

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 29 September 2017

CASE NO.: 2014-AIR-00012

In the Matter of:

GLENN GOSSELIN,
Complainant,

v.

GAMA CHARTERS, INC.,
Respondent.

Before: Timothy J. McGrath, Administrative Law Judge

APPEARANCES:

Robert B. Mitchell, Esq., Gary Phelan, Esq. and Reese Mitchell, Esq., Mitchell & Sheahan, PC, Stratford, Connecticut, for the Complainant

Pedro P. Forment, Esq. and Mendy Halberstam, Esq., Jackson Lewis, LLP, Miami, Florida, for the Respondent

DECISION AND ORDER DISMISSING COMPLAINT

I. STATEMENT OF THE CASE

This case arises from a claim for whistleblower protection filed by Glenn Gosselin (“Complainant” or “Gosselin”) against his employer, Gama Charters, Inc. (“Respondent” or “Gama”), under the employee protection provisions of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“AIR21” or the “Act”), 49 U.S.C. § 42121 (2013), as implemented by the regulations at 29 C.F.R. Part 1979 (2013). On February 21, 2014, the Secretary of Labor acting through his agent, the Regional Administrator for Occupational Safety and Health Administration (“OSHA”), dismissed the complaint. On March 20, 2014, Complainant filed an objection to OSHA’s findings and requested a formal hearing before the Office of Administrative Law Judges pursuant to 29 C.F.R. § 1979.106 (2015).

A hearing was held before the undersigned Administrative Law Judge in New London, Connecticut on March 21-23, 2016. The parties were represented by counsel and afforded the opportunity to present evidence and oral arguments. The Hearing Transcript is referred to herein as “TR.” At hearing, the parties offered documentary evidence which was admitted as Complainant’s Exhibits (“CX”) 1, 3-11, 13 & 14, Respondent’s Exhibits (“RX”) 1-69 and Joint Exhibits (“JX”) 1-26. Trial Exhibits 1-4 (“TX”) and Administrative Law Judge Exhibits 1-59 (“ALJX”), including the parties’ Joint Stipulation, marked as ALJX 58, were also admitted into evidence.

Testimony was heard from Complainant; Thomas L. Connelly, CEO and President of Gama Aviation, LLC¹ (“Gama Aviation”); Thomas Miller, former Director of Operations at Gama Charters, Inc. (“Gama Charters”) and current Director of Operations and Senior Vice President of Regulatory Affairs at Gama Aviation; John Walter, former Executive Vice President of Flight Operations at Gama Charters and Gama Aviation; Scott E. Ashton, former Chief Commercial Officer at Gama; Fareed Ramjohn, former Client Services Manager and Coordinator at Gama Aviation; and Laura Gawricki, Assistant to Thomas Miller and current Technical Publications manager at Gama Aviation. The record is now closed, and the parties submitted post-hearing briefs (“Compl. Br.” and “Resp. Br.,” respectively).

II. ISSUES PRESENTED

The issues before me are: (1) Whether Respondent’s client, DAC Aviation, LLC (“DAC Aviation”), and Gama Charters, Inc. were joint employers for AIR21 purposes; (2) Whether the Complainant engaged in protected activity on April 3, 2012, April 24, 2012 and May 11, 2012;

¹ Gama Charters and Gama Aviation were formerly known as one entity—Flight Services Group. Resp. Br. at 8; TR 44, 332. In 2000, Flight Services Group split into two separate companies, Gama Charters, Inc. and Gama Aviation, LLC. See Resp. Br. at 7-8; TR 332-33, 527. At that time, Gama Aviation, LLC and Gama Charters, Inc. were owned by the U.S. company, Gama Group, Inc., which is owned by the Gama Group UK. Resp. Br. at 8; TR 333-36. Thomas Connelly, Thomas Miller, and the company, Merritt Properties, had a 51% ownership interest in Gama Charters while Gama Aviation owned 49% of Gama Charters. Resp. Br. at 8; TR 336.

Prior to the merger of Gama Charters and Gama Aviation in 2014, Gama Charters held the air carrier certificate and Gama Aviation was the maintenance company. TR 330, 334, 495, 505. Gama Charters, Inc. is now Gama Aviation, LLC, but the ownership is essentially the same. Resp. Br. at 7; TR 47, 330-31, 334, 527, 528. The company now known as Gama Aviation has been operating under the same air carrier certificate for at least 25 years despite the company’s name changes, division and merger. Resp. Br. at 8; TR 47, 334, 527-28.

(3) Whether these alleged protected activities were contributing factors in Respondent’s adverse action against Complainant; and, (4) Whether Respondent demonstrated that it would have terminated Complainant for cause notwithstanding the existence of Complainant’s purported protected activities.²

Based on the record as a whole, I find that Complainant has failed to show by a preponderance of the evidence that he engaged in protected activity under AIR 21.³

III. FINDINGS OF FACT

A. Background—Gama Charters, Inc.

Respondent provides commercial and private aircraft management services to clients. Resp. Br. at 7-8; RX 1 at 6; TR 484. In 2012, there was a services agreement between the companies, Gama Charters and Gama Aviation. TR 484. Under this agreement, Gama Charters “provide[d] aviation-related consulting services[,] . . . pilot services[,] . . . maintenance control[,] and oversight services,” while Gama Aviation was responsible for sales, customer support and accounting. TR 484.

In 2012, Respondent employed sixty pilots and operated about thirty aircraft. TR 48. Pilots were usually assigned to specific client accounts retained by Respondent. TR 48. Gama deals with “very high-end clientele” and “high-net-worth individuals,” such as “kings, princes, princesses, sports personalities, presidents, former presidents, government officials,” who have “high expectations about . . . the level of service they want to have for their transportation needs.” TR 110-11. Gama provides a service similar to a “high-end limo service,” by delivering an aircraft and a crew for a client’s personal travel. TR 110.

B. Applicable Regulations

Respondent has authority to fly under the Federal Aviation Regulations (“FAR”) 14 C.F.R. § 135 (“Part 135”) and 14 C.F.R. § 91 (“Part 91”). ALJX 58 at 8; JX 22; JX 23; TR 337.

² Because I find Complainant failed to establish by a preponderance of the evidence that he engaged in protected activity, I do not need to determine whether DAC Aviation is a joint employer for AIR21 purposes in this decision.

³ Pursuant to Rule 42(b) of the Federal Rules of Civil Procedure, I previously granted the Respondent’s motion to bifurcate the issue of liability and damages. However, because I do not find Respondent liable for violating AIR21, there will be no hearing to allow Complainant to present claimed damages.

Part 135 applies to “commercial aviation ventures that include air taxi operations, [and] air charter.” TR 68-69; *see also* TR 337. The client/aircraft owner has an option to lease the aircraft to Respondent for revenue generating passengers. ALJX 58 at 8. When the owner leases the aircraft to Respondent, it is flown under Part 135 by Respondent as a “charter” flight made available to paying passengers. *Id.*; *see also* TR 337.

Under Part 135, a “duty” period spans from the time when a crewmember is “assigned by the air carrier for reporting for duty and when that person is released from duty” and “[t]here are different types of duty periods that could be assigned.”⁴ TR 71, 73, 76. If a flight is imminent, pilots will be assigned for duty and are given a “prescribed period . . . [when] their duty period would begin before and [would end] after the flight.” TR 71. Under § 135.267, a pilot is restricted to a 14-hour duty day in a 24-hour period, and within the 14-hour duty period, a pilot is limited to ten hours of flying. *See* RX 2; TR 69-70, 434-35. “Standby” time is also considered as “duty,” which is a period assigned to crewmembers by the air carrier for a *possible* imminent flight. TR 71-72, 80.

Part 135 also delineates specific rest requirements for pilots. ALJX 58 at 8; RX 2; TR 69-70. Specifically, pursuant to 14 C.F.R. §§ 135.263 and 135.267, a pilot must have “at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the assignment.” RX 2 at 2; *see also* TR 552. Section 135.267 also mandates that the air carrier “provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours each in each calendar quarter.” RX 2 at 2; *see also* TR 552.

There are two types of charter flights under Part 135. *See* TR 84-86. A pop up charter is an unscheduled, emergency flight requested by an outside customer to Respondent on short notice. *See* TR 84, 85, 561. In the event of a pop up charter, a pilot is only given about three to ten hours’ notice prior to the scheduled flight departure. *See* TR 86. Therefore, before assigning a pilot, Respondent must determine whether the pilot was rested and able to take the flight. TR 85. Conversely, a regular charter is a scheduled flight in advance where a pilot is given at least ten hours’ notice of the flight departure time. TR 85, 561.

Part 91 applies to general, noncommercial, owner flying. ALJX 58 at 8; TR 67; *see also* JX 23; TR 337. When an aircraft is flown under Part 91, an owner does not need an air

⁴ There is no regulation at Part 135 which defines “duty” time in relation to pilots. *See* TR 72, 74. The regulation at 14 C.F.R. § 135.273 defines duty periods and rest time limitations solely for flight attendants.

certificate and there are no specific rest or duty requirements for a pilot. ALJX 58 at 8; TR 67, 68. However, under Part 91, “[p]ilots have the responsibility to be rested and safe to be able to take a flight.” TR 68. For this type of flight, Respondent assigns a crew and determines whether the crew is qualified to take the flight. TR 68; *see also* JX 23. More specifically, Gama uses a “pre-flight risk analysis form” prior to each flight to check all pertinent flight factors, such as the pilot’s duty time and the weather. TR 434-35.

Although there are no specific rest requirements, there is a fitness requirement: “That you [as the pilot] are mentally, physically [able] and -- rested to accept the flight, not to obstruct [section] 91.13,⁵ which is reckless operation.”⁶ TR 552-53. The 14-hour duty day applies only under Part 135, but it is used as a “common sense check for long Part 91 duty days.” TR 435. Therefore, Thomas Miller, Gama’s Director of Flight Operations, has to approve any assignment in excess of the 14-hour duty day under Part 91. TR 435.

⁵ That regulatory section provides:

(a) Aircraft operations for the purpose of air navigation. No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

(b) Aircraft operations other than for the purpose of air navigation. No person may operate an aircraft, other than for the purpose of air navigation, on any part of the surface of an airport used by aircraft for air commerce (including areas used by those aircraft for receiving or discharging persons or cargo), in a careless or reckless manner so as to endanger the life or property of another.

14 C.F.R. § 91.13.

⁶ Part 91 defines a rest period for all crewmembers as follows:

Rest period means a period of time required pursuant to this subpart that is free of all responsibility for work or duty prior to the commencement of, or following completion of, a duty period, and during which the flight crewmember or flight attendant cannot be required to receive contact from the program manager. A rest period does not include any time during which the program manager imposes on a flight crewmember or flight attendant any duty or restraint, including any actual work or present responsibility for work should the occasion arise.

14 C.F.R. § 91.1057(a). Part 91 also defines “reserve status” for crewmembers as a

status in which a flight crewmember, by arrangement with the program manager: Holds himself or herself fit to fly to the extent that this is within the control of the flight crewmember; remains within a reasonable response time of the aircraft as agreed between the flight crewmember and the program manager; and maintains a ready means whereby the flight crewmember may be contacted by the program manager. Reserve status is not part of any duty period or rest period.

Id.; *see also* Compl. Br. at 15. “Standby” under Part 91 “[m]eans that portion of a duty period during which a flight crewmember is subject to the control of the program manager and holds himself or herself in a condition of readiness to undertake a flight. Standby is not part of any rest period.” *Id.*

C. Respondent's Management Agreement with DAC Aviation (Part 91 Flights)

In 2009, Gama retained the DAC Aviation account, a company owned by Mr. Chinh Chu.⁷ TR 306-07. At that time, Gama Aviation executed a management agreement with DAC Aviation allowing Gama Aviation to “furnish aircraft management services” to DAC/Chu for Part 91 flights.⁸ JX 23 at 1, 6; TR 68, 374, 375, 378, 388, 487-88. Under the agreement, Gama Aviation was an independent contractor of DAC Aviation/Chu. JX 23 at 1; TR 378. The purpose of the management agreement is to “assist the client in the operation . . . of the aircraft under Part 91.”⁹ JX 23 at 4; TR 381. More specifically, the agreement is a “vehicle by which the owner of the aircraft delegates authority for Gama to operate for him under Part 91, because he’s not a pilot, and he doesn’t understand the regulatory environment.”¹⁰ TR 341. DAC Aviation/Chu contracted with Respondent to assist with the operations of the aircraft, “[b]ecause he has no personal or institutional knowledge on how to operate aircraft,” but the client maintained operational control¹¹ under Part 91.¹² JX 23; TR 341-43, 382-83, 394, 477.

⁷ Chu owns a Gulfstream 450 aircraft. Compl. Br. at 9; JX 22; JX 23; TR 53, 305.

⁸ The management agreement was between DAC Aviation and Gama Aviation, LLC, the maintenance/management company. See *supra* Parts I, n.1 & III.A.

⁹ The client also delegates authority to Respondent to handle state and federal taxes, social security, unemployment, disability, payroll, workers’ compensation, and liability insurance. TR 380-81. All pilots provided by Respondent must also meet insurance company requirements. TR 388.

¹⁰ Letters of authorization (“LOAs”) are required to “operate in certain air spaces or to . . . use certain [FAA] functions” TR 421, 469. LOAs, for example, are issued for specific air space or “to use a master and minimum equipment list that lets equipment be inoperative while . . . flying.” TR 472. “If Mr. Chu wanted to go out and fly the airplane with his own pilot that he hired from someone else, they would have to apply for their own letters of authorization which would give him [Chu] authority to fly.” TR 421. Connelly clarified that in “certain air space,” a client needs a LOA to fly his or her own airplane. See TR 469-70. Without a LOA under Part 91, “[t]here are geographic areas of air space that you have to stay out of. There are altitudes that you have to stay out of.” TR 470. Gama has LOAs or operations specifications under its Part 135 operating certificate, which gives it “rights and privileges . . . [and] let[s] us fly under Part 91 with those same rights and privileges.” TR 421. Under the management agreement, Chu flew under Gama’s Part 135 operations specifications. JX 23; TR 421-22.

¹¹ An aircraft owner’s operational control is defined as follows:

(a) Each owner in operational control of a program flight is ultimately responsible for safe operations and for complying with all applicable requirements of this chapter, including those related to airworthiness and operations in connection with the flight. Each owner may delegate some or all of the performance of the tasks associated with carrying out this responsibility to the program manager, and may rely on the program manager for aviation expertise and program management services. When the owner delegates performance of tasks to the program manager or relies on the program manager’s expertise, the owner and the program manager are jointly and individually responsible for compliance.

(b) The management specifications, authorizations, and approvals required by this subpart are issued to, and in the sole name of, the program manager on behalf of the

Although DAC Aviation/Chu maintained operational control under the agreement, Respondent monitored and scheduled the maintenance of the owner's aircraft and ensured the "aircraft [was] returned to airworthy condition." JX 23 at 6; TR 383-84. DAC Aviation was required to pay for plane maintenance, while Respondent retained the authorization to fly in different air spaces under Part 91. JX 23 at 4; TR 343, 381.

Under the agreement, "[a] crew is made available by Gama [Aviation]" to the client.¹³ JX 23 at 6; TR 68, 374, 375, 378, 388, 487-88. Respondent is responsible for implementing crew training and flight checks to ensure the flight crew meets or exceeds Federal Aviation Administration ("FAA") standards. TR 388. All crewmembers furnished by Respondent for performance and services are considered employees or agents of Gama Charters. JX 23 at 1; TR 378.

Pursuant to the agreement, "[e]ach member of the crew shall be acceptable to the client." JX 23 at 6. Thomas Connelly, the CEO and President of Respondent, explained this provision assures the client that the crewmember provided will not have any "adverse personality issues."

fractional owners collectively. The management specifications, authorizations, and approvals will not be affected by any change in ownership of a program aircraft, as long as the aircraft remains a program aircraft in the identified program.

14 C.F.R. § 91.1011.

¹² Connelly explained why the client maintains operational control under Part 91:

The language [in the management agreement] was brought out after a few accidents that happened on charters where it was unsure where the client in the back had hired an airplane from a . . . broker, you know, who they thought to be the operator, and then a charter broker or second broker, and then a third.

So by the time the owner got in the airplane, they really had no idea who had operational control of the airplane, and there was some accidents, and when it got into the courts, they decided that, you know, they couldn't find the liability very easily. So they decided to come up with this operational control language to make it very apparent that when you charter an airplane, you know, that the person who has operational control is, you know, spelled out very clearly on the charter contract and when it's flown under Part 91, that the operator has that operational control.

TR 394.

¹³ Under Schedule A of the management agreement, Gama must provide the pilots and crewmembers to fly the client. JX 23 at 6. Connelly explained:

Gama Aviation puts a budget forth for the year, which has a lot of line items: Management fees, the crew costs, and the fuel, things like that. And the client agrees to a budget, and Gama goes and has the risk of securing those pilots at cost -- they either -- they make a margin on it or lose margin on it.

