

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 18 April 2014

CASE NO.: 2013-AIR-00014

In the Matter of:

CRAIG LAMBERT,
Complainant,

v.

FALCON AIR EXPRESS,
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT

This claim arises under the Wendall H. Ford Aviation Investment and Reform Act for the 21st Century (“AIR21” or “the Act”), 49 U.S.C. § 42121, and the implementing regulations found at 29 C.F.R. Part 1979. Complainant made a whistleblower complaint to OSHA on or about July 20, 2012, which OSHA denied on or about March 4, 2013. Complainant requested a timely hearing before this office in April 2013. While the matter was pending hearing at this Office, the parties notified me that the matter had resolved, and on April 14, 2014, submitted a Settlement Agreement for approval pursuant to 29 C.F.R. § 1979.111(d)(2).

Motion to File Redacted Agreement

The Settlement Agreement included a Motion to Accept a Redacted Settlement Agreement and to Approve Settlement (“Motion”). In summary, the parties argued that the financial terms of the settlement are confidential and should be exempt from disclosure under the Freedom of Information Act (“FOIA”) because they are “confidential commercial or financial information” about the company that would not be disclosed to the general public. 5 U.S.C. § 552(b)(4) (FOIA exemption for “trade secrets and commercial or financial information obtained from a person and privileged or confidential”). The confidentiality provision is found at paragraph 10, page 6, and the portions to be redacted are found at paragraphs 1(a) to (d), at pages 1 to 3, of the Settlement Agreement. The Motion included the signed Settlement Agreement (Exhibit A), as well as a redacted copy with the portions of the agreement deleted that they seek to protect as confidential (Exhibit B).

The request to file a redacted version in lieu of the actual agreement is denied. Settlement agreements are required to be submitted for approval pursuant to the AIR21 regulations, become part of the record of the case, and must be disclosed under FOIA unless an exemption applies. 29 C.F.R. § 1979.111(d)(2); *Swint v. Net Jets Aviation, Inc.*, ARB No. 03-

124, slip op. at 2 (ARB Nov. 25, 2003). The Department of Labor has regulations that govern the FOIA process, and exemptions are determined at the time of the request, not at the time of the filing of the agreement; under FOIA, if no exemption applies, the document would have to be disclosed. *See* 29 C.F.R. Part 70; *Swint, supra*, ARB No. 03-124, slip op. at 2; *Webb v. Numanco, LLC*, ARB No. 98-ERA-27, slip op. at 3 (ARB January 29, 1999). “Since no FOIA request has been made, it would be premature to determine whether any of the exemptions in the FOIA would be applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information. It also would be inappropriate to decide such questions in this proceeding.” *Id.*

Even though I am denying the request to file a redacted copy of the agreement, I have labeled the redacted version as such and will include it in the file (Exhibit B). If a FOIA request is made, the parties intend to claim an exemption under 5 U.S.C. § 552(b)(4), and the reviewing officials will have the benefit of the suggested redactions when determining whether an exemption applies.

Approval of Agreement

Here, I have reviewed the settlement agreement. I note that the agreement includes a release of other potential claims that are not covered by AIR21. *Settlement Agreement* ¶¶ 2, 5. My approval is limited to this case, and only to those matters within my jurisdiction. *Swint, supra*, ARB No. 03-124, slip op. at 2.

Having reviewed the Settlement Agreement, I find the terms and conditions to be a fair, reasonable and adequate resolution of the claims filed under AIR21. The terms and conditions of the settlement agreement are adopted and incorporated by reference into this Decision and Order, and the Settlement Agreement is hereby approved. The matter is dismissed.

RICHARD M. CLARK
Administrative Law Judge