

**U.S. Department of Labor**

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**Issue Date: 25 February 2010**

**CASE NO.: 2009-AIR-00012**

*In the Matter of:*

**FREDRICK CRUTCHFIELD**

*Complainant*

v.

**SOUTHERN AIR INC.**

*Respondent*

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND  
DISMISSING COMPLAINT WITH PREJUDICE**

This proceeding arises from a complaint of discrimination filed under section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121 (“AIR21”), and the procedural regulations found at 29 C.F.R. § 1979.100, *et seq.* (2003). On January 23, 2009, the Regional Administrator for the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), acting as agent for the Secretary of Labor (“Secretary”), issued an order finding a violation under AIR21. On February 23, 2009, the Respondent filed objections to the Secretary’s preliminary order and requested a hearing pursuant to 29 C.F.R. §1979.106(a). The formal hearing in this matter was scheduled to commence on Tuesday, January 26, 2010 in Hartford, Connecticut. Because the parties reported the case settled, on January 28, 2010, I issued an order continuing the hearing generally and required the parties to file a copy of the settlement agreement and a motion to approve the same pursuant to 29 C.F.R. § 1979.111(d)(2). On February 24, 2010, the parties filed a Joint Motion for Approval of Settlement Agreement (hereinafter “Joint Motion”) and a document entitled “Settlement and Confidentiality Agreement and Release of Claims” (hereinafter “Settlement Agreement”).

In the Joint Motion the parties indicated that the Settlement Agreement has been designated by the parties as confidential because it contains confidential personal financial and business information. The parties also explain that parts of the Settlement Agreement are omitted and the term “REDACTED” appears because the agreement

covers the settlement of other parties in cases not pending before me. They assure me that all terms pertaining to Mr. Crutchfield are contained in the agreement provided.

Upon review of the Settlement Agreement, I find that the agreement is a fair, adequate, and reasonable settlement of the complaint pending before me and it is APPROVED. *See Baena v. Atlas Air, Inc.*, ARB No. 03-008, 2002-AIR-4 (ARB Jan. 10, 2003). As to the confidentiality, I note the following: the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, all of their filings, including the Settlement Agreement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act (“FOIA”), 5 U.S.C.A. § 552, *et seq.* The Administrative Review Board has noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine *at the time a request is made* whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

*Seater v. S. Cal. Edison Co.*, USDOL/OALJ Reporter (PDF), ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

Accordingly, it is **ORDERED** that:

- (1) The Joint Motion is **GRANTED**;
- (2) The Settlement Agreement is **APPROVED**;
- (3) The Settlement Agreement shall be designated as confidential subject to the procedures requiring disclosure under FOIA; and
- (4) The Complaint of Fredrick Crutchfield is **DISMISSED WITH PREJUDICE**.

**SO ORDERED.**

**A**

**JONATHAN C. CALIANOS**  
Administrative Law Judge

Boston, Massachusetts