refuses to sign.

On the Ryan Coaching/Discipline Form, Ms. Bergman and Ms. Guzman terminate Mr. Batton's employment with Ryan. As prior counseling, they reference the July 28, 2008 final warning. The cited reasons are violations of company policy and intimidation, harassment, and verbal assault of a crew member while on and off duty during an August 24 through 30, 2008 trip. Additionally, due to the "distinctive" pattern of behavior, fellow crew members do not want to fly with him; they are intimidated, scared, and do not feel safe around him. Among the numerous FAM violations, Rule 41 relating to aggressive, intimidating, or threatening physical or verbal behavior towards another crew member is highlighted.

To date, Mr. Batton's earnings for 2008 are \$12,436.04.

September 3, 2008

In an 2008 e-mail to multiple lead flight attendants, Ms. Bergman stresses that any flight attendant or lead flight attendant who is late for show time must be reported to crew scheduling and the in-flight department. Ms. Bergmann notes that during a meeting she was "blindsided" by an unreported incident of a flight attendant being late for a show time.

September 4, 2008 to April 16, 2010

Mr. Batton attempts to seek re-employment by making two to five employer contacts a week. He receives bi-weekly unemployment benefits of \$329. In 2009, his unemployment benefits total \$9,603.00.

September 9, 2008

[[As previously discussed, due my diminished confidence in Mr. Batton's testimony regarding when he filed his written AIR 21 complaint, and based on probative FAA documentation, I have determined that Mr. Batton e-mailed his complaint to the FAA on September 9, 2008.]]

Mr. Batton e-mails a three page complaint to the Chicago FAA office. He reports a recurrent problem on a flight on July 9, 2008 required a return to Rockford. He asserts that on August 24, 2008, when an aircraft experienced a recurrent hydraulic problem, a mechanic indicated they do not have enough time to repair the aircraft properly. Later, the aircraft has a tail scrape upon landing. Mr. Batton also reports that on an August 27, 2008, a mechanic indicated that a problem would not be written up until the aircraft reached another destination. On the same flight, Mr. Batton was forced to deadhead which required him to go over his hours of duty limitation. While in Hawaii, a mechanic indicated they needed three days to fix the aircraft. However, the next day the plane departed Hawaii because a company vice president told the mechanic to get the aircraft back to Rockford because it was needed for another trip.

September 15 to 23, 2008

Mr. Latorre, an FAA aviation safety inspector from Mr. Aycox's Chicago FAA office, conducts an investigation into Mr. Batton's complaint. Addressing each of the specific incidents, Mr. Latorre finds insufficient evidence to proceed with enforcement action against Ryan. Nevertheless, Mr. Batton's concerns were elevated for further consideration by another FAA office.

December 2008

Mr. White of the FAA conducts a second investigation of Ryan based on the allegations contained in Mr. Batton's complaint which related to issues of aviation safety and potential violations of FAA rules and regulations. During his contacts with Ryan, Mr. White does not provide any information that would indicate Mr. Batton had made a complaint.

January 21, 2009

Mr. White completes his investigation and finds several maintenance documentation discrepancies. Although he is unable to substantiate all of Mr. Batton's complaints, Mr. White recommends follow-up action since Ryan "is not documenting aircraft maintenance and is falsifying aircraft maintenance releases by signifying the aircraft is airworthy when knowing the aircraft is not airworthy."

May 14, 2009

The FAA advises that its preliminary investigation into Mr. Batton's safety allegations "has established that a violation of an order, regulation, or standard relating to air carrier say may have occurred." The FAA was taking corrective and enforcement action.

October 22 to December 16, 2009

At a Veterans Administration hospital, Mr. Batton receives medical treatment for depression and stress associated with employment termination.

Case in Chief

Under 49 U.S.C. § 42121(b) and 29 C.F.R. § 1979.109, to establish that a respondent has committed a violation of the employee protection provisions of AIR 21, a complainant must prove by a preponderance of the evidence that an activity protected under AIR 21 was a contributing factor in the unfavorable personnel action alleged in the complaint. Accordingly, to establish a violation of AIR 21, a complainant must prove three elements: a) protected activity; b) unfavorable personnel action; and, c) contributing factor.

Issue No. 1 - Protected Activity

The first requisite element to establish illegal discrimination against a whistleblower is the existence of a protected activity. The Secretary, U.S. Department of Labor, (“Secretary”) has broadly defined “protected activity” as a report of an act which the complainant reasonably believes is a violation of the subject statute. While it doesn’t matter whether the allegation is ultimately substantiated, the complaint must be “grounded in conditions constituting reasonably perceived violations.”²⁸ And, the complainant’s concern must at least “touch on” the subject matter of the related statute.²⁹ The information provided must be specific in relation to a given practice, condition, directive, or event that affects aircraft safety.³⁰ Additionally, the standard involves an objective assessment of reasonableness. The subjective belief of the complainant is not sufficient.³¹

The implicit purpose of the employee protection provisions of AIR 21, to encourage the reporting of matters involving or relating to violations of any federal law or FAA order, regulation, or standard concerning air carrier safety, also affects the scope of protected activities under 49 U.S.C. 42121(a)(1). The Supreme Court noted in a parallel statute, that the statute’s language must be read broadly because “[a] narrow hyper-technical reading” of the employee protection provision of the Act would do little to effect the statute’s aim of protecting employees who raise safety concerns.³² Such statutes have a “broad, remedial purpose for protecting workers from retaliation based on their concerns for safety and quality.”³³

Finally, internal complaints are generally covered under the employee protection provisions.³⁴ According to the Secretary, an internal complaint should be a protected activity

²⁸*Minard v. Nerco Delamar Co.*, 92 SWD 1 (Sec’y Jan. 25, 1995), slip op. at 8.

²⁹*Nathaniel v. Westinghouse Hanford Co.*, 91 SWD 2 (Sec’y Feb. 1, 1995), slip op. at 8-9; and *Dodd v. Polysar Latex*, 88 SWD 4 (Sec’y Sept. 22, 1994).

³⁰*Simpson v. United Parcel Serv.*, ARB No. 06-065, ALJ No. 2005-AIR-031, slip op. at 5 (ARB Mar. 14, 2008); *Rougas v. Southwest Airlines, Inc.*, ARB No. 04-139, ALJ No. 2004-AIR-003, slip op. at 9 (ARB July 31, 2006).

³¹*Kesterson v. Y-12 Nuclear Weapons Plant*, 95 CAA 12 (ARB Apr. 8, 1997).

³²*Kansas Gas & Electric Co.*, 780 F.2d 1505 (10th Cir. 1985), *cert. denied*, 478 U.S. 1011 (1986).

³³*Mackowiak v. University Nuclear Systems*, 735 F.2d 1159 (9th Cir. 1984).

³⁴*Carson v. Tyler Pipe Co.*, 93-WPC-11 (Sec’y Mar. 24, 1995).

because the employee has taken his or her concern first to the employer to permit a chance for the violation to be corrected without government intervention.³⁵ The report may be made to a supervisor, or through an internal complaint or quality control system, or to staff member responsible for the subject matter.³⁶

Turning to the specific AIR 21 provisions, 49 U.S.C. 42121(a)(1) – (4) sets out four types of protected activity. First, the employee “provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be 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 or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States.” Second, the employee “has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States.” Third, the employee “testified or is about to testify in such a proceeding.” And, fourth, the employee “assisted or participated or is about to assist or participate in such a proceeding.”

Considering the above stated principles, an AIR 21 protected activity under 49 U.S.C. 42121(a)(1) has three components. First, the employee’s information must involve a purported violation of a Federal law or FAA regulation, standard or order relating to air carrier safety and at least “touch on” air carrier safety. Second, the complainant’s belief about the purported violation must be objectively reasonable. Third, the complainant must communicate his information or safety concern to either his employer or the Federal Government.

With these principles in mind, I will consider four events that may represent protected activities under AIR 21, relating to Mr. Batton’s communication to a lead mechanic, a July 9, 2008 phone call to the FAA hotline, a complaint made to an FAA representative, Mr. Aycox, between July 28, 2008 and the beginning of August 2008, and Mr. Batton’s e-mail complaint to the FAA.

Complaint to Lead Mechanic

Sometime before July 9, 2008, on one of his flights, Mr. Batton had a conversation with Mr. Walker, a lead mechanic about problems with Ryan’s B-757s on long haul trips. Based on his observations during several flights, Mr. Batton stated that the practice of Ryan continuing to fly its aircraft with unrepaired and unresolved mechanical deficiencies was wrong. Mr. Batton’s conclusion was predicated in part by a previous discussion with another mechanic on a flight who had to continually add hydraulic fluid due to an uncorrected leak in order to keep the airplane flying, as well as his observations of increased interactions between mechanics and pilots.

³⁵*Poulos v. Ambassador Fuel Oil Co., Inc.*, 86-CAA-1 (Sec’y Apr. 27, 1987) (order of remand).

³⁶*Williams v TIW Fabrication & Machining, Inc.* 88-SWD-3 (Sec’y June 24, 1992); *Bassett v. Niagara Mohawk Power Corp.*, 85-ERA-34 (Sec’y Sept. 28, 1993); and, *Helmstetter v. Pacific Gas & Electric Co.*, 91-TSC-1 (Sec’y Jan. 13, 1993).

While a subsequent FAA investigation did not completely substantiate Mr. Batton's safety concerns about the hydraulic leak, which was determined to be within limits, the FAA investigation noted an apparent systemic problem with Ryan not documenting aircraft discrepancies. Consequently, in light of both the FAA's findings and the circumstances confronting Mr. Batton at the time, I find that he had a subjectively and objectively reasonable basis for his stated concern to Mr. Walker which clearly relates to the safety of Ryan aircraft operations, and correspondingly, air carrier safety.

While Mr. Batton's stated concerns objectively related to air carrier safety, his conversation with Mr. Walker did not rise to the level of an internal complaint to his employer, Ryan. Notably, rather than tell a supervisor about his safety concerns regarding Ryan aircraft or call the company's internal safety hotline, Mr. Batton shared his observations with Mr. Walker, who at that time was employed only as a lead mechanic on a Ryan flight and was not acting as Mr. Batton's supervisor. In the absence of any definitive evidence regarding Mr. Walker's position in the Ryan management hierarchy, his title of "lead mechanic" only establishes that he was responsible for supervising mechanics on that particular flight. In his capacity as a lead mechanic, while certainly responsible for the work of other mechanics on his flight and the mechanical integrity of his airplane, Mr. Walker was not the chief mechanic for Ryan or working as a Ryan staff member with both the responsibility and capacity to address Mr. Batton's safety concerns about Ryan's fleet of B-757s. Consequently, since Mr. Walker as a lead mechanic was not Mr. Batton's supervisor, and Mr. Batton has not proven that Mr. Walker was a Ryan staff member with the ability and authority to respond to Mr. Batton's safety concerns about Ryan aircraft, his complaint to Mr. Walker during a flight did not constitute an internal complaint to his employer, Ryan, protected under AIR 21.³⁷

July 9, 2008 FAA Hotline Phone Call

On July 9, 2008, after his airplane was forced to return to Rockford and Mr. Batton overheard the pilots' concern about a recurrent mechanical problem on the aircraft, Mr. Batton called an FAA whistleblower hotline. However, due to the limited recording time, Mr. Batton only left his contact information and did not actually report his safety concerns. Further, Mr. Batton never received a returned phone call, or contact, from the FAA in response to his July 9, 2008 phone message. Consequently, due to his inability to get through to an FAA representative on July 9, 2008 and the absence of an actual safety complaint, when Mr. Batton left his contact information with the FAA hotline, he did not provide or cause to be provided information to the Federal Government information about a violation relating to air carrier safety under 49 U.S.C. § 42121(a)(1).

Arguably, Mr. Batton's limited phone call to the FAA hotline might fall under the provision of 49 U.S.C. § 42121(a)(1) that protects an employee who is "about to provide" information about an air carrier safety violation. Yet, that specific provision appears to be

³⁷The record contains insufficient probative evidence that Mr. Walker in turn shared Mr. Batton's concerns with his supervisors or Ryan management. To the contrary, according to Mr. Batton, Mr. Walker's response was to give Mr. Batton the FAA hotline phone number, while indicating Ryan mechanics were not reporting deficiencies due to concerns for their jobs.

restricted to situations where the employer has knowledge of the pending report. As Mr. Batton testified, he actually made a special effort to conceal from Ryan his intention to call the FAA to report his safety concerns by telling the crew that he was going into the main building to get snacks. And, while Mr. Batton asserted that he informed a co-worker of his call to the FAA hotline,³⁸ the record contains insufficient evidence to that show that Ryan was actually aware that on July 9, 2008 Mr. Batton was “about to provide information” to the FAA.

Finally, I have also considered whether Mr. Batton’s act of leaving his contact information with the FAA hotline by itself represents an initial step in filing a proceeding with the FAA involving air carrier safety which is protected under 49 U.S.C. § 42121(a)(2). In that regard, significantly, Mr. Batton never received a direct response from the FAA to his July 9, 2008 hotline contact information. In terms of a possible indirect response, about a week after Mr. Batton left his contact information on the hotline, the FAA conducted an in-cabin inspection of a Ryan aircraft. However, FAA records show that the agency conducted numerous, periodic spot inspections of Ryan aircraft both before, as witnessed by Mr. Batton during questioning of a mechanic by the FAA, and after his July 9, 2008 phone call. Consequently, in light of the FAA’s established practice of periodic inspections, the temporal proximity between Mr. Batton’s July 9, 2008 hotline phone call and the July 17, 2008 FAA in-cabin inspection is insufficient to establish that his phone call initiated or caused that FAA “proceeding” on July 17, 2008. As a result, the evidentiary records fails to demonstrate that FAA initiated proceedings in response to Mr. Batton’s contact information left on the FAA hotline on July 9, 2008. Instead, the FAA proceedings only began after Mr. Batton finally contacted Mr. Aycox, who then initiated a response to Mr. Batton’s air carrier safety concerns. As a result, Mr. Batton’s attempt to contact the FAA through its hotline July 9, 2008 was unsuccessful and thus was not the first step in filing a proceeding with the FAA protected by 49 U.S.C. § 42121(a)(2).