TR 346.

TR 387-88. If a crew member is terminated through no fault of Respondent's, meaning that the individual quits or the client asks for the removal of the crewmember, the client is responsible for the costs of hiring and training a new employee to service the aircraft. JX 23 at 6; TR 390.

D. Respondent's Lease Agreement with DAC Aviation (Part 135 Flights)

Under the lease agreement between DAC Aviation, the lessor, and Gama Charters, the lessee, Gama has control over the crew selection and supervision during all periods of the lease.¹⁴ JX 22; TR 375. Respondent has "complete and uninterrupted operational control of the aircraft during each lease period." JX 22 at 4; TR 402. Accordingly, Respondent is responsible for scheduling and "flight following"¹⁵ of the aircraft during the lease term. JX 22 at 1; TR 397. The lease term includes all periods of time when the owner's aircraft is "not in use or scheduled to be in use by the . . . [owner] in its business." JX 22 at 1. Respondent has the exclusive right to initiate, conduct, and terminate flights and has priority over the plane if a scheduling conflict arises between the client and Gama Charters.¹⁶ JX 22 at 1; TR 398.

Gama Charters must also perform administrative tasks, such as aircraft certification and crew qualification under Part 135 pursuant to the agreement. JX 22 at 2; TR 400. Although DAC Aviation is required to pay for Part 135 compliance expenses, Respondent controls all tasks necessary to obtain aircraft certification and crew qualification. JX 22 at 2; TR 400. Respondent is ultimately required to keep the aircraft "completely airworthy" and in "fully operative condition" by arranging or performing any repair or maintenance work. JX 22 at 2; TR 400-01. Connelly explained that under the lease agreement, "[t]he client agrees to give us an airplane that is compliant. We do a conformity inspection to make sure it's compliant, and if it's not, we tell them what's not compliant, and they pay to have it upgraded to be compliant." TR

¹⁴ There are periods when a flight is neither assigned under Part 91 nor Part 135. TR 376. Thus, a crew is not assigned during this period. TR 376. However, Respondent maintains the aircraft under the management agreement during this time. JX 23; TR 376. In this intermediate period, pursuant to the management agreement, if DAC Aviation hired one of Respondent's pilots, the client would pay a penalty or 25% of that pilot's salary to Gama Aviation. JX 23 at 6; TR 366. In other words, DAC Aviation does not have the power to use or hire Respondent's pilots without prior permission during the term of the management agreement. JX 23 at 6; TR 377, 390.

¹⁵ Respondent tracks the aircraft from the "time it takes off until the time it lands . . . by virtue of some computer programs that show[s] . . . the exact location [of the plane]. . . ." TR 397.

¹⁶ During the lease, Respondent has control over marketing and sales of charter flights under Part 135. JX 22 at 1; TR 398.

400. Capital improvements to the aircraft are also DAC Aviation's responsibility. TR 385-86, 400.

E. Gama's Safety Standards, Programs and Procedures

Gama's policies were designed in conjunction with FAA regulations and the company's operation manuals and programs are approved by the FAA. TR 231, 234. Gama has used the "combined" safety program, Safety Management System ("SMS"), since it was first created by the FAA, which consists of about seven or eight safety programs.¹⁷ TR 423, 424. When SMS was designed in the early 2000s, Gama was one of the few Part 135 operators to join and test the FAA's pilot program.¹⁸ TR 424, 427-28. SMS includes a family assistance program designed to notify families in the event of an incident or accident, an emergency response program, and an analysis and surveillance program for maintenance. TR 424. As part of SMS, Gama also uses an "individual internal evaluation program that . . . looks at [the company's] processes and procedures" TR 424.

Gama's culture centers on safety and professionalism. *See* TR 425-26, 430. In conjunction with SMS, Gama's pilots use event logs to report and describe any safety concerns or incidents, including aircraft damage or unsafe conditions.¹⁹ TR 185-86, 423; *see generally* RX 7; RX 49—RX 54. Gama encourages pilots to report any serious or minor issue in an event log.²⁰ RX 7 at 1; TR 430-31. Once an event log is filled out by a pilot, it is reviewed by the Director of Safety at Gama. RX 7 at 1; TR 185-86.

