

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 30 November 2017

CASE NO.: 2010-AIR-00015

In the Matter of:

TIM RUDZINSKI,

Complainant,

v.

NORTHWEST AIRLINES,
d/b/a DELTA AIRLINES, INC.,

Respondent.

APPEARANCES: Nancy A. Valentino
Attorney for the Complainant

Thomas J. Munger
Attorney for the Respondent

BEFORE: ALAN L. BERGSTROM
Administrative Law Judge

DECISION AND ORDER – DENYING AND DISMISSING COMPLAINT

This matter arises from a complaint filed under the provisions of Section 42121 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), 49 USC §42141 as implemented by federal regulations set forth in 29 CFR Part 1979, and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 1978. The Complainant filed a complaint on June 6, 2009, alleging that Respondents retaliated against him in violation of AIR-21 by terminating his employment on March 30, 2009 and harassing him from April 2007 through March 30, 2009. The complaint was investigated and on January 22, 2010, the Regional Supervisory Investigator, Occupational Safety and Health Administration, Lansing Area Office, dismissed the complaint by finding that the Complainant's protected activity was not a contributing factor in his termination. On February 16, 2010, the Complainant filed objections to the Secretary's decision and requested a hearing before an Administrative Law Judge.

PROCEDURAL HISTORY

The case was received in this office on February 22, 2010 and assigned to presiding Judge K.A. Krantz. Mr. A. Armstrong appeared as Complainant's counsel and Mr. T. J. Munger appeared as Respondent's counsel. By Order of March 19, 2010 a formal hearing was scheduled to commence on October 18, 2010 in Atlanta, Georgia (ALJX 1). The hearing was continued on August 13, 2010 (ALJX 2). By Order of September 7, 2010 a formal hearing was scheduled to commence on March 22, 2011 in Atlanta, Georgia (ALJX 3). By Order of December 15, 2010 Judge Krantz acknowledged that Complainant's counsel had been discharged by the Complainant.¹ The Complainant then proceeded *pro se*. By Order issued February 28, 2011 the March 22, 2011 formal hearing was cancelled upon Complainant's request for additional time for discovery and dispositive motions (ALJX 5). An extensive period of contested discovery ensued until Judge Krantz issued an Order on August 4, 2014 closing the discovery period as of that date.

By Order of June 4, 2014 a formal hearing was scheduled to commence on November 18, 2014 (ALJX 6). On August 27, 2014 Respondent's counsel filed a "Motion for Summary Decision." The Complainant filed a response on October 7, 2014. By Order of October 27, 2014 Judge Krantz denied Respondent's "Motion for Summary Decision" and rescheduled the formal hearing to commence on February 24, 2015 in Atlanta, Georgia (ALJX 7, 8). By Order of January 14, 2015 Judge Krantz granted the Complainant's request for a continuance to May 2015 and rescheduled the formal hearing to commence May 5, 2015 in Atlanta, Georgia (ALJX 9). By Order of April 15, 2015 Judge Krantz granted a joint request for continuance and cancelled the May 5, 2015 hearing (ALJX 10). By Order of June 16, 2015 Judge Krantz returned the case to docketing for an "unassigned" status due to his scheduled retirement (ALJX 11).

On July 7, 2015 the case was assigned to this presiding Judge and a "Scheduling Order" was issued to the Parties on August 3, 2015 (ALJX 12). By Order of August 20, 2015 a Settlement Judge was appointed at the request of the Parties (ALJX 13). By Order of October 16, 2015 the Settlement Judge closed "Settlement Judge Proceedings" (ALJX 14). By Order of January 20, 2016 this presiding Judge denied Complainant's "Request to Amend the Complaint" and scheduled a formal hearing to commence on June 21, 2016 (ALJX 15). On February 8, 2016 Respondent's counsel filed a "Motion to Enforce Settlement Agreement and Motion to Stay" and a "Motion Calling for Recusal of the Presiding Judge." By Order of March 18, 2016 Respondent's Motions were denied (ALJX 16). On April 15, 2016 attorney N.A. Valentino filed her appearance as counsel for the Complainant. By Order of April 22, 2016 the formal hearing was continued to October 25, 2016 at the unopposed request of Complaint's counsel to review the extensive evidence developed during four years of discovery and prepare for the hearing (ALJX 17).

A formal hearing was held on October 25 and 26, 2016, in Atlanta, Georgia, at which time the parties were afforded full opportunity to present evidence and argument as provided by AIR-21 and applicable regulations. At the hearing, Administrative Law Judge exhibit 1 through 25; Joint exhibit 1; Complainant exhibits 1-54, 56-58, 61-72; and Respondent's exhibits 1, 4-7, 14-16, 18,

¹ In his "Notice of Amended Attorney's Lien of Alan Armstrong" Complainant's original counsel stated he was discharged on December 5, 2010. He asserted a lien in the amount of \$61,204.15 (ALJX 23).

20-21, 24-26, 30, 32, 35-39, 44-45, 49-63 were admitted without objection (TR² 7-13, 17-27, 26-33, 39, 41, 43, 45, 48, 51, 285-286, 351-352, 390). CX 59 was withdrawn (TR 21). CX 55, 60,³ and 62⁴ were admitted over Respondent's objections (TR 17-25). EX 2, 3, 9-11, 13, 19, 27, 31, 33, 34, 40, 42, 47, 48⁵ were admitted over Complainant's objections (TR 27-32, 35-39, 43-45, 48-49, 50-51, 385) Ruling on objections to CX 55 and EX 12, 19, 30 and 31 were reserved until the witnesses had testified (25, 37, 44, 45, 52). Respondent's objections to CX 55 and Complainant's objections to EX 8, 12, 17, 41, 46 and were sustained (TR 34, 39-40, 49-51, 384-385) and the documents were not considered.

The findings of fact and conclusions which follow reflect the complete review of the entire record, the argument of the parties, as well as applicable statutory provisions, regulations and pertinent precedent.

STIPULATIONS

The parties submitted written stipulations of fact and entered into oral stipulation of fact at the formal hearing, and this Administrative Law Judge finds, the following as facts in this case (JX 1, TR 12-15):

1. On November 27, 1989, Northwest Airlines, Inc. ("Northwest") hired the Complainant as an airframe and power plant technician at the Minneapolis Airport.
2. In 1997, the Complainant became employed at the Atlanta Hartfield International Airport.
3. In August 2008, the Complainant became a manager in line maintenance at the Detroit Wayne County Airport ("DTW").
4. The Complainant worked as a manager in line maintenance at DTW until the last day he worked – March 30, 2009.
5. Since 1997, the Complainant has lived in Fayetteville, Georgia.
6. Each of the managers and mechanics in DTW line maintenance were assigned to one of a number of designated zones that were responsible for aircraft at designated group gates. A manager could also be assigned to a control center position.
7. In April 2008, Delta Airlines, Inc. ("Delta") and Northwest announced a merger agreement whereby Northwest would merge into Delta.
8. On March 30, 2009, the Complainant was informed that he would not be offered an end state position with Delta.
9. The Complainant remained on the payroll until May 6, 2009.
10. On June 25, 2009, the Complainant filed an AIR-21 complaint against Northwest with OSHA.
11. On January 22, 2010, OSHA issued a Determination on the Complainant's AIR-21 complaint dismissing his complaint.
12. On February 15, 2010, the Complainant filed objections to OSHA's Determination.

² The following exhibit notation applies: JX - joint exhibit; ALJX – Administrative Law Judge exhibit; CX – Complainant exhibit; RX – Respondent exhibit; TR – transcript page

³ CX 60 was admitted as relevant for consideration in damages and mitigation only.

⁴ CX 62 was admitted as relevant for consideration on issues of credibility and mitigation only.

⁵ EX 46 was admitted as relevant for consideration in damages only.

13. Respondent Northwest Airlines d/b/a Delta Air Lines, Inc., operates a commercial air passenger service operation and is an air carrier within the meaning of 49 U.S.C. §42121 and 49 U.S.C. §40102(a)(2).
14. While employed by Respondent, the Complainant was an employee within the meaning of 49 U.S.C. §42121.
15. The provisions of 49 U.S.C. §42121 (“AIR-21”) apply in this case.
16. The Complainant suffered no economic loss of income with respect to Northwest Airlines of Delta Air Lines, Inc. through May 6, 2009.
17. On April 17, 2007, the Complainant received a 2006 year-end performance review for work as “Manager Line Maintenance – Control Center” indicating an overall competency rating of 3.25, overall MBO rating of 4.11 and overall performance rating of 3.75. The Complainant contested the performance review scores with his supervisor, D.R. Luttenbacher, and at the Human Resources Department level in April 2007 without pursuing a secondary review.
18. On April 25, 2008, the Complainant received a 2007 year-end performance review for work as “Manager Line Maintenance” indicating an overall competency rating of 3.38, overall MBO rating of 3.70 and overall performance rating of 3.50
19. On December 1, 2008, the Complainant acknowledged the status of his performance appraisal for the period beginning January 1, 2008, for work as “Manager Line Maintenance” and which indicated a core competency rating of 2.7, overall MBO rating of 3.60 and overall performance rating of 3.25. The Complainant submitted comments on the review to the Director of Human Resources, Carolyn India-Black, on December 21, 2008.

ISSUES

The issues remaining to be resolved are (TR 15-16):⁶

1. Did the Complainant engage in activity protected under AIR-21 as alleged in the complaint concerning Northwest Airlines Aircraft #9868 during the period from August 30, 2007 through Wednesday, September 5, 2007 ?
2. If so, was the protected activity under AIR-21 a contributing factor for the alleged adverse employment action of March 30, 2009 ?
3. If so, has the Respondent establish by clear and convincing evidence that it would have taken the same adverse action, notwithstanding the protected activity ?
4. If AIR-21 was violated, is the Complainant entitled to appropriate relief under AIR-21, such as reinstatement, back pay, front pay, restoration of employee benefits, seniority, interest, attorney fees and legal costs ?

⁶ The Parties stipulated that the AIR-21 complaint was filed on June 25, 2009. The Parties were advised that since AIR-21 provides that complainant must be filed, pursuant to 49 U.S.C. §42121(b)(1), within 90 days of the adverse employment action, alleged discrete adverse employment actions alleged to have occurred on or before Sunday, March 27, 2009 are time barred from consideration as discrete violations of AIR-21. The Parties were advised that the alleged employment discrimination based on a sleep disorder and fatigue occurring in 2008 would not be considered. No objection was voiced by either Party. (TR 16)

PARTY POSITIONS

Complainant's Position:

Complainant's counsel submits that the Complainant began his shift as night line manager on August 29, 2007 became aware of damage to aircraft #9868 and inspected the damage. He determined that the aircraft was unable to fly due to crease damage and sent aircraft #9868 to the hanger for required repairs which would take a substantial period of time to repair. The Complainant completed his shift and departed for home the morning of August 30, 2007 for a period of time off. The Complainant returned to work on September 4, 2007 and learned the aircraft had been flying for several days without repair of the noted crease damage. The Complainant considered flying aircraft #9868 without repair of the noted crease damage violated FAA rules and regulations. He reported his concerns to his superiors and a Quality Assurance Audit ensued which disclosed a mechanic had signed off on the repairs without actually completing the repairs. Complainant's counsel submits that the Complainant's responsibility as a night line manager was to inspect aircraft to determine if the aircraft were worthy to fly and not to follow-up on mechanics in the repair hanger or determine if proper repairs had been completed.

Complainant's counsel submits that the Complainant's actions, after grounding aircraft #9868 and sending it to the repair hanger, where those of a whistleblower. He argues that after the September 4, 2007 actions, the Complainant was denied a transfer to another position in Minneapolis, harassed and badgered regarding time-off for Christmas 2008, and culminated with employment termination after the merger of Northwest Airlines and Delta Airlines, Inc., in violation of AIR-21.

Complainant's counsel argues that the Complainant's immediate supervisor, J. Fauth, made the decision to terminate the Complainant and not L. Gossett and that J. Fauth testified in deposition that the reason the Complainant was terminated was based on the August/September 2007 incident involving aircraft #9868. She submits that the testimony of L. Gossett stating he made the decision to terminate the Complainant is not credible.

Complainant's counsel submits that until the Complainant's September 2007 whistleblowing activity he had not been disciplined in any way by Northwest Airlines. She argues that the time delay from the September 2007 whistleblower activity and the March 30, 2009 adverse employment action is not dispositive because the merger between Northwest and Delta had been underway for a significant period of time, the Employer is a large savvy corporation well aware of AIR-21 requirements, and "simply chose to sit back and wait for the talent assessment tool with which to terminate the Complainant in violation of AIR-21." She cites to CX 70 and argues that the Employer altered e-mails in order to hide the motivating factor for terminating the Complainant for his September 2007 whistleblower activities.

Complainant's counsel submits that the in addition to lost salary, the Complainant lost the benefits of contributions to his 401(k) plan, bonuses, vacation packages, free travel for life and health benefits, as well as other losses that are difficult if not impossible to determine.

In a supplemental brief filed in response to Employer's written closing argument, Complainant's counsel noted several issues related to the credibility of witnesses, commented on the long discovery process, commented on the Complainant's prior counsel of record, and reiterated her arguments set forth above.

Employer's Position:

Respondent's counsel filed "Respondent's Motion for Summary Decision" as written closing argument in this case. He submits that as a result of the merger of Northwest Airlines into Delta Air Lines, Inc., over 1200 Northwest management employees lost employment and were offered severance packages by Northwest. He submits that Delta made its decision on which Northwest manager to hire based on a talent assessment process and that the Complainant was given a low talent assessment "because of his history of problems as a manager dating back to at least 2006" attributable to a number of performance and conduct problems, lack of teamwork, pattern of efforts to undermine management peers and insubordination towards his management team. The Complainant was informed he was not offered an end-state position after merger with Delta and was offered a severance package which he at first accepted and then revoked.

Respondent's counsel submits that the documentary evidence consistently showed that Respondent had no problem with the Complainant holding aircraft #9868 out of service in September 2007 and that the Complainant had acted correctly in the matter. He also submits that e-mails by the Complainant demonstrate that Northwest management had lost confidence in the Complainant long before September 2007 because of failure to work as a team with other managers, efforts to undermine his fellow managers, failure to complete tasks on time, insubordination and unprofessional e-mails; demonstrate that the Complainant continued to engage in such activity unrelated to aircraft #9868 in 2008; and demonstrate that the Complainant was aware that his job was in jeopardy prior to September 2007. He submits that not one of the e-mails from Respondent's managers indicate that the Complainant did anything wrong in respect to aircraft #9868 in September 2007. He argues that the Complainant's conduct of making unsubstantiated allegations against peer managers in 2006 and March 2007 led to an April performance assessment documenting the Complainant's difficulty working with others in his department and that he needed to improve a lot as to his working with fellow managers and that his supervisor stated "we don't feel that we can put you in a work area where you have to work with other managers. This is a drawback to the company, if you are not versatile. I feel that next year will be your year to show a lot of improvement."

Respondent's counsel submits that documents ordered to be produced demonstrate that the Complainant suffered no economic loss of income when compared to wages Delta would have paid to a line manager after the Complainant was terminated and that the Complainant's actions during the long period of discovery and his testimony on income after May 6, 2009 indicate that the Complainant is less than a forthright, credible witness.

Respondent's counsel submits that the Complainant was well aware of personal performance shortfalls and difficulty working with others well before the September 2007 aircraft #9868 incident; documentary evidence supports that the Complainant's performance and professionalism were lacking; and that the Complainant failed to correct his work performance

and team relationships throughout 2006 and through his termination in 2009. He submits that the only Northwest Airlines employee with input into the Complainant's talent assessment was supervisor J. Fauth who has consistently stated that the Complainant acted properly in seeking repairs to aircraft #9868 and reporting the events related to aircraft #9868. He argues that the talent assessment grade assigned to the Complainant was warranted by the Complainant's long-term conduct and unrelated to his actions regarding aircraft #9868.

Respondent's counsel submits the evidence establishes that there was no retaliation at all against the Complainant; that his supervisors were supportive of job and shift opportunities that were of interest to the Complainant immediately before and after September 2007; and that the Complainant continued to undermine peer managers and demonstrated continued problems with interpersonal skills and behavior with his peers and management unrelated to aircraft #9868. He submits that the Complainant received a detailed counseling session from supervisors in October 2008 on steps to improve his e-mail etiquette, interpersonal skills needed for effective management, argumentative behavior, inability to listen for understanding and importance of being a team player and that the Complainant promptly and directly defied the counseling directives and continued to display insubordinate actions.

Respondent's counsel submits that the Complainant's supervisor during the talent assessment phase, S. Boysen, completed the three step talent assessment in November 2008 based on his seven months supervising the Complainant and that he was well aware of the Complainant's deficiencies in the workplace. He argues that the talent assessment properly reflected the Complainant's performance and potential and that the Complainant was not offered an end-stage position with Delta Air Lines, Inc. because of his final "E" rating, the same result as that of 1,219 other Northwest Airlines employees, with no known AIR-21 protected activity and not continued to an end-stage position through the merger process with Delta Air Lines, Inc.

Respondent's counsel submits that following employee talent assessment grading by Northwest Airlines immediate supervisors, a "calibration discussion" was led by L. Gossett, Director of Line Maintenance with Delta Air Lines, to ensure there was a consistency in rating the impacted employees. He submits that four Northwest Airlines leaders, B. Fitzgerald, T. Johnson, L. Nitski and K. Abrajic, made statements during the calibration meeting that supported the low talent assessment grades assigned to the Complainant without knowledge of the Complainant's actions related to aircraft #9868. He argues that while J. Fauth knew about the Complainant's actions with aircraft #9868 and believed the Complainant acted correctly, supervisor J. Fauth addressed only the Complainant's personal actions that demonstrated he lacked interpersonal skills and did not support the team work desired as a manager. He submits that based on the information provided during the calibration discussion, L. Gossett elected not to change the Complainant's "E" rating and decided that the Complainant would not be offered an end-stage maintenance position through merger of Northwest Airlines into Delta Air Lines, Inc. He argues that there is no evidence that L. Gossett was aware of any AIR-21 protected activity at the time he decided to not offer the Complainant an end-stage position with Delta Air Lines, Inc. such that the Complainant activities related to aircraft #9868 was not a contributing factor in the Complainant's loss of employment.

Respondent's counsel submits that Complainant's peer maintenance managers E. Scruggs and T. Johnson were also given low talent assessment marks by S. Boysen; went through the assessment and calibration process like the Complainant; received an "E" rating like the Complainant; were not hired to an end-stage position with Delta Air Lines, Inc.; and had their employment with Northwest Air Lines ended like the Complainant. He asserts that there is no evidence that either E. Scruggs or T. Johnson engaged in AIR-21 protected activity or reported a FAR violation.

Respondent's counsel submits that the Complainant's various actions in 2011 and Complainant's efforts to mislead his earnings after 2008 evidence that the Complainant lacks credibility and his statements and testimony should be likewise viewed as not credible. He argues that the Complainant's post-May 2009 income demonstrates that the Complainant has not suffered any damages after leaving Northwest Air Lines employment. Respondent's counsel requests the complainant be dismissed.

In a supplemental brief filed in response to Complainant's written closing argument, Respondent's counsel objected to Complainant's brief on procedural ground related to filing deadlines and service on opposing counsel. These objections are overruled and Complainant's counsel's written argument was considered. He argues that "the length of temporal" between protected activity and the adverse employment action does not apply in this case based on the evidence submitted, including announcement of the merger six months after the September 2007 involving aircraft #9868. He argues that the Complainant has fallen far short of establishing a contributing factor and that there is clear and convincing evidence that the Complainant's employment termination was unrelated to any alleged AIR-21 protected activity.

SUMMARY OF RELEVANT EVIDENCE

Testimony of Complainant (TR 70-169, 175-323, 380-384)

The Complainant testified that he has resided in Fayetteville, Georgia, since buying his house in 1997 and that he lives with his wife and children, one of whom attends college in Huntsville, Alabama. He stated that his wife works from home in sales for Delta Air Lines and occasionally goes to work in at the airport in Atlanta, Georgia or to other locations for meetings. He stated he received an associate's degree in 1989 in specialized technology from Pittsburgh Institute of Aeronautics with core classes in airframe and power plant "A" licenses, and classes in Federal Aviation Regulations and electronics. He was offered a position of aircraft mechanic with Northwest Airlines and Delta Air Lines. He elected to work for Northwest Airline at the Minneapolis-St. Paul hub in the Building C, the hangers and sheet metal shop area. He identified CX 58 as his resume that listed his past work in inverse order.

The Complainant testified that his initial mechanic work at Northwest Airlines involved DC-10s and later DC-9s, 727s, 747s and A320s. The shop handled all flight controls, flight control repairs, and basically all the components of the aircraft that could be removed that were for flight, and some internal components like galleys and tubing. Throughout his time with Northwest he received over 2,000 hours of Employer provided training. There was training on heat treating metals, log books, manuals, safety items, workplace safety, and aircraft

pressurization. There was annual training on anti-discrimination, sexual harassment, disability discrimination.

The Complainant testified that after about a year as a sheet metal mechanic he moved into an ARMAR program where aged 747 aircraft were torn completely apart down to the frame and remodeled, repaired and rebuilt over a six month period. Airframes and fuselage sections would be replaced. Structural repair manuals would be used to compare dents, creases, bulges or other issues with acceptable standards and if the aircraft section was out of acceptable variables of integrity, repairs would have to be made. He described the steps in repairing enlarged rivet holes with a "freeze plug" as part of his ARMAR work. After the ARMAR project ended, he returned to the sheet metal shop as a day shift mechanic. He remained in the sheet metal shop in Minneapolis until he bid a union position and became a line maintenance mechanic in Columbus, Ohio around 1994. He commuted to Columbus from Minneapolis for about a year. The work in Columbus was at a small line maintenance facility where there were three aircraft overnight and the work involved maintenance packages and routine light duty work such as checking brakes, tires, lights, and changing out any expired items on the aircraft. He then returned to the Minneapolis facility as a relief lead mechanic in the sheet metal shop where he filled in for lead mechanics that were off and covered weekends. As a relief lead mechanic he built union lead seniority, made a higher income than mechanics, and supervised a crew of shop mechanics in the various shops. A crew was usually 12 mechanics and could be in the structural shop, galley shop, or flight control shop. He stated that there came a point when he was asked by shop manager S. Velasquez to upgrade to manager of an area. He worked as a manager involving maintenance operations, schedules, parts receipt and delays, and aircraft repairs and deliveries. The work also entailed several meeting a day with upper management. He filled in for the manager where and when needed to supervise 220 mechanics and leads in the maintenance shops. He remained in the entry level management position until early 1997 when he took a job as an aircraft instructor in Atlanta, Georgia. He received his training for the instructor position in Minneapolis and moved to Atlanta after his house in Minneapolis sold.

The Complainant testified that the aircraft instructor position training and teaching the Atlanta maintenance shop areas the General Engineering Maintenance Manual, which are the rules to follow to comply with FARs. The shop areas included engine, sheet metal, electric and the fabric and trim shops. He also provided training to other land maintenance hubs. At the time he also held the role of a mishap investigator. His position was a hybrid union-management position where he paid union dues and had some union benefits. Around late 1998 he took a planner position in planning at Atlanta where he was responsible for reviewing maintenance needs for specific DC9 aircraft and then scheduling light, heavy and major maintenance work to be accomplished. Light maintenance was work that could be done quickly, such as landing gear. Heavy maintenance involved structural integrity and could involve stripping the inside of the fuselage. Major maintenance involved the aircraft being taken down to skeleton and rebuilding it. He stated that the planner work was similar to some of the work he did as an area manager in Minneapolis under manager S. Velasquez.

The Complainant testified he was next asked to take a manager's position over the sheet metal honeycomb shop in Atlanta. The honeycomb shop would rebuild and fabricate flight controls for aircraft in for structural work, including the honeycomb material sandwiched between pieces of

metal for structural integrity in the wings and fuselage. He supervised about 65 people in the honeycomb shop. He remained in that shop manager position for about a year before moving upstairs in the hanger as a reliability analyst. The work of reliability analyst involved review all aircraft structural deficiency write-ups involving heavy maintenance structural items involving DC9s that came in from the 17 check lines and then prepare a weekly report to be sent to the aircraft owners. He worked as a reliability analyst for about four years before returning to the maintenance planner position. He testified that when September 11, 2001 happened, Northwest laid everyone off and began bringing people back on in small groups. There was interview process to come back and he came back into the reliability analyst position for DC9s, after being out of work about ten days. This time as reliability analyst for DC9s, he would deal with aircraft fuselage inspection records and code aircraft events daily, such as an engine turn-back due to engine failure. Engineering would look at the codes to determine if there was a high incidence of event failures and then hone down to what caused the increase in reported failures. He worked with the engineers in RCB meetings to review the identified issues and finding resolutions. He would prepare a report of the issues for use by the FAA and submit it to Northwest Airline in Minneapolis for review and consolidation with other similar reports to the FAA. He stayed in that position until the Atlanta hanger was closed down and the personnel transferred or separated. The Complainant stated he took a voluntary leave from the company and was given a severance package that would allow him to return within five years and keep his seniority as if he had not left.

The Complainant testified that while out from Northwest Airlines he worked for Lowes installing kitchen displays, including walls, cabinets, and countertops, in Lowes stores east of the Mississippi. It would take about a month to do a store. He started with one store a month and later grew the business with subcontractors to five stores a month. He did this type work up to the spring of 2005.

The Complainant testified that he had been called three times by J. Bendoraitis, a vice president with Northwest Airlines, to return to the company. After the third call he discussed returning to Northwest Airlines in greater detail, looked at the positions available, and sent his resume to J. Bendoraitis. In the spring of 2005 he interviewed for the line manager position in Detroit. He was interviewed by J. Kelly [director of the Detroit base], D. Luttenbacher [an operations manager in Detroit], and L. Gajria and one other individual. He assumed the position with Northwest around August 2005. Between the interview and August 2005 he wrapped up work with Lowes and did some work for Airtran for a short period.

The Complainant testified that when he took the position with Northwest Airlines in Detroit he was told there was speculation that a merger with Delta Air Lines was going on and he should not sell his house in Fayetteville because he could be returning to the Atlanta area. He then began commuting to Detroit. Shortly after he arrived in Detroit as a line maintenance manager, a strike occurred and managers were placed on a mandatory work schedule of 13-hour days for 5 or 6 in a row, then one day off. That schedule lasted the rest of 2005. He worked the afternoon shift and would oversee the line maintenance of aircraft coming into the hanger and just try to keep the planes flying throughout the day to keep them on schedule.

The Complainant testified that the union strike occurred about two weeks after he reported to the line manager position in Detroit. Many of the union mechanics were given signoff papers, had access badges taken back, and sent home the night before he came in for his dayshift. He stated he had never seen a strike where all the mechanics were sent home and that he expected the strike would be over in a day. He collected badges of the union workers who showed up for work that day and escorted them to the door. For the strike, he and the other line managers were issued maintenance uniforms and toolboxes and performed work as mechanics. He stated there were replacement workers bussed in and a few Northwest Airlines mechanics that crossed the picket line to work. He ended up working two shifts, one as line manager at the main domestic line area and then over to the hanger as a mechanic. Approximately 90% of the hanger work involved wide-body aircraft, 747s, 757s and A330s. He would also be sent out with replacement workers to other city hubs in Michigan if a broken aircraft, mainly DC9s, needed repairs. During the strike the effort was directed at triage so that the aircraft requiring the least repair were quickly repaired and returned to flight status. There were multiple supervisors in the hanger during the strike until the flight stuff leveled out after a few months and people started returning to their home bases. It was a system-wide strike. The strike ended about January 2006.

The Complainant testified that after the strike ended, he kept his title a line maintenance manager but functioned essentially as a lead mechanic of hanger zone one for the afternoon shift. Like a manager in working clothes. His immediate supervisor was D. Luttenbacher, who had the domestic line. He had crews to supervise who worked the mid-shift and afternoon shift. He would start work between 2:30 and 3:00 pm and worked until 11:00pm. There were several line maintenance managers in the shift – one to call out planes when ready for flight, one to order parts, one to supervise the work being done on the aircraft, and another to make sure aircraft were leaving on time. The line managers would just work out among themselves who would do what function. He stated that D. Luttenbacher asked him to report on how things were going in the zone and areas which could be improved. Subsequently, he'd park his car in the garage and walk to the hanger through the office area and update D. Luttenbacher on what he had observed on the prior shift. He reported to D. Luttenbacher when he thought specialized training was required for the mechanics. He notified his work area peers and D. Luttenbacher about mechanics taking sodas off aircraft in violation of company policy. He also reported to D. Luttenbacher and his peer managers about managers leaving before end of shift when the next shift managers came into work and work was turned over to the next shift since "just because someone is coming in early for his shift doesn't mean he's covering for other people to leave early." He stated some of his peers reported receiving letters in their personnel files about leaving shift early and it was a result of his reporting the issue to D. Luttenbacher and J. Fauth, who shared the director's office. He stated that his working relationship with the other line managers was negatively impacted by the event.

The Complainant testified that near the end of 2006 he moved from zone one to the control center when offered the position by D. Luttenbacher. He became control center manager which was an operational position and not one requiring a uniform be worn. At the control center they handled all the delays of aircraft coming from the zones as well as aircraft that aborted takeoff and aircraft diverted into Detroit with a failure. He would have to coordinate repairs or get replacement aircraft. He served on a committee interacting with directors and vice presidents flight operations, ground operations, technical operations and all of the groups. If a flight was

scheduled to take off and did not, the delay would be coded to flight operations, ground operations or maintenance. Sometimes there were disputes as to where the delay code should be assigned and he would be involved if maintenance was involved. Departure delays went to on-time performance which was reported to the Department of Transportation on a weekly basis. He also would transcribe aircraft radio and phone communications for the legal department on a regular basis. That work was done in a secure area because it was confidential work for the legal department. He stated that on January 1, 2007, the control center manager who covered the preceding day shift transferred to hanger three and he had to cover the day and afternoon shifts, from morning launch time until the last evening flight out. The control center job was a Monday to Friday work week with commuting back to Atlanta for the weekends where he could cover the weekends remotely from the house. He had control center personnel working under him seven days a week getting flights ready to launch. A large part of his work involved investigating and properly coding the 20 to 30 flight delays that happened each day.