Consequently, although Mr. Batton had objectively reasonable safety concerns at the time, his failed attempt to provide information involving air carrier safety violations at Ryan to the FAA through its hotline line on July 9, 2008 did not constitute a protected activity under 49 U.S.C. § 42121(a).

Complaint to Mr. Aycox

By the time he spoke with Mr. Aycox at the end of July or the first week of August 2008 about what he thought was wrong with Ryan operations and potential violations of Federal regulations, Mr. Batton had objectively reasonable concerns about air carrier safety associated with Ryan aircraft. In addition to his earlier expressed concerns about the persistent hydraulic leak, Mr. Batton had also observed the pilots’ reaction on July 9, 2008 to the recurrent, and apparently unresolved, mechanical problem that forced the return of his aircraft to Rockford. As Mr. Aycox verified, during their conversation, Mr. Batton expressed his opinion that Ryan was

³⁸As previously discussed, standing alone, Mr. Batton’s testimony is insufficient to establish that he told another Ryan flight attendant of his call to the FAA hotline. Even if I had determined that Mr. Batton had the alleged exchange, absent a statement or testimony from the other flight attendant, upon consideration of the circumstantial evidence of temporal proximity between his phone call and the July 28, 2008 final warning letter, as well as the credible denials of Ms. Bergman, Mr. Yeoman, and Mr. Williams, the preponderance of the probative evidence fails to establish that the other Ryan flight attendant in turn told her employer, Ryan, about Mr. Batton’s July 9, 2008 FAA hotline phone call.

doing things wrong and contrary to Federal regulations. Additionally, Mr. Aycox's effort to seek permission for his office to investigate Mr. Batton's concerns further support a finding that Mr. Batton expressed concerns that involved air carrier safety and potential violations of FAA regulations. Consequently, between July 28 and August 7, 2008, Mr. Batton engaged in an activity protected under 49 U.S.C. § 42121(a)(1) when he provided information to an FAA representative, Mr. Aycox, by expressing his concerns about the safety of Ryan aircraft.

Written Safety Complaint

In his September 9, 2008 e-mailed complaint to the FAA, Mr. Batton described at least three incidents involving recurring, unresolved mechanic problems, delayed documentation of mechanical malfunctions, and forced return to flying service of a Ryan aircraft prior to completion of repairs. Again, although the subsequent FAA investigations may not have substantiated all his concerns, Mr. White testified that contents of Mr. Batton's written complaint related to air carrier safety. And, based on the information before him, including his personal experiences aboard Ryan aircraft, Mr. Batton's written concerns that these incidents with Ryan aircraft involved violations of Federal regulations associated with air carrier safety were objectively reasonable. Accordingly, by his September 9, 2008 e-mail complaint to the FAA regarding the safety of Ryan aircraft operations, Mr. Batton provided information to the Federal Government which was a protected activity under 49 U.S.C. § 42121(a)(1).

Unfavorable Personnel Action

According to 49 U.S.C. § 42121(a), and 29 C.F.R. § 1979.102(a), unfavorable personnel actions covered by the AIR 21 employee protection provision include both discharge from employment and discrimination with respect to compensation, terms, conditions, or privileges of employment. Prior judicial precedent required a tangible employment action that resulted in a significant change in employment status.³⁹ However, the Administrative Review Board has since further refined that standard by indicating an employer's action is materially adverse if it would dissuade a reasonable employee from making a complaint, and "clarified" that the term "adverse actions" refers to unfavorable employment actions that are more than trivial, either as a single event or in combination with other deliberate employer actions.⁴⁰

As alleged in his AIR 21 complaint, on September 2, 2008, Mr. Batton suffered the ultimate unfavorable and "materially adverse" personnel action, when Ryan terminated his employment as a flight attendant. Additionally, in light the ARB's clarification that a letter of warning represents an adverse action, the evidentiary record also establishes that Mr. Batton suffered another unfavorable personnel action when he was suspended on July 23, 2008, returned to Rockford, and issued a final warning letter on July 28, 2008.

³⁹See *Ilgenfritz v. United States Coast Guard*, ARB No. 99-006, ALJ No. 1990-WPC-3, slip op. at 8 (ARB Aug. 28, 2001) (negative performance evaluation, absent tangible job consequences, is not an adverse action).

⁴⁰*Williams v. American Airlines, Inc.*, ARB No. 09-018, ALJ No. 2007-AIR-4 (ARB Dec. 29, 2010) (a letter of warning as the "first concrete step" in a progressive discipline system is an adverse action).

Issue No. 2 – Contributing Factor

Having engaged in two protected activities and suffered two unfavorable personnel actions, to establish employment discrimination under AIR 21, Mr. Batton must also prove by a preponderance of the evidence a connection between his protected activities and the unfavorable personnel actions. That is, Mr. Batton must prove that at least one of his two protected activities was a contributing factor in his suspension and final warning letter, and/or his employment termination by Ryan. The term “contributing factor” has been defined as “any factor which, alone or in connection with other factors, tends to affect in any way” the decision concerning the adverse personnel action.⁴¹ Based on this definition, the determination of contributing factor has two components: knowledge and causation. In other words, the respondent must have been aware of the protected activity (knowledge) and then taken the unfavorable personnel action in part due to that knowledge (causation). With these principles in mind, I turn to the two protected activities Mr. Batton has established.

Written Safety Complaint

Mr. Batton’s whistleblower complaint principally alleged that Ryan terminated his employment on September 2, 2008 due to his written safety complaint to the FAA, which he asserted was submitted prior to his final meeting with Ms. Guzman, Ms. Bergman, and Mr. Williams. However, for the reasons previously discussed, I have determined that the preponderance of the probative evidence demonstrates that Mr. Batton did not e-mail his written safety complaint to the FAA until September 9, 2008, a week after Ryan ended his employment as a flight attendant. As a result, Mr. Batton’s protected activity of providing information to the Federal Government on September 9, 2008 about Ryan aircraft mechanical problems and maintenance issues was not a contributing factor in the decision by Ms. Guzman, Ms. Bergman, and Mr. Williams to terminate his employment a week earlier on September 2, 2008 since they had no knowledge of Mr. Batton’s written safety complaint at the time.

Complaint to Mr. Aycox

Suspension and Final Warning Letter

According to Mr. Batton, he did not contact Mr. Aycox until sometime between July 28, 2008 and the first week of August 2008, after he returned to Rockford at Ms. Guzman’s direction on July 24, 2008. Prior to Mr. Batton’s conversation with Mr. Aycox, with Mr. Yeoman’s concurrence, on July 23, 2008 Ms. Guzman had decided that Mr. Batton needed to be suspended, returned to Rockford, and required to attend a supervisor meeting, which could not be held until July 28, 2008 due to the unavailability of Human Resource personnel. Based on this sequence of events, Ms. Guzman did not have knowledge of Mr. Batton’s conversation with Mr. Aycox when she initiated action on July 23, 2008 that led to Mr. Batton’s suspension and the final warning letter, since Mr. Batton had not yet engaged in that protected activity. Consequently, Mr. Batton’s protected activity of sharing his concerns with Mr. Aycox between July 28, 2008 and August 7, 2008 was not a contributing factor in Ms. Guzman’s decision to suspend him on July 23, 2008, return him to Rockford and issue a final warning letter on July 28, 2008.

⁴¹*Marano v. U. S. Dept. of Justice*, 2 F.3d 1137 (Fed. Cir. 1993).

Employment Termination

Finally, I reach the principal issue in this case, whether Mr. Batton's protected activity at the end of July and beginning of August 2008 was a contributing factor in Ryan's termination of his employment on September 2, 2008. Resolving this issue requires analysis and evaluation of conflicting circumstantial evidence and direct evidence.

Since Mr. Batton did not tell his supervisors that he contacted Mr. Aycox at the FAA and absent direct evidence that Ms. Guzman, Ms. Bergman, and Mr. Williams had knowledge of that protected activity, Mr. Batton relies on the not insignificant circumstantial evidence associated with the close temporal proximity between his protected activity at the end of July and beginning of August 2008 with his employment termination about a month later. However, that circumstantial evidence does not stand in isolation and its probative value begins to lessen upon consideration of other probative evidence in the record.

The first significant probative evidence that Mr. Batton's supervisors were unaware of the he had made a complaint to an FAA representative is Mr. Aycox's interrogatory response that he did not tell anyone at Ryan about Mr. Batton's concerns. Absence any challenge to, or a basis for questioning, his integrity, I consider Mr. Aycox's statement credible. Arguably, a possibility exists that some unknown other FAA representative could have informed Ryan of the conversation between Mr. Batton and Mr. Aycox. However, Mr. White's testimony that he likewise did not tell anyone at Ryan about Mr. Batton's concerns during his subsequent investigation supports a finding that the FAA does not disclose the name of a whistleblower to an employer during its investigations and renders the possibility of disclosure by an unknown FAA representative highly speculative and unconvincing.

Next, Mr. Batton's supervisor, Ms. Bergmann, and the Human Resource personnel Mr. Yeoman and Mr. Williams, credibly testified that they were unaware prior to September 2, 2008 that Mr. Batton had any contact with the FAA. And, although Ms. Guzman did not testify or provide a statement denying knowledge of Mr. Batton's discussion with Mr. Aycox, Mr. Yeoman also credibly testified that during his conversations with Mr. Batton's supervisors, which included Ms. Guzman, he never heard anyone mention Mr. Batton contacting the FAA.

Another important and probative factor involves Mr. Batton's performance prior to his protected activity and his corresponding employment status between July 28 and September 2, 2008. In order to ensure a safe and effective work place and flight operations, Ryan flight attendant performance standards require all employees be respectful to each other and prohibit both refusal to cooperate with crew members and aggressive and intimidating verbal action towards a fellow crew member. As noted by Mr. Yeoman, Ms. Guzman, and Ms. Bergmann, over the course of several months, from mid-spring through the end of July 2008, a pattern of disruptive behavior by Mr. Batton emerged, consisting of his comment to Ms. Diaz, his alleged revelation regarding Ms. Smith's gender, his confrontation with Mr. Jorgensen which led to Mr. Jorgensen's expressed concern about being able to safely fly with Mr. Batton, and his confrontations with Mr. Pflueger and associated challenges to Mr. Pflueger's leadership. In light of that course of conduct, by the time Mr. Batton engaged in his protected activity at the end of July and beginning of August 2008, he had already had a discussion with Ms. Guzman, Ms.

Bergman, and Mr. Williams about his job performance issues and received a final warning letter based on the concerns raised by Mr. Jorgensen, Mr. Pflueger, and Ms. Smith. The July 28, 2008 final warning letter placed Mr. Batton on notice that absent immediate correction he faced the possibility of immediate termination. Consequently, by July 28, 2008, prior to his protected conversation with Mr. Aycox, and thus unrelated to any AIR 21 protected activity, Mr. Batton's supervisors had already raised significant concerns about Mr. Batton's ability to work effectively as a Ryan flight attendant and placed him on notice that his continued employment with Ryan was predicated on immediate corrective action on his part. That is, effectively, during July 28 and September 2, 2008, Mr. Batton's continued employment was in jeopardy due to prior performance deficiencies.

With that background of having been previously placed on notice of performance deficiencies related to team work and crew relationship issues, and July 29, 2008 final warning letter requiring immediate corrective action, Mr. Batton's subsequent highly disruptive behavior towards Ms. Thomas during their trip and the flight from Guam to Hawaii at the end of August 2008 represents probative evidence of an independent, intervening, and ultimately triggering event for his employment discharge on September 2, 2008. Under these circumstances, since his supervisors' decision to terminate his employment on September 2, 2008 was solidly based on behavior in which Mr. Batton engaged just a few days earlier, which clearly reflected a failure to take the immediate corrective action regarding his relationships with other crew members mandated in the July 28, 2008 final warning letter, the likelihood that Ms. Guzman, Ms. Bergmann and Mr. Williams also rendered their termination decision in part based on knowledge that Mr. Batton had contacted Mr. Aycox at the FAA about a month earlier significantly diminishes.

Finally, I have considered the multiple pretext and whistleblower animosity assertions presented by the complaint's counsel. Yet, with two exceptions, those incidents occurred prior to Mr. Batton's contact with Mr. Aycox. First, Ms. Guzman and Ms. Bergmann did not ask Mr. Batton for a statement about his exchanges with Ms. Thomas prior to making their termination decision; and, at the September 2, 2008 meeting, Mr. Williams indicated there would be no discussion regarding his termination. While a more thorough investigation would have included a statement from Mr. Batton, considering that Mr. Batton was working under a final warning letter about disruptive behavior towards other flight attendants, Ms. Bergmann reasonably explained that Mr. Batton's supervisors considered the conflicting statements from Ms. Thomas, Ms. O'Shiel, Ms. Charleston, and Ms. Howe, and essentially concluded the consensus of Ms. Thomas, Ms. O'Shiel, and Ms. Charleston outweighed Ms. Howe's contrary statement. And, as I have determined, their consensus fairly establishes that Mr. Batton's verbal exchanges with Ms. Thomas had visibly shaken her during flight from Guam to Hawaii. Second, Ryan significantly delayed releasing Mr. Batton's personnel record until December 2008 despite a signed release and request from his attorney. In evaluating this situation, I simply note that litigation had been initiated and counsel for Ryan rather than Human Resources⁴² or Mr. Batton's supervisors appears to have been in charge of the eventual release of the personnel records. The record contains no evidence that the Ryan attorney had been involved in the September 2, 2008 termination decision.

⁴²Mr. Yeoman believed the personnel record had been released with no issues.

