



Issue Date: 06 June 2013

CASE NO: 2013-AIR-00008

In the Matter of:

ARNOLD A. MCALLISTER,
Complainant,

v.

LEE COUNTY BOARD OF COUNTY COMMISSIONERS,
Respondent.

ORDER DISMISSING COMPLAINT

This matter arises under the employee protection provisions of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (“AIR21” or “the Act”), 49 U.S.C. § 42121 et seq. and its implementing regulations found at 29 C.F.R. § 1979.

On April 23, 2013, I issued an Order to Show Cause, requiring the parties to demonstrate why this matter should or should not be dismissed. The parties were asked to address: (1) the timeliness of the complaint; (2) whether Complainant failed to allege that he engaged in protected activity; and (3) whether Respondent is an “air carrier” under the meaning of the Act, and specifically whether Respondent is a “citizen of the United States” for purpose of the definition of “air carrier.”

Respondent submitted a timely response to the Order to Show Cause,¹ but Complainant has not submitted a response as of the date of this Order.

For the reasons set forth below, I find that Respondent is not an “air carrier” under AIR21 because, as a political subdivision of the State of Florida, it is not a “citizen of the United States” for purposes of the statute. Because that finding requires dismissal of the complaint, I will not reach the issues of timeliness or whether Complainant successfully alleged that he engaged in a protected activity.

The Act prohibits an “air carrier” from discharging or otherwise discriminating against an employee with respect to compensation, terms, conditions, or privileges of employment because

¹ Respondent’s submission contained arguments based on facts that are not in evidence, and those arguments will be disregarded. Respondent did, however, briefly address the issue whether it is an “air carrier.” In doing so, it suggested that it is not an air carrier because it is not engaged in air transportation. The Order to Show Cause specifically stated that no argument on that issue was necessary, and it has played no role in my decision. I have, on the other hand, considered Respondent’s argument as to whether it is a “citizen of the United States.”

the employee (or any person acting pursuant to a request of the employee) engaged in protected activities. 49 U.S.C. § 42121(a). An “air carrier” is defined as “a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.” 49 U.S.C. § 40102(a)(2); 29 C.F.R. § 1979.101. A “citizen of the United States,” in turn, is defined as:

- (A) An individual who is a citizen of the United States;
- (B) A partnership each of whose partners is an individual who is a citizen of the United States; or
- (C) A corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

49 U.S.C. § 40102(a)(15). The issue, therefore, is whether the Lee County Board of County Commissioners meets the definition of “citizen of the United States.”

Florida counties are political subdivisions of the state. Art. VIII, § 1(a), Fla. Const. Lee County’s boundaries were established in § 7.36, Fla. Stat. (2012). The powers and duties of the Lee County Board of County Commissioners, Respondent in this matter, are established under state law at § 125.01, Fla. Stat. (2012). As the governing body of Lee County, the board of county commissioners clearly is not an individual who is a citizen of the United States; nor is it a partnership with partners who are citizens of the United States. Further, although Respondent was established under the laws of the state of Florida, it is not a corporation or association organized under state law: laws related to organization of corporations and associations are set forth in Title XXXVI, Fla. Stat. rather than Title XI (concerning county formation and powers). Title XI has nothing to do with county organization.

I conclude that as a matter of law, Respondent is not a “citizen of the United States” under 49 U.S.C. § 40102(a)(15), and is therefore not an “air carrier” within the meaning of AIR21. Accordingly, Respondent cannot be found liable for any violation of the employee-protection provisions of the Act, even assuming that Complainant was subjected to adverse employment action because he engaged in protected activities. The complaint must therefore be dismissed.

ORDER

For the reasons set forth above, the complaint of Arnold McAllister under the Act is DISMISSED.

SO ORDERED.

PAUL C. JOHNSON, JR.
Associate Chief Administrative Law Judge

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).