The Complainant testified that on one occasion while control center manager he coded a delay to a zone which upset P. Janssen who made an adverse statement to the Complainant through a control center employee that used language which was against company policy. The Complainant reported the event to D. Luttenbacher.

The Complainant testified that he was advised by J. Fauth that there was a manager opening with a vendor working for Northwest in Atlanta that was outside Northwest Airlines. When he expressed interest in the job but not in leaving Northwest Airlines, the manager position was rewritten and he was notified by D. Luttenbacher that the job was posted and Northwest Airlines wanted their own manager to oversee the vendor in Atlanta. He applied for the Atlanta supervisor job and notified D. Luttenbacher by e-mail on August 26, 2007, referring to CX 4. The Complainant testified that he had learned earlier in August 2007 that he would be going back to zone management as the night line maintenance manager for overnight aircraft and he transitioned to the control center manager position for the overnight aircraft zone around mid-August 2007. During the transition period, he created a list of specific job duties and requirements for the control center manager as requested by J. Fauth and sent them to J. Fauth and L. Gajria to help advertise the position, referring to CX 1 and CX 2.

The Complainant testified that from the time he was hired by Northwest Airlines to September 2007, he was never disciplined or placed on a personal improvement plan or personal action plan.

The Complainant testified that he came to work as night line manager around 9:00 PM August 29, 2007 and aircraft #9868 was sitting at the gate with structural damage waiting for someone to inspect. He went to the aircraft and observed damage behind the door where it had been hit by the jetway. The pilots had made a log book entry that there were three dents to the fuselage by the door and were waiting for maintenance to examine the area. He told the flight crew that they would need a different aircraft and the crew disembarked. He stated that maintenance control, engineering, local upper management and everyone involved with aircraft maintenance were involved with the particular aircraft to see what the flight options were for the aircraft with the damage that had occurred. He took photographs of the damage found in CX 8 for the ADIT report of the aircraft damage. He identified CX 5 as the turnover log initiated in maintenance to

record entries of what was going on with aircraft #9868 while in maintenance. He reported making the entry at 5:28AM, August 30, 2007 that the “line check was completed, the wobble check was done, aft section of right strike removed from routing to Minneapolis to get welding accomplished. Packing up to go to the hanger for a dent on fuselage aft of forward door.” The determination to send the aircraft to the hanger was made by engineering and maintenance control based on all the information as to whether the damage could be repaired at the gate. A. Fox was his counterpart manager and B. Byers was the night line operations manager at the hanger. He identified CX 10 as a 4:48 AM, August 30, 2007 e-mail he sent to D. Luttenbacher, A. Fox and B. Byers describing the damage and forwarding the photographs he took of the damage area. The e-mail included the three hour ADIT written by employee J. Walker.

The Complainant testified that he, engineering, maintenance control and the parties involved consulted the “Northwest DC9 Typical Repair Manual” at CX 13 which did not give any latitude for the aircraft to fly with the damage that had been sustained. The determination was made to send the aircraft to the hanger for repairs. He stated he had not sent an aircraft to the hanger before. He reported that there had been conference calls about the damage to aircraft #9868 during conference calls at 9:00 PM, August 29 and on August 30, 2007 at 1:00 AM and 4:00 AM. He stated that transition to the day shift personnel probably started around 5:45 AM, August 30, 2007 and he made his last log entry “right at 5:28 AM.” He stated that it was then Friday and he returned home to the Atlanta area for Labor Day Weekend.

The Complainant testified that from his experience as a mechanic, the damage to aircraft #9868 “was over a frame section, which is not allowed unless an engineer wants to put his name on it saying it’s good to fly for a couple of days or whatever. The you’d have to ... typically, would require a repair where you’d have to cut out the damage, repair the frame section or stringers, which are the internal structures, and then reassemble it ... it’s a little bit if a big job in this area ... [because] you have lavatories and galleys and everything that’s in the same area where you have to work, so those have to be removed ... With taking all those items apart and ... fabricating parts, an aircraft would be down easily a week, five days, depending on where you were ... in Detroit they had limited resources for accomplishing structural repairs, so it would probably take longer.” After the aircraft was sent to Hanger 3 for repair, it was under the control of those maintenance personnel.

The Complainant testified he returned home. After he next woke up he called work to see if there were any loose ends that needed tidying up and talked to R. Todd at the hanger who had overseen aircraft #9868. He learned the aircraft was green, which meant that the repair to the aircraft had been signed off. He asked R. Todd to check on the green status again and was told on a second call he had not rechecked the green status. The Complainant stated he called D. Luttenbacher who was still at work finishing his shift and informed him that something did not seem right about aircraft #9868 being in green status and was told to enjoy the weekend and D. Luttenbacher would check into the aircraft status.

The Complainant testified that he returned to work the night of September 4, 2007 and at some point realized aircraft #9868 was not in the hanger and was not on the Aircraft Out of Service Report. He stated he punched in the aircraft number into the computer log and found that it had been flying revenue flights, passengers, over the weekend. He then pulled up the log and found

it had been signed off within limits. He explained the entries in CX 11 as indicating technician Remdi reported in the electronic log on August 30, 2007, that there was a “dent at station 239, left hand, just below 16 longeron, eighty-thousandths by 1.011 deep. Check limits found to be within limits per SRM 53-04 ... Figure 38, Condition 1B, Table C. HFEC, high frequency inspection, no crack noted and the inspection stamp; and it looks like the [aircraft #9868 damage] was being set for repetitive checks.” He stated the entry indicates the dent was closed out and was no longer an issue and the aircraft was in green status and permitted to fly at that point. The Complainant testified that when he looked up the page for SRM 53-04 and the page said “this page is obsolete.”

The Complainant testified that he asked his counterpart, believed to be A. Fox, what should be done because it was no part of his job to check up of repairs to aircraft #9868 or go behind the signoff to check on the SRM 53-04 reference. He then reported by e-mail to D. Luttenbacher and J. Fauth that aircraft #9868 was flying illegally because it was in an unsafe condition to fly. He based this belief on his personal knowledge, training and experience as well as the discussion input from everybody on August 30, 2007 in deciding to send the aircraft to the hanger for repairs and the manufacturer’s guidelines. D. Luttenbacher replied that he would look at the aircraft when it arrived at Detroit hub under a maintenance control order. The aircraft returned to Detroit with passengers from Charlottesville and was met by D. Luttenbacher and L. Henney, a line maintenance manager, on September 5, 2007. He stated D. Luttenbacher reported comparing the photographs the Complainant had taken of the damages on August 30, 2007 and compared them with the damage area when the aircraft had returned to Detroit and the damage looked the same. He testified that an inspection “found that there was cracked structure underneath it and they accomplished a large scab patch or repair patch to the fuselage and structure underneath” and it was taken out of service for repair.

The Complainant testified that a Quality Audit was conducted by S. Weis into the damage and handling of aircraft #9868. He reported receiving a call from S. Weis at the end of his investigation and talking to people in the hanger. He was asked to provide information and turnover logs.

The Complainant testified that around October 23, 2007 things seemed to change with D. Luttenbacher, J. Fauth and “the circle of their management group” because he was approached by J. Fauth that morning and asked if he would like to go to maintenance control in Minneapolis and was given contact information for the Minneapolis director, B. Fitzgerald. He called B. Fitzgerald and learned B. Fitzgerald was coming to Detroit and would be present at the managers’ conference that day. He then informed D. Luttenbacher of the opportunity to move to the Minneapolis position. He testified that the day after the managers’ conference D. Luttenbacher told him the Minneapolis position had been revoked. He reported that in October 2007 he felt he “was being ostracized and things were different in my work area ... I was feeling threatened” so he wrote a preamble about the Quality Audit investigation to S. Weis and K. Cairo, the manager of QA and FAA Liaison. He identified CX 43 as an e-mail from K. Cairo encouraging him to complete a comprehensive report of the events involving aircraft #9868 damage and handling of repairs. He identified CX 25 as the “preamble” and report of events involving aircraft #9868 that he sent to S. Weis. He testified that “my largest concern is that I was going to be railroaded down, some way or another, eliminated from the company from thing

that were being said about me [as a result of] the aircraft incident and how it played out with the upper management in Detroit” and not be treated fairly.

The Complainant testified that there were two Quality Audit reports provided by S. Weise. Both contained in CX 26. He stated that the two reports indicate that there were issues with the handling of aircraft #9868 with regard to the reported damage and repairs and that he was not attributed any fault as a result of the audit findings. He reported the second audit report was issued after D. Luttenbacher and J. Fauth objected to findings in the first report. He stated he felt that in the second audit report some of the blame was taken away from individuals and placed on him, though he was never disciplined. He testified that during the first audit S. Weis asked him for turnover log printouts that referred to the damage to aircraft #9868 because she could not get from D. Luttenbacher. He stated that S. Weis had asked why his information about the events were different from that of other individuals, so he was concerned that there was an alternate version about what happened to aircraft #9868.

The Complainant testified that shortly after the audit reports he was moved to a relief manager’s role at the hanger. It was there that saw a little poster in front of his desk concerning whistleblowing and a 90 day period. He wasn’t concerned at that point; but did file a whistleblower complaint with OSHA after he was terminated in March 2009. He reported that it seemed every job he applied and interviewed for never came to fruition after the audit reports and he was trapped in Detroit. He stated that when he received his retentions package information related to the merger from J. Fauth he apologized for the way their professional relationship turned out and that he had informed D. Luttenbacher the day aircraft #9868 went to the hanger that it wasn’t correct.

The Complainant testified that he had received performance review scores that he did not agree to and that there were stipulations regarding the scores assigned in the performance reviews for 2006, 2007 and 2008. He stated “5” was the perfect employee, “1” was the worse score, and “3” means the goals and work environment were being met. He stated anything above “3” was exceeding goals and anything below “3” means you are not meeting goals. He testified that S. Boysen was his direct supervisor for the 2008 mid-year review and prepared the review.

The Complainant identified CX 24 as an e-mail he produced on October 19, 2007 and testified he created it because he thought there was something major going to happen to his career. He believed the manager’s meeting with J. Fauth had already occurred where he had a position open in Minneapolis.

The Complainant testified that there was a point in 2007 where “the treatment at work became so severe that things were happening that were affecting my sleep; I was getting very minimal sleep.” He stated he would fly to Atlanta to keep doctor appointments after his workweek ended and that his doctor who put him on Family Medical Leave Act leave to recover. That went from around Christmas 2007 into 2008, for a total of 45 days. He subsequently returned to work as third shift hangar manager. When he returned he asked for an accommodation because the schedule was working 13 hours from 5:30 PM to 6:30 AM. He stated L. Gajria from human resources recommended he ask for a permanent accommodation vice a temporary accommodation, so he did; but the request was denied.

The Complainant testified he subsequently had a doctor's appointment scheduled and tried to get the first flight out after his workweek to get to a 10:30 doctor's appointment when he was informed of a 757 that needed moved into the hanger from a gate. He opened the hanger doors and found an A330 parked in front of the hanger. He was told to move the A330 with a "Goldhoffer" for which he was not trained or authorized to operate. He stated supervisors R. Lilly and B. Hoffman told him over the radio to choose between leaving work to catch a morning flight or moving the A330 with the "Goldhoffer;" and if he did not move the aircraft he would lose his job for not doing what he was told to do. He testified that if he operated the equipment without being trained or certified on it, he could be fired. He stated T. Neville overheard the conversations and took over moving the aircraft so he could catch his flight to Atlanta and see his doctor. He did keep the doctor's appointment and she prescribed sleeping medication for deep sleep at night and removed the work restrictions pending further evaluations so that he had clearance to return to work without restrictions.

The Complainant testified that he returned to work after being cleared to work without restrictions and found S. Adkins sitting at his usual desk in the line maintenance manager position in Hanger 3 that he had immediately prior to leaving for the doctor's appointment. He became the third manager on the shift until S. Boysen told him he would be the vacation relief manager. As vacation relief manager his schedule would change and could be night shift, day shift or zone work, wherever there was a hole. He would be notified when he came into work or by e-mail on his days off. He stated he considered the vacation relief manager position to be a demotion and he couldn't get on a sustained normal schedule which adversely affected his sleep patterns and "was detrimental to what I was needing." Sometimes he would be scheduled to work two areas at the same time, such as zone one and the airport and a couple of miles away in the hanger. Sometimes he'd report to work on Monday do go one place and be notified he was required at a different location. He stated that his supervisor did not appreciate having the duplicate scheduling pointed out. The Complainant testified that he would have a set schedule for the year and plan his travel but that as vacation relief manager other managers would get holidays off and he would have to change his plans "to work through the holidays to cover for people ... [which] pretty much eliminated every holiday for the year." He discussed the matter with D. Luttenbacher who advised he notify his supervisor about having Christmas 2008 off far enough in advance so it could be scheduled.

The Complainant testified towards the end of 2008 he met with J. Fauth, S. Boysen and L. Gajria around 9:30 to 11:00 AM after his night shift ended. They discussed Christmas leave among other things, including performance issues. He stated he "was pulled into a room where I was forced to sign a paper with all three of them and I had to wait until I signed. They said I was not leaving until I signed this paper ... [which] looked like a, it would be in a sense, a disciplinary letter towards me." He stated that he had two intimidating meetings with J. Fauth right after he had worked his shift, around October 23, 2008, where he had to repeat he was working Christmas three times and that if he did not work Christmas he would be fired. He stated after the two intimidating meetings he was advised by L. Gajria to write an apology, which he did.

The Complainant testified that he was approached by J. Bendoraitis who was president of an airline based out of Chantilly, Virginia, if he's be interested in heading the maintenance hangar in "SDF". He interviewed for that job in October 2008. He was offered the position with

Compass Airlines, which turned out to be a subsidiary of Northwest Airlines. He then called Northwest Human resources department and spoke with R. Warren with C. India-Black in the background. He stated he asked about whether he had to leave the company to work for Compass Airlines and was told by C. India-Black “don’t worry about it. You’ll have a position in Atlanta soon. You’re fine.” He then turned down the position with Compass Airlines.

The Complainant testified that he was notified on March 30, 2009 he would be let go and not get a position with Delta in Atlanta through the merger. He stated T. Williams (later corrected to T. Johnson) and E. Suggs were also managers that were let go at the same time as he. He stated E. Suggs explained she was waiting for a severance package and then leaving for a new job in Arizona. He testified that he was sent an e-mail on the Talent Assessment Process that was coming up as part of the Northwest – Delta merger. There were questions we had to answer about what we had done the prior year and he had to give his background to S. Boysen. The Talent Assessments began in the September-October period of 2008. His Talent Assessment contained the comments he had written and he believed S. Boysen was to sign off on it. He reported working for S. Boysen only one shift on one day of the Talent Assessment period, which ran from July 1, 2007 to June 30, 2008, and that S. Boysen was in the office most of the time and only working with him about 15 minutes of the shift. He stated that he had several supervisors during the period and S. Boysen may have been one for a month or two. He identified CX 40 as containing letters of accomplishment where his work before returning to the company in 2005 was acknowledged.

The Complainant testified that when he returned to Northwest in 2005 he worked at the Detroit hub there was a very different attitude and the employees thought they could do whatever they wanted to against company policies. He stated he “would let people know that this is not how it’s supposed to be done” based on his prior experience with the company.

The Complainant testified that he believed his termination from Northwest on March 30, 2009 “was directly tied against the aircraft event, the illegal activity that happened and the retribution – I was put in the areas where I could not come out of it and my reviews and everything reflected towards that, to eliminate my positions and put me in environments where I could not change it.” He stated that when he was put in Hanger #3, the majority of the people there were peers involved with the Aircraft #9868 event as inspectors and mechanics on the day shift and afternoon shift.

The Complainant testified that because of the termination he suffered damages such as, “I had matching 401(k). I lost the opportunity to receive any bonuses, profit sharing checks, flight benefits, medical coverage ... vacation time,” companion passes and pay raises. He stated his wife works for Delta but her seniority was much lower than his was so his flight benefits were better than hers were when it came to boarding flights. He stated he worked salary so he didn’t get paid overtime.

The Complainant testified that after he left Northwest he worked for a temporary agency working for Caterpillar for roughly the first year. Then they started to ask me to do small jobs so I reinstated my business and worked for Caterpillar as a contractor. It was a hands-on maintenance type of job. It’s been growing over the years. He has customers that are large

companies and they require coverage for any issue at any time something comes up, so the work schedule is pretty much the same, 24/7. He stated that after hours, he has to go into the customers' buildings for safety and security issues. He reported that he has a lot of employees that he oversees because the skill sets are not really there. The Complainant testified that the company name is AC Commercial and it is owned by he, his wife and a portion by his daughter. He reported ownership is currently 40% his, 40% his wife's and 20% his daughter's. He stated that the "AC" stands for his children's names. He stated that when he restarted the company he and his wife owned 50% each and in the past year when his daughter turned 18 the percentages went to 40 – 40 – 20. He stated his wife works for the company at home on her off hours from her regular job with Delta. She picks up supplies, does paperwork, and runs errands. He is the one who stays in contact with the customers and knows what is happening with them. He reported that this past summer both children were working at the Caterpillar site for his business doing what was required. His son goes with him to job sites after hours when called in and his daughter goes with him when she is home. Both children will do maintenance on the work vehicles when asked. He reported that when his son turns 18 the ownership will restructure again. His son wants to run the company after he gets a college engineering degree.

On cross-examination, the Complainant identified EX 3 as the March 18, 2007 e-mail he wrote to J. Fauth and D. Luttenbacher concerning three serious issues involving manager P. Janssen. The first issue involved a recording he heard of a conversation by P. Janssen with employee S. Keller that he considered an inappropriate conversation of a sexual nature. The second issue involved P. Janssen directing an employee to call him "a piece of shit" when telling him to call P. Janssen. The third issue arose when he called P. Janssen and was called him a "balless (sic) wonder" and "continued [a] conversation that was way out of line." He acknowledged writing "this incident has solidified my concern for my position at my current level in Detroit and also the continued inappropriate behavior of our [line maintenance manager] staff.

The Complainant testified that EX 4 was an email he sent to D. Luttenbacher in 2006 referring to his discussions with D. Luttenbacher about zone managers leaving early when the relieving manager reported for the next shift and that he "received feedback from the zone" and that "poison" was directed at him because "the zone believes ... I was the cause of letters in their file."

The Complainant identified EX 5 as the performance evaluation he received from D. Luttenbacher in April 2007 and EX 6 as his e-mail response to the evaluation. He testified that at some point in 2007 he was communicating with J. Fauth on a daily basis by e-mail and D. Luttenbacher instructed him to have e-mails he was sending to J. Fauth route a copy to D. Luttenbacher. He testified that EX 7 contains an e-mail he sent to J. Fauth on April 17, 2007 without a copy to D. Luttenbacher and identified EX 20 as containing an e-mail he sent to J. Fauth on June 10, 2008 without a copy to D. Luttenbacher.

The Complainant testified that he had been working at the Detroit hub and his first Christmas there occurred in 2005. He stated that he did not have to work Christmas in 2005, 2006 and 2007 though other line maintenance managers worked those days.

The Complainant identified EX 27 as the apology he wrote following a discussion with J. Fauth and S. Boysen about inappropriate e-mails around the October 19, 2008 time period and a discussion with L. Gajria who recommended the written apology. He could not remember the exact e-mail that precipitated the meeting with J. Fauth and S. Boysen. He stated that J. Fauth and S. Boysen had told him in the meeting that he was way out of line so he included that in the apology.

The Complainant identified EX 28, dated October 29, 2008, as the document he had to sign quite a few hours after his shift had ended.

The Complainant identified the writing in the upper right corner of EX 30 as his addition; but that he did not recognize the handwriting of “schedule stuff Oct. 23, 2008.”

The Complainant testified that his actions in the Control Center the night of August 29, 2008 with regard to aircraft #9868 was a job function of the shift. He stated that the actions he took over the following weekend of telephone calls and upon his return on September 4, 2008 of pulling computer prints to see what actions had been taken with respect to aircraft #9868 were not an obligation he had to do after his actions the night of August 29, 2008. He testified that he took action to ground aircraft #9868 after his return on September 4, 2008 because “I followed up; because there was illegal activity of a plane flying passengers and continued to fly passengers in an unsafe condition and there was, at no point, was I going to let illegal activity affect the flying public. Morally, all around.”

The Complainant identified EX 51 as the K-1 from AC Commercial, Inc. filed with the IRS for 2010. He stated his children worked for AC Commercial, Inc. in 2016 and were paid “just right around \$12,000 a year” for the work.

On redirect examination, the Complainant testified that he had advised his accountant that the share allocation had changed for AC Commercial, Inc.; but didn’t receive any of the tax forms until the accountant was asked for the documentation for this litigation. He stated that he and his wife file joint tax returns. He stated that his children pay their own taxes on income they earn. He stated that business income is included in the joint taxes he and his wife pay.

On re-cross examination the Complainant testified that on November 16, 2007, D. Luttenbacher forwarded a batch of 221 e-mails to J. Fauth which he and D. Luttenbacher had exchanged. He testified that “upon my discovery, I started noticing a pattern of a lot of e-mails being forwarded to [J.] Fauth and I started putting together the date that they were forwarded to and I came to a count of 221 documents” that were all forwarded by D. Luttenbacher to J. Fauth.

Upon questioning by this presiding Judge, the Complainant testified that there was a mix of every e-mail that was sent to D. Luttenbacher since he went back to work for Northwest in 2005 to November 16, 2007 in the 221 batch of e-mails sent by D. Luttenbacher to J. Fauth on November 16, 2007. In response to noting that CX 67 only has four e-mails from the 221 batch, the Complainant stated that the 221 batch of e-mails “was a mix regarding, you know, projects or things that would have to happen in the work area regarding employees recorded headsets,

anything that was communicated with [D.] Luttenbacher regarding what I was doing in my job ... It's not all related to peer managers or anything like that."

On re-cross examination the Complainant testified he sent a "preamble" in October 2007 as an internal complaint at Northwest that he believed he was being retaliated against because of the aircraft #9868 incident. He stated that there was an investigation into the incident by Northwest but he had no actual input to the investigation until he met with the investigator.

On redirect examination after the testimony of H. Gossett, the Complainant testified that the event in Lowes occurred as he described but it did not occur until around June 25, 2009 when he filed an OSHA complaint and "was waiting to be rehired by Delta on an interview I had taken." He stated he had an interview for a job with Delta around the time the May 2009 e-mails were sent.

On re-cross examination, the Complainant testified that the interview was with Delta Air Lines in the main hub in Atlanta, Georgia. The interview was in the general offices at the main hub. He stated that from what he knew, no one was aware he had been released from the company.

September 22, 2010 deposition of Complainant (EX 63)

The Complainant testified in deposition that he has lived in the same house in Fayetteville, Georgia since 1997; he has been married since November 9, 1996; and has two children. His wife works at home for Delta in reservations. He graduated for high school in 1987 and received an airframe and power plant license and an associate degree in specialized technology from Pittsburgh Institute of Aeronautics in 1989. He also received a radio and electronics license.

The Complainant testified that he was hired by Northwest Airlines as a mechanic in Minneapolis and started work on November 27, 1989. He became a lead mechanic in the sheet metal shop in Minneapolis in 1994 and became a manager in the sheet metal shop around 1996. Shortly thereafter, in 1997, he worked in Atlanta as an aircraft instructor handling structures and components and mishap investigations. After about a year he was asked to take a position in the hangers for a few months and then he became a manager in the honeycomb shop in Atlanta in 1998. He then went to a union position as a reliability analyst in Atlanta on two occasions totaling about three years. He became a production planner related to checks and repairs to aircraft shortly before September 11, 2001. After September 11, 2001 there was a force reduction "and they got rid of a lot of positions." It wasn't a long furlough. He returned to reliability analyst until the DC-9 maintenance hangar closed in 2002 or 2003. He took a layoff and returned to Northwest just prior to the August 2005 strike.

The Complainant testified that while off from Northwest Airlines in 2003 to 2005 he ran his own business, AC Commercial, out of his home in Fayetteville, Georgia. The business was an S-Corporation with his wife, because you needed two people. The work involved a nationwide contract with Lowes Corporation to install kitchen displays in the stores. He used subcontractors to do the installation work. "The business captured income probably in the range of around 60 to 90,000" dollars annually. "The company grossed I think 250,000" dollars annually. He also tried kitchen sales at the local Lowes store for a few months.

The Complainant testified that his business was going good with Lowes when he was called four times by J. Bendoraitis, a vice president with Northwest Airlines, to return to Northwest. He returned to Northwest in August 2005 as a line maintenance manager of zone 1 in Detroit, there were three zones at the time. He reported initially floating between zones as a line maintenance manager and doing the same work at the control center "most of '06, early '07." He worked as a line maintenance manager up until he left Northwest in 2009. D. Luttenbacher was the operations manager and his supervisor in Zone 1 and in the control center. There was a strike that began on August 21, 2005 during which time he worked second shift, 12 hour shifts - 2:00 PM to 10:30 PM, six days a week. During the strike he sometimes worked day shift, 6:00 AM to 6:30 PM. He reported he returned to Zone 1 to night shift, 10:00 PM to 5:30/6:30 AM, as a line maintenance manager in August 2007 for about two months before being reassigned to the Hangar 3 night shift from 6:00 PM to 6:30 AM through 2008. He then went into the vacation relief role for line maintenance manager until informed he was terminated on March 30, 2009. He stated he was kept on the payroll for roughly 30 days to May 5 or 6, 2009.

The Complainant testified that D. Luttenbacher was his supervisor until about April 2008. Then S. Boysen took D. Luttenbacher's position of hangar operations manager. He never reported to the international line under D. Sytsma as on the June 30, 2008 organizational chart. He stated he was a line maintenance manager until he became the vacation relief manager.

The Complainant identified a March 17, 2007 e-mail sent at 2:44 as an e-mail he sent to himself concerning S. Keller calling him a piece of shit because P. Jessen said to do so when she told him P. Jessen wanted a call from the Complainant. He stated that he then forwarded the e-mail to C. India-Black who was the director of human services at the time.

The Complainant testified that D. Luttenbacher reported to J. Fauth in March 2007 and identified a March 18, 2007 e-mail sent at 4:50 PM to them to report "some very serious violations." He reported that all telephone calls to the control center were recorded on a computer. He described a violation as a call from P. Jessen to S. Keller calling managers and employees "ball-less wonders." He described another violation as inappropriate conversation of a sexual nature between P. Jessen and S. Keller. He stated another violation was P. Jessen calling S. Keller and telling her to call the Complainant a piece of shit, which she did. He also stated that when he called P. Jessen he used explicit language as described in the e-mail which was way out of line. He testified that part of his job at the control center at the time involved listening to the telephone call recordings on the computer system.

The Complainant identified a performance management evaluation signed by him on April 12, 2007. He reported that the performance evaluation was given to him on that day by D. Luttenbacher. He stated that he had reviewed all the comments set forth in the performance evaluation in April 2007. The Complainant identified an April 12, 2007 e-mail to D. Luttenbacher as his comments to the April 12, 2007 performance evaluation. He stated that at the time of the e-mail he thought a 3.25 in competency rating was disappointing but found out later that everybody's scores were deescalated. He stated that he saw the April 12, 2007 performance evaluation scores as career limiting. He testified that the April 12, 2007 e-mail

wasn't intended to be a rebuttal of the performance evaluation but just a conversation between D. Luttenbacher and himself.

The Complainant identified an April 17, 2007 e-mail he sent to J. Fauth indicating he felt the April 12, 2007 performance evaluation was not accurate and that the e-mail would be his last direct communication with J. Fauth without going through, or copying, his supervisor, D. Luttenbacher. He stated that D. Luttenbacher instructed him to have all conversation copied to him but did not ask him to give a directive to J. Fauth to have all e-mails go through D. Luttenbacher. He stated he included in the e-mail his desire to transfer to an open position posted by T. Guthrie "to move to a position of my peers because we were all paid the same."

The Complainant testified that he was a line maintenance manager in the control center at the time of the evaluation, the phone calls between P. Jessen and S. Keller, the April e-mails with J. Fauth and D. Luttenbacher, and the ACM delay code project for Detroit. He reported that there had been two persons doing the work and that he did the control center work by himself. J. "Fauth had directed all line maintenance managers that he didn't want any maintenance delays. So ... all the managers were coding delays to the pilot group, flight attendants, baggage handlers, whatever it would be, which increased my workload ... the workload was significant. I was working a lot of hours compared to my peer group." He testified that he left the control center in mid-August 2007.

The Complainant testified that he talked to L. Gajria about his 2006 annual performance evaluation but could not now recall the content of the conversation. He reviewed L. Gajria's "note to file" about the conversation and did not recall anything inconsistent with her notes but the notes contain information they did not discuss. He stated he disagreed with the statement "Tim has a poor attitude and can't seem to get over the performance review." He reported that "[P] Janssen was [J.] Fauth's buddy and his secretary was [S] Janssen, so very close-knit group here."

The Complainant testified that he was absent from work for medical reasons from "I believe it was like December 11th / 12th, somewhere around there to January 20-ish" 2008. At that time he was night shift line maintenance manager in Hangar 3. He reported his doctor recommended he move to "daylight hours. Somewhere day shift / afternoon shift." He stated the restrictions were removed in May 2008 when he told his doctor "I needed something to help me because I needed medication or something for sleeping. And she said, well, we'll remove the restrictions and give you medication." He stated he had talked about removing the work restrictions "and she made a decision that that would be the wise choice."

The Complainant identified the annual performance evaluation 2007 that he signed on April 2008. He reported that it was the second version of the performance review. He identified D. Sytsma as the manager's signature under his signature as well as J. Fauth's signature below that. He testified that D. Sytsma told him that he was instructed to put comments on interpersonal skills based on what J. Fauth had directed him to enter and that D. Sytsma contradicts the directed comments on page two of the performance evaluation.

The Complainant testified that he commuted from Atlanta to Detroit from 2005 through his last day with Northwest Airlines. He reported that he paid monthly rent to stay in a house with the owner. He commuted back and forth using his employee pass privileges by flying in a space available status. He stated "I never used positive space for commuting; I saw some notes on positive space."

The Complainant testified that he made the handwritten notations on the September 17, 2008 e-mail from J. Fauth to three individuals about people missing a managers' meeting and on the September 19, 2008 from J. Fauth to C. India-Black on three managers who had no valid reason to miss the managers' meeting. The Complainant testified "that meeting happened on my days off and I had a doctor's appointment, two doctors' appointments on my days off and I sent a note to [S] Boysen stating that." He stated that the managers' meeting was not a mandatory meeting and that he told S. Boysen he was going to miss the managers' meeting.

The Complainant testified that he wrote an e-mail to C. India-Black on October 18, 2008 stating that his schedule was being changed continuously to accommodate everyone's time off. He stated that at the time there was an in-house whistleblower investigation going on and "she told me to keep her abreast of issues."

The Complainant identified an October 19, 2008 e-mail to S. Boysen that he sent at 1:00 PM from home on a day off. He stated that he was replying to an e-mail from S. Boysen that he felt was "out of line towards me ... At the time I was writing it, I did not consider it out of line. I just thought that I clarified the issue because [S. Boysen] was stating that I had full buy-in for, consent and buy-in with the job. It was actually a demotion that I was forced to take. It wasn't something that I accepted ... there was a long list of events that were happening that I wanted to clarify ... I was surprised to see his action towards me. I was replying to what I thought was a very hostile e-mail ... I gave equal response for what I was given, plus clarified the issue. I was getting pushed out the door. I was told many times I wouldn't be part of the company anymore and this was just the course of events.. This was just writing on the wall ... I mean there is a history of e-mails that state that they were going to get rid of me ... all the people that [S. Boysen] would smoke with would come up to me and say you are a short timer. They would tell me I'm not part of the company. They would say things to me. I'm like, if this guy is telling everybody else and not telling me, that's very inappropriate."

The Complainant testified that he saw the April 2007 e-mail from J. Fauth saying he would only transfer the Complainant out of the control center if the Complainant demonstrated he could work on a crew without causing disruption and that he and S. Boysen were planning to place the Complainant on a performance improvement plan as part of a mid-year review.

The Complainant identified an October 22, 2008 e-mail he wrote to J. Fauth and S. Boysen because "after two intimidating meetings, I was trying to find a common ground to work on what they were telling me to do ... my thing was I had difficulty sleeping. From the aircraft event up to this date, I was only sleeping two hours a day and I needed to be on a normal schedule. And I worked alongside [T. Johnson] who was sleeping on the job. And this was sent out in an e-mail from [JJ] Fauth and [S] Boysen to everyone about the manager sleeping on the job. I was like, I'll switch places with him if that's alright with you guys ... My whole thing was I'll take his job

and he can do a job that will rotate him around where he won't get tired." The Complainant testified that "right before this letter, during that meeting, I asked [J. Fauth] about putting me on a schedule where I could meet a normal routine, because bouncing back and forth, I had sleep issues and stuff and I thought I'll give them a suggestion. We discussed the conversation before about putting me on a schedule. They agreed ... Well they didn't give me an answer."

The Complainant identified an October 23, 2008 e-mail he sent to fellow peer manager R. Couturier and stated the handwriting on the e-mail was his handwriting made "in response to two intimidating meetings I had." He stated that "[R] Lilly was one of the group of 36 managers that handled schedules and me and assignments up to the 20th or 22nd or whatever date it was, that's who I talked to [about getting Christmas off]. I would talk to any group of those people about getting days off." The Complainant testified "The main reason for trying to get a schedule, which would be in this case [T] Johnson, because I could get a normal schedule and when it came time for getting holidays off or getting approved for holidays off, I would be approved for them. The schedule that I was on as a vacation relief manager, they would give everybody else holidays off first before they would grant me one. So if I would request a holiday off, I had to wait for everybody else to be approved for it. So my main goal was to get on a schedule where I had set days off ... the reason was to get a set schedule."

The Complainant testified that he had a meeting with J. Fauth and S. Boysen in October 2008 that led to a letter around October "22nd or 26th somewhere." He stated he discussed the matter with L. Gajria who recommended he go into the next meeting "with my tail between my legs and be very apologetic to everything I told her." He stated after discussing the events with L. Gajria she told him he was insubordinate and that he needed to apologize, to move on and be a team player. He stated that when he wrote the memo "I was apologizing for the behavior that caused the meeting that we had" and he did not believe he was out of line in writing the apology when he wrote it and did not think his use of e-mail was improper at the time he wrote the apology. He stated that after talking with L. Gajria he could agree as to how his e-mails could be interpreted differently as insubordinate.

The Complainant testified that he received a summary of his meeting with J. Fauth on October 29, 2008. He identified Hangar 4 operations manager could have been R. Lilly, D. Sytsma, L. Robinson or others he couldn't remember. He stated he had Christmas day as a scheduled day off in 2005, 2006 and 2007 and did not have to request the day off.

The Complainant identified the 2008 performance review he signed on December 1, 2008 to be the 2008 mid-year review. He reported he provided information by e-mail for the talent assessment done in connection with the merger. On review of the talent assessment form completed by S. Boyer, he stated that "it looks like [the e-mail information has] been pasted into this" assessment form under Step 2 for customer service, operations and people. He stated he was now aware that E. Scaggs and T. Johnson also were given the same "high performance attributes" score of 18 and "potential/promotability" ranking of "E".

The Complainant identified his signature to a "change of control severance plan waiver and general release." He stated it was undated; but he signed it sometime in June 2009 when he "was in the process of interviewing for a job at Delta and I thought I was going to get it. Then I was

holding off singing it, so it was sometime in June.” He stated that it was his handwriting across the top that said “revoked 6/26/2009.” He reported that he would have signed the document 10 to 15 days before he put the “revoked” notation on the document, which was right after he was turned down for the coordinator demand planning job with Delta. He reported he received his exit package from Northwest Airlines in May 2009 and he received several telephone calls from Northwest reminding him to return the signed documents before time ran out; but could not say what specific date he signed the severance package document. He stated he did not know that the Older Workers Benefit Protection Act required a document be attached to the severance package setting forth the names and ages of other workers being released and he had assumed the November 1, 2008 date on the list of employee ages was when it was decided to terminate the employees. He stated that he interviewed with H. Cline and J. Jamison for the coordinator demand planning job with Delta on June 4 and 5, 2009, and that there were 18 people interviewed and ranked for three positions. He agreed his score after the interview was 48.5 and that put him at 10th of the 18 people interviewed. He did not know who was hired, but that the position was later advertised again on June 17, 2009.

The Complainant testified that he called the EEOC and complained about Northwest Airlines. He then signed a summary of his complaint to the EEOC on October 26, 2009. He reported adding handwritten notes to the summary statement. The complaint alleged discrimination based on age (40), gender (called gay) and religion (denied religious accommodation for Christmas holiday off in 2008); as well as being subjected to a hostile work environment (from conversations of others in the workplace of a sexual nature and presence of pornography and offensive pictures), different terms and conditions of employment, and termination because of gender, religion and age. He stated he was not given an option of getting a position below what he was performing and “was only so many months away with my age plus years of service that I could have took a retirement package if I wanted to do so, because I equaled out to 55 or whatever the number had to be ... if I had been in the second group when they laid off in October, I would have been able to qualify for the 40.” He testified he asked “Lee” about taking the retirement option because he was only a few months away and was told he could not get the retirement package. He also identified EEOC documents he signed and sent back to the EEOC on August 17 and 18, 2009. He stated that the August 17, 2009, statement to the EEOC of “I’m filing a charge of discrimination due to retaliation. My position was a manager of line maintenance operations. I was in charge of the safe operation of aircraft for the flying public. Due to my action of upholding EEO policies, FAA policies, company trained policies, my job was eliminated on May 6, 2009” are true, correct and accurate statements. He testified that he believed that every holiday was taken away from him in 2008 in retaliation for taking FMLA leave.

The Complainant testified that he did not have speakers at work to listen to the recordings made while working in the control center, so he e-mailed the recordings to his computer at home. He stated he “was disciplined on them for having removed them from work.” He stated the recordings “are in e-mail format so they are in cyberspace. They are out there.” He stated the recordings are still in his possession, “They never asked to return them. They never said a word about them ... I never erased them.” The Complainant later testified “I said I was disciplined for taking the tapes and the actual statement ... says it was a violation of the code of business conduct for you to make copies of recordings and remove them from the company premises to be

used on your own purposes. Despite this, the given circumstances, the company will not discipline you for this action. So I wasn't disciplined. I stated I was, but I wasn't disciplined."

The Complainant testified that E. Chester, Jr. was the OSHA investigator assigned to his AIR 21 complaint. He identified an e-mail he sent to E. Chester on June 30, 2009. He agreed that what he did on August 29, 2008 was part of his job responsibilities; but the follow up telephone call after he got home that day "was just FYI. They told me it was signed off already." He stated that he did not have to follow up on the aircraft repairs as part of his job responsibility when he came back to work; but he did and found that the plane was flying without proper repairs being done on the aircraft. He notified his superiors about the need to bring the airplane in for repairs because he could get personally penalized as a licensed technician.

The Complainant identified an October 24, 2008 e-mail to S. Wiese as his internal complaint regarding aircraft #9868. He stated that he thought he had to file his FAA Whistleblower Act complaint within 90 days of the aircraft event and not 90 days of an adverse employment action. He stated he e-mailed his complaint under AIR 21 to OSHA on June 25, 2009, which was his only complaint against an airline. He stated the adverse action in the complaint was his employment termination of which he was informed on March 30, 2009. He identified a November 2, 2009 e-mail as one he sent to C. Grima a Northwest technician at the time of the aircraft #9868 incident. He stated C. Grima knew about the aircraft #9868 incident and his termination and "I basically said just connect the dots for [the OSHA investigator]." He said he wrote the e-mail because C. Grima "asked for what would be a couple of key points and I said I'll give you kind of what we talked about; and so I just threw it out there." He stated C. Grima was called but he had no idea what was said to investigator E. Chester.

The Complainant testified that he has retained the excel spreadsheets for manager schedules from 2007, 2008 and 2009 that show who was working and who was off. The schedules were created throughout the year. He stated that based on the work schedules he had, "Somebody produced the document that showed the people off that weren't off" on Christmas day 2008; and that document was given to the EEOC.

The Complainant testified that after he left Northwest Airlines he worked for Caterpillar From March to the end of 2009, through an agency, Telegy. At Caterpillar "I handled all their operations of writing all their Six Sigma work, standard work for operations, streamline, accomplish RAWs. It's basically a lot of office work but it's all operations improvements for them ... They paid for all [Six Sigma classes] throughout the year." Compensation was \$20.00 per hour for 40-hour work weeks from the end of May 2009. He stated he was making around \$81,000.00 per year with Northwest when terminated. He then became self-employed January 1, 2010 and did the same work for Caterpillar as AC Commercial instead of through an agency. He hires employees when needed through Telegy. He reported AC Commercial is an S-Corporation and that through 2010 to the date of the deposition, his net income with AC Commercial was "probably in the vicinity of 70 to 85" thousand dollars. He stated his wife serves as secretary to write checks and make deposits. He reported that he kept COBRA after leaving Northwest Airlines and his wife is a part-time Delta employee without health insurance.

Testimony of H.L. Gossett (TR 325-379)

Mr. Gossett was called as a witness by the Employer and testified that he for the past 8 months he has worked as the Senior Vice President of Aircraft Maintenance for Delta Private Jet, a subsidiary of Delta Airlines. Prior to that, he worked for Delta Airlines from August 1989 to November 2015. The first year he worked as a junior mechanic in a sheet metal shop, then work on thrust reversers, and shortly thereafter doing structures and sheet metal work in the overhaul bay. After about a year he transferred to line maintenance in Atlanta, Georgia. There he worked as a mechanic, lead mechanic, maintenance crew foreman, shift manager, operations manager, and regional director for line maintenance southeast. In June 2005 he was promoted to director of line maintenance, just prior to bankruptcy. Subsequently he promoted to managing director and ultimately to Vice President of line maintenance with additional duties as “director of all maintenance for all regulatory activity with the Federal Aviation Administration.”

Mr. Gossett testified that in 2008 he was managing director of line maintenance and in late 2008 he was moved to domestic operations only as roles began to combine in the merger. He stated that until the FAA recognized Northwest Airlines and Delta Airlines as a combined entity at the time of a single operation certificate, all regulatory functions at Delta Airlines were under his oversight and the regulatory functions at Northwest were under the oversight of his counterpart at Northwest, J. Wrobel. He testified the he had day to day operational oversight and responsibility for domestic operations for both Northwest and Delta Airlines; “Domestic being the 48 U.S. states, Alaska, Hawaii and some of the Caribbean.”

Mr. Gossett testified that to determine which line managers of Northwest Airlines would be given jobs with Delta Air Lines through the merger, assessments were conducted for the entire operation of Northwest and Delta line managers in a merit position at each specific level. The supervisor would assessed the individual and give a score or rating on the individual’s high-performance attributes, work performance, and items on a document. Then a leadership team of general managers and above from Northwest and Delta would go through a calibration process where everyone rated was discussed “to a common set of expectations and what the standard would look like. We would discuss openly each of the individuals to make sure that ... everybody was getting a reasonable, the same standard applied to them.” The leadership team included general managers, directors, regional directors and human resources representatives from Delta. The assessment process was a two day period in the end of October, November timeframe in 2008; though it’s possible it was early 2009. During the assessment meetings some of the scores and ratings initially provided by managers were changed. The measurement scale was 1 to 5. There were a lot of people rated with 5s in all categories, which seemed unrealistic to have “perfect employees” so they were discussed on developmental needs, things needed to be improved upon and adjust the 5 ratings based “on what we were given as feedback, from not only the rating manager, but from any peers, ... folks senior to them that interacted with these folks. So, it was not uncommon for us to then make a recommended adjustment to the individual that the rating, that maybe they weren’t a perfect five.” He reported that “if someone was rated as a 3.0 but ... others in the room had a very positive experience with them, we would want them to weigh in so we would make sure that we get the best possible assessment of all the individuals in our area of responsibility.” Some ratings were lowered and some were raised.

Mr. Gossett identified EX 35 as a “Talent Assessment Form” used by the leadership team during the assessment of individuals before the merger of Northwest and Delta. The form had been previously used for reducing the workforce during a Delta bankruptcy process. He stated that the individual’s performance was to be rated for the 12 month period preceding the time the manager prepared the assessment form. If S. Boysen did the Complainant’s assessment on November 27, 2008, the 12-month period for performance rating in Step 2 of the Talent Assessment Form would be from November 27, 2007. There was no time limit for ratings in Step 1 “High Performance Attributes.” Step 3 was the “Potential Promotability Ranking”. Unless the promotability ranking was changed during the calibration process, individuals with an “E” ranking would not be offered an end-state position with Delta Air Lines.

Mr. Gossett testified that during the leadership team assessment meetings the Complainant was discussed. “We discussed every individual [in the ‘E’ or exit category] and the reasoning and attributes that ... weighed into the score and the overall rating, just as I mentioned for those that were like perfect ... to understand what specifics of the individuals were and why they were recommending exit.” From the discussions he understood the Complainant wasn’t looking out for the overall team first, was self-promoting, had poor communication at times with others, and was just a challenge to give feedback to. The first to comment on the Complainant during the assessment process would have been J. Fauth as station director at Northwest. B. Fitzgerald who worked directly with the Complainant gave commentary as director of Maintenance Control. T. Johnson , L. Nitski and K. Abrajac made statements as regional or general managers of Northwest. Mr. Gossett testified that the leadership team did not change the Complainant’s ratings during the calibration process and the Complainant was not offered an end-state position with Delta.

Mr. Gossett testified that he had functional responsibility for domestic operations at the time of the talent assessments and it was his responsibility to make final decisions on who would be part of the domestic operations going forward after the merger. He stated he was the decision maker in the case of the Complainant. He reported that “based on the recommendation, the score and validation that I heard during the calibration session, I saw no reason to change the rating” from an “E.” He stated that at the time he made the decision not to change the “E” rating, he had no knowledge that the Complainant had reported an unsafe aircraft or any other safety violation; though he was made aware of the event by the Complainant subsequently. He stated that sometime thereafter the Complainant sent an e-mail to the CEO, R. Anderson, who referred the Complainant to him. The Complainant explained in a telephone conversation he wanted to talk about his career and potential for working in Atlanta. He stated that at some point the Complainant “mentioned that he had had some issues with an incident related to an aircraft. He testified that the Complainant was the first to mention an aircraft incident and that he had not been told of the incident by J. Fauth or S. Boysen.

Mr. Gossett identified CX 62 as containing the e-mail he received from the Complainant in May 2009 and to which he responded. He stated that at the time of his response to the Complainant’s May 2009 e-mail, he was aware that Complainant was no longer at Delta Air Lines and was confused as to why the Complainant would be talking in the e-mail about his career and future with Delta Air Lines when he had already exited the company at that point.

Mr. Gossett testified that he never had a conversation with J. Fauth requesting Northwest terminate the Complainant in exchange for Delta terminating a former Northwest employee working in Los Angeles. He reported that J. Fauth did receive an end-state position with Delta through the merger in line maintenance, "but didn't seem to be able to transition to the type and approach of line maintenance and style that we were doing at Delta Air Lines" He stated that Delta had a staffing and planning model based on demand that was very effective in how functional areas were staffed. At the Detroit station the staffing level for line maintenance went from 230 people to between 160 and 180 but J. Fauth "would not move forward as a leader in attempting to try new things. J. Fauth separated from Delta Air Lines for reasons unrelated to the Complainant. He reported that S. Boysen and D. Luttenbacher are also not with Delta Air Lines.

On cross-examination, Mr. Gossett testified that he was in charge of line maintenance and domestic operations in 2008 for both Delta Air Lines and Northwest Airlines and worked out of the Atlanta hub. He stated that it was a fair statement that it would be difficult to make an assessment based on a one-day observation. He reported that S. Boysen completed the Complainant's initial assessment in EX 35 and that he was not aware of how long the Complainant worked with S. Boysen at the time the assessment was written. He stated he was aware that Step 2 of the assessment had a time period but he did not know the exact dates to the time period. He stated he can assume that since the comments in the Step 2 assessment in EX 35 is written in the first person, that the Complainant provided the information and it was pasted in the assessment form.

Mr. Gossett testified that he never had discussions with J. Fauth regarding former employee that should be terminated. He stated he was unaware if J. Fauth had made statements that he was the person who decided to terminate the Complainant at the time he exited the company.

Mr. Gossett testified that at Delta "MD Ops/HR" would mean managing director of Operations and Human Resources. He stated that the merger was not fully integrated from a regulatory standpoint until there was a single operator certificate issued on December 31, 2010.

Mr. Gossett testified that it was his responsibility for domestic operations for the final say on ratings of employees into the system and that the calibration sessions happened every year during annual performance reviews. He stated others, including J. Fauth, were aware he was the final decision maker on talent assessments. He stated B. Fitzgerald as director of maintenance control, T. Johnson as a regional general manager over Northwest operations, K. Abrajic as a regional director general manager over western operations for Northwest and L. Nitski as director of Minneapolis line maintenance operations were present at the Talent Assessment calibration sessions involving the line maintenance merger; "there were probably 50 people at the start of the Talent Assessment calibration session." He stated that none present claimed to have personally supervised the Complainant. He stated that S. Boysen "would have been present" at the Talent Assessment meeting but he did not recall input by S. Boysen, though "he would have presented the overall review of the individual and then there would have been a discussion about the rating ... he did represent that there were teamwork issues and communication issues and collaboration issues and it was validated, or the other folks in the room commented as well." He stated that human resources representative was in the room and it

transitioned from C. India-Black, the director from Northwest, to L. Gajria and others, including L. Blackman the director of human resources for technical operations. The calibration session was somewhere around the November 27, 2008 timeframe , late 2008 or early 2009.

Mr. Gossett testified that the Complainant's May 11, 2009 e-mail confused him because the Complainant was reaching out as if he was an employee but he was not an employee of Delta at that time. He testified that there was one time he was walking into Lowes in Fayetteville, Georgia, and the Complainant was walking behind him and called his name. He testified "we shook hands with each other and he informed me that he was going to pursue legal action with Delta over his termination of employment; and I wished him well and decided it was best that I just move on from the conversation. So, after that, I got [the May 11, 2009] e-mail and was confused at his questioning about pursuing employment with Delta with a pending legal action as he had stated." He reported remembering very clearly receiving the e-mail after the conversation in Lowes.

Mr. Gossett testified that he was unaware of any contact L. Blackman or L. Wicks as administrative assistant to T. Sarrof, the senior vice president of technical operations, may have had with the Complainant. He denied recall of ever telling anyone not to talk to the Complainant, the Complainant's going to be making a lot of trouble, there's no reason to engage him in further conversation, or he's looking for a job and we are not hiring him here.

Mr. Gossett testified that he retired from Delta in November 2015 and that he was contacted by E. Snell for assistance with maintenance with Delta Private Jets and "cleaning up the regulatory activity that they had and putting some systems in place to run an efficient and compliant operation." He agreed to work for a year for E. Snell.

Mr. Gossett testified that it was Delta's practice to coach and mentor, use the performance evaluation process and the feedback process to give feedback to individuals on what they need to improve on their issues over time; unless there is a red flag event. He stated a "red flag event would be where you have crossed a specific line of regulatory compliance or personal behavior where it is ... immediate termination. There's no coaching or feedback ... you have either broken the law or done something completely unethical that requires immediate termination."

Upon examination by this presiding Judge, Mr. Gossett testified that the Talent Assessment Form in EX 35 was date stamped on November 27, 2008 at the time it was entered into the computer system by the supervisor, who would have been S. Boysen for EX 35. He stated that he was provided a binder with all the assessment forms involved in the calibration meeting and EX 35 would have been one of them. He stated that if any of the assessment forms were modified after the calibration meeting because ratings need to be changed, there would be a difference time stamp range as to when the change was entered into the computer system. After examining EX 35, he stated that EX 35 "would have been the document we would have reviewed at the calibration session with no changes. This would have been, the scores would have been the final, the final document." He reported the score of 18 on page one and the classification as "E" on page two of EX 35 was what would have been reviewed at the calibration session and subsequently be finalized in the human resources system. He stated that he now believed the calibration session took place after November 27, 2008, the date on EX 35.

Mr. Gossett reported that the overall impact score of 18 at the bottom of EX 35, page one, is “automatically tabulated in the system on a multiplier ... [and] is auto-populated from the scores.”

On re-cross examination, Mr. Gossett testified that he did not ask for any documentation for the assessment scores or comments made about individuals during the calibration meeting. He testified that the calibration session was over a two-day period and every individual with a 5 rating or a low rating were the bulk of the discussions. Those individual in the middle ratings only took a few minutes to represent. He stated 15-20 minutes was typically spent on an individual performance attributes for those either in the top or bottom ratings. The calibration sessions started after the 8:00AM morning conference call and ran until 5:00 or 6:00 PM. During the calibration session, everyone was physically present in a room in Atlanta. He testified that he “took the commentary of the leaders at face value.”

May 1, 2014 Deposition testimony of H.L. Gossett (CX 72)

H. Gossett testified in deposition that he is currently a vice president with Delta Air Lines and that at the time of the merger he was director of line maintenance under J. Lauder. He stated on August 14, 2008 he was named director of domestic operations, reporting to P. Wroble. “I began making operational decisions and leadership decisions around the domestic operation, which would include the continental United States, Hawaii and a couple of Caribbean islands. I started making the operational and personnel and department head decisions over that group the very next day.”

H. Gossett testified that prior to January 1, 2010 Northwest Airlines and Delta Air Lines were not operating under a single operating certificate. From a regulatory standpoint Northwest and Delta aircraft had to be maintained with two different policy manuals regarding aircraft maintenance and under “both operating certificates and all of the regulatory requirements that go into the operating certificate with regard to maintenance programs and reliability programs.” While working to merger there were some items bridged and other items separate. The seniority lists of the working groups had merged prior to January 1, 2010; but, from a regulatory standpoint, each individual operating certificate reported to regulatory agencies through their respective certificate.

H. Gossett testified that there are policies and procedures in place at the company that employees are expected to follow; but, not all policies are absolutely black and white. He reported that Delta’s “Rules of the Road” are published as a guideline for core values and principals. They are guidelines and principals but not company policy.

H. Gossett testified that he had met the Complainant once in a Lowe’s store in Fayetteville and had spoken on the phone about meeting to discuss a career and application for a demand planner. He recalled R. Anderson sending him a note about the Complainant but “I don’t recall any offer of any position anywhere else.” He denied talking to R. Anderson or sending R. Anderson an e-mail concerning the Complainant, he simply responded to the note form R. Anderson. He stated that he had no discussions with his supervisor, P. Wroble, concerning the Complainant.

H. Gossett testified that there is a talent assessment done as an annual review of all merit employees. Talent assessment process is also used for force reduction and was used during the merger of Northwest Airlines and Delta Air Lines. He reported that talent assessments were normally done at the end of a calendar year; but would also be done for other reasons, like a reduction in force regardless of the point in the calendar year ... For the normal review process, the annual review process for merit employees, it is done once a year at the end of the calendar year ... with a rating. So those scores would have stood alone, on their own, at the time of that rating.” He stated that the assessment forms are filled out on a computer by typing in comments and ratings. He testified that during the calibration process “all of the ratings were put into the system ... then all of the senior leadership team in the department, which would be regional manager and up, managers, general managers, regional directors and director, would sit in a room and we would go by level. So, the managers would assess the duty managers and crew managers and discuss their particular individuals and their rating. And we would do a calibration session to make sure that everybody was applying a similar standard to their measurements, their comments and their ratings ... Once we were finished with the duty manager and crew manager assessments, we would excuse all managers and then the general managers and above would discuss the managers. And we would excuse them, and then the directors would discuss the general managers and so forth. But during that process, we were all working to get to the same level of calibration ... at the same level of standard, as much as we probably could, by communicating with each other, these are the areas of strength and/or weakness, to allow everybody to get on the same page and to simply calibrate. After that, then the scores and ratings could be adjusted until we completed the final process. But until that calibration took place, any score that was saved would just be saved. And then after we did the calibration process, there would be adjustments to the overall rating and/or classification, whether A, B, C ... D or E. Those could potentially change during the calibration process. ... every reviewer was given an opportunity to discuss everybody that was assessed ... there would be a brief on each individual. So every assessment that was done would be covered with some kind of commentary.” He stated nothing stood out with regards to the Complainant’s assessment, though he did recall that the Complainant was discussed “during the calibration process, the comments that I recall were regarding teamwork, lack of teamwork with your peer set and the crew manager positions in collaboration and sometimes argumentative. ... that came from not just [J. Fauth who] would have represented you, but there were also additional comments made by some of the other leaders in the room that were similar to that; the lack of teamwork and collaboration on a crew in Detroit.” He acknowledged that in Step 1 of the talent assessment form the employee’s direct supervisor enters the high performance entries of 1 through 5 for each category; then an overall performance impact rating would be entered for the overall impact of the areas rated in Step 1. He stated the direct supervisor was expected to give three to five examples in Step 2 of employee actions in the Step 1 categories. He reported that the guidance document for the initial assessment was to consider the 12 month period preceding the assessment, so “any performance issues that were included post July 17, 2008, would be included as part of the assessment. So, at the timing of whatever we did for assessments for each individual level, the guidance would have been to review relevant [information] over the last twelve months at the time you are doing the assessment.” The managers were to complete the assessments “sometime in October or November for manager-level employees, and that would include the last twelve months.”

He stated that if he worked with someone for just one day it would be difficult to make an assessment based on one day's working knowledge. He stated that having a spouse work for Delta would not have a relationship impact with the other spouse's work for Delta. He stated a talent assessment was done on merit employees as part of the merger process.

H. Gossett testified that crew manager positions at Delta were the equivalent of lead positions at Northwest, and were considered front line positions. The next step down at Delta was the aircraft mechanic technician position. He reported "the lead positions and the AMT positions are both published scale positions ... uniformed employees."

H. Gossett was questioned about statements made by J. Fauth. He denied any knowledge about statements J. Fauth may have made concerning H. Gossett knowing of the Complainant and wanting to make a deal where Delta would terminate an employee in L.A. in exchange for Northwest terminating the Complainant. He stated that both J. Fauth and P. Wroble were end-state employees and given permanent positions through the merger. Subsequently J. Fauth was terminated from Delta related to leadership performance and nothing related to the Complainant. He reported he knew J. Hawkland from Atlanta but not prior to coming to Atlanta and did not recall J. Hawkland "getting ahold" of him to discuss the slating process.

H. Gossett testified that if an employee had knowledge of an unsafe aircraft "it's our responsibility to get that corrected ... I would not tolerate an unsafe aircraft being ignored. Our responsibility to our customers and to the company is to maintain our fleet. So our job is to take care of those items on the aircraft, whether they are safety related or not." He stated there is an administrative process that is defined in policy manuals and human resources manuals to address reviewing performance and actions that are outside guidelines, such as an employee ignoring an unsafe aircraft condition.

H. Gossett testified that L. Blackmon was the director of human resources in technical operations in the June 11, 2009 timeframe. He also stated he did not recall a conversation with P. Wroble on June 20, 2009, about the Complainant and the job of demand planner with Delta Air Lines.

H. Gossett testified that in Delta an employee personnel file is kept at the location of the employee. He also stated that he had no "recollection of the timing of that transition from Northwest and Delta employees into one pay system. ... The personnel administration and the oversight and regulatory responsibilities up until the time of the merger – up until the time of midnight on December 31st, 2009, each individual air carrier had to have their own oversight process and oversight of the Federal requirements to operate a 121 carrier. The business processes are not governed by these documents, the federal aviation documents.

November 30, 2012 Deposition testimony of J. Fauth (CX 66)

J. Fauth testified in deposition that the decision to "exit" the Complainant "was a mutual decision between your direct manager, myself, human resources and labor relations. Every one of them reviewed it, criticized it, pushed back on it and made a final decision." He stated in the normal review process "the direct manager reviews the employee's performance demonstrated over the year, writes the review, gives it to me for approval. I make sure that we're in line so that we're

in balance amongst the workforce ... it goes to HR for approval and then the manager talks to the employee directly on it.” He stated that he was the managing director for Northwest Airlines and had direct reports from the operations manager who was over managers. He never wrote reviews for employees who did not work directly for him.

J. Fauth testified that “what happened at Delta is that Northwest and Delta merged and Delta thought they knew what was going on in the world so they eliminated twelve hundred and forty-eight people. Twelve hundred and twenty of those were Northwest managers because we didn’t know what was going on.” He stated that the Complainant’s case had no bearing on his exit. He testified that the Complainant’s talent assessment was to determine the Complainant’s end-state position. He reported “I don’t believe you were in an end-state position as I recall. I think your performance was to the point where you were being in the performance development process long before [the talent assessment process]. Your exit from the company was based solely on your individual performance as you demonstrated at work repeatedly. It had nothing to do with the merger with Delta or anything else.” He stated that human resources does not write reviews for employees/managers. He stated that if the Complainant had interaction with D. Luttenbacher as operations manager, D. Luttenbacher would make comments on the performance evaluation. He reported that when a manager signs a performance review he is responsible for having written it. In the Complainant’s 2008 mid-year performance review the manager “got input from everybody you worked with.” J. Fauth testified that “Just the fact that so many people had to review your performance review because there were so many performance issues, we didn’t do this for any other of the fifty-six managers that worked for me. We did it for one. It’s because it was the worse review we had.” He stated to the Complainant that “I was in management twenty years. I never had anybody object to the review they got when I gave them, except for you.” He stated he would never tell the Complainant not to rebut any of his performance reviews.

J. Fauth testified that crew managers at Delta were managers and that lead mechanics at Delta were not managers. As to the EEOC and OSHA complaint J. Fauth stated he remembered a gentleman coming and talking to him and other and he was satisfied and left. He did not recall any documents being produced.

J. Fauth testified that a PIP “is a performance improvement plan and is the last step before someone walks out the door, because we give every employee every opportunity to improve for those that can. Those that can’t, don’t, successfully complete the PIP are then exited from the company.” He stated that he personally, was never on a PIP. He reported that he could be in agreement with S. Boysen on a performance assessment, “I would give my opinion, I would either agree, disagree or agree on certain points. ... any decision that gets made in Detroit when I’m responsible for the entire operation would have to have my agreement.” He stated “We didn’t carry dead weight. We had to have somebody that added some value somewhere in the organization ... you [the Complainant] moved throughout the organization trying to find a place where you might fit; but it just never worked out.” He stated “I think you [the Complainant] worked almost everywhere because we couldn’t find a place that you fit right. We assigned you in every spot in the organization, including the hangar, the line, the control center, everywhere else, trying to find a place that you might possibly fit in. At the end of the day, we couldn’t.”

J. Fauth testified regarding the Complainant being exited from the company that “ultimately I make a recommendation to HR, to human resources, everybody concurs, so there’s no, any single one individual that’s making a decision. [The] recommendation to terminate your employment based on your performance came from your immediate manager, through me, through HR, through labor relations, back to me; and we took the necessary action to run a safe, sound operation.”

J. Fauth testified that he had received a report that the Complainant was abusing the pass travel system; but did not recall the outcome. He stated if employees in the pass travel system on standby boarded before a more senior director it would be a valid question to raise why the director was not boarded first.

J. Fauth testified that he remembered the Complainant “had every Christmas off except one when you were there, and you cried the entire time you had to work.” He stated to the Complainant that “there’s nothing that we could ever say to you that wouldn’t be considered retaliatory [by the Complainant]. A statement that you created a situation that you couldn’t take criticism, you couldn’t improve your performance. There was an excuse for everything you ever did. And so everything is viewed as retaliatory by [the Complainant].”

J. Fauth testified he was called by D. Luttenbacher about aircraft #9868 while he was on vacation in South Carolina. He stated “There was a conversation that [D. Luttenbacher] wanted to call me and was reluctant to call me because I was on vacation. I said, Dave, make sure the airplane’s safe without a doubt and we’ll follow up with the other issues later. Your [the Complainant’s] issues were insignificant as compared to making sure the aircraft was safe.” He reported he “had 250 aircraft events a day in Detroit” and “there were lots of projects that didn’t get completed by [the Complainant] ... there were lots of times when you didn’t complete the work that was assigned to you. That’s why we kept moving you around, trying to find anything where you could contribute something.”

J. Fauth testified that in 2007-2008, in Detroit, K. Bauer was vice president; P. Wroble was vice president; he was managing director; then there were three operations managers in Detroit. Below them were crew managers then mechanics.

J. Fauth testified that when the Complainant was in control central the Complainant “didn’t want to work there because [he] had to work more hours than other people and it affected [his] ability to commute back and forth, which is why we suspected [he was using] positive space travel ... [The Complainant] didn’t like working in the control center because [he] felt [he] had to work more hours than other people even though you had weekends off; but that didn’t work well ... because [he] had to commute home on a short period of time when other managers who were on a different type of rotation had longer weekends. So [he] wanted the best of both worlds to accommodate [his] personal situation. It had nothing to do with supporting Northwest Airlines at the time ... and that’s why, as I recall, why [the Complainant] moved out of the control center, because [he] felt slighted because [he] had to work more hours than other people. But that goes back to [his] customer commitment. That was my opinion of the person responsible for the entire operation in Detroit ... based on my observations being responsible for everything that

happened at maintenance in Detroit.” He stated that the Complainant’s work in the control center was the only place that he felt the Complainant had done a decent job.

J. Fauth testified that he did not recall the Delta talent assessment very well; when the talent assessment started prior to the merger; or, when supervisors were given access to input data for the talent assessment. He reported that T. Tanberg and L. Gajria were both in the human resources department. He stated that the Delta talent assessment had been several years before and he did not recall specific forms or processes. He stated that he did not know if the Complainant’s position had to be back filled when he left and that D. Pefhausen “came to Detroit when they closed Milwaukee ... [and it] had nothing to do with [the Complainant’s] exit.”

J. Fauth testified that D. Luttenbacher had been the operations manager for the ramp, international, and in every location Northwest had operations managers or senior managers of some sort. He left operations manager to an inspector’s position, it was not a demotion. S. Boysen may have filled the operations manager position upon D. Luttenbacher’s move to the inspector’s position. He stated that he “moved [D. Luttenbacher] around to develop him to fill my position when I left the company” in September 2010. He stated that the end-state organizational chart reflected that most of the Northwest managers are no longer with Delta; “it was smoke and mirrors from Delta.”

J. Fauth testified that he communicated with every manager in Detroit directly by e-mail. Upon examination of a January 19, 2007 e-mail to the Complainant he stated that the Complainant was in the control center and he directed the Complainant “to change a [delay] code that [he] didn’t do as part of [his] job in the control center ... I had to follow up with [him] to make sure it got done.”

J. Fauth testified that aircraft work is documented when the work is complete. He reported “we don’t fix things that aren’t broke.” He reported that quality audit reports are done every month. After examination of the quality audit report related to the August 30, 2007 damage report / repair to aircraft #9868, he stated that the Complainant as lead maintenance operations ramp manager “didn’t talk to the mechanics for whatever reason ... wasn’t available to the technicians.” He reported he had no input into the quality audit and was only a recipient of the quality audit report. He stated that after the quality audit report was written he had made a request “to make sure that we don’t ever have this kind of blunder again.” He stated “I’m never happy with audits that tell you that people fail to do their job properly ... [in readdressing audits] I have input to make sure that the audit has corrective actions ... I don’t write audits, it’s a totally separate department by design so nobody who’s going to receive it has any input to it. ... [D. Luttenbacher] has no authority to have final acceptance of any audit ... I didn’t have authority to accept the results of the findings of any audit ... [Quality Assurance] are the only ones that could accept the findings [of a quality audit report].”

J. Fauth testified “[L] Gossett knew all about you ... [L] Gossett wanted to make sure you didn’t join the Delta organization. He actually wanted to make a deal so that ... Delta would terminate and employee in LA that was a former Northwest employee and that we would terminate you. But that was [L] Gossett. I said I didn’t know the employee in LA so I didn’t get involved in that ... [the airlines] were one company, or else I wouldn’t have known [L] Gossett

from anybody else ... As soon as the merger was announced, just announced in the news, it wasn't two companies. We were calling people down there just to see who they were."

J. Fauth examined a May 13, 2009 e-mail he sent in response to an inquiry from L. Wix for background on the Complainant who had asked to come to Atlanta and meet with T. Charaf. Upon questioning by the Complainant on the contents of the e-mail, J. Fauth testified "I've never met your wife ... She didn't work for me, and so I had no professional association with her whatever. Maybe [T. Charaf] would give you special consideration because your wife's [at Delta], because Delta's supposed to be a family. Right? The Delta family, we've all heard that." He stated that he made an error in listing the aircraft #9868 incident in 2006 vice 2007 because he wasn't involved with the aircraft incident though "I got all the mop-up and the cleanup from all the blunders that took place that day." He stated that statements were collected from individuals involved with aircraft #9868 and "so when you collect all the statement and put all the fact together based on the statements, you can make a summary of what happened." He agreed that the facts showed the Complainant went to the hangar and notified the hangar manager that the repairs were not correct for the damage noted. He agreed with the statement that a number of employees were perceived to give the Complainant the cold shoulder because "everyone gave [the Complainant] the cold shoulder because nobody liked [him] because [he wasn't] an effective manager. I kept having to move [the Complainant] around to avoid controversy anywhere [he] ever worked ... when [the Complainant was working aircraft #9868] he was the relief person ... to try to have the escalations of the employees die down for a couple days when [he was] gone."

J. Fauth testified that it seemed for the Complainant "everything that went wrong was somebody else's fault ... they were all out to get [the Complainant] from the very first day [he] walked on the job and that he met [the Complainant] in Detroit." He testified that the Complainant would have been terminated long before the aircraft #9868 incident. He stated that Complainant was given an opportunity to develop his performance after the aircraft #9868 incident because "we didn't want to interject any cloud of judgement based on your inability to address this issue to your performance issues as a manager in Detroit. The slate was wiped clean, or else [the Complainant] would have been gone long before [the aircraft #9868 incident]. ... look at [the Complainant's] performance reviews over a period of time and you can watch the correlation of [his] performance reviews and [the aircraft #9868] event; and at that point we could have, should have, terminated [the Complainant] long before [the aircraft #9868 incident]. But ... because everyone's skeptical of [the Complainant's] whistleblowing on everything that ever occurred ... I just said I'm not going to deal with it, we'll just take the high road and we'll absorb the dead weight for another year until we give him an opportunity to improve; and you've heard me say how many times did we give [the Complainant] every opportunity to succeed and [he] didn't take it, and that's why [he isn't] working for Delta." He stated the "clean slate" at Northwest was after the aircraft #9868 incident. In response to the question how did he view the Complainant from his personal view, J. Fauth testified the Complainant was "the nicest knucklehead I knew. I didn't dislike [the Complainant] and that's why I spent so much effort trying to help [the Complainant] out."

J. Fauth testified as to the Complainant taking family medical leave and asking for temporary shift assignment that "All I remember is that it was getting close to Christmas and [the

Complainant] didn't like working midnight shift, so [he] put in for a family medical leave act so that [he] could have Christmas off again. And [he] didn't like working midnight shift so [he] was on some sort of medication. That's all I remember about that event. ... But it only sticks with me because it was another way for you to have the Christmas holidays off at the expense of other people that had to cover for [him]." He testified that "when [the Complainant had] to have [his] turn in the barrel to work Christmas, [he] cried about it ... I think [he] might have worked one Christmas the entire time [he] was at Northwest Airlines."

J. Fauth testified that in September 2007 he "asked [the Complainant] to consider a position in maintenance control ... I asked [the Complainant] if [he was] interested in an opportunity in maintenance control. When I asked [B. Fitzgerald], he said 'no, I don't want [the Complainant]. [He isn't] qualified and [with his] track record throughout Detroit, why would he want to absorb that kind of issue or problem in maintenance control?'" He stated he brought the subject up with the Complainant because "there was an opportunity, [the Complainant] did a halfway decent job in the control center, a place [he] didn't want to work because [he] thought [he] had to work more hours than anybody else, so we were trying to find an opportunity for [the Complainant] to work somewhere [he] could contribute something of any value. So maintenance control and delays. It wasn't a maintenance controller position. It was someone to track delays. So a low level entry-type position." He reported he did not know anything about the Complainant accepting the position or B. Fitzgerald or J. Knutson offering the position to the Complainant.

J. Fauth testified it's not a normal process to do a QA audit because of a damage event. But because of the variety of blunders that started with things not being documented properly, QA got involved [with the aircraft #9868 incident]. And then [the Complainant] got personally involved because [he] thought [he was] being singled out. So, yeah, it mushroomed from what would normally be a simple, insignificant event." He testified that the Complainant "did call me to threaten me."

J. Fauth testified that the Complainant was not demoted to the relief position; he was "hired as a manager and [he] was terminated as a manger. [His] position never changed as far as promotion or demotion." He stated he was not aware that the Complainant may have been a few months out from retirement. He restated that the Complainant's exit "had solely to do with [the Complainant's] own individual performance or lack thereof as a manager at Northwest Airlines." He reported that human resources controls pay raises and he did not recall if the Complainant was given a pay raise in April 2008. He stated that he was "responsible for making performance assessments. From that performance assessment then goes to HR and there's actually a compensation board that reviews all of it."

J. Fauth testified that "I can confirm that [the Complainant was] not laid off, that [he was] terminated based on [his] job performance." He stated he made "the honest assessment of [the Complainant's] abilities or lack thereof."

On examination by counsel for Northwest Airlines, J. Fauth testified he met numerous times with L. Gajria concerning the Complainant's 2007 performance evaluation. He reported in April 2007 he stated to L. Gajria that the Complainant had a poor attitude and couldn't seem to get over his 2006 performance evaluation from four to six months earlier. He also stated that the

Complainant tends to procrastinate and then quickly complete the work prior to the due date as evident by the Complainant not doing delay codes properly. He also discussed with L. Gajria the Complainant's lack of tact and ability to communicate effectively. He stated that before the aircraft #9868 incident he had a big, serious question about whether or not the Complainant was adding to the organization. He stated the Complainant did the right thing with aircraft #9868 in calling maintenance control and that "if he has any concern at all with the way maintenance is performed, he should be raising that flag until everybody in the company is aware of it if you're not getting someone to listen to you."

J. Fauth testified that he did not have anything to do with the Complainant being terminated.

October 21, 2009 Recorded statement of J. Fauth (CX 68)

J. Fauth was interviewed by an OSHA investigator from the Department of Labor concerning the Complainant's AIR-21 complaint. J. Fauth stated he was the managing director of line maintenance in Detroit for four years from September 2005 and while the Complainant worked there. When Delta took over operations, the title changed from managing director to director, the responsibilities remained the same. He stated that his last day of work for Delta was October 20, 2009 and that he is on the payroll until the end of the year and does not have to come to work unless needed.

J. Fauth testified that he was on vacation during the aircraft #9868 incident. He stated he received a call from D. Luttenbacher while on vacation that the incident had occurred and his concern was "has the airplane been stopped? Has it been determined to fix? Is it safe?" He stated after he came back to work in Detroit "the situation seemed like it had mushroomed, but I didn't have any firsthand information at that time. And it wasn't until QA got involved that I was able to piece together what really had taken place." He understood the situation to be that "the aircraft may have departed in an unairworthiness condition; and then [the Complainant] called maintenance control, which is the right thing to do, and they stopped the airplane. ... I don't know how it got back to Detroit ... We inspected it and we made a permanent repair instead of a temporary repair ... so that it didn't require any additional repairs." He reported he thought the confusion occurred because a technician in the hangar checked the dents in aircraft #9868 and indicated the dents were within limits and the aircraft was airworthy to go based on what the technicians and managers in the hangar thought. He stated the Complainant had a lot of experience in the sheet metal shop and when he came back to after his days off he looked at the maintenance records and called D. Luttenbacher to disagree that the repair done would have actually fixed the aircraft. When he didn't get the response he thought he should have gotten, the Complainant called maintenance control. When maintenance control receives a concern about safety, "they just stop. There's no hesitation and it inconveniences people, but it's not a factor in our decision-making."

J. Fauth testified that the Complainant was hired early August 2005 but he did not know the Complainant until the strike on August 19, 2005. At that time the Complainant was a manager in Detroit and he was the director of the east region with no ties to Detroit. He stated about a month into the strike he became the director of line maintenance in Detroit and the Complainant reported to him. During the first month of the strike they were co-workers fixing aircraft in the

hangar, and then towards the end of September 2005, he began running the show as director of line maintenance. He reported that after about three months into the strike the dust finally settled and the Complainant reported to T. Guthrie who reported to him. The change of command was pretty loose the first six months of the strike do to all the replacement mechanics and managers that were temporarily assigned to Detroit from all over the country. He stated that the strike lasted 1-1/2 years “but we settled down and got the business model in place, we had about 68 managers.” The Complainant stayed in the hangar, “he never really reported directly to me ... there may have been a time when [the Complainant] was in the control center, when I tried to avoid some of that chain of command with him specifically, because others were having a difficult time working with him, so I tried to keep that one-on-one with [the Complainant]. He’s one little extra attention to keep him going in the right direction ... I think I was more patient with him than some of the others, some of his peers and the people who worked for him [and with him].” He stated he tried to have a direct relationship with the Complainant while at the control center and allowed [the Complainant] to come directly to him. He stated when the Complainant was in the control center as that individual contributor he was in charge of a process, which was the only time he did not have a chain of command. “There were periods of time when [the Complainant] was in the control center that he reported to [D] Luttenbacher; but there were also periods of time he reported directly to me. .. Anytime [the Complainant] ran a crew, whether he was in a hangar, on third shift, on the vacation or leave shift, on the ramp, he would have had an ops manager, like all other managers had, that they would go through that process.” He reported that the Complainant ‘was one that always tried to circumvent the chain of command.’”

J. Fauth stated he would best describe the Complainant “as paranoid, everybody was out to get him” and he would tell the Complainant no one was out to get him. He stated that “where [the Complainant] excelled the most was in the control center where he did not have peers and co-workers and subordinates. He was an individual contributor. He was a valuable asset at the time and he was doing fine there, until he wanted to get out of the control center because he was working more hours than other people were; and I encouraged him to stay.” He reported that he went to lunch three to five times a month with the managers he worked closest with and had lunch with the Complainant, maybe five or six times over the three or four the Complainant worked in Detroit.

J. Fauth stated that the Complainant “got hired because we were getting ready to go into a strike and they needed somebody, and anybody who put their name in a hat was given a job. So in normal circumstances, had they done a thorough interview ... my guess is that he probably would have struggled to get hired. So when I was first in the hangar, the first week I’m working with him, you knew that ... he wasn’t the guy that’s going to set the world on fire. ... He stood out, not always in a positive way, very quickly, right from the very first time I met him.” He stated that the standard to get in the door in August 2005 was pretty low, if a technician “could wheel the tire out to the right aircraft so that someone could install it, we were pretty happy then. But as time went on we knew we couldn’t sustain that.” He stated that they began hiring to a higher level and went through performance evaluations or probationary periods and the standard continually increased and continued to go up. He stated that “as the standards increased, [the Complainant’s] performance was decreasing, so he wasn’t even keeping up with the expectations that we were setting for new managers we were hiring at that time. He stated the Complainant’s

real issues were with his not getting along with people. He reported the Complainant did a good job in the control center but there was another manager there to “manage the work group because the Complainant struggled managing a work group. He struggled getting along with his peers. He struggled with some of the people he worked for.”

J. Fauth stated that if he learned about job opportunities with other companies he would let people know. He had people temporarily from Pittsburgh, Dallas and Atlanta, so it is quite possible he had mentioned a job opportunity in Atlanta to the Complainant.

J. Fauth stated that “when we had meetings that everybody needed to go to, I would have two or three meetings, duplicate, on various days ... we’d have a meeting at 5:00 o’clock in the morning, a big, formal conference room meeting at 4:30, 5:00 o’clock, because for the midnight guys that’s the end of their shift. ... even when we called mandatory meetings ... there were still people that couldn’t make it. We didn’t make people come in from vacations and that kind of stuff. So if [the Complainant], we would have given him a packet of information and discuss it with him when he got back.” He stated that the operations managers were responsible to know who was going to come to the various meeting times, who was expected, and who didn’t show for the meetings; and that with 68 managers, he would probably not notice a particular one missing. He reported that if the Complainant missed a September meeting it was probably the end-of summer wrap-up meeting where B. Fitzgerald from maintenance control and P. Wroble vice president of maintenance and C. Bauers come in and where some of the required training goes on.

J. Fauth stated that “in the Northwest system, a business pass could only be used from the point where the employee worked to a location where he was going for business. ... if [the Complainant] works in Detroit, he can fly out of Detroit on a business pass to a location that he’s going for business” like a training class. He stated that Northwest did not dictate where people had to live but if they were stationed in Detroit and lived somewhere else in the world “that comes with the dreaded commute and the responsibility of being where you’re supposed to be.” For the commute the employees can buy tickets or fly space available. He reported his speculation that when the Complainant was hired he was given an option to relocate his family to Detroit with a temporary living expense for 90 days, a house hunting trip, and flying positive space or company-business pass for work for 90 days. After 90 days you are expected to have moved or figure your own commuting arrangement. The Complainant made it clear he was not going to relocate to Detroit early-on; and he commuted from Atlanta. He reported that he gets a weekly report of all the 400 employees who have flown business pass and on any given week there are 15 to 18 in training class, most in Minneapolis, so a business pass to another location would stand out. Sometimes a person would go from their home location directly to a training location on a business pass; but never from home location to work location. He stated that it’s easier for flight attendants to fly to catch their flights since they can ride in jump seats and not displace passengers. Since September 11, 2001, technicians can’t ride in jump seats. If the seats are filled by passengers, the technicians will stay at the gate.

J. Fauth denied ever telling the Complainant that he had an end-state position with Delta after the merger. He stated that “there was a formalized process where the employee had to go through and fill out ... they had to give us their preferences as to anyplace in the world that we

had maintenance ... probably 80, 90 percent of them picked Detroit, [the Complainant] would have picked Atlanta. ... some people had three or four preferences, some wanted to go overseas. From there, ... as we identified where everybody wanted to go, identified their performance or where they fit into the new organization ... it was a closely guarded secret that drug out over for many, many months as far as before we could actually tell everybody what was going on.”

J. Fauth stated that for routine annual and semi-annual performance evaluations his involvement was to review the stack of 60 performance evaluations and sign as second level review after the managers who wrote the evaluation signed. He stated probably two-thirds of the evaluations could be read and the score was very appropriate. On others he would call managers to discuss why the score was very high for the individual or why it was low for an individual. He stated he never changed or corrected a written performance evaluation. He also wrote the performance evaluations for his own six or seven direct reports. He stated that there were a lot of discussions over the Complainant’s performance reviews with D. Luttenbacher and S. Boysen. He reported that there were discussions about another half dozen managers “that we were working with to try to ... get them situated so they’re happy doing what they’re doing and they get recognition for what they do.” He stated that the Complainant was never given a formal performance award; but there were times he would be given a box of subway cards and would give them out to managers and employees saying “you did a good job yesterday, lunch is on us” because they were “very, very flexible and generous with those.” Sometimes the managers would get their own supply of subway cards. So there’s no doubt that the Complainant has partaken in that, which is kind of a reward. Northwest didn’t really have a formal recognition process for performance at the time. He stated that on occasion of a really outstanding job with something that was of notable recognition, we’d go through the same process to get subway or \$5.00 Starbuck cards, but get \$25.00 gift cards or cards for Home Depot, Target or BP gas.

J. Fauth stated that the Complainant got along fairly well with the technicians because he wasn’t a strong manager; “if [the Complainant] was the manager, they had an easy night that night, because he wasn’t really driving the processes we were needing ... the friends that [the Complainant] made as technicians were generally the guys that could get away with not having to do extra effort that other managers would [require].”

J. Fauth stated that after the aircraft #9868 incident he told the Complainant “You did the right call Calling maintenance control is the right thing to do. ... I would absolutely applaud him for what he did. That has absolutely no bearing on his performance overall. ... we are very cautious never to ask somebody why, because the questions isn’t why, the question is: is it safe. If it’s not safe, it’s no question. If it’s safe ... you have to use common sense. ... I would terminate somebody in a heartbeat if they let a safety concern go by without bringing it up. ... it’s got to be safe before it leaves the gate.” He reported that D. Luttenbacher did not get any backlash from the aircraft #9868 incident; but he did seem a little overwhelmed with everything going on in the hangar in the spring of 2008 so S. Boysen was brought into hangar operations and D. Luttenbacher was moved out. D. Luttenbacher was not moved out of hangar operations because of the aircraft #9868 incident, the incident had “no bearing [on the move] whatsoever. ... [D. Luttenbacher] was primarily moved out of the hangar because the airplanes going into the hangar for repairs were taking much longer than they should have taken for the repairs. ... they were sending us technicians down from Minneapolis to help us out and it was just [not] being run very

smoothly. ... [D. Luttenbacher] never had hangar experience prior to running the hangars.” S. Boysen had more of a hangar background.

J. Fauth stated that the Complainant was terminated “based purely on his operational performance. There were no other factors at all involved with that. ... when the lower three [employees] went ... you just based it on performance ... we had very clear guidelines, and you’re supposed to use the last 12 months’ of performance.” He agreed that the last 12 months of performance would have included the April 25, 2008 mid-year performance evaluation and the December 2007 annual performance evaluation, which was the Northwest performance matrix. He stated that “when we were going through the slating exercise to rank all managers, we used the talent profiles and talent assessments, which is the Delta process.” He stated that the Delta process did not use the Northwest performance evaluation, it was a totally independent process. There were no Delta employees in Detroit before the merger, so only Northwest employees were involved in the slating process for Detroit located workers. Asking an employee where that employee would like to go was part of the Delta transition process.

J. Fauth stated that the Delta talent assessment form was a different measuring process than Northwest performance evaluations. The talent assessment forms measured core competencies and it took months to make sure all of the 68 managers were in exactly the right order as closely as possible. During the process L. Gajria from Northwest human resources was there to explain the process. He stated “You’d go in the different categories and give them a ranking, and then you’d give them a score – a letter on their promotability, and there’s a number of different things, and you do it all on a computer screen, and it calculates it all out for you. And then we would put that in an order ... and then we would cross-check just to make sure we had everybody where they need be. ... so we’re making sure that the process still recognizes [the employees’] contributions. ... we spent a lot of time doing that.”

J. Fauth stated that after the Delta process was complete the Complainant was offered a severance package, which would have been two weeks of pay for every year of service with a maximum of 26 weeks and a minimum of 8 weeks. He would have gotten health insurance and airline passes for that period of time, could have used COBRA, and could have used an outplacement service for interviewing skills, resume writing and networking to find another job. He stated the Complainant first accepted the severance package and then revoked it. He stated that once the employees were separated from the company, they dealt with human resources.

March 28, 2006 counseling/coaching of Complainant (CX 67)

On March 29, 2006, the Complainant sent an e-mail to D. Luttenbacher stating, “I acknowledge our conversation we had yesterday and will make my best effort to own and support the team. I appreciate the feedback, as it will aid me in becoming a better manager.” D. Luttenbacher forwarded the e-mail to J. Fauth.

March 29, 2006 Complainant e-mail to D. Luttenbacher (CX 67; EX 4)

The Complainant e-mailed D. Luttenbacher that “I have found some poison to the actions that have been directed at me. For one example – The zone believes that I told you that they were not

producing the daily turnover and turned them in for leaving early. And I was the cause of the letters in their file. I really need to bring a few items to light with you and I need to verify something with [J. Fauth] if I have your permission.”

2006 Year-end performance review (EX 5, 6, 7, 12, 13)

On April 12, 2007 the Complainant signed his 2006 year-end review for 2006 as “Manager Line Maintenance – CC.” His immediate supervisor, D. Luttenbacher, also signed the performance review on April 12, 2006 as “Manager Line Main. Ops – DTW.”

On a scale of 1-5 for core competencies, the Complainant was graded at: 3.5 for customer commitment, safety, communications, diversity/inclusion, and development of employees; 3 for leadership, business knowledge and processes, innovation/creativity, and interpersonal skills. A rating of “3” was defined as “consistently and reliably meets expectations.” A “4” was defined as “consistently and reliably meets all and exceed some expectations.”

D. Luttenbacher added the February 15, 2007 comment “As of the time of this evaluation for 2006, I have already noticed a change for the better in 2007. I think your skills you have learned in Dale Carnegie have paid off a lot. I also think that being the sole manager of the CC has also helped you. To be an effective manager for NWA, you need to work on improving your relationships with your fellow managers. Right now, we don’t feel that we can put you into a work area where you would have to work with other managers. This is a drawback to the company, if you are not versatile. I feel that this next year will be your year to show a lot of improvement.”

The following was acknowledged as strengths for the Complainant: safety, communications, company commitment, adaptability to changing roles and attended Dale Carnegie course and improving. The following was listed as developmental needs: interpersonal skills with fellow managers and follow up on assigned projects.

On April 12, 2007 the Complainant sent an e-mail to D. Luttenbacher as “review feedback.” The Complainant stated:

I know that this was the year end review but would like to pass on some things. It takes a little time for me to review items. I do not look at the Overall MBO for myself I look at the Overall competency for myself because that is what will be a reflection of me for any future positions, raises.

I had a 3.25 on the mid year and a 3.25 at the end. I thought that with all the extra effort that I kicked in to get to base to meet two goals launch and overall delay, I thought I would have seen a pretty good jump, not break even. (disappointing). I brought the whole base and all Management up by my efforts. Also, I really strived to make improvements on my midyear review.

When I review the scores, I do not see anything that would make me promotable for the operation and see this as career limiting.

Letters coincide with form.

- A. I agree with the Leadership scoring and I think about this daily.
- B. I thought this could have been higher. With all the fields that I have worked in. Plus a large amount of Managers ask me direction on issues, it make me feel that I'd be above the "3" category. And I know it doesn't fall in any category But.
- C. If 3.5 is the highest thanks, but I feel I should be up there with the highest on the base. I guess if you don't toot your own horn when you do something good, it's not recognized.
- D. I would like a few examples for last year, I was not able to get buy in on quite a few ideas because I had to sell them to you and Brian, and he did not let anything go through that I brought forward.
- E. I feel that I am at fault for keeping a high standard of what should happen. It is really hard when you see violations going on all the time and have to keep your mouth shut. I have worked greatly on this issue, and though I've succeeded a little, I also feel that I am a very personable person. I disclose things to my upper manager to improve the operation, and I feel that this alone has caused my scoring in this area. I have never attempted to bring something up for self again. I look at this and think to myself now and say what should I've done, if I'd say nothing everything would be fine and all would go as it was.
- F. Okay with this score.
- G. Okay with this score. I explained to you before that it is hard to have someone working for you that has more information than I do. This is not going to change.
- H. If this is the highest thanks, if not, it should be raised. I have taken a few personal shots at my masculinity because of my working relationships with all types of personalities – called 'gay.'
- I. Okay with this score. The only thing I had here was, I would like the turning in on time for that period, many came to me late or very late.

As for the last paragraph – I feel this doesn't completely reflect me and am really upset that my trying to carry company standards has affected the outcome of my career. Again I hate this to be written in my review. I also look at this as another 'carrot to work for in the hope of gaining a few points.'

I apologize that I have a memory 'like an elephant' and as the saying goes 'wrong me once, shame on you – wrong me twice – shame on me.' I remember peoples action toward me and I keep myself clear of letting them happen to me again. Dave, I come from fields in this airline that people carry themselves at a higher level such as yourself and Jack.

Being I came into my position in DTW right at the time of the strike and I have been waiting all this time for my salary to be corrected. Dave I made \$71k last year (after pay reduction) when I thought I was going to be coming in at 79k. I'd like to see that \$90/year managers salary.

By the way – I do not work all the hours and days off because I want to. 90% of the time it is not in my control and is a must.”

On April 17, 2007 the Complainant sent an e-mail to J. Fauth entitled “Grade 35 position I the computer” that commented on his 2006 year-end performance review. The Complainant stated:

“I feel that my review did not accurately account for my dedication; efforts since being in the position for last years review (especially in the last paragraph in which I do not see personal or professional growth from.). I had brought this up already to [D. Luttenbacher] and he informed me nothing could be changed or adjusted so I feel that it is pointless to pursue.

I just wanted to say that I have never brought things to anyone’s attention other than for the best interest of the company and not for self gain. I have also been asked by Ops Managers to assist them with areas of concern with my fellow managers.

I am asking that all communications between you and me go through my immediate supervisor so that I am not circumventing the system. This will also be the last form of communication I will provide directly to you without copying my supervisor.

I believe my actions of informing Ops Managers and yourself about problems I am aware of in the workforce has in turn labeled me as a complainer when all I was trying to do was fix problems that I myself did not have the horsepower or name tag to do.

In closing, this has really taken the wind out of my sail for the task at hand and I am requesting a move to the open position that [T] Guthrie has posted whatever the shift may be.

PS. I am not interested in [J] Kascak’s position.”

On April 18, 2007, J. Fauth forwarded the Complainant’s April 17, 2007 e-mail to D. Luttenbacher with the notation “we’ll need to discuss, but I can’t think of anyplace where we could put him that enhances the operation.”

L. Gajria prepared a “Memo to File” from her conversation with the Complainant regarding his 2006 performance review. In her memo dated April 2007 she reported –

“After [the Complainant] met with his manager [D] Luttenbacher to discuss and receive his 2006 Performance Review, he stopped by my office and asked that we meet to discuss his concerns regarding the evaluation. [He] showed me a copy of his evaluation as well as an email rebuttal he’d sent to his Manager. He shared his concerns. I listened and asked questions for clarification. He seemed convinced that he wasn’t being fairly evaluated for his performance at the end of

2006 and beginning of 2007. I explained that the review is a composite evaluation of his total work in 2006 and not representative of his work in 2007 or a specific time period in 2006. I shared with [him] that he had the option of requesting a secondary review of his performance review. [He] later told me that he decided not to pursue the secondary review.”

L. Gajria prepared a “Memo to File” from her conversation with J. Fauth regarding the Complainant’s 2006 performance review. In her memo dated April 2007 she reported –

“I met with [J] Fauth to discuss his thoughts on [the Complainant’s] performance in 2006, after [the Complainant] came to me to express his concern regarding his 2006 performance review. [J] Fauth shared the following:

- The information presented in the review is not new to [the Complainant]. He’s been coached before on the positive and negative aspects of the review.
- [The Complainant’s] employees respect him. He’s been actively working on gaining their respect.
- [The Complainant] has a poor attitude and can’t seem to get over the performance review.
- B. Byers left the Control Center on January 1, 2007, leaving [the Complainant] to manage the operation. [The Complainant] has done a great job since then. This was noted on his review.
- When assigned projects, [the Complainant] tends to procrastinate and then quickly complete the work just prior to the due date. In the past they’ve had to ask [the Complainant] to redo his work when errors are found.
- [The Complainant] does not work locally with Managers to improve work issues. He has a reputation as a ‘snitch’; he goes over other Line and Ops Managers and reports issues directly to [J] Fauth.
- [The Complainant] has a hard time delivering difficult messages. He often lacks tact and the ability to effectively communicate.
- When [the Complainant] first came to DTW Line Maintenance he worked the hangars. He was known as a lone Manager, he didn’t communicate well with others which often lead to work not being done correctly. [R] Carter and [L] Robinson would be able to share their insights into this as they worked with him during this time.”

Complainant’s reporting and handling of control center system recordings of employee telephone conversations (CX 67; EX 2, 3)

On March 17, 2007, the Complainant sent himself an e-mail noting that he had returned a telephone call from P. Janssen who told him “to grow a set of balls and code the delay to the pilots.” He also described his employee relaying the message to call P. Jessen and calling him “a piece of shit” at P. Janssen’s direction. He indicated he walked into the manager’s office for Zone 5 and M. Peak announced “officer on deck.”

On March 18, 2007, the Complainant had complained to D. Luttenbacher and J. Fauth in an e-mail of P. Janssen's conduct in two telephone calls to S. Keller in the Control Center and during his return call to P. Janssen. He discussed the general content of the telephone conversations without identifying the individuals involved.

On December 19, 2007, the Complainant sent an e-mail chain, with attached two digital recordings from the Control Center system of monitoring telephone calls to and from the Control Center, to C. India-Black in human resources department, who forwarded the recordings and chain e-mail to J. Douglas, the Managing Director of human resources. The Complainant had forwarded the digital recordings of two telephone conversations, between manager P. Janssen and employee S. Keller, to his work address at Northwest on March 17, 2007 and resent the e-mail to his business e-mail address and his wife's personal e-mail address eleven minutes later on March 17, 2007.

April 2007 e-mails on ACM delay coding (EX 8, 9, 10)

These exhibits indicate that the Complainant was given an assignment on Monday April 16, 2007 to prepare a document on ACM delay coding to be issued on Friday, April 20, 2007. The Complainant forwarded a draft ACM delay coding document to D. Luttenbacher at 14:17, April 20, 2007 and that D. Luttenbacher made corrections and discussed the matter with the Complainant immediately thereafter and the instruction that the ACM delay coding document was to be issued that day.

On April 21, 2007, the Complainant e-mailed D. Luttenbacher that "as to this past Friday's item, I was trying to be through by finding ACM's that we took delays on that were out of the norm, I apologize I had quite a few things I was working on.

By e-mail of April 24, 2007, D. Luttenbacher advised the Complainant that –

"The ACM memo is typical of the events that I brought up in your eval. I gave you an assignment Monday and last minute you put it together and send it off to me for review. The fact that we had to revise it 3 times shows that you did not take the time to work on it that was required. Your assignment turned into mine.

You requested examples of last year. The half sheet notification project that was requested after the first of the year never got off the ground. ...

I'm thinking that you may need to do some LMS on 'time management.' Two that I see that might help are 'Developing a time management plan' course NET 43021 and 'Overcoming the time management challenge' NET43023. I have not taken these either but intend to ...

These are things you need to work on. As I mentioned before, you are improving in the CC. You are very valuable to the operation in what you do. Please take this as constructive criticism and try to improve in these areas.

I need you to follow through with the IRM/EQM training in the control center. This will make your job a lot easier if we get everyone to know how to do this.”

The Complainant replied on April 24, 2007 to D. Luttenbacher that –

“I started the ACM project as soon as I rec’d it, I was searching for examples where we had delay disputes and I wanted to be thorough outside of the examples in the book ... As for the assignment, I did put it down the list a little because I had a list of deadline delay items I had to finish up ... these were items that I elected not to work on y days off from the previous weekend just to see how it affected my job.

... As for the IRM/EQM I have been working with Joe (you can ask him). I will have the presentation done.

I will take the classes thanks.”

Management discussion of Complaint’s April 17, 2007 request to move from the Control Center (EX 7, 11)

As noted above, the Complainant requested in an April 17, 2007 e-mail to J. Fauth to be transferred to the open Grade 35 position posted by T. Guthrie. On April 23, 2007 D. Luttenbacher advised J. Fauth that –

“As far as [the Complainant’s] request to move out of CC ... I think he should stay in the CC till December when we make all the moves. All the time off issues are self imposed and he never requested time off from me. I am thinking that you and I should have a face to face with him. Your thoughts? I can schedule something tomorrow morning if you think we should. If not, I will meet with him, one way or the other. I wrote a long note yesterday but decided to sit on it.

On April 23, 2007 J. Fauth replied –

“Let’s schedule a meeting either tomorrow before our staff meeting or wait until you get back from MEM. In one regard it may be good to let him think about things for a while.

I agree, we may need to leave him in the CC until December, and then ‘if’ he demonstrates that he can work on a crew without causing disruptions we can throw him in the mix at the end of the year shuffle.”

May 2007 Quarterly Business Review attendance e-mail exchange (EX 14, 15)

On May 1, 2007, at 2:27 PM, [D] Luttenbacher notified the Complainant he was being scheduled “to attend the QBR on May 31st. Any problem going?” The Complainant replied at 2:41 PM “QBR? I guess that’s fine.” Seven hours later the Complainant e-mailed [D] Luttenbacher “I

thought about the QBR and do not think it is a good allocation of time. I really do not have any reason to go. Thank you for thinking of me.”

On May 2, 2007, at 3:53 AM, the Complainant e-mailed [D] Luttenbacher –

“I wanted to inform you that I will be putting in for other positions due to the fact I have corrupted my status. I realize I have put my standards too high and my job is driven by what has happened in the past.

Even though I am told my actions and my placement is due to the fact I did not communicate correctly to my fellow managers, not once did they communicate to me in the same manner. I also have put myself in this situation being because when asked about things I disclose.

As such in the days back in zone one where you said to be when I talked to you about something going on, you stated you need to tell me about this stuff so that I can correct the issues. I guess I ran with that line a little too broad. I also realize it is much better to let things come out on their (sic) own instead of trying to fix something before it grows.

I know this has been a tiring line of events for you because I know I’m tired of thinking about it.

I cannot correct history and I can only go forward. I just have to elevate my situation and move on. I also realize I have my life and family second to my job. The schedule I have would be great if I didn’t have to commute and this job is apples and oranges to what my peers can do and get. But this is where I am at and I have way too many stresses in my life and need to get back to the basics.

I have realized the obvious and the future is not bright.”

On May 2, 2007, at 6:37 AM, [D] Luttenbacher directed the Complainant’s name be removed from the QBR list of attendees. [J] Fauth observed at 7:54 AM that “[the Complainant] seems to be digging himself a hole. The more I think about this situation, the more I question the value he can add to the organization for the effort we need to put into him. I’m feeling like we’re having to manage a moody kid.”

Complainant’s move from Line Maintenance Manger - Control Center to Line Maintenance Manger - Hanger 3 (CX 1, 2)

On August 15, 2007, J. Fauth notified the Complainant by e-mail that the Line Maintenance Manger position at Control Center was to be posted. The Complainant was requested to supply an outline of some of “the specific duties and responsibilities that we would want to include in the posting’s job description.”

On August 17, 2007, J. Fauth commended the Complainant for his response earlier that morning on duties and responsibilities of a line maintenance manager in the Control Center. The Complainant had submitted the following for the job description for the Control Center Line maintenance manager position:

“Control Center LMO Manager

Must be familiar with and able to interpret the following:

Delay Code Bulletin
Com.FOM manuals for Flight ops all fleets
Flight Attendant Manual and Flight Attendant check list procedures
Technical Ops Aircraft MEL manuals

Manager Duties include:

Supervise a Support Tech crew 13 persons in the CC along with 5 in the zones.
Manage OT, time off, crew scheduling, assist in communications coverage during staffing issues.
Review and confirm proper coding of delays associated with Tech Ops “M” codes.
Keep account of AOS aircraft and review the delays in reference to plane changes.
Stay abreast of situation that require attention of LMO (Return to Block, Diversions, Aborted take offs, etc.).
Represent Tech Ops regarding questions on Operations to all levels of management.
Assist and/or disputes/accept delays with other departments.
Must have a strong understanding of LM operations and the responsibilities.

Position Preferences:

A&P preferred although experience in the industry could supersede the requirement.
Strong background in Main Hub interactions and responsibilities.
5 plus years experience in Technical operations preferred.”

2007 Complainant’s requests for vacation time (CX 3)

On August 22, 2007, the Complainant e-mailed D. Sytsma notifying him that no leave dates were shown in the computer schedule (LOIS) for the remainder of 2007 and that he did not have to compete for vacation by bids in his last position. He notified D. Sytsma that “I was going to take off the time my kids were not in school since my wife works and do not know what the plan will

be now ... Kids are out of school the following dates: November 12, 22, 23. I could possibly move my RDO's to adjust for this one if no options December 24 thru Jan 1st."

That same day, D. Sytsma responded that "LOIS is not accurate that far out from the looks of it but I went ahead and entered the vacation time anyway. Plan on the time but I may need to do some slight adjustment down the road when I get a chance to make sure all the RDOs are correct."

2007 Atlanta manager position (CX 4, 23)

On August 25, 2007, the Complainant notified D. Luttenbacher by e-mail that "The position in Atl has been posted. I will be applying for the Manager's position in Atlanta. It has been posted as a grade 34 and not a 35. There is going to be some competition for this position ... I am requesting your support in my pursuit of this position." D. Luttenbacher replied the following day with "Well done. You have my support."

On October 10, 2007, the Complainant inquired of L. Gajria if the interviews had started for the Atlanta postings since "I was told that call went out the week before the conference but I have heard of no lone getting a call for any of the position postings." L. Gajria replied the same day "We cancelled the original posting and reposted MEM and ATL. You should receive a letter regarding this within the next few days. We will conduct additional interviews after the positions close."

August 29 – September 4, 2007 Events surrounding aircraft #9868 (CX 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 45; EX 21-26)

At 1:03 AM, Thursday, August 30, 2007, the Complainant e-mailed photographs of the crease damage to aircraft #9868 that was caused by a jetbridge to E. Pricco, J. Walter and DC9 Maintenance Control. The Complainant forwarded the same e-mail to A. Fox at 2:10 AM, August 30, 2007.

At 4:48 AM, Thursday, August 30, 2007, the Complainant e-mailed a report to D. Luttenbacher, A. Fox and B. Byers with copies to E. Scaggs, W. Wittkopt, J. Fauth and T. Guthrie. The Complainant reported:

"The flight arrived on afternoons and the pilot reported dents on the fuselage during his walk around.

All the below damage was found and reported per the ADIT. Upon my arrival, I found the jet way to be slightly forward of the damage, by the location, it appeared to have happened at a previous station. This damage will require the Galley and/or the lav, to be pulled to determine the internal damage. The frame section has been affected and the skin has been creased. Ground Ops [E] Pricco and [J] Walter came to the location and viewed the damage.

Al and I took measurements and I was in contact with Nick from MC.

The dents and creases removed the aircraft from service. The after section of the strake has been removed and will be routed to MSP for welding. It will be setting with the logbooks in the aircraft. Route ASAP so that it will return before the skin repair is finished.”

On August 30, 2007 “Chartland” recorded for aircraft #9868 that “on preflight, found 3 dents above lav service lav door.” “Rmeiti” recorded the dent on aircraft #9868 at “Sta. 239 L.H just below Long 16L” measured .8” x 1.0” and .011” deep. “Rmeiti” reported “Checked dent limits, found to be within limits per SRM 53-04 Fig. 38 Condition 1B Table C HFEC No cracks noted, NWA260 (206870) Repetitive inspection required at ‘C’ check or annually. Installed decal defer to Q.C.” A notation was added on September 5, 2007 stating “Deferred by Adelman”

Aircraft #9868 was moved to Hangar 3 where the following action was taken for “Rt Strake Cracked in Two Places. First is 5” long & Second is 2” long” -

8/30/2007, 5:28:52 AM Aft section of right strake removed for routing to MSP to get welding accomplished [entry by Complainant]
8/30/2007, 10:15:24 PM Strake in process of being welded, to be sent on the last flight or the first flight in the AM [entry by T. Richard]
8/30/2007, 12:34:07 PM A/C damage “dents” three each will be within srm limits [entry by R. Groebner]
8/31/2007, 6:40:40 AM Strake weld repair complete and coming on FLT 740 @ 0835 local. [entry by W. Blades]
8/31/2007, 1:40:09 PM Received strake at 0910 (I) from MSP sheetmetal. Installed and released. [entry by R. Groebner]

On September 4, 2007, 3:21 AM, the Complainant sent an e-mail to D. Luttenbacher and J. Fauth on the jet bridge damage to aircraft #9868. He stated:

“There appears to be a failure – I communicated this damage via email, verbally, and the Manager’s turnover log, DC-9 MC, and personally showed [B] Byers who was working as the Hangar Manager on Duty.

When I took this aircraft out of service on the 30th and went on my days off I decided to accomplish a follow-up call to see what repair was being accomplished on it. To my amazement I found out from a phone call to the hangar that it had been signed off within limits. ...

I called MC this evening asking if they had any input into this and what was the criteria in which it was signed off? This resulted in further looking and he was questioning how the tech signed it off and how did the tech get inspection to agree to it.

Below are references to the SRM ... I have many years of heavy structure experience, wrote repairs for Boeing approval and unless I have been trained

improperly this needed the minimum of a short term EA and follow-up inspections.

The specifics on why I pulled the aircraft out of service was because of the following: ... 1. The skin was dented with a crease on the Former. 2. The dent was on a Former which was also dented. 3. The 2 fasteners in the near center of the crease on the Former showed slight pulling (dishing) of the heads on the countersink. 4. The last was left a little to interpretation of where the dent started and ended being you can't have two dents in the same bay of the skin without meeting certain criteria – there appeared to be one to the left of the silver dot marker.

... It appears that ... no one gave my [e-mail of August 30, 2007, 4:48 AM] any credibility, that the only concern was that the aircraft was not in AOS and was flying again. I specifically stated that the galley and or lav had to be pulled to determine the extent of the damage which would have pulled the aircraft out of service for at least a day.

It also has me concerned that after many follow up calls 1 to [D] Luttenbacher after I found that there was no repair and it was signed off OK, and 2 to [T] Richard which I asked specifically to verify the sign off was correct. I did also call [B] Wittkopt to verify that he agreed that it was out of limits after [T. Richard] did not check on the repair.

This aircraft is currently flying. I do not want to see something unfortunate happen. MC wants this repair rechecked.”

On September 4, 2007, 6:08 AM, “Jim” generated a Maintenance Control Order for aircraft #9868 stating:

“Subject: AC damage evaluation. Instructions: Reference logs ... 3 dents above lav service door. These dents may not meet the criteria for continued service. Contact inspection and engineering and MC to re-evaluate damage before next flight.” A second entry by “Brown” indicated temporary repairs to the referenced damage was made on September 7, 2007.

Aircraft #9868 was taken to Hangar 3 on September 4, 2007 for “recheck dents on A/C fuselage L/H side.” The following actions were reported:

9/4/2007, 2:48:27 PM Sent to hangar with MMCO for recheck of previous log page 4173679. Found further damage around area. Suspect it was hit after original write up. Recheck area found damage internal and 4 more dents around the area. Pictures taken and sent to engineering [J] Gross. Will require repair of crack indication in skin and shear tie repair behind if damages. Four other dents written up and need

evaluated. Requested work package to be added to allow for work off of non routines. Opened panel in galley area and shroud on toilet to gain access for inspection. HFEC completed and confirmed further damage. Note all previous parties viewed area and all stated that previous damage not as bad as it is now. Recheck of old damage should be accomplished to check if depth of dents increased. [entry by L. Henney]

9/4/2007, 9:05:39 PM Temp repairs approved by [J] Gross, [J] Piehl is staying till mid shift midnights to continue dent repair ... [entry by G. Perrin]

9/5/2007, 5:23:21 AMAM Still working sheetmetal repairs. Numerous parts coming in on FLT 740 @ 0835. All part numbers on paper and will be turned over to AM manager. [entry by W. Blades]

9/5/2007, 11:59:37 AM Fabrication of parts in progress. More fasteners coming in (sic) may have to use some button head due to certain fasteners being nis. Shear tie and longeron repair in progress. Left open from overnight did not work. Eng run for oils and graffiti needs to be painted over. Paint due this afternoon from MSP. Shear tie repair has not been completed. Talking to engineering to see if it can be reformed. [entry by L. Henney]

9/5/2007, 7:39:16 PM At start of shift today (1:15) I spoke with Heni and he was instructed to cold straighten the shear tie ... which was cracked as he did his best to return the shear tie back out to its natural shape. Shear tie part was noted, MC MSP were contacted by day shift. One would have to be purchased, NIA system. Part was purchased from Boeing in Atlanta from MSP response center. We are to return call with flight time from Boeing. Part is to get in at mid-night on Delta flight 1512. [M] Hill has been working it for afternoons, we ask for Milo and [A] Spivey to carry on for nights. [entry by G. Perin]

9/6/2007, 6:30:44 AMNew shear tie arrived at 0130 local. Had to cut longeron one frame bay further aft and make new splice due to previous splice not drilled per SRM instructions and found crack on longeron at frame between cutouts. Crack now removed with new cutout. New shear tie located and drilled. Waiting for EA on row of fasteners with only 1 and ½ D edge distance. Hoping to get EA to go with 1 and ½ edge distance or will need to cutout that row and fab new doubler and filler due to enlarged repair. New longeron cut to length and began drilling. Need to cut off fingers of butt joint slice per SRM. [entry by W. Blades]

9/6/2007, 11:36:53 AM Per engineering no EA needed to allow 1-1/2 d edge for a class three repair. Longeron and shear tie repair going together. [entry by L. Henney]

9/6/2007, 9:26:44 PM Repair is going together but it is going slow. [entry by J. Kassack]

9/6/2007, 11:23:09 PM Spoke with Mike in engineering and got EA 98-209644 to address row of fasteners with short edge distance and ok install repair with buttonhead fasteners. Will now begin installing doubler and filler. MX in progress. [entry by W. Blades]

9/7/2007, 6:08:27 AM Doubler installation in progress. [L] Park will stay over and continue repair with day shift. [entry by W. Blades]

9/7/2007, 1:50:30 PM Doubler installation completed. OK to close behind lav received. Hold down cables missing for aft part of lav. Part in on flt 750 at 14:20. Needs edge sealed and painted. Paint may be deferred. One eng needs oil checked. For line check. Paint card for cockpit in work. Close galley. 22:00 z etr. [entry by L. Henney]

9/7/2007 Entry noting "inspected repair per 98-209644. OK for service. Reinstalled F/C toilet shroud and G3 cover plate. Job complete. External visual inspection must be performed at intervals not to exceed 3,000 landings. This repair must be replaced by a Class 111 repair.

Complainant excused from October 2007 Managers' Conference (CX 22)

On September 25, 2007, the Complainant requested of D. Luttenbacher that he not be required to attend the following 2007 Managers' Conference scheduled for the following week. D. Luttenbacher replied the same day: "I think it would be better if you can stay here and hold the fort down."

Complainant's submission of information to Quality Audit Department investigating the September 2007 repairs to aircraft #9868 (CX 25, 44, 45; EX 43, 63)

The Complainant identified CX 25 as a written statement he submitted to S. Weise who was conducting a Quality Audit of the September 2007 repairs to aircraft #9868. In this exhibit the Complainant recorded that he first talked to S. Weise in a telephone call while he was walking through Minneapolis airport on September 7, 2007 while he "was in the process of flying up to MSP to meet my family who was flying up from Atlanta." He did not elaborate on the actual content of the September 7, 2007 telephone conversations with S. Weise. S. Weise was the Administrator, Quality Assurance and FAA Liaison for Northwest Airlines.

On October 21, 2007 the Complainant sent an e-mail to S. Weise on the damage to aircraft #9868 stating, "if you did not finish the audit, I have some more information for you." On October 22, 2007 at 8:35 AM, S. Weise responded that she would be in the office "around 6am (CDT) Tues-Fri this week if you want to give me a buzz and relay the information!" At 2:58 pm,

October 22, 2007 the Complainant e-mailed S. Weise and stated that “The things that I will send you are not for distribution without prior consent. I will send the complete deposition of the events relating to me.” At 7:30 PM on October 22, 2007, the Complainant e-mailed S. Weise six jpg attachments not further identifiable.⁷ He stated “Here is the first. Please do not forward, I will send some more info ... This was sent the morning right after the MCO was written. Before the aircraft arrived in DTW. Read down to the Asterisk line for the fwd’d version.” The e-mail then includes the September 4, 2007, 3:21 AM, e-mail the Complainant sent to D. Luttenbacher and J. Fauth on the jet bridge damage to aircraft #9868 as set forth above and information contained in CX 11 which included the “Three Hour ADIT Report (Found Damage)” of August 29, 2007 and Complainant’s narrative of the damage incident as of August 30, 2007 at 4:48AM.

The Complainant testified in deposition that he submitted CX 25 to S. Weise by e-mail on October 24, 2007. In CX 25 the Complainant reported on the aircraft #9868 damage as follows –

“... I kept MC in the loop, discussed this aircraft issue with [A.] Fox the first and second time where we both talked about the signoff and that MC needed to be called to clarify what happened. ... It was when I called MC that I stepped out of line because it got MSP involved ...

I came into work on 8/29/2007 (on third shift in zone 1) and was told at the end of second shift of a crack to the edge of a strake on the right side of the DC-9 and some dents on the left side that I was told they were Minor and the pilot was making a big deal about the dents. I went out to see the aircraft with [B.] Wittkopt and when viewing the dents I said the dents look out of limits and should be addressed.

I called the control center and talked with [J.] w. and explained that we had aircraft damage on 9868 which appeared to be caused by a Jetway hitting the aircraft. The ramp manager [W.] (?) came out and made the damage report up and I sent him pictures.

I came inside and talked with [B. Wittkopt] and [A.] Fox stating that I could not believe that second shift thought that this damage was minor, jokingly saying to [B.] Wittkopt that he had some loose standards. I was kidding in jest but wanted him and [A. Fox] to come out and look at the aircraft damage. When I showed [A. Fox] the damage, he and [B. Wittkopt] both agreed that it was cause for concern and that it definitely needed Engineering’s support. I contacted MC ... and requesting Engineering’s support and [A. Fox] and I took pictures and dimensions of the damage.

Throughout the night I dealt with MC and Engineering, and after looking at all the options there was no forgiveness due to the damage being on the Frame and as I determined, a crease on the frame where the skin was forced to bend similar to when metal is pressed of bent in a sheet metal brake. This resulted in the aircraft

⁷ By comparison of CX 7, 8, 9, 10 and 11 to CX 25, it appears that the jpg attachments were the six photographs of aircraft fuselage denting and creasing contained in CX 8.

having to be taken to the hangar so that the interior structure could be viewed by looking behind the toilet area.

Around 3 to 4 in the morning, [B.] Byers acting as the (Big Chair) had come over the zone and [A.] Fox and I showed him the damage. I explained the MC and Engineering had instructed me to have the aircraft sent to the hangar to evaluate the interior damage. Both agreed that the damage was significant and that the course of action was correct.

I then sent an email stating the damage ... and the required task that needed taken to correctly give Engineering the option to evaluate the situation. ...

I then went home on my Days off. Later that afternoon on my first day off, ... I wanted to see if the proper repair action was being followed ...

I made my first call to [T.] Rickard, hangar three Manager, early on in the afternoon shift. I asked him to tell me the status of the repair on the aircraft and he stated that it was already signed off as within limits of the SRM. I stated to him that this could not be correct because I researched this last night and found no way that this could be signed off. I asked if he could look into this repair and find out if it was signed off correctly ...

... I then called [D.] Luttenbacher who is the ops manager over the Hangar. I explained to him that it appeared someone had pencil whipped the repair and that it someone definitely needed to follow up on this aircraft. He said he looked at it and it was signed off IAW the SRM and found within limits. ...

Upon returning to work on my first day back ... I then looked in/for IDI for the aircraft history and found that no action was taken. ... It was signed off (IAW SRM 53-04 page 219 figure 39 – which said the page was obsolete and removed from the SRM). ...

I then called MC ... and asked him to look up the log page reference ... I explained to him that the dent crossed a frame and that there was no reference to sign off with ... I then stated that the aircraft was flying revenue and was located in CLT and was due to DTW at 10:30. He said he would put in an MCO to have the plane looked at ... and he said he'd ground the aircraft once it arrived.

I did call back later to confirm what he said and a MCO was sent to have the aircraft looked at @ 6:08 UTC (2:08 am local DTW time) # 7574.

The MCO was a simple ... '3 dents above lav. Service door. These dents may not meet criteria for continued service. Contact Inspection and Engineering and MC to reevaluate damage before next flight. ...'

I then wrote a note @ 7:21 UTC 09/04/2007 (3:21 am) local to [J. Fauth and D. Luttenbacher]. ... B.) 1. This aircraft flew after all my efforts on my days off to get it looked at and repaired properly or documented properly; 2. It was flying Revenue passengers; 3. There was no follow-up on this aircraft ...; 4. This aircraft would have kept flying and no one would have followed up. It was considered handled.

Immediately at the end of shift I left my job at zone one and after my workday I went straight over to [D. Luttenbacher's] office @ Hangar 4 and met with him @ 7:00-7:30 am 09/04/2007 ... I told him that the aircraft was coming in and was going to be grounded for review of the damaged area ...

I then returned to work the night of the 4th ... on my way home I stopped at the hangar to view the damage ... [and] noticed the skin was cut away and the frame was bent.

I then went over to [D. Luttenbacher's] office and ... he told me the Managers said that the damage was greater than it was originally and that it must have been re-hit. ... The repair was then started on the plane.

[D. Luttenbacher] than stated to me that I was 100% correct in what I did and the actions I had taken. He also stated that I should not boast around on this. I stated that I had no intention of boasting and that my concern was in the lines of safety.

... On my Friday 9/07/2007, on third shift getting ready to leave work zone 1 ... [D. Luttenbacher] asked me if I received a call from [S.] Weise ... he informed be that QA had become involved with the incident ... [and that] she will be calling you to discuss the event. ... He said that the engineer who was working on the aircraft the first time the aircraft was sent to the hangar probably called QA. ...

... No big deal now, I have noticed from the turnover log that people were trying to cover their paths. All I wanted was proper attention to the airplane. ...”

By e-mail of November 1, 2007, S. Weise asked the Complainant to respond to two questions:

- “1.) Did you enter information into the electronic turnover log before you left on 30aug morning? Based on information that [D. Luttenbacher] gave me below – it does not appear that there was any indication of MC or Engineering being contacted and what their directions were.
- 2.) After [A.] Fox mentioned that to you that we should probably put something in the logbook (re: evaluation/internal access) – I think you opted not to. Please tell me why (‘I forgot’ is not an option) ... I appreciate your candid responses to these answers keeping in mind the turnover process in DTW is being examined.”

She included a copy of D. Lutterbacher's October 5, 2007 e-mail to her stating he could not find anything in the turnover logs for August 29 to 31 about aircraft #9868 repair or lack thereof beyond mention of removal of a cracked Strake that was removed and sent to MSP for repair. D. Lutterbacher offered to provide access codes to the turnover system and opined "The turnover system we are using is not very good yet and is cumbersome."

By e-mail of November 1, 2007, the Complainant replied to S. Weise:

"Answer #1 – I did not mention information in the MC or Engineering in the E log. I covered it with [B.] Byers prior to this. Also, this turnover log was new to me and I did not see a lot of weight to it from peoples responses, a lot of times people do not look at it until they are ready to make the turn over to the next shift – in other words, the view of the turnover log may not happen until the majority of the shift went by.

Answer #2 – As I recall – The call was for the books to be onboard for the goldholfer to pick up the aircraft, then someone in the backroom said do you want these onboard, [A.] Fox said, should we write something up in the logbook – I responded the pilot already wrote up the dents, don't you think that is ok? We kind of shrug'd agreed and the books went back onboard. I remember it going something like that ... hindsight it should have been.

A couple of bad thing on my part –

- a.) I did feel that I rushed a few things because it was the end of the shift and we are supposed to have everything turned over by the time dayshift gets there which is 5:15 to 5:30. I was trying to wrap things on all fronts.
- b.) It was Friday and I was trying to get out of there so I could go through security for a flight home. I do not recall which flight I took but I usually try for the 6:30 delta direct. From the turnover log, my last entry started on this aircraft at 5:28."

On November 2, 2007, the Complainant e-mailed S. Weise that –

"I also want to add. This information was discussed via 2am conference call local and 4:30 am conference call local. The last call is then communicated by the hangar 4 ops manager via the tan line to planning and MC. Of the status and outcome of findings. Prior to the 4:30 am call is when a complete turnover was given verbally in person with Brian."

Complainant's initial referral to L. Gossett (CX 28, 29, 72)

On March 17, 2008, the Complainant requested by e-mail to R. Anderson, "If you know of any industry news that would be interesting, let me know."

On March 18, 2008, R. Anderson notified the Complainant by e-mail that he had forwarded the Complainant's information to L. Gossett the head of line maintenance. That same day L. Gossett notified both R. Anderson and the Complainant that "I look forward to talking with [the Complainant]. Please feel free to contact me at [telephone number] at your convenience." The Complainant replied he would call L. Gossett "later today."

In the afternoon of March 18, 2008, L. Gossett advised R. Anderson that "I did talk to [the Complainant] and was direct that we had opportunities he may qualify for in locations we were hiring off the street for. Aside from that, no promises, you can count on me to make the right call for the right reasons."

2007 Year-end performance review (CX 41; EX 19)

On April 25, 2008 the Complainant signed his 2007 year-end review for 2007 as "Manager, Line Maintenance." His immediate supervisor, D. Luttenbacher, signed the performance review on April 9, 2007 as "Manager, Line Maint. Ops." J. Fauth signed the performance review on May 27, 2008 as the next level supervisor.

On a scale of 1-5 for core competencies, the Complainant was graded at: 3.75 for safety, diversity/inclusion, and development of employees; 3.5 for customer commitment; 3.25 for leadership, business knowledge and processes, innovation/creativity, and communications; and 3.0 for interpersonal skills. A rating of "3" was defined as "consistently and reliably meets expectations." A "4" was defined as "consistently and reliably meets all and exceed some expectations."

D. Luttenbacher noted that mid-way through the year the Complainant moved from Control Central to Zone 1, 3rd shift and then the Hangar 3, 3rd shift. He is able to draw on his experience from past work in Atlanta to help make decisions. He has shown expertise in the areas of structures and is always happy to get involved in those types of projects. He does a good job of assigning technicians and is careful to follow up with task accomplishment. He leads by example, I rarely see him sitting in the office, he is normally out on the hangar floor leading and directing. He spends the time needed to get the job done right. He excels at paperwork and is detailed oriented. He is still learning the 'how and why' things are done the way they are. He has strong computer skills and uses them effectively to track complex details such as crew strengths and weaknesses. Safety is always one of his top priorities. He is very safety conscious and follows all safety regulations. He is quick to correct techs and vendors when they do unsafe actions. He works hard to make sure his technicians and supervisors have what they need. He also makes sure to keep his supervisors informed on progress at all times. He also works hard to provide a safe, reliable, on time aircraft to the passengers. He can be very creative when the opportunity or need presents itself. He has the ability to think outside the box when it is needed to get the desired outcome. He was responsible for disputing delays and getting them coded correctly at the beginning of 2007, which made DWT achieve their "on time performance" goal for 2006. Interpersonal skills continue to be a challenge for the Complainant. He demonstrates good interpersonal skills with subordinate employees; but struggles to display the same skills with his peers or supervisors. There seems to be a lack of trust between him and the other managers whether actual or perceived. He has been working hard to improve that image and

would benefit from being more “team” oriented. He would benefit from feeling confident in the work environment. He holds nightly crew meetings and does a good job interpreting organizational policies and procedures. He is very convincing in communication with groups of any size. He needs to learn to communicate more effectively with his peers and supervisors. He has a high level of comfort working in diverse groups and is able to leverage diverse perspectives to consistently obtain high quality results. He works hard to develop employees that work for him. He is careful not to do things for them but to teach them where to find the answers. He understands employee development is key to successful operation.

The following was acknowledged as strengths for the Complainant: safety, organized, commitment to NWA, and structures. The following was listed as developmental needs: technical schools and interpersonal skills with fellow managers.

Under “employee comments” was handwritten: “System. Since [the Complainant] came to the Hangar and started working for me, I have not seen any issues with interpersonal skills or communications. He has been doing a great job and I enjoy having him here. (see attached [Complainant’s signature])”

Exhibit CX 41 summarizes the 2007 performance numerical grades for 54 “mgr line maint” including the Complainant. The numerical grades for final overall performance rating ranged from 3.0 to 4.0. The Complainant’s final performance rating was 3.5

On April 27, 2008 the Complainant submitted a written comments to the 2007 year-end performance review.⁸ The Complainant stated –

“... referencing ‘interpersonal skills’

I understand that there is a perception of trust that occurred in early 2006 during the transitional period when managers from MSP and Local management was working together in DTW.

I was observing ‘NEW’ technicians taking soft drinks off of the aircraft and discussed this subject with a few afternoon Managers from the zone explaining that this was against company policy. Over lunch, I also explained the subject matter to a MSP manager whom I used to work for ... I also said that the local managers must not be aware of the policy because I noticed that a drawer in the office was filled with juice and pop. ...

At the time, I frequently stopped by [D. Luttenbacher’s] office on the way to the zone and we would openly discuss items, and I would at times bring up information that I observed on practices of safety, procedures, how employees were working out, etc. I would do this to try to understand and learn on how to handle things in DTW. Because these meetings were very informal, I brought up the subject matter and discussed that maybe a letter should be given out so that

⁸ This statement was submitted under cover of a November 3, 2016 letter by Complainant’s counsel at the request of this presiding Judge. Complainant’s counsel marked the exhibit as “R 19, pg 9”

employees were familiar with what was the policy. Unfortunately, this was accomplished via email to the Managers and less to the employees. Because I had spoken of this subject a few times with some of the Managers and the email followed a few days later, the Zone Managers became upset with me. Particularly the day shift ...

Unfortunately, much time has passed and this has been put on my reviews for the mid 2006, year end 2006 and now the 2007 review. I have not had a single occurrence of a peer group issue since but I cannot correct the past. I have moved on and forward from this event but it still shows up on my review. I can say that this has put a damper on what I would bring forward to because there is always the perception that I cannot work with my peers. I personally do not have any issues working with anyone; I have moved on and hoping my peers follow.

Secondly, 'F&G' interpersonal skills with superiors:

This is a new entry to my review. In my previous years I have had great communications with my superiors, especially in my work in 2007 as the Control Center Manager whereas I had to communicate with all levels of upper management and of different operation groups (Flight ops, Air ops, etc.).

There was only one time I know of that communications broke down between myself and [D. Luttenbacher] whereas my reporting of safety items was misconstrued on my intent. This was only temporary while an investigation was going on but has been mended 100%.

Medical accommodation issues with Complainant (CX 46; EX 18)

By letter of May 22, 2008 from D. Cormier, senior accommodations specialist, the Complainant was notified that "additional documentation was provided by South Atlantic Medical & Rehabilitation today that rescinded all work shift restrictions previously imposed by Dr. [W] Mitchell. For this reason, we have determined that a workplace accommodation is not necessary because you are able to work, full-duty, without restrictions. Please be advised that this decision is based on the information available at this time. Should new information be presented, or circumstances change, another assessment may be necessary."

On May 23, 2008, the Complainant notified S. Boysen that he went to his doctor's office on May 23, 2008 "and asked to have the (work) restrictions removed, there are no restrictions." He also requested guidance on how to have July 1, 2008 off to attend a baseball game with his children since it was a day off on his old schedule but not on his current schedule.

On May 23, 2008 S. Boysen asked J. Fauth by e-mail if Human Resources was going to need a statement from the doctor.

Complainant counseling/coaching on communications (CX 47; EX 20)

On June 10, 2008, the Complainant sent an e-mail to J. Fauth “looking for constructive advice” concerning lack of response to e-mails to his supervisor and others about his “required” attendance at an upcoming meeting.

On June 12, 2008, [J] Fauth replied –

“... first It’s not anymore ‘my’ operation than it is yours. You need to take the same ownership as I do towards ‘our’ operation. Hopefully. I’ve taken your comment out of content.

Second, while I try to not get bogged down with the proverbial ‘chain of command’ bureaucracy, you do have an immediate supervisor that you report to, and now that you are in the vacation relief position, it’s best that you also keep [S. Boysen] ‘informed’ on matters as well. In your ‘communication path’ it’s best to keep your immediate supervisor in the chain of command advised and bear in mind that as soon as you go around, over or behind them, you’re sort of out there on your own so to speak.

On the topic of the dreaded emails ... my feeling is that if you choose to communicate via email, you also choose to wait for a reply via email. (sound fair?)

I receive nearly 75 to 100 emails a day and not all emails are going to get a response as quickly as they are received. Not all of us have extra time in our day to hammer out emails and to respond to each and every email as quickly as we’d like and often not as quickly as the sender expects a response. Again, if you choose to communicate via email, then you also choose to wait for a response via email. The problem is the response time back will vary based on the daily priorities of the recipient you sent the email to, and NOT necessarily based on your priority to get a reply.

Neither [S. Boysen] nor I sit in front of our computers all day long merely waiting for an email to respond to. While we all [use] Black Berries to help keep up with emails, keep in mind that a BB is also a cell phone. If you want or expect an immediate reply, or hadn’t gotten a reply in the time frame that you need an answer, DON’T send another email asking for a reply, pick up the phone and call. Or better yet, stop in the office and talk with the individual.

Your ‘communication path’ is way too structured. To have to get other managers to proof read an email before you send it to a Mgr indicates you either lack confidence or want to make sure you make the right impression. I’ve told you before, relax and just do your job, and feel confident in your abilities. Seems like you spend too much time trying to make impressions, build bridges, establish relationships. Just continue to do your job that let your actions, abilities and

accomplishments make the right impressions. And don't get yourself so bogged down trying to do too much, just do your job. If you'd like to sit down and discuss this further, please feel free to CALL me."

Complainant's handling of disciplinary action of subordinate employee (CX 49)

On July 30, 2008, S. Boysen held a "Damage Meeting" and assigned the Complainant and two other managers to complete specific action with designated employees for incidents involving damage to property. The Complainant was assigned to complete "level One Safety and 3 days off without pay (or) restitution of damage to H4 fire station in the amount of approximately \$2,000.00. On August 2, 2008 the Complainant advised that if the specific employee "elects not to pay for the damage, I will have his 3 days without pay effective the 13th when we are staffed full unless the request for his absence is ASAP."

On August 29, 2008, S. Boysen advised J. Fauth by e-mail that the 3 days without pay commencing August 13, 2008 was correct but "it appears [the Complainant] gave him 12, 13 and 14 off that is in conjunction with the RDO 11th. Will go after this too. I guess manager think they are above the law." J. Fauth replied to S. Boysen the same day that "sort of what I would expect of [the Complainant]. These sort of things will help make our task very easy when it comes time to decide who's going to be a long term player, and who we take under our wing to develop the leadership team going forward. (Ps. I'm well over it. You can't sweat the small stuff.)"

Complainant's missing September 17, 2008 managers' meeting (EX 23, 24)

On September 17, 2008, J. Fauth asked by e-mail why eight managers missed that day's managers' meeting. The Complainant replied on September 28, 2008 that his "upper molar was cracked and I had a temporary crown done." J. Fauth replied that "It would have been good to have known at the time we were looking for you."

Complainant's requests for time off for Thanksgiving 2008 and Christmas 2008 (CX 36, 42, 48, 50, 51, 54; EX 21, 22, 26, 31, 32, 33, 50, 51)

On August 28, 2008 the Complainant e-mailed S. Boysen on "Selection days and a x-mas question." He stated that he was scheduled for training starting September 15th and "was wondering if I could take the 13th and 14th off and use the holiday on the 12th and if you really wanted you could just through (sic) in the 11th for just being flexible ... Secondly, my kids are still in the belief of Santa Claus stage and this will probably be the last year for this. Being I am away from them for most of the year, I would really treasure having the time off with them. If needed I can cover when you are short, say New Years or something."

By an August 29, 2008 e-mail, S. Boysen notified the Complainant "11th through 14th is off and posted. Christmas I can take the request 30 days prior."

On September 9, 2008 S. Boysen notified all managers that Hangar 3 operations would convert to a 3-shift operation effective October 15, 2008 and the change would be considered the year

end realignment for the hangar operations. He indicated that 2009 vacation bids could begin being worked in November 2008. On September 12, 2008 S. Boysen forwarded the final schedule beginning October 15, 2008 to the Complainant and other affected managers and requested they review the new schedule. He stated that “the vacations and training that were listed have been carried over to the new schedule as close as possible.”

On September 14, 2008 the Complainant e-mailed S. Boysen stating the he had reviewed the schedule and would –

“... like to put some things out on the table. I am not complaining so don't take offense.

As you know my schedule has been changed quite a few times and I did have the Dec 24-26 off due to previous RDO [regular day off] patterns. If I was not going to have X-mas off, this would have been my first pick for bid vacation. Especially for this year, my kids really last year for the Santa experience. As for holidays, this is the only one I really care about, I do not mind working the others.

As for relief, I do not mind adjusting RDO's to get coverage as long as I don't get the short end of the stick”

The Complainant stated he “tried for years to sell my house in ATL ... if my house would sell tomorrow, I'd move tomorrow. It's not like I enjoy commuting. It is actually something I despise and it is not financially easy.” He also asked to be scheduled for training on the 747 and if S. Boysen was the supervisor to whom he reported.

On September 14, 2008 S. Boysen replied to the Complainant that no offense was taken and that “It's a very fluid business and I don't see that to change anytime soon.

On September 15, 2008 J. Fauth notified S. Boysen that the Complainant was “not being honest about moving. He told me (and [S] Gorman, [R] Anderson and [L] Gossett) that he was available in ATL to help the merger transition. He told me he plans to go to ATL and not move to DTW.” J. Fauth directed “NO additional schools for [the Complainant] at this point. He only wants to bolster his resume. It has nothing to do with supporting the operation.”

On September 18, 2008, J. Fauth requested S. Boysen call him regarding the Complainant stating; “Apparently he's back to talking to HR about his new schedule and missing Christmas. Can we go back and see if he's had to work any Christmas day since he's been here as a mgr?”

On September 19, 2008 J. Fauth received confirmation from S. Janssen, as manager of control center and administration, that the Complainant did not work Christmas day in 2005 or 2006 because they were his regular days off and he did not work Christmas 2007 because he was on FSK from December 6, 2007 through January 26, 2008. S. Janssen noted that Christmas 2008 fell on the Complainant's regular day off under the original schedule for 2008 but with the 3-shift schedule change October 15th, Christmas does not fall on the Complainant's regular day off,

similar to the change affecting “[B] Groebner and [J] Adamkowski who both lost Christmas as RDO when their schedules were changed.”

On September 19, 2008 J. Fauth advised C. India-Black by e-mail that the Complainant hadn’t worked any Christmas while at Northwest Airlines and that “we will try to accommodate any request for Christmas off, but will be considering the same request from every other mgr. Frankly, if another mgr who did have to work last year has the same request as [the Complainant]. I would be inclined to grant it to that mgr before I would to [the Complainant]. We try to consider each request, but need to be fair to everyone.”

On September 19, 2008, S. Boysen replied to J. Fauth stating “I have met with [the Complainant]. He was instructed to give me a 30-day notice on Christmas Holiday and I would look at it with the other requests and approve according to seniority. He was made no promises of having it off.” J. Fauth replied that “seniority is a factor, but not the only consideration for mgrs.” He directed S. Boysen to review a September 19, 2008 e-mail he sent to C. India-Black

On October 17, 2008, the Complainant e-mailed S. Boysen stating –

“I noticed that I am working dayshift the week of Thanksgiving. I have no problems doing this because I do not have any plans for the holiday. My concern is this, I was planning on working third shift that week because I was planning on flying up on Thanksgiving day to work that night when flights are wide open.

My question to you is this, could I use a business pass to fly up Wednesday night, because I would rather not stress out all my weekend just trying to figure out how I am going to get to work. Also, I was planning on having my Thanksgiving meal with my family on that Wednesday and was not going to fly out Thursday but cannot do that because of the shift change.

I was not planning on taking the holiday but, if I cannot do that, I would like to take Thursday off as a holiday. I would think it would be OK because of the business need.”

On October 18, 2008, S. Boysen notified the Complainant that “when vacation bidding is complete, I will lock you in.”

On October 19, 2008, the Complainant sent S. Boysen an e-mail related to the relief manager position (discussed below) and included the statement: “Forgive me for wanting to spend somewhat of a holiday with my family. It appears that holidays are important to you and others because as the schedule shows, it was one of the first things put on the schedule months ago (showing holidays off). My RDO’s have been rescheduled for cover each time where as I have not had a family holiday yet this year.”

On October 23, 2008, at 5:27 AM, the Complainant sent R. Lilly, L. Robinson, D. Sytsma and T. Hudson and email titled “Christmas - request time off.” He stated: “I am putting in for my time off request for the x-mas. I am requesting December 24 and 25 as holidays. [R] Lehman has

accepted to work for me on these days if needed. I will also work my RDO's on the 27, 28th as swap for those days off if that is acceptable instead of using holidays if this will aid in me getting the days off. I am requesting this due to the last cherished year for the X-mas experience as a child see's it due to their ages."

On October 23, 2008, at 5:46 AM, R. Lilly replied to the Complainant that "There are a couple other hgr managers that have also put in for these days off, when we get close to 30 days out we will determine by seniority who will be awarded them."

On October 23, 2008, at 9:15 AM, J. Fauth sent an e-mail to the Complainant stating –

"... less than 24 hours ago you were told very explicitly that you were to report to [S] Boysen for all matters other than 'direct daily operational issues.' This exact situation was discussed at length and you were instructed in detail that you were to request any time off from [S. Boysen]. We went on to say if [S. Boysen] was not available at the time you were to see me.

These sorts of work-a-rounds, and insubordinate behavior are the exact issues we discussed at length yesterday morning. These are also the very issues that you made a commitment to [S. Boysen] and myself that you understood and would correct.

Please call me at your earliest convenience to make arrangements to meet me in my office to discuss this matter further. Please do not send your typical rebuttal email. I would encourage you to save it until we have a chance to discuss this matter in person.

... While we take seniority into consideration to grant requested holidays off, we also look at who has been required to work on previous holidays and try to make decisions that distribute time off in a manner that is fair to everyone. Like I said yesterday, Management needs to function as a team and it's all for one and one for all."

On October 23, 2008, at 5:12 PM, R. Lilly advised J. Fauth by e-mail that "At NO time did I or any other of the Ops Manager solicit the grade 35/34 managers to provide us with requests for the Christmas Holidays off. [The Complainant] sent the email request to me last night asking for Dec 24/25th off without any prior conversation or verbal request. [S] Lewis approached me approximately 3 weeks ago and stated [the Complainant] sent him an unusual email outlining a trade deal for he and [S. Lewis] to swap days off so [the Complainant] could have the Christmas Holidays off.⁹ [S. Lewis] shared with me that [the Complainant's] email made him very uncomfortable." He also added a summary of the conversation he had with the Complainant about the midnight manager's schedule showing [the Complainant] was scheduled for work in Zone 1 and the need for him to work the shift in Zone 5 in order to have two managers in each zone during the shift.

⁹ This September 14, 2008 email from the Complainant to S. Lewis is included as EX 33.

On December 19, 2008, the Complainant e-mailed J. Hawkland asking “Am I working for you on new years?” J. Hawkland replied “About our deal, it was advise (sic) that I don’t work for you on Christmas day but another day is ok ... if you still want to work for me on new years day, let me know which day is good for you.”

Relief line maintenance manager position and scheduling complaints (CX 52, 54; EX 25, 26)

At 9:09 AM, October 18, 2008, the Complainant e-mailed S. Boysen with the comment “Strange thing I have noticed is my schedule gets changed for coverage for someone else’s time off without any concerns if I have plans.”

At 9:33 AM, October 18, 2008, S. Boysen replied to the Complainant that he could meet with the Complainant and that he “will have [the Complainant’s] assignment figure[d] out next week if you do not wish to carry on with working the discussed and agreed upon position. I will set the appointment when I’m ready to meet with you this coming week. I have no problem with helping a manager with a suitable schedule that will complement the operational needs.”

At 10:14 AM, October 18, 2008, S. Boysen sent an e-mail to the Complainant stating –

“you are a relief manager, no surprises, that was made known to you with your consent and buy in. The world doesn’t revolve around anyone of us when working the schedule. You spend a fair amount of time on dayshift which is a 6-3 pattern. If you note, you have remained on a 5-3 pattern even when you are on days. If you wish I can find another manager that would be willing to pull relief and I can give you 3rd shift position (not knowing where that would be until I find a replacement) that is more consistent. Let me know your decision on this. Please make your selection that will remain in effect for at least the year of 2009. When vacation bidding is completed I will lock you in. I need your decision on this by Oct 22nd otherwise I will consider your present position accepted by you.”

At 10:20 AM, October 18, 2008, the Complainant sent an e-mail to C. India-Black with a copy to L. Gajria in which he stated –

“Since my returning from FMLA, I have been trying to be the perfect employee, having the can do spirit, and no matter what comes up my answer has been ‘Will Do!’

My schedule has changed to accommodate another manager taking off. This in turn causes me to incur taking a day off or spend time away from my family just to cover the schedule change. This was not my plan. This has happened before. No one ever asked me if I have plans before they change my schedule, it just happens and I have had to drop everything and meet the schedule.

I was put on relief schedule when [S. Boysen] took over the operation from [D. Luttenbacher]. From day one it appeared that [S. Boysen] had a chip on his

shoulder towards me. I confronted him a few times where he responded that he is just not a morning person. But the issue continued.

I did consult [L. Gajria] on this subject after I could not figure out what I was doing wrong. Feel free to ask her.

This really bothers me, because My job has been going great except for my schedule being changed continuously to accommodate everyones time off.

Also with reviews underway, merger positioning, this is the last thing I want to happen.

I just want to come to work and do my job.

What is really bothersome to me is I have to have a personal meeting with Jack to keep things positive but this situation just shedded negative light on me.

I just want to make you aware of this since I am not going to tolerate this any longer.”

At 10:29 AM, October 18, 2008, the Complainant requested a meeting in an e-mail sent to S. Boysen with copies to J. Fauth and peer managers T. Hudson, R. Lilly, L. Robinson and D. Sytsma. The Complainant stated –

“Jack I want a meeting with you. This relief position was never made with my consent and buy in. My consent was Jack asking me to go to third shift line zone three and all of a sudden I was put on relief schedule. I can guarantee I never. Accept or was asked to do the relief position.”

At 1:00 PM, Sunday, October 19, 2008, the Complainant sent an e-mail to S. Boysen “to correct some facts and calumny” in S. Boysen’s October 18, 2008 e-mail. The Complainant sent a copy of the e-mail to J. Fauth, three managers and L. Gajria. The Complainant stated –

“... this has ruined the start of my weekend and I am basically losing sleep thinking about this ...

Since I have been working for you I have said ‘yes’ and ‘will do’ to everything you have asked without question since you took over [D. Luttenbacher’s] role. I have done my best resolving things you needed, making suggestion for improvements etc. Even though suggestions were only to improve the operation or such as the second attachment make the hangars ore compliant. My role appeared to take the role of do what I say and other than that stay out of sight or out of mind. The perception also appeared to me as the following: if I am concerned about anything related to me I get a negative response or no time to talk even though you can be BS’ing with others over nothing before and after I ask. ...

I pretty much had the perception that you wanted me out of your operation when you took over. Plus a little foreshadowing from your smoking cronies who appeared to know what was happening to me way before I did. ...

As for you needing an answer by the 22nd – I will wait and see what the Reason he spoke of was ...

The reasons I heard for me being in this position were:

- a. I was going to the line 3rd shift Intl to accommodate me.
- b. I was going to relief because it was the only spot left after [P] Brent was put in my position on the line and [S] Adkins took my position I had.
- c. I was put in the relief schedule to cover [L] Henney so that she could go to Goldholder training.

I will wait for that meeting [see below]. As it was stated in class – issue. I hope to brush up on all that leadership training before the meeting so that there is a positive outcome.”

At 6:50 AM, Monday, October 20, 2008 J. Fauth sent an e-mail to L. Gajria and copied S. Boysen in which he stated –

“We have [the Complainant] working in a relief position because it’s the only position where we can have him working to prevent from imploding the operation. In the relief position we move him around enough that he can’t cause too much disruption because we don’t keep him in one spot for any length of time.

[S. Boysen] and I are planning to conduct his mid-year review, and prior to this weekend were considering a PIP, but I’m now certain it’s the right thing to do. [The Complainant] will of course yell foul, but we need to be able to address this head on. [The Complainant] is more of a detriment to the operation than any value he may add. [The Complainant] has created a situation where any action the company takes to address issues with him will appear as retaliation, but if we are not going to address him and hold him to the same standard, we ought to just tell him to stay home and we’ll mail his pay check to him.

For the record, [the Complainant] has had more holidays off than most other managers.”

At 11:32 AM, Monday, October 20, 2008, L. Gajria notified J. Fauth and S. Boysen that she was “on the phone with [the Complainant]. I’ll write soon. I’ve read all the emails.”

October 22 and 24, 2008 counseling/coaching of Complainant (CX 25; EX 27, 28, 29)

On Wednesday, October 22, 2008, the Complainant met with S. Boysen and J. Fauth concerning the Complainant's "behavior, conduct and overall performance over the past several weeks." The complainant was counseled about the insubordinate nature of the e-mail he sent to S. Boysen and others on October 19, 2008 (CX 54 & EX 25, summarized above). The Complainant was counseled to "limit your email activity to business oriented needs, to display proper professional discretion and to be more respectful to your peers and to your managers."

During the meeting the Complainant was instructed to "report to the Hanger 4 Ops Manager ('big chair position') for all daily operational issues and that for all other issues ... report directly to [S. Boysen] ... in the event that [S. Boysen] was not available at any time [the Complainant] would then contact [J. Fauth] directly ... [who would] assist until [S. Boysen's] return." The complainant was "clearly and repeatedly [told] that he would need to work directly with [S. Boysen] for any time off."

Also discussed with the Complainant was his lack of interpersonal skills that "has repeatedly hampered your effectiveness as a manager ... [and] fostered a general lack of trust with some ... peers and subordinates"; argumentative behavior to direction, feedback and constructive criticism; need to "work with management instead of undermining their authority or working around them"; need to be a team player and the perceptions the Complainant is "out for yourself and not necessarily supporting the team effort first"; and his pursuit to get time off for Christmas 2008."

Subsequently, the Complainant submitted the written statement –

"I am sincerely embarrassed and apologize for my behavior!

I was way out of line –

This was mostly due to a lot of outside issues and a lack of sleep from Friday to Sunday ---

5 hours sleep in 43 hours of awake.

Again, I sincerely apologize for my behavior and improper use of E-mail."

On Wednesday, October 22, 2008, 4:46 PM, the Complainant e-mailed J. Fauth and S. Boysen for meeting with him earlier that day. He stated –

"As for the role of relief, I will do it as long as you need me to. However I find I need some consistency in my role to correct some of my shortfalls. ...

[for sleeping managers in a message a few weeks prior] My suggestion would be to have the individual take the relief role, and this would maybe correct the issue that he has sleeping, because by having more activity. The individual is also single, 40ish, and appears to have a good attitude. He works night line ...

The benefits for my goals would be, I would be working around a group of individuals that I get along with, I can concentrate on doing my job in one area

where the outcome can be tracked, I can prove succeeding in my goals, my interpersonal skills could only improve since I will be consistently working with a group of people I get along well with.

The benefits to me would be, as a father and due to my circumstances, what I need more than anything is consistency, consistency in what I do for a Living, what I tell my kids, when I tell them I am going to do something, etc.

I feel that with any of these changes would help all parties involved. My goal is to a positive outcome.

I am sincere in my proposal and would request that a serious look be taken towards it.

Thank you for your time and I appreciate your time today and moving toward the future.”

On Friday, October 24, 2008, the Complainant again met with J. Fauth and S. Boysen. The Complainant was counseled on his e-mail of “Thursday, October 23, 2008, to a manager other than [S. Boysen] for time off” for Christmas 2008 (EX 30 to R. Couturier, EX 31 to R. Lilly, L. Robinson, D. Sytsma and T. Hudson) “made less than 24 hours after it was clearly explained to [the Complainant] that [he] must make any request for time off directly to [S. Boysen and] how this clearly demonstrated [the Complainant’s] lack of commitment to following directions” which was considered as insubordination. J. Fauth and S. Boysen discussed the Complainant’s suggestion to put another person into the relief position which the Complainant p[roposed would better suit him “and simultaneously afford [him] the holidays off by taking [the other manager’s] schedule.” They again addressed the Complainant having every Christmas holiday off since reporting to Detroit and the additional topics of e-mail etiquette, interpersonal skills, argumentative behavior, being a team player.

On October 29, 2008, the Complainant signed a “Meeting Summary” of the October 22 through 24, 2008 events. (EX 28)

2008 Annual performance review (CX 33, 37, 61, 65; EX 34)

(CX 65) On October 29, 2008 (11:06 AM), J. Fauth forwarded a draft 2008 performance evaluation by S. Boysen for the Complainant to L. Gajria of human resources for review with the comment “Please take a look at this midyear review. We are planning to present this to [the Complainant] tomorrow.” The draft core competencies for the Complainant were graded at: 3.5 for innovation/creativity, customer commitment; 3.25 for business knowledge and processes, safety and security; and diversity/inclusion; 3.0 for development of employees; 2.5 for communications; 2.0 for interpersonal skills; and 1.75 for leadership. A rating of “1” was defined as “does not meet expectations.” A “2” was defined as “meets some expectations.” A “3” was defined as “consistently and reliably meets expectations.” A “4” was defined as “consistently and reliably meets all and exceed some expectations.” S. Boysen entered specific comments for each core competency.

On October 29, 2008, (2:01 PM), L. Gajria responded with written comments recommending a more structured approach to each competency comment with additional specific examples in support of the assigned grade.

On November 4, 2008, (11:36 PM), S. Boysen forwarded a "Mid Year 2008y.doc" to J. Fauth with the comment: "This is pretty much a rework. Examples as [L. Gajria] suggested. Just did this on a word document so we can edit easier. Once final I'll paste on the PTM system."

On November 26, 2008, (4:26 AM), J. Fauth forwarded a review of the Complainant to L. Gajria for her review. He stated: "Please review. If you agree with this let's print up the final document and set a time next week to go over this with [the Complainant]."

On November 26, 2008, (10:18 AM), L. Gajria sent an e-mail to J. Fauth stating: "I've completed my review of [the Complainant's] draft mid-year review. The changes I've made as well as questions are in red bold font. Overall the document looks good and has some good examples of [his] performance and behavior. As long as you and [S. Boysen] that each section accurately depicts what [he] has done, what is expected, and where he succeeded or failed, the document should be ready for presentation. Please let me know when you plan to present it to him, and if you'd still like me to be present." The draft review had extensive comments under each core competency and the following grades: 3.5 for innovation/creativity, and diversity/inclusion; 3.25 for business knowledge and processes, and safety and security; 3.0 for development of employees; 2.75 for customer commitment; 2.5 for communications; 2.0 for interpersonal skills; and 1.50 for leadership.

On November 26, 2008 (6:09 PM), S. Boysen forwarded to J. Fauth a "2008 Perf Mid Year (Final Draft) for the Complainant.

On November 29, 2008 (8:45 AM), J. Fauth forwarded by email to C. India-Black and L. Gajria the 2008 performance review for the Complainant submitted to him by S. Boysen on November 26, 2008. J. Fauth stated : "Here is [the Complainant's] review that will be issued to him on Monday. At this point I we were not going to give him a PIP to go along with the review. The reason being is I did not want to be held to the time line in the PIP. Let me know if there are any questions."

(EX 34) On December 1, 2008 the Complainant as "Mgr Line Maint" and S. Boysen as "Manager, Technical Operations" signed the 2008 performance review for the period January 1, 2008 through December 31, 2008.

On a scale of 1-5 for core competencies, the Complainant was graded at: 3.5 for innovation/creativity; 3.25 for business knowledge and processes, safety and security; and diversity/inclusion; 3.0 for development of employees; 2.75 for customer commitment; 2.5 for communications; 2.0 for interpersonal skills; and 1.75 for leadership. A rating of "1" was defined as "does not meet expectations." A "2" was defined as "meets some expectations." A "3" was defined as "consistently and reliably meets expectations." A "4" was defined as "consistently and reliably meets all and exceed some expectations."

S. Boysen noted the Complainant's leadership style does not foster a team environment with his crew or trust among his fellow managers. He seems to have the knowledge of how to be an effective leader; however he falls short of being able to put this knowledge to use. Managers who have been assigned to work with the Complainant have approached upper management and shared their concern for and displeasure with being teamed up with him. Their reason spoke to their lack of trust in his motives and intentions regarding relationship management. Several managers have told others that they must be very careful about what they say in front of him because it will be used against them. This creates a disharmonious work environment ripe with mistrust. Managers have complained of the Complainant undermining their authority when dealing with disciplinary or administrative problems. His management team has reservations regarding whether to assign him to high stakes projects requiring solid leadership skills, particularly related to prioritization based on the specific needs of the project. He has sound technical skills with structural and airframe repairs; however his ability to share this knowledge is stifled by his ineffective leadership, interpersonal and communications skills. He has made improvements in the last couple of months in monitoring technician paperwork. He has been active in identifying unsafe practices and has followed up with coaching his crew when needed. He understands the dangers of the industry and is proactive to keep a safe working environment and creating a culture that respects safe work practices. The quality of Complainant's work does demonstrate good external customer commitment; however he has demonstrated substandard internal customer commitment. He has expressed dissatisfaction with his present role as a relief manager. He believes it is not fair for him to have to work different areas when assigned to do so to cover other managers' schedule needs. When he pushes back and offers rebuttal for the reassignments, his Ops Managers find it difficult to explain their reasoning in a way which will make him listen for understanding without cause for rebuttal. He has a creative and inventive mind. He shows interest in using new approaches to solve old problems. He has identified AC and office problems and has been able to identify processes to make a safer and more efficient work environment. Interpersonal skills is an area that needs much improvement. When he is given constructive feedback, he has a difficult time not rebutting every comment. He tends to convey he knows it all when talking to someone giving him feedback. This causes some people to feel they cannot tell him anything because he will not listen. He does not think how people may react to his actions before he acts and seems surprised when people question his motives or intent without evaluating his own behavior to determine why his actions were misunderstood. Numerous discussions pertaining to interpersonal skills have been held with him over the past several years and there has been little improvement to date despite his stated belief that he's been trying to improve his interpersonal skills. His interpersonal skills have a significant negative impact on his communications skills. He needs to work on sending appropriate and timely professional e-mails free of emotion, condemnation, and accusations. He would do well to learn when to use e-mail versus when to speak directly to a person. He treats the work force fairly when assigning duties. He is presently working a relief manager role and does work with a diverse technician work force. He holds employees accountable to company policies and identifies training needs of technicians and suggests specific training to need of technician and business.

CX 33 is an undated computer printout tracking the progress of the Complainant's 2008 performance evaluation. It indicates that the Complainant and S. Boysen met to set "MBOs" (management basic objectives) on February 21, 2008 and completed a mid-year review on

October 3, 2008. The year-end review was begun on October 3, 2008 and modified three times through December 1, 2008. The performance evaluation was in “corporate review” status with a final due date of January 15, 2009.

CX 61 contains an undated computer printout tracking the Complainant’s 2008 performance evaluation. In addition to the entries noted in CX 33, the document indicated corporate review was completed on October 20, 2008; S. Boysen and J. Fauth completed their reviews; a year end discussion was held with the Complainant by S. Boysen on March 5, 2009; and employee acknowledgement was in progress as of April 9, 2009.

CX 61 contains the 2008 performance evaluation of EX 34 summarized above but indicates on the last page that S. Boysen and J. Fauth signed the performance evaluation on April 9, 2009. It also included the Complainant’s comments: “[J] Fauth and [S] Boysen stated I could not rebutte this review during a very intimidating meeting. I disagree with this review completely and submitted my rebuttal and disapproval to [C] India-Black. I also asked that my emails that I sent to her be included in my employee file. This review contained false information leveraged to eliminate my position.”

CX 37 is a December 21, 2008 e-mail from the Complainant to C. India-Black in which he states that he understood his 2008 performance review had been passed on to her. With regard to the performance review, the Complainant stated:

“My review core competency had dropped from 3.38 last review to 2.9 current (scale 0-5) with categories Leadership of my previous year 3.25 to now 1.75, Safety 3.75 to 3.25, customer commitment 3.50 to 2.75, interpersonal skills from 3.0 to 2.0, Communications from 3.25 to 2.50, Diversity 3.75 to 3.25, Development from 3.75 to 3.25. I had only one category increase which was innovation creativity which went from 3.25 to 3.50. I believe that most of this information is inaccurate and does not align with previous reviews that I have had with the company.

As you know, my first line manager, [S. Boysen] is supposed to conduct my review. [J. Fauth] basically performed my review and had [S. Boysen] write it. When [S. Boysen] and I met to go over my review, [he] indicated that he really did not work with me that much. I felt as though he just followed orders. In my annual review the previous year, [D] Sytsma was my first line manager. I asked [him] and few questions. One of them was along the lines, ‘Is this really what you see from me?’ [He] answered ‘No, this is what I was told to put down.’ He then added a comment of his own to the review. What I find interesting here is a pattern of intimidation. Do both [D. Sytsma] and [S. Boysen] feel threatened if they perform their jobs as their (sic) supposed to? In my annual reviews, I feel that [J] Fauth engineered my reviews from the onset and since he is the second line manager, easily manipulated the process.

I believe that [J] Fauth is unethical and I question his business conduct and practices in our organization. Integrity, good judgement and fair dealing are

pivotal in a leadership position. What type of example is [J Fauth] conveying? My question to you is this, 'Are there different standards for each work group?'

...

For the last 15 years, I have performed my responsibilities well; I am punctual and help in building employee moral (sic). The only time I have experienced negative retributions is when I enforce company policies as part of my job responsibilities. ... Please contact me with next steps or if you need additional information."

2008 Northwest Air Lines – Delta Air Line merger talent assessment (CX 34; EX 35, 36, 37, 38, 39)

(CX 34) On October 3, 2008, the Senior Vice President for Human Resources & Labor Relations for Northwest Airlines, M. Becker, sent notice to all vice presidents, directors, and managing directors on the "Talent Assessment – Managers of People" stating:

As you may be aware, all salaried employees have been asked to complete their talent profiles by October 17th. The next step in the talent identification process for leaders at Northwest and Delta is to begin assessing talent at the manager of people level.

During the month of October, leaders at both airlines will complete talent assessments on their direct report *managers of people*.

A talent assessment tool similar to the one used for General Managers, Directors and Managing Directors will be used to capture:

- 1) Employee ratings in key competency areas
- 2) Individual performance results over the last twelve months
- 3) Promotion potential

By the end of November, leaders across Northwest and Delta will have completed talent assessments, calibrations and talent selections of manager level employees.

Your divisional HR teams will assist you in achieving these milestones and will provide guidance on the completion of the talent assessment forms. The talent assessment system and instructions can be found in RADAR in the manager toolkit under performance management.

(EX 35) This exhibit shows a completion date of November 27, 2008 and is a Talent Assessment Form marked "confidential" for the Complainant. It indicates that the original assessor from the technical operations department in Detroit was S. Boysen. The Step 1 - high performance attributes (HPA) were graded as "3" for business maturity; "2" for results orientation, manage the work, managing change and ambiguity, and team focus; and "1" for quality of decision making. The composite HPA score was "12".

The Step 2 - rate performance results over the last 12 month, entries for customer service, operations, people and finance were written in the first person. The overall performance impact score was "1". On a scale of 1 to 5, "1" was defined as "very little impact" and "2" was defined as "some impact. The summary of the cumulative HPA score and weighted performance impact score was "18.

The Step 3 – Determine the Potential/Promotability Ranking the letter entered was "E". "E" was defined as "needs repositioning outside the company." "A" was "well positioned in current role." "B" was "lateral move for expanded development." "C" was promotable 1 level (within 24 months)." "D" was "highly promotable 2 levels (as applicable – within 12 months)."

(EX 38) This exhibit is an undated "Assessment Spreadsheet for NW TO DTW Line Maintenance" listing candidates considered for Round 3 Duty Manager and Lead positions. A total of 61 individuals are listed with 2008 overall ranking within the categories of potential/promotability – 39 were listed with an "A" for potential/promotability; 4 were listed with a "B" for potential/promotability; 11 were listed with a "C" for potential/promotability; 4 were listed with a "D" for potential/promotability; and 3 were listed with an "E" for potential/promotability. The Complainant was listed with an "E" for potential/promotability along with T. Johnson and E. Scaggs. EX 36 and 37 indicate that E. Scaggs and T. Johnson received the same composite HPA score, overall performance impact score, summary of the cumulative HPA score and weighted performance impact score, and potential/promotability ranking letter as the Complainant. EX 39 indicates the names and number of individuals by letter ranking for potential/promotability as reported in EX 38.

Realignment of technical operations managers after merger of Northwest Airlines and Delta Air Lines (CX 59)

By e-mail of February 27, 2009, aircraft maintenance technicians from pre-merger Delta and pre-merger Northwest were notified that they would be the first combined workgroup to begin bidding on available positions across the new TechOps system and that bidding would be open from March 1, 2009 to midnight March 10, 2009. It noted that jobs would be filled following Delta TechOps protocol. B. Weigle forwarded a copy to the Complainant with the notation, "FYI – not sure if you get this normally."

Post March 30, 2009 correspondence by and involving Complainant (CX 57, 60, 62, 72)

By letter dated April 9, 2009, the Complainant requested T. Charaf, the President of Technical Operations for Delta Air Lines, to contact him by e-mail or telephone. He stated in the letter he had met T. Charaf on October 25, 2008 at the "DTW Technical LMO Family Day" and discussed his desire to transfer to Atlanta and that he had commuted "for the past few years but resided with [his] family in Fayetteville, Georgia. The Complainant stated –

"I am a very dedicated and loyal employee and spent almost 20 years with NWA. I have volunteered and offered to assist in any way with the integration and merger of our airlines locally since I was commuting DTW-ATL-DTW ... As a

DTW LMO Manager, I have had a good career. At one point I handled the Control Center ... In the past, I have received recognition via a letter of recommendation and photo ops with the former CEO ... along with a couple of appearances in the company news magazine ... I would love to bring my expertise and experience to Delta. I have a few positions on file in which I have applied. I would like the opportunity to be part of the Delta team and to contribute to Delta's success. ...”

On May 11, 2009, the Complainant e-mailed L. Gossett to request a meeting in Fayetteville, Georgia, “to talk about my experience in Detroit and entertain any questions you may have. If time permitted, I would also like to discuss why my correcting a damaged aircraft flying a revenue flight led to me not making it home to Fayetteville and instead now being one of the few NWA employees that wanted to come to GA not being offered a position. Also, there was a good portion of one sided or false information put out about me. ... I am not a disgruntled employee, I have invested 20 years and worked hard the past 4 years toward the merger of the two airlines. I personally feel that since I know and have worked in most of the DTW operation, it was the last place my Director wanted me to work was at the headquarters in ATL.”

On May 14, 2009, L. Gossett replied to the Complainant by e-mail, with a copy to L. Blackmon of Delta human resources, that “I am always open to listen to the employees of Delta Air Lines when they have questions or concerns. I am a little confused though as I understand that you are no longer with the company. Can you clarify that for me?” The Complainant replied the same day by e-mail that –

“Yes, I was not offered a position in Atlanta and am in the process reviewing separation paperwork. I strongly feel that I have value for the airline, and had a promising career until I followed up with a directive procedure that engineering wanting (sic) accomplished. I followed up with Maintenance Control of event for incomplete evaluations of an unsafe airplane – MC grounded the plane. This aircraft was flying revenue passengers for 3 or 4 days and after this event, my career changed. I feel that my separation is unjust.

If you find it necessary, I would request that you and/or [L] Blackmon contact my previous Manager, [R] Weigle who has known me for 10 yrs ... He can give you an unbiased view of my performance.”

On May 29, 2009, L. Gossett advised P. Wroble by e-mail that “Tony signed me up to review [the Complainant's] file with HR and to give [him] a final answer.” P. Wroble responded by e-mail that “We need to have legal engaged. Anything sent will be twisted and turned and reloaded and fired back. [J] Douglas from H.R. is the best place to start. I think answering [the Complainant] at all is extremely dangerous. If anything goes to , [it] ought to be sent by a company attorney.”

On May 31, 2009, L. Blackmon and the Complainant discussed the Complainant's concerns addressed to L. Gossett. The Complainant followed up with an e-mail to L. Blackmon on June 1, 2009 in which he stated –

“... I wish I could have been more clear on the call but was focused on a presentation that I just set up to give on a Six Sigma project for Caterpillar Corporation. I wanted to just cover the facts that I do have a very productive career since being employed with NWA from 1989. The one event in DTW that drove down my career in a negative way. I was just following up on a directive and after Quality Audit found some discrepancies in others stories and DTW maintenance practices, things went south. I just did what I was supposed to do in my position for safety of flight.

I never went to any outside authorities and kept everything in house. ... shortly after the audit was finalized, [J] Fauth appeared to have an agenda towards me, even though I made many attempts throughout last year to mend or go forward on our working relationship, it was not welcomed.

My main concern is this, I know I have value for the airline, I have always done a great job, I am very dedicated and treat employees fairly ... I knew that when [J. Fauth] had control of my destiny, I would not get a fair turn. .. [It] was very difficult working in that environment, away from my family and kids. I stayed on, passed up job opportunities etc. because many times I was told that I was going back to ATL.

I wanted to move forward, get to Atlanta, and forget about DTW and start working for the future of the new DELTA. I had many jobs I applied for but were showing pending just prior to my last day May 7th.

... I would like you to review my previous reviews from [D] Luttenbacher and [D] Sytsma prior to reading my last. You will notice a tremendous shift. [D] Sytsma told me he was instructed to put the interpersonal skills on my review but added his own hand written comments to the end.”

On June 15, 2009, L. Blackmon e-mailed the Complainant stating “[L] Gossett and I have reviewed your request and would like to share the decision with you via phone tomorrow. ... Please confirm that this time works for you ...” By e-mail the same day, the Complainant agreed to the time for the telephone conference call and provided a telephone number. He also stated that he had “interviewed for a position of Demand Planner in the OCC shortly after [conversing with L. Blackmon].

On June 30, 2009, J. Douglas, as Managing Director, Human Resources, notified J. Fauth that –

“It appears that [the Complainant] might be pursuing action against Delta. I’ve asked [T] Tanberg to collect all items and documents related to the decision to not put him in a Lead position or manager position. You will be named as the decision maker in this so you will likely receive a call from DL legal.”

Complainant’s wage and tax statements (CX 39; EX 49 to 62)

For 2009 the Complainant reported annual wages and earnings of \$70,794.00 on the joint tax return he filed with his wife. He also reported a \$380.00 loss from his partnership in Crosstex Energy LP, no income or loss related to his S-corporation AC Commercial, Inc., and his wife's occupation as "home maker." His tax return indicates that the Complainant rolled over \$155,517.00 in pension funds from Northwest Airlines. The return also indicates the Complainant received \$33,843.00 in taxable wages from Northwest Airlines and \$25,012.00 in taxable wages from Talagy. His wife received \$18,521 in taxable wages from Delta Airlines.

For 2010 the Complainant reported to the IRS gross receipts and sales attributable to the S-corporation AC Commercial in the amount of \$195,925.00, with \$50,958.00 for cost of goods, \$30,000.00 for compensation to officers and \$1,359.00 for taxes, licenses, and other deductions which yielded ordinary business income in the amount of \$113,608.00, of which \$43,224.00 was distributed to the Complainant. The IRS Schedule K indicated that the entire distribution was paid to the Complainant as owner of 100% of the corporation's stock with ordinary business income share of \$113,608.00.

For 2011 the Complainant reported to the IRS and State of Georgia by a W-2 Wage and Earnings statement from his business AC Commercial located at the same address as his residence, that he had paid himself \$33,157.63 in earnings for the year. The Complainant reported to the IRS gross receipts and sales attributable to the S-corporation AC Commercial in the amount of \$413,724.00, with \$209,251.00 for cost of goods, \$41,447.00 for compensation to officers, \$20,274.00 in salaries and wages, \$10,362.00 in pension plans and \$60,515.00 for taxes, licenses, and other deductions which yielded ordinary business income in the amount of \$71,875.00, of which \$48,798.00 was distributed. The IRS Schedule K indicated that the Complainant was owner of 100% of the corporation's stock with ordinary business income share of \$71,875.00.

For 2012 the Complainant reported to the IRS and State of Georgia by a W-2 Wage and Earnings statement from his business AC Commercial located at the same address as his residence, that he had paid himself \$36,171.96 in earnings for the year. The Complainant reported to the IRS gross receipts and sales attributable to the S-corporation AC Commercial in the amount of \$580,039.00, with \$193,509.00 for cost of goods, \$45,215.00 for compensation to officers, \$57,173.00 in salaries and wages, and \$29,989.00 for taxes, licenses, and other deductions which yielded ordinary business income in the amount of \$182,070.00, of which \$69,458.00 was distributed to the Complainant. The IRS Schedule K indicated that the distribution was paid to the Complainant as owner of 100% of the corporation's stock with ordinary business income share of \$182,070.00.

For 2013 the Complainant reported to the IRS and State of Georgia by a W-2 Wage and Earnings statement from his business AC Commercial located at the same address as his residence, that he had paid himself \$36,171.96 in earnings for the year. The Complainant reported to the IRS gross receipts and sales attributable to the S-corporation AC Commercial in the amount of \$520,971.00, with \$149,600 for cost of goods, \$61,145.00 for compensation to officers, \$80,460.00 in salaries and wages, \$12,989.00 in pension plan, and \$57,899.00 for taxes, licenses, and other deductions which yielded ordinary business income in the amount of \$158,878.00, of

which \$10,451.00 was distributed to the Complainant. The IRS Schedule K indicated that the distribution was paid to the Complainant as owner of 100% of the corporation's stock with ordinary business income share of \$158,878.00.

For 2014 the Complainant reported to the IRS and State of Georgia by a W-2 Wage and Earnings statement from his business AC Commercial located at the same address as his residence, that he had paid himself \$33,157.63 in earnings for the year. The Complainant reported to the IRS gross receipts and sales attributable to the S-corporation AC Commercial in the amount of \$412,977.00, with \$109,529.00 for cost of goods, \$33,158.00 for compensation to officers, \$117,590.00 in salaries and wages, \$800.00 in pension plan, and \$124,770.00 for taxes, licenses, and other deductions which yielded ordinary business income in the amount of \$27,130.00, of which \$14,662.00 was distributed to the Complainant. The IRS Schedule K indicated that the distribution was paid to the Complainant as owner of 100% of the corporation's stock with ordinary business income share of \$27,130.00.

For 2015 the Complainant reported to the IRS and State of Georgia by a W-2 Wage and Earnings statement from his business AC Commercial located at the same address as his residence, that he had paid himself \$36,171.96 in earnings for the year. The Complainant reported to the IRS gross receipts and sales attributable to the S-corporation AC Commercial in the amount of \$588,242.00, with \$91,467.00 for cost of goods, \$72,172.00 for compensation to officers, \$109,340.00 in salaries and wages, and \$166,736.00 for taxes, licenses, and other deductions which yielded ordinary business income in the amount of \$148,527.00. The IRS Schedule K indicated that the Complainant was owner of 50% of the corporation's stock with ordinary business income share of \$74,264.00.

For the period of January 1, 2016 through October 11, 2016, S-Corporation AC Commercial, Inc. had gross income of \$833,011.41, with \$115,376.23 for cost of goods, \$136,490.00 in salaries and wages, and other expenses of \$186,364.54 for a net operating income of \$394,780.62. No payment to officers or distribution to shareholders was listed.

STATUTORY AND REGULATORY FRAMEWORK

The AIR-21, at 49 USC §42121, provides in pertinent part:

- (a) **DISCRIMINATION AGAINST AIRLINE EMPLOYEES** - No air carrier or contractor or subcontractor of an air carrier may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) –
 - (1) provided, caused to be provided, or is about to provide (with the knowledge of the employer) or caused to be provided to the employer or Federal Government information related 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;

- (2) has filed, caused to be filed, or is about to file (with the 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;
- (3) testified or is about to testify in any such proceeding or;
- (4) assisted or participated or is about to assist or participate in such a proceeding.

(b)(2)(B) REQUIREMENTS -

- (i) ...
- (ii) ...
- (iii) CRITERIA FOR DETERMINATION BY SECRETARY – The Secretary may determine that a violation of subsection (a) has occurred only if the complainant has demonstrated that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.
- (iv) PROHIBITION - Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

- (d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS - Subsection (a) shall not apply with respect to an employee of an air carrier, contractor, or subcontractor who, acting without direction from such air carrier, contractor, or subcontractor (or such person's agent), deliberately causes a violation of any requirement of this subtitle or any other law of the United States.

Implementing federal regulations applicable to AIR-21 at 29 CFR Part 1979 were revised effective March 21, 2003.¹⁰ The regulations provide, in pertinent part:

§1979.102 Obligations and prohibited acts.

- (a) No air carrier or contractor or subcontractor of an air carrier may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in paragraphs (b)(1) through (4) of this section.
- (b) It is a violation of the [AIR-21] for any air carrier or contractor or subcontractor of an air carrier to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any employee because the employee has:

¹⁰ 68 Fed. Reg. 14100-14111 (Mar. 21, 2003)

- (1) provided, caused to be provided, or is about to provide (with the knowledge of the employer) or caused to be provided to the air carrier or contractor or subcontractor of an air carrier or the Federal Government, information related 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 subtitle VII of title 49 of the United States Code or under any other law of the United States;
 - (2) has filed, caused to be filed, or is about to file (with the 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 subtitle VII of title 49 of the United States Code, or under any other law of the United States;
 - (3) testified or is about to testify in any such proceeding or;
 - (4) assisted or participated or is about to assist or participate in such a proceeding.
- (c) This part shall have no application to any employee of an air carrier, contractor, or subcontractor who, acting without direction from an air carrier, contractor, or subcontractor (or such person's agent) deliberately causes a violation of any requirement relating to air carrier safety under Subtitle VII Aviation Programs of Title 49 of the United States Code or any other law of the United States.

§1979.109 Decision and orders of the administrative law judge.

- (a) ... A determination that a violation has occurred may only be made if the complainant has demonstrated that the protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of any protected activity.

To prove unlawful retaliation at a formal hearing under AIR-21, the Complainant must prove by a preponderance of the evidence (1) that he engaged in the described protected activity, (2) that the employer had knowledge of the described protected activity, (3) that he was subjected to an adverse personnel action amounting to discharge or discrimination with respect to compensation, terms, conditions, or privileges of employment, and (4) that the protected activity was a contributing factor in the adverse employment action. 49 U.S.C. §42121(b)(2)(B)(iii); *Palmer v. Canadian National Railway*, ARB Case No. 16-035, 2016 WL 6024269, ALJ Case No. 2014-FRS-00154 (ARB Sep. 30, 2016);¹¹ *Brune v. Horizon Air Industries, Inc.*, ARB Case No. 04-

¹¹ In *Palmer* the ARB reversed *Fordham v. Fannie Mae*, ARB No. 12-061, 2014 WL 5511070, ALJ No. 2010-SOX-51 (ARB Oct. 9, 2014) and restated it had previously vacated *Powers v. Union Pacific Railroad Co.*, ARB Case No. 13-034, 2014 WL 5511088, ALJ No. 2010-FRS-30

037, 2006 WL 282113, ALJ Case No. 2002-AIR-8 (ARB Jan. 31, 2006); *Continental Airlines, Inc. v. Administrative Review Board*, 638 Fed. Appx. 283 (5th Cir. 2016);

If the employee does not prove any one of the required elements by a preponderance of the evidence, the complaint warrants dismissal. *Robinson v. Northwest Airlines, Inc.*, ARB No. 04-041, 2005 WL 3263822, ALJ No. 2003-AIR-022 (ARB Nov. 30, 2005); *Leon v. Secureplane Technologies, Inc.*, ARB Case No. 11-069, ALJ Case No. 2008-AIR-012 (ARB Apr. 15, 2013) aff'd 595 Fed. Appx. 710 (9th Cir. 2015) unpub.

Protected activity is a contributing factor if “the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer’s decision.” *Sievers v. Alaska Airlines, Inc.*, ARB Case No. 05-109, 2008 WL 316012, ALJ Case No. 2004-AIR-028 (ARB Jan. 30, 2008) citing *Marano v. Dep’t of Justice*, 2 F3d 1137 (Fed. Cir. 1993) If the complainant’s alleged protected activity constitutes a deliberate violation of AIR-21 on the part of the complainant and was done without the direction of the air carrier (its contractor or subcontractor or agent), the whistleblower protections provisions of AIR-21 are inapplicable to the complainant. 49 U.S.C. §42121(d);

Additionally, relief under AIR-21 may not be ordered if the respondent air carrier (its contractor or subcontractor or agent) demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity.¹² 49 U.S.C. §42121(b)(2)(B)(iv); *Palmer*, supra; *Formella v. U.S. Dept of Labor*, 628 F.3rd 381 (7th Cir. 2010) “‘Clear’ evidence means the respondent has presented evidence of unambiguous explanations for the adverse action in question. ‘Convincing’ evidence has been defined as evidence demonstrating that a proposed fact is ‘highly probable.’ ... ‘clear and convincing evidence’ [is] evidence that suggests a fact is ‘highly probable’ and immediately tilts’ the evidentiary scales in one direction.” *Speegle v. Stone & Webster Construction, Inc.*, ARB Case No. 13-074, 2014 WL 1870933, *6 (Apr. 25, 2014) citing *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984).

DISCUSSION

The Parties have stipulated that the Complainant filed the complaint in this case on June 25, 2009. For reason set forth in Paragraph II, below, no alleged discrete acts of retaliation prior to Friday, March 27, 2009 are considered a basis for AIR-21 corrective action.

The Complainant alleges he –

“reported to the company about an unsafe aircraft that was flying revenue flights. I was following up on a directive from engineering and Maintenance Control to have the aircraft repaired. The Hazard could have affected 125 public passengers

(ARB Oct. 17, 2014), reissued *remand en banc*, 2015 WL 1876029 (ARB April 21, 2015), remand *vacated en banc*, 2016 WL 4238457 (ARB May 23, 2016). The ARB declared that it is legal error to follow the *Fordham* and *Powers* decisions.

¹² Renamed the “same-action defense” by the ARB in *Palmer*, supra

and crew of 5. The result of my action caused the aircraft to be grounded for a week and the aircraft had a frame, the skin and stringer repaired. The aircraft event occurred in August 2007. After the event, the NWA internal department Quality Audit accomplished an internal investigation; there were discrepancies in what they were being told. Shortly after the investigation started I began receiving retaliation for the incident. ... A few smaller events happened after [working Christmas 2008] until my actual termination date of May 6, 2009. ... This event happened in the past and I am no longer employed there.”

I. The Complainant engaged in activity protected by AIR-21 by reporting unsafe operation and lack of airworthiness of aircraft #9868 to maintenance control supervisors on September 4, 2007 and by reporting the events and concerns surrounding the airworthiness of aircraft #9868 to Respondent’s Quality Assurance department on separate occasions between September 7, 2007 and November 2, 2007.

In establishing that a complainant has engaged in “protected activity under Air 21 [there are] two elements: (1) the information the complainant provides must involve a purported violation of a regulation, order, or standard relating to air carrier safety, though the complainant need not prove an actual violation; and (2) the complainant’s subjective belief that a violation occurred must be objectively reasonable.” *Blount v. Northwest Airlines, Inc.*, ARB Case No. 09-120, 2011 WL 5374591, *3, ALJ Case No. 2007-AIR-009 (ARB Oct. 24, 2011) citing *Sitts v. COMAIR, Inc.*, ARB No. 09-130, ALJ Case No. 2008-AIR-007, slip opinion at 9 (ARB May 31, 2011); *Florek v. Eastern Air Central, Inc.*, ARB Case No. 07-113, 2009 WL 1542296, ALJ Case No. 2006-AIR-009. “Generally, under whistleblower statutes, when a safety concern has been investigated and determined to be safe, and has been adequately explained to the employee, the employee’s continuing safety concern is no longer protected.” *Sitts*, id., at 2009 WL 1542296, *10.

Here the Complainant commenced performing his duties as a night line maintenance manager at 9:00 PM, Wednesday, August 29, 2007 he went to Northwest aircraft #9868 while it was parked at a jetway gate in Detroit to inspect pilot reported damage of three dents to the fuselage aft the forward door. He took pictures of the damaged area, discussed the options available with other persons from maintenance control, engineering, upper management and line mechanics. The Complainant notified the flight crew that a different aircraft would be required for their continued flight. After the flight crew disembarked aircraft #9868 was moved from the flight line to the maintenance hangar since engineering and maintenance personnel had determined that repairs could not be made at the gate. The Complainant entered into the log at 5:28 AM, Thursday, August 30, 2007, that aircraft was “packing up to go to the hangar for a dent on fuselage aft of forward door.” The Complainant subsequently departed at the end of his night shift for his days off on the Labor Day¹³ weekend.

During his weekend off, the Complainant talked by telephone with R. Todd and learned aircraft #9868 had been returned to green status. He subsequently called D. Luttenbacher that the green status did not seem right and D. Luttenbacher agreed to check on the status of aircraft #9868.

¹³ The Complainant testified that he began his Labor Day weekend immediately after completing the August 29-30, 2007 night shift. He mistakenly believed that August 30, 2007 was a Friday. August 31, 2007 was a Friday. Labor Day 2007 was on Monday, September 3, 2007.

The Complainant had no further involvement with aircraft #9868 until his return to work on Tuesday, September 4, 2007.

Upon his return to night shift work on September 3, 2007, the Complainant reviewed the status of repairs to aircraft #9868. He notified Operations Manager, D. Luttenbacher and J. Fauth by e-mail sent at 3:21 AM, September 4, 2007 that he had talked with maintenance control who was now questioning how the repairs to aircraft #9868 were signed off and that maintenance control wants the repair checked. He described his observations from personally inspecting aircraft #9868 and stated "This aircraft is currently flying. I do not want to see something unfortunate happen." Maintenance control issued an order at 6:08 AM, September 4, 2007, to have aircraft #9868 returned to the hangar for reevaluation before the next flight. Aircraft #9868 was sent to the hangar for recheck of the damage and repairs at 2:48 PM, September 4, 2007. Structural and fuselage repairs were completed and aircraft #9868 was returned to service the afternoon of September 7, 2007.

S. Weis of Northwest Airlines quality assurance department conducted a subsequent Quality Audit investigation of the August 30 – September 7, 2007 aircraft #9868 events. Quality reviews of maintenance work are performed routinely each month. However since this Quality Audit began days after the incident, it is more probable that the Quality Audit was initiated based on a report from one of the engineers involved with the aircraft damage evaluation and repairs. The Quality Audit disclosed "a variety of blunders that started with things not being documented properly."

The Complainant testified that he had no input into the Quality Audit until he was contacted by S. Weis and K. Cairo at the end of the investigation to provide a comprehensive report of the events related to aircraft #9868 and to provide maintenance logs. He identified CX 25 as his October 24, 2007 statement of events and an internal complaint on perceived retaliation. Neither D. Luttenbacher as a maintenance operations director nor J. Fauth as managing director of line maintenance had authority to make a final acceptance of an Audit Quality report, only the Quality Assurance Department could finalize a Quality Audit Report. The exhibits however, indicate that the Complainant discussed the aircraft #9868 incident on September 7, 2007 when S. Weis first called the Complainant to discuss the event. There were subsequent e-mail inquiries by S. Weis to the Complainant and the Complainant's response through November 2, 2007.

The Claimant's personal discussion with the manager for Maintenance Control on September 4, 2007 caused aircraft #9868 to be recalled and taken out of service for safety recheck and repairs. J. Fauth testified that the Complainant did the right thing by reporting his safety concerns over aircraft #9868 initial repairs to maintenance control and having the aircraft returned for permanent structural repairs. In that the Complainant had no job responsibilities to follow-up on the initial repairs to aircraft #9868; raised air safety concerns to maintenance control based on his training, experience and the specific August 31, 2007 discussions about the damage to aircraft #9868 with engineers and maintenance personnel; and his actions in raising the safety concerns was consider proper by his immediate supervisors, this presiding Judge finds that the Complainant's report of safety concerns on September 4, 2007 to maintenance control supervisors constituted subjectively reasonable and objectively reasonable safety concerns over

the airworthiness of aircraft #9868 to continue operations after initial repairs and was protected activity under AIR-21.

After deliberation on the credible evidence of record, this presiding Judge finds that the Complainant has established by a preponderance of the evidence that he engaged in activity protected by AIR-21 by reporting unsafe operation and lack of airworthiness of aircraft #9868 to maintenance control supervisors on September 4, 2007 and by reporting the events and concerns surrounding the airworthiness of aircraft #9868 to Respondent's Quality Assurance department on separate occasions between September 7, 2007 and November 2, 2007.

II. The Complainant suffered an adverse employment action amounting to discharge on March 30, 2009.

Complaints of discrimination or retaliation under AIR-21 must be filed within 90 days of discharge or discrimination which results from engaging in protected activity. 49 U.S.C. § 42121(b)(1).

Here the Parties have stipulated that the Complainant filed his AIR-21 complaint on June 25, 2009. The Parties also stipulated that the Complainant was notified on March 30, 2009, that his employment was not going to be continued through the merger with Delta Airlines. The Complainant testified that he considered himself terminated on March 30, 2009, though he was kept on the payroll until May 6, 2009. The 90 day period prior to June 25, 2009 would include all discharges and discriminations that may have occurred during the period from Friday, March 27, 2009 through Thursday, June 25, 2009.

After deliberation on the credible evidence of record, this presiding Judge finds that only the Complainant's notice of discharge on March 30, 2009 falls within the 90-day statutory limitation and is considered an adverse employment action amounting to discharge.

III. The Complainant has failed to establish by a preponderance of the evidence that the Supervisor making the decision to not continue the Complainant's employment through the merger of Northwest Airlines and Delta Air Lines had knowledge of the Complainant's AIR-21 protected activity on September 4, 2007 or on separate occasions between September 7, 2007 and November 2, 2007 prior to the termination decision.

The determination of which line maintenance managerial employees would be retained as part of the Delta Air Lines operations upon merger of Northwest Airlines into Delta Air Lines was made through a "Talent Assessment Process" in the fall of 2008 which was headed by L. Gossett as Director of Line Maintenance for maintenance operations of both Northwest Airlines and Delta Air Lines domestic operations throughout the United States and parts of the Caribbean.

During the Talent Assessment Process each line maintenance manager and more senior supervisors from Northwest Airlines and Delta Air Lines would complete their own respective "talent profile" by October 17, 2008 and submit it to their immediate supervisor. Each supervisor receiving a talent profile from a direct reporting manager would then complete a

“talent assessment” of the reporting individual by the end of November 2008 using a standardized, computerized talent assessment tool. The talent assessment tool was designed to capture employee ratings in six key competency areas of high performance attributes – business maturity, results orientation, manage the work, managing change and ambiguity, team focus, and decision making; individual performance results over the preceding twelve months; and promotion potential with the airlines. Upon completion of the “talent assessment” a consolidated two-day leadership team meeting, initially composed of all general line maintenance managers, directors of line maintenance operations, regional directors of line maintenance operations, the director of line maintenance operations (L. Gossett) and representative for the human resources department, was held in Atlanta, Georgia, to complete a “calibration process.” Participants from human resources department included C. India-Black, L. Gajria and L. Blackman.

The “calibration process” was designed to openly discuss each employee’s talent assessment resulting scores and rankings to ensure that each individual was being considered and held to the same standards as the individual’s peer managers. Competency scores were graded 1 through 5, with 5 being considered “perfect employees.” During the calibration process all managers present were encouraged to share their knowledge and experiences with the individual being calibrated with the leadership team present so that the best possible assessment of the individuals in line maintenance operations. Some scores and ratings were raised and some were lowered when feedback and recommendations from the leadership team was considered with the individual’s submitted talent assessment. All individuals went through the calibration process with the majority of the discussion being spent on those individual with high level ratings and scores and those with low level ratings and scores, including those individuals whose submitted talent assessment contained an “E” ranking which was essentially a recommendation that the individual not be offered an end-state position with Delta Air Lines. When the calibration process was completed for line maintenance managers was completed, the general managers were excused from the leadership team meeting and they were individually calibrated by the remaining leadership team members. Upon completion of the calibration process for general managers, the directors of line maintenance were excused from the leadership team meeting and they were individually calibrated by the regional directors and the director of line maintenance operations for Northwest Airlines and Delta Airlines. During the calibration process the leadership team could recommend an employee’s rating in the six key competency areas, the 12-month performance rating, and/or for promotion potential, be changed to ensure standardized comparisons. As director of line maintenance operations for Northwest Airlines and Delta Air Lines, L. Gossett had a binder with each individuals talent assessment form and made the final decision on whether a score or ranking of any individual employee’s talent assessment form was changed, what the change would be, and what the final talent assessment would reflect in the six competency areas, 12-month performance score, and promotion potential with the emerging consolidated Delta Airlines. If a talent assessment form was changed during the calibration process, a revised date would be entered into the computer to reflect the change in the final assessment.

The Complainant completed his talent profile and submitted it to his immediate supervisor, S. Boysen. S. Boysen completed the talent assessment of the Complainant using the standardized, computer assessment tool on November 27, 2008 and inputted much of the Complainant’s narrative from his talent profile. When the Complainant’s talent assessment was presented to the

leadership team for the calibration process, comments about the Complainant's poor communication with others at times, his self-promotion, not looking out for his team first, argumentative issues, challenge to supervisors when receiving feedback, collaboration issues, teamwork issues with his peers, communications issues, and promotion potential were discussed. Comments were submitted by J. Fauth as Northwest DTW station director; B. Fitzgerald as director of maintenance control, T. Johnson as Northwest regional general manager; L. Nitski as director of Minneapolis line maintenance operations, and K. Abrajac as Northwest regional director general manager. L. Gossett did not request any further documentation to support the scores and rankings for any of the talent assessment forms during the calibration process.

L. Gossett considered the information presented during the Complainant's calibration discussion and testified that "based on the recommendation, the score and validation that I heard during the calibration session, I saw no reason to change [the Complainant's "E"] rating." He testified that at the time he made the decision not to change the Complainant's "E" rating, he had no knowledge that the Complainant had reported and unsafe aircraft or any other safety violation and had not been told of the incident by either J. Fauth or S. Boysen. L. Gossett testified that he was first told that the Complainant had some issues with an aircraft incident by the Complainant. The e-mail sent by the Complainant to L. Gossett on May 11, 2009 requesting a meeting is the first mention correcting a damaged aircraft flying a revenue flight made by the Complainant to L. Gossett. The Complainant referred to the aircraft #9868 incident again in a May 14, 2009 e-mail to L. Gossett. Both e-mails were after the time L. Gossett made the final decision to not continue the Complainant into an end-stage position with Delta Air Lines and after the Complainant was notified of his separation on March 30, 2009 and after the Complainant was last paid on May 6, 2009.

The Administrative Review Board has held that a key element that must be proven by a complainant is that the decision maker who made the termination decision knew of the complainant's protected activity before the termination decision was made. *Gary v. Chautauqua Airlines*, ARB No. 04-112, ALJ No. 2003-AIR-38 (ARB Jan. 31, 2006) Such knowledge of the protected activity on the part of the person making the adverse employment decision is an essential element of a discrimination complaint. Without such knowledge the complaint fails. *Peck v. Safe Air International, Inc.*, ARB No. 02-028, ALJ No. 2001-AIR-3 (ARB Jan. 30, 2004)

When the Complainant testified about telephone conversations between T. Jansen and S. Keller that he found derogatory towards him he testified that part of his duties in the Control Center at the time was to listen to digitally recorded telephone conversations to and from the Control Center. He later testified that he did not have speakers at work to listen to recordings of telephone conversations so he e-mailed the digital recordings to his home computer. He testified that he was issued a letter from Northwest stating that it was a violation of the business code of conduct to make copies of business recordings and remove them from the company premises for personal use and that since the company said he would not be disciplined for doing so, "I wasn't disciplined." He testified "They never asked to return them. They never said a word about them ... I never erased them." Such conduct and statements indicate a lack of candor, lack of credibility, and self-serving actions.

The Complainant's talent assessment submitted by S. Boysen was not changed during the calibration process, therefore the November 27, 2008 submission date was the final talent assessment score and ranking date. The Complainant's final talent assessment after calibration was an "18" in weighted performance score at Step 2 and an "E" for potential /promotability ranking at Step 3. The "E" ranking was the lowest ranking available and reflected "needs repositioned outside the company." Of the 61 line peer maintenance managers, the Complainant was one of three line maintenance managers to be ranked to be "repositioned outside the company." As with the Complainant, the other two peer managers with an "E" ranking, T. Johnson and E. Scaggs, were not continued with Delta Airlines to an end-stage position.

The Complainant testified that he was in a meeting in end of 2008 with J. Fauth, S. Boysen and L. Gajrai present to discuss Christmas leave and performance issues and forced to sign a statement with all three present and could not leave room until signed. The document signed was EX 28 signed on October 29, 2008. He also testified that he had two intimidating meetings with J. Fauth and had to repeat three times if he did not work Christmas he would be fired and was subsequently told by L. Gajrai to write an apology to J. Fauth which he did. These meetings were October 22, 2008 and October 24, 2008. L. Gajria was not present at any of the meetings but had been consulted by J. Fauth prior to each of the meetings about the Complainant's conduct and performance and the appropriateness of placing the Complainant on a performance improvement plan (PIP). The Complainant had a meeting with J. Fauth and S. Boysen on October 22, 2008 to counsel him on his insubordinate e-mails of October 18 and 19, 2008, and identify S. Boysen as his supervisor for all activities except daily hangar operations where he reported to the director of maintenance operations. The Complainant testified that he suggested J. Fauth and S. Boysen in an October 22, 2008 e-mail that he be moved to night shift line manager for a normal routine and the night shift manager who slept on the job takeover vacation relief manager and that "They agreed ... Well they didn't give me an answer." However, the Complainant's e-mail was several hours after his October 22, 2008 counseling session with J. Fauth an S. Boysen and became one of the subjects addressed at the October 24, 2008 counseling meeting involving the Complainant, J. Fauth and S. Boysen where the suggestion was addressed and denied. The Complainant testified he discussed the October 22, 2008 meeting with L. Gajrai who explained why his e-mails had been insubordinate and suggested he go to the October 24, 2008 in a very apologetic manner and write an apology, which he stated he did. The Complainant signed a post-counseling summary on October 29, 2008. The foregoing demonstrates the Complainant's selective memory and self-serving exaggeration of events.

The Complainant testified that S. Boysen took over as hangar operations manager in April 2008 for D. Luttenbacher who had been his supervisor from August 2005. He stated that in September to October 2008 he had several supervisors and S. Boysen may have been one for a month or two. He also had e-mail exchanges with S. Boysen and C. India-Black reflecting that S. Boysen had been his supervisor since April 2008. The Complainant still argued he had only worked for S. Boysen for one day and S. Boysen was not qualified to write an evaluation on him. This type of event also demonstrates the Complainant's lack of candor to the presiding Judge.

The Complainant testified at the formal hearing that he never intended to sell his house and relocate to Detroit. This is consistent with the testimony of D. Luttenbacher and his e-mail statement to S. Boysen. The Complainant's testimony is inconsistent with the September 14,

2008 e-mail the Complainant sent S. Boysen when trying to arrange for Christmas 2008 off where he stated “I have tried for years to sell my house in ATL ... if my house would sell tomorrow, I’d move tomorrow. It’s not like I enjoy commuting. It’s actually something I despise.” This type of action demonstrates that the Complainant has a history of making self-serving, deceptive, and not credible statements to suit his own interests.

Testified after AC Commercial S-Corporation was started back up in 2009, his wife owned 50% of the shares and he owned the remaining 50% of shares until the year prior to the October 2016 hearing when his daughter received 20% of the company and he and his wife’s ownership share change to 40% each. In IRS filings for tax years 2009, 2010, 2011, 2012, 2013, 2014 the Complainant reported he owned 100% of S-Corporation, AC Commercial. He reported for tax year 2015 he owned 50% of AC Commercial. The Complainant further undermines his credibility when he testified that he and his wife were the only officers of AC Commercial, file joint tax returns and include AC Commercial business income in their returns. When the joint returns are compared to the compensation for officers, distribution to shareholders, and net business income reported by AC Commercial for various tax years, large discrepancies are noted as reported to the IRS, which infers that the Complainant was not forthright with the IRS.

After deliberation on the record as a whole, this presiding Judge finds that the Complainant has been less than forthright and lack substantial credibility in relation to conflicts in the testimony and statements made by J. Fauth, S. Boysen, L. Gajrai, and L. Gossett, who are entitled to greater weight. Additionally, this presiding Judge finds that L. Gossett was the final decision maker who approved the final “E” ranking indicating separation from the company which was communicated to the Complainant on March 30, 2009; that the Complainant has failed to establish by a preponderance of the evidence that L. Gossett, as the final decision maker of the Complainant’s separation from the company, had any knowledge of the Complainant’s protected activity under AIR-21 prior to or at the time L. Gossett finalized the Complainant’s “E” ranking.

IV. The Complainant has failed to establish by a preponderance of the evidence that his protected activity of September 4, 2007 and/or on separate occasions between September 7, 2007 and November 2, 2007 was a contributing factor to the adverse employment action on March 30, 2009.

The Complainant has argued that because the decision to terminate his employment was made shortly after November 27, 2008, there is a close proximity in time to his September 4, 2007 and/or his October 27, 2007 protected activity such that there is a permissible inference that the protected activity contributed to his adverse employment action of discharge March 30, 2009.

The Administrative Review Board has recognized that while temporal proximity between protected activity and an adverse employment action may support an inference of retaliation, the inference is not necessarily dispositive and may be insufficient alone to establish protected activity was a contributing factor to the adverse employment action. Where intervening acts by a complainant that occur between the protected activity and adverse employment actions independently support an adverse employment action, the inference of temporal proximity is compromised. *Robinson v. NWA, Inc.*, ARB No. 04-041, ALJ No. 2003-AIR-22 (ARB Nov. 30, 2005); *Clark v. Pace Airlines, Inc.*, ARB No. 04-150, ALJ No. 203-AIR-28 (ARB Nov. 30,

2006); *Barker v. American Airways, Inc.*, ARB No. 05-058, ALJ No. 2004-AIR-12 (ARB Dec. 31, 2007); *Vieques Air Link v. U.S. Dept of Labor*, 2006 WL 247886 (1st Cir. Feb. 2, 2006) *unpub*, ARB No. 04-021, ALJ No. 2003-AIR-10.

After deliberation on the credible evidence of record, this presiding Judge finds that between November 1, 2007 and March 30, 2009, the Complainant engaged in insubordinate conduct towards his immediate supervisors S. Boysen and J. Fauth; violated the Northwest business code of conduct; made false and misleading statements to L. Gajrai, S. Boysen and J. Fauth; failed to respond to counseling on professional conduct, proper interaction with his peer, scheduling, and use of e-mails, such that any temporal proximity that may have existed in this case has been compromised. Accordingly, this presiding Judge finds that the inference of protected activity may be a contributing factor due to temporal proximity does not apply in this case.

This presiding Judge also finds that the Complainant has failed to establish by a preponderance of the evidence that his protected activity of September 4, 2007 and/or October 27, 2007 was a contributing factor to the adverse employment action on March 30, 2009; and that the Complainant is not entitled to relief under AIR-21 based on complaint filed June 25, 2009.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After deliberation on the credible evidence of record and argument of the Parties, this presiding Judge enters the following Findings of Fact and Conclusions of Law –

1. Respondent Northwest Airlines d/b/a Delta Air Lines, Inc., operates a commercial air passenger service operation and is an air carrier within the meaning of 49 U.S.C. §42121 and 49 U.S.C. §40102(a)(2).
2. While employed by Respondent, the Complainant was an employee within the meaning of 49 U.S.C. §42121.
3. The provisions of 49 U.S.C. §42121 (“AIR-21”) apply in this case.
4. On November 27, 1989, Northwest Airlines, Inc. (“Northwest”) hired the Complainant as an airframe and power plant technician at the Minneapolis Airport.
5. In 1997, the Complainant became employed at the Atlanta Hartfield International Airport.
6. In August 2008, the Complainant became a manager in line maintenance at the Detroit Wayne County Airport (“DTW”).
7. The Complainant worked as a manager in line maintenance at DTW until the last day he worked – March 30, 2009.
8. Since 1997, the Complainant has lived in Fayetteville, Georgia.
9. Each of the managers and mechanics in DTW line maintenance were assigned to one of a number of designated zones that were responsible for aircraft at designated group gates. A manager could also be assigned to a control center position.
10. In April 2008, Delta Airlines, Inc. (“Delta”) and Northwest announced a merger agreement whereby Northwest would merge into Delta.
11. On March 30, 2009, the Complainant was informed that he would not be offered an end-state position with Delta.
12. The Complainant remained on the payroll until May 6, 2009.

13. On June 25, 2009, the Complainant filed an AIR-21 complaint against Northwest with OSHA.
14. On January 22, 2010, OSHA issued a Determination on the Complainant's AIR-21 complaint dismissing his complaint.
15. On February 15, 2010, the Complainant filed objections to OSHA's Determination.
16. The Complainant suffered no economic loss of income with respect to Northwest Airlines of Delta Air Lines, Inc. through May 6, 2009.
17. On April 17, 2007, the Complainant received a 2006 year-end performance review for work as "Manager Line Maintenance – Control Center" indicating an overall competency rating of 3.25, overall MBO rating of 4.11 and overall performance rating of 3.75. The Complainant contested the performance review scores with his supervisor, D.R. Luttenbacher, and at the Human Resources Department level in April 2007 without pursuing a secondary review.
18. On April 25, 2008, the Complainant received a 2007 year-end performance review for work as "Manager Line Maintenance" indicating an overall competency rating of 3.38, overall MBO rating of 3.70 and overall performance rating of 3.50
19. On December 1, 2008, the Complainant acknowledged the status of his performance appraisal for the period beginning January 1, 2008, for work as "Manager Line Maintenance" and which indicated a core competency rating of 2.7, overall MBO rating of 3.60 and overall performance rating of 3.25. The Complainant submitted comments on the review to the Director of Human Resources, Carolyn India-Black, on December 21, 2008.
20. The Complainant engaged in activity protected by AIR-21 by reporting unsafe operation and lack of airworthiness of aircraft #9868 to maintenance control supervisors on September 4, 2007 and by reporting the events and concerns to Respondent's Quality Assurance department on separate occasions between September 7, 2007 and November 2, 2007.
21. The Complainant suffered an adverse employment action amounting to discharge on March 30, 2009.
22. The Complainant has failed to establish by a preponderance of the evidence that the Supervisor making the decision to not continue the Complainant's employment through the merger of Northwest Airlines and Delta Air Lines had knowledge of the Complainant's AIR-21 protected activity of September 4, 2007 or on separate occasions between September 7, 2007 and November 2, 2007 prior to the termination decision.
23. The Complainant has failed to establish by a preponderance of the evidence that his protected activity of September 4, 2007 or on separate occasions between September 7, 2007 and November 2, 2007 was a contributing factor to the adverse employment action on March 30, 2009.
24. The Complainant is not entitled to relief under AIR-21 based on his complaint filed June 25, 2009.

ORDER

It is hereby Ordered that the Complainant's **claim under AIR-21 is DENIED** and the **complaint filed on June 25, 2009, is DISMISSED.**

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia

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, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; 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). 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).

If filing paper copies, 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 an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file 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. If you e-File your petition and opening brief, only one copy need be uploaded.

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 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 may include 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. If you e-File your responsive brief, only one copy need be uploaded.

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 you e-File your reply brief, only one copy need be uploaded.

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).