In summary, the probative evidence of Mr. Aycox's statement that he did not tell Ryan about Mr. Batton's concerns, the credible denial by Mr. Batton's supervisors of knowledge of his conversation with Mr. Aycox, Mr. Batton's employment status after July 28, 2008 due to the final warning letter, and his subsequent disruptive behavior towards Ms. Thomas, cumulatively outweigh and overwhelm the circumstantial evidence of knowledge of his protected activity by his supervisors based on temporal proximity. Additionally, the record contains insufficient evidence that the stated reason for terminating Mr. Batton's employment was pretext or that Mr. Batton's supervisors harbored animosity towards him for contacting Mr. Aycox at the FAA. Accordingly, Mr. Batton has failed to prove by a preponderance of the probative evidence that his protected activity of sharing his safety concerns about Ryan flight operations with Mr. Aycox between July 28, 2008 and August 7, 2008 was a contributing factor in decision by Ms. Guzman, Ms. Bergmann, and Mr. Williams to terminate his employment on September 2, 2008.

Additional Considerations

Due to the length of the proceedings, the significance of the case to both parties, and for the sake of completeness, I will address several issues associated with other possible determinations involving the other two alleged protected activities and Mr. Batton's written complaint to the FAA, and additional allegations of pretext.

Complaint to Lead Mechanic

For two reasons, even if I had determined that Mr. Batton's conversation with a lead mechanic, Mr. Walker, was an internal complaint to Ryan such that it represented a protected activity, the preponderance of the probative evidence does not demonstrate that the pre-July 9, 2008 conversation was a contributing factor in the unfavorable personnel actions against Mr. Batton. First, again upon consideration of the circumstantial evidence of temporal proximity, the multiple issues associated with Mr. Batton's interactions with other crew members, the supervisors' credible denial of knowledge of Mr. Batton's complaints, and in the absence of a statement or testimony from Mr. Walker that he advised Mr. Batton's supervisors or Ryan of Mr. Batton's stated air carrier safety concerns, the preponderance of the probative evidence fails to establish that Ms. Guzman, Ms. Bergman, Mr. Yeoman, and Mr. Williams were aware of Mr. Batton's conversation with Mr. Walker when they suspended him on July 23, 2008, returned to him to Rockford on July 24, 2008, issued a final warning letter on July 28, 2008, and terminated his employment on September 2, 2008. Second, the evidentiary record is insufficient to prove that Mr. Walker initiated processes that eventually lead to the unfavorable personnel actions Mr. Batton suffered by encouraging other crew members to make statements against him. Specifically, none of the flight attendants and lead flight attendants who presented complaints and reports about Mr. Batton, including Ms. Martin, Ms. Diaz, Mr. Pflueger, Mr. Jorgensen, Ms. O'Shiel, Ms. Charleston, and Ms. Thomas implicated Mr. Walker's participation and the record contains no probative evidence that he orchestrated the presentation of their diverse concerns.

July 9, 2008 FAA Hotline Phone Call

Even if alone Mr. Batton's July 9, 2008 attempt to contact the FAA through its hotline represented protected activity, the circumstantial evidence of temporal proximity remains outweighed by the probative evidence provided by Mr. Aycox and Mr. White that supports a finding the FAA does not provide whistleblower names to employers. Additionally, the absence of any response from the FAA to his July 9, 2008 hotline message makes the possibility that someone at FAA nevertheless informed Ryan that Mr. Batton was attempting to contact them even more remote.

Written Safety Complaint

Even if I had reached a different conclusion regarding the accuracy of Mr. Batton's testimony and determined that he e-mailed his complaint to the FAA sometime between his return to Rockford on August 30, 2008 at 10:15 p.m. and September 2, 2008 at 3:00 p.m. when he met with Ms. Guzman, Ms. Bergman, and Mr. Williams, Mr. Batton remains unable to prove by a preponderance of the probative evidence that when Ms. Guzman had him removed from the flying schedule on August 31, 2008 at 1:00 p.m. due his pending employment termination she was aware of his e-mailed complaint to the FAA. Not only does Mr. Batton's testimony fail to definitively establish that he sent the complaint to the FAA before 1:00 p.m. on August 31, 2008, someone at the FAA, other than Mr. Aycox, would have had to immediately contact Ms. Guzman in order that she would have knowledge of that protected activity when she removed him from the schedule and told him to see her on September 2, 2008. Consequently, the circumstantial evidence due to temporal proximity is still outweighed by Mr. Aycox's probative statement that he did not advise Ryan of Mr. Batton's written safety complaint and the credible denials of Mr. Batton's supervisors that they were aware of Mr. Batton's safety complaint at the time they decided to end his employment as a Ryan flight attendant.

Pretext Allegations

Throughout the course of this litigation, Mr. Batton has questioned whether several aspects of management's actions established pretext sufficient to overcome the supervisor's stated denials of knowledge of his protected activities.