The event log form is also used as part of the Aviation Safety Action Program ("ASAP"), which is a "conjoined program with FAA where we [Gama] have an oversight committee that

¹⁷ SMS is a voluntary program created by the FAA in an attempt to get air carriers to utilize various safety programs in a cohesive manner. TR 423, 427.

¹⁸ There are about 2,000 Part 135 operators in the United States today. TR 427.

¹⁹ About 80 to 100 event logs are submitted to Gama per month. TR 431.

²⁰ When asked whether Gama would have issue with a pilot reporting a problem directly to the FAA, Connelly replied:

We [Gama] would prefer that they come to us and let us deal with it, and . . . we don't hide anything from the FAA anyway because we're going to put it into either our voluntary disclosure program or our ASAP program, and the FAA is part of those teams with us. So . . . if they wanted to go to the FAA before, it's a shame that they don't have the trust with their supervisor, but it's okay.

TR 431.

reviews the ASAP reports as they are submitted anonymously to the company, and we determine courses of action to take, along with the FAA.” RX 7 at 2; TR 185-86, 423. ASAP allows pilots to report safety incidents with “a little bit of immunity to persecution or prosecution in terms of fines or penalties.” TR 423. ASAP is designed to help Gama “highlight issues with safety . . . and come up with . . . a continuous improvement process for us.” TR 423. A pilot can choose to submit an event log through ASAP by checking a box on the log form. RX 7 at 2; TR 425, 433. If the pilot submits the log through ASAP, the FAA is notified of the stated issue. TR 425, 433. ASAP also helps identify the action necessary to remedy the safety issue or incident. TR 425.

Approximately each week, Gama has a team of FAA inspectors audit the company by analyzing Gama’s manuals, interviewing employees and making sure Gama follows proper processes and procedures. TR 426. Industry groups also execute similar audits to ensure Gama meets commercial charter standards. TR 426. Gama must retain its registration with these groups, because “charter customers . . . or corporate aviation departments won’t use us [Gama]. So we have to maintain those standards”²¹ TR 427. Connelly explained, “[T]here’s no way there could be a systemic safety . . . or cultural issue [at the company] without it being brought out in one of these audits, because we [Gama] are . . . audited by independent agencies all day long, and our culture is to find that stuff and deal with it in a positive way.” TR 427. He further testified that Gama is “[i]ncredibly audited and proud of the fact that we pass them with flying colors. And when they find problems . . . we address them and correct them.”²² TR 429.

Although not required by the FAA, Gama uses a voyage report form to collect information so that the company adheres to regulations, policies and procedures. TR 101. A voyage report is filled out by the pilot in command during each flight and submitted to Gama. RX 7 at 1-2; TR 101, 106, 107, 416. The report is generally due from the pilot within two hours following the flight or by the end of the next day. TR 102-03, 107. The report is entered into Gama’s Flight Operation System (“FOS”), a system that collects data including records of flight times, aircraft maintenance, duty times, training periods and vacation periods for pilots. Resp. Br. at 11; TR 88, 103, 106.

²¹ In 2013, Gama joined a program called Wheels up, which requires the company undergo additional audits. TR 428-29.

²² Respondent submitted Gama’s multiple safety certifications into evidence at trial. RX 40—RX 48.

F. Gosselin's Employment with Respondent

Gosselin began flying when he was fifteen years old and acquired a commercial certificate to fly when he was eighteen. ALJX 58 at 8; TR 548. He has been a licensed pilot for over thirty years. ALJX 58 at 8. Throughout his career, he has held many positions in the aviation field, including aircraft owner, business owner, and fixed base operator manager. TR 549. Gosselin has also worked as a pilot for various companies, such as Key Air, where he first began his corporate career in 1989. TR 550. As of trial, Gosselin was employed by United Airlines as a co-pilot on a Boeing 777. TR 551.

Complainant was first employed by Gama as a pilot in 2005. TR 49. Gama was then known as Flight Services Group. *See* TR 550. During this term of employment with the company, Complainant was assigned to fly on the Starwood Hotels client account. TR 550. His pilot position dissolved at Flight Services Group when the Starwood Hotels account left the company. *See* TR 49, 550.

In December 2009, Gosselin was rehired by Respondent when a new pilot position opened up at Gama Charters to fly on the new DAC Aviation/Chu account. TR 49-50, 53, 306-08. Gosselin learned of the job opportunity through Thomas Miller in late 2009, and provided Miller with his resume. