



Issue Date: 14 September 2009

In the Matter of

MARK RADICE
Complainant

v.

AMERICAN AIRLINES, INC.
Respondent

Case No. 2009-AIR-00009

ORDER OF DISMISSAL

This case arises under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“AIR 21”). Each party has filed a motion to dismiss the case, which is now moot as the result of an arbitration proceeding.¹ The Solicitor of Labor, who is permitted to participate in AIR 21 proceedings as provided by 29 C.F.R. §1979.108(a), objects to an order which simply dismisses this case. It is the Solicitor’s position that 29 C.F.R. §1979.111 of the AIR 21 regulations does not permit a case to be dismissed once OSHA has issued its findings and the case has been docket with this Office. Rather, either the party which objected to OSHA’s findings must withdraw its objections to those findings, in which case those findings and OSHA’s preliminary order become the final decision of the Secretary, or the parties must enter into a settlement agreement, which is subject to approval by the administrative law judge. *See* §1979.111(c).

While the Solicitor’s position may be in accord with the literal terms of §1979.111, that section of the regulations clearly does not contemplate the situation where subsequent to OSHA’s findings and preliminary order the case has become moot, and it is not in the interests of the party which received OSHA’s favorable ruling to proceed with the case. Surely the Solicitor cannot intend that the successful party before OSHA be made to litigate a case which now will provide it no benefit to him simply because the opposing party will not agree to OSHA’s now-irrelevant

¹ Although their respective motions differ, both parties desire the same outcome, *i.e.*, a dismissal of the case with prejudice.

determination. That would be ludicrous, and I will not hold that the AIR 21 regulations require a ludicrous result.

Therefore, I hold that the motion to dismiss is proper under the circumstances, and

IT IS ORDERED that this case is dismissed with prejudice. Each party shall bear its own attorneys' fees and costs.

A

JEFFREY TURECK
Administrative Law Judge