Concerning his exchange with Ms. Maddux in March 2008, Ms. Guzman initially did not discipline Mr. Batton for that event. The only action Ms. Guzman took at the time was to suspend Ms. Maddux for her outburst. Yet, in subsequent meeting with Ms. Guzman, his exchange with Ms. Maddux was raised as one of his performance problems. In light of this disconnect, Mr. Batton's confusion is not unfounded. At the same time, during the course of her investigation into the incident, Ms. Guzman had read Ms. Maddux's allegation about the comment Mr. Batton made which initiated her reaction. At the time, having concluded Ms. Maddux was the issue, Ms. Guzman's failure to also confront Mr. Batton with the alleged comment was not unreasonable. However, by the time of the subsequent disciplinary meeting, Mr. Batton had made a racial comment to Ms. Diaz, allegedly discussed Ms. Smith's gender, and

confronted Mr. Jorgensen and Mr. Pflueger, such that Ms. Guzman's additional reference to Mr. Batton's earlier exchange with Ms. Maddux was understandable.⁴³

Without engaging in any prior formal disciplinary action other than a conversation on July 19, 2008, and having not taken any action against Mr. Batton for his comment to Ms. Diaz, Ms. Guzman decided to take impose a final warning letter on July 28, 2008, citing as prior counseling the July 19, 2008 phone call, and including the incident with Ms. Diaz. Again, Mr. Batton's objection to this process has some merit. He was not formally counseled about his comment to Ms. Diaz in Miami and he had not engaged in any other adverse exchanges with other flight attendants after receiving Ms. Guzman's advise on July 19, 2008 to keep a low profile. Nevertheless, in an e-mail, Ms. Guzman reasonably explained that volatile complaint by Ms. Smith, in confluence with the continuing complaints received from Mr. Pflueger after July 19, 2008 about Mr. Batton's job performance, with the background of his prior comment to Ms. Diaz, led to her decision to recommend a final warning letter. She also later acknowledged in response to Mr. Batton's August 5, 2008 reply to the final warning letter that due in part to inadequate counseling and documentation Mr. Batton may not completely understand the significance of his noted deficiencies. Upon consideration of the events presented to Ms. Guzman, I do not believe she was engaged in an effort to develop or fabricate a cover for punishing Mr. Batton for raising safety concerns and complaining to the FAA. Instead, the seriousness and cumulative nature of the complaints presented to Ms. Guzman warranted a significant response.

Although Ryan has an appeal process to the level of company vice president, Mr. Williams did not forward Mr. Batton's August 5, 2008 response to the final warning letter to the functional vice president. Noting that Mr. Batton did not send his response to the functional vice president, Mr. Williams provided a plausible explanation that rather than an appeal, he considered Mr. Batton's response to him a disagreement with the stated basis for the final warning letter and the decision to make it a "final" warning.

Finally, the record shows that Mr. Batton's supervisors did not always fully investigate the complaints against Mr. Batton. In particular, Ms. Guzman appears to have to come to a judgment about Ms. Smith's allegation and Ms. Thomas' complaint without asking Mr. Batton for a response. At the same time, Ms. Guzman was clearly reacting to very emotional complaints from Ms. Smith and Ms. Thomas without any basis for concluding that the two flight attendants were fabricating their stories. Concerning Ms. Smith's situation, Ms. Guzman also had to quickly respond since Ms. Reinhart expressed concern that Ms. Thomas and Mr. Batton would see each other during an upcoming crew change. And, in Ms. Thomas' case, Ms. Guzman and Ms. Bergmann obtained supporting statements from two lead flight attendants, Ms. O'Shield and Ms. Charleston. Under these conditions, I do not consider Ms. Guzman's lack of thoroughness indicative of contrived management action taken partially in response to Mr. Batton's safety complaints.

⁴³I note that Ms. Guzman's disciplinary response to Ms. Maddux's unprofessional outburst demonstrates the seriousness with which Ms. Guzman viewed breaches of flight attendant standards involving fellow crew members. This incident also shows that Ms. Guzman was willing to take accelerated disciplinary action in such situations.

Conclusion

Mr. Batton has proven that he engaged in two activities protected under AIR 21, his complaint to Mr. Aycox between July 28, 2008 and August 7, 2008, and his September 9, 2008 written safety complaint to the FAA. He also suffered two unfavorable personnel actions, suspension and subsequent final warning letter on July 28, 2008 and the termination of his employment on September 2, 2008. However, Mr. Batton has failed to prove by a preponderance of the probative evidence that either of his protected activities was a contributing factor in either of the unfavorable personnel actions. Accordingly, Mr. Batton's AIR 21 employment discrimination complaint must be dismissed.

ORDER

The employment discrimination complaint of MR. ANTHONY BATTON against RYAN INTERNATIONAL AIRLINES brought under the employee protection provisions of AIR 21 is **DISMISSED**.

SO ORDERED:

A

RICHARD T. STANSELL-GAMM
Administrative Law Judge

Date Signed: August 17, 2011
Washington, DC

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, Suite S-5220, 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). In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov. 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).

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

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(c) and 1979.110(a) and (b).