

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 16 April 2014

ARB NO.: 10-016

CASE NO.: 2009-AIR-00015

In the Matter of

RUSSELL COWLES,

Complainant,

v.

AMERICAN AIRLINES, INC.,

Respondent.

ORDER DISMISSING COMPLAINT WITH PREJUDICE

This matter arises from a complaint filed under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 USC 42121. It is subject to the federal regulations set forth at 29 CFR Part 1979. The current complaint was filed on October 10, 2008, and found to be without merit by the Regional Administrator, Occupational Safety and Health Administration on April 8, 2009. On May 12, 2009, Complainant requested a formal hearing pursuant to 29 CFR Part 1979.

On October 2, 2009, this Administrative Law Judge issued an “Order to Show Cause Why the Case Should Not be Dismissed” due to the Complainant’s election to treat his complaint as a labor-management dispute involving administrative procedures and matter under a collective bargaining agreement vice an issue related to aviation safety arising within the parameters of AIR-21. Following submission by the Parties, the complainant was dismissed by Order of October 15, 2009.

The Complainant filed a timely appeal with the Administrative Review Board (ARB) on October 27, 2009. The ARB assigned the appeal ARB Case No. 10-016. By Order of December 8, 2009, the ARM consolidated this appeal with the appeal in ARB Case No. 10-014¹ and ARB Case No. 10-015². By “Final Decision and Order of Remand” of September 16, 2011 the ARB reversed

¹ *Paul Lucia v. American Airlines, Inc.*, ARB Case No. 10-014; ALJ Case No. 2009-AIR-00017

² *Lawrence Abernathy v. American Airlines, Inc.*, ARB Case No. 10-015; ALJ Case No. 2009-AIR-00016

the October 15, 2009 Order and remanded the case for formal proceedings. The file was received in this office on October 12, 2011. By Order of October 26, 2011, this case was scheduled for formal hearing in Ft. Lauderdale, Florida, commencing at 9:00 AM, March 8, 2012.

On December 5, 2011, Respondent's counsel filed Respondent's "Notice of Suggestion of Bankruptcy" with supporting attachments indicating that papers initiating bankruptcy proceedings under Chapter 11 of the Bankruptcy Code were filed in the United States Bankruptcy Court for the Southern District of New York on November 29, 2011 (Chapter 11 Case No. 11-15463). By Order of December 15, 2011, the scheduled hearing was cancelled and case proceedings were stayed pending final order from the Bankruptcy Court.

On April 14, 2014 the Parties filed a joint "Stipulation of Dismissal with Prejudice." The Parties averred that "the request is based on the Parties' common interest in discontinuing this proceeding and is not based on a settlement agreement." The Parties stipulated "to the dismissal of this case, with prejudice, with each party to bear its own costs and fees." The Parties request that an Order be entered to voluntarily dismiss the case pursuant to Federal Rules of Civil Procedure, Rule 41(a)(1)(A)(ii).

Federal regulations at 29 CFR §1979.111(c) provide that "At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge ..."

After review of the administrative record, this Administrative Law Judge finds that the request for withdrawal is made voluntarily, is in the best interest of the Parties, and is in the judicial interest of AIR-21.

ORDER

It is hereby ORDERED that –

1. **The complaint in this matter is DISMISSED WITH PREJUDICE;** and,
2. The Parties are directed to bear their own costs and fees incurred during this proceeding.

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia