



Issue Date: 31 May 2012

Case No.: **2012-AIR-00010**

In the Matter of:

SANDRA BARRETT,
Complainant,

v.

SHUTTLE AMERICA / REPUBLIC AIRWAYS,
Respondent.

DECISION AND ORDER DISMISSING COMPLAINT AS UNTIMELY

The above-captioned case involves a complaint filed by Complainant against Respondent under the Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121 (“AIR 21”). Complainant is appearing pro se (without counsel) in this proceeding.

The Secretary’s Findings are dated February 23, 2012. The Secretary dismissed the complaint because it was not filed within 90 days of the adverse action. Complainant filed a timely request for hearing.

On May 16, 2012, the Presiding Judge, sua sponte, issued an Order to Show Cause to Complainant to show why the complaint should not be dismissed as not being timely filed. Complainant filed a response dated May 25, 2012.

Findings of Fact

1. Complainant is a flight attendant employed by Respondent.
2. Complainant alleged that she received a three day suspension effective from October 30 through November 2, 2010, for submitting a written report concerning unsafe pilot practices which took place during an airline flight on October 25, 2010.
3. Complainant filed an AIR 21 complaint with OSHA on March 4, 2011.

Discussion

In response to the Order to Show Cause, Complainant acknowledged that her AIR 21 complaint was not filed until March 4, 2011. However, she stated that she immediately attempted to file a union grievance concerning the suspension. Unfortunately, the union refused to help her “until I received a certified letter in the mail of the disciplinary actions/punishment against myself, from my manager.” She did not get this information until December 6, 2010. Only then was she given a grievance hearing in which she did not prevail. Only then did she turn to outside help. She further submits that, “I was given the run-around from the beginning as to delay my filing of any complaint, because they knew the proper process so they held out on me so I could not be able to file on time.”

Complainant chose to pursue a union grievance pursuant to a collective bargaining agreement. The fact that the union delayed providing assistance in the grievance process does not provide grounds for equitable tolling of the deadline requirement for filing an AIR 21 complaint. Nor is the Respondent obligated to inform the Complainant of a potential cause of action, the potential deadlines under those statutes or to take specific actions within the deadlines of known or unknown statutes.

Based upon the foregoing, I conclude that Complainant has failed to show cause why her complaint should not be dismissed as untimely filed.

Accordingly, IT IS ORDERED that the claim IS DISMISSED.

SO ORDERED.

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DANIEL A. SARNO, JR.

District Chief Administrative Law Judge

DAS,JR/ccb
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. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1979.110(a). In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov. Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1979.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. § 1979.110(a).

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

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

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

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110. Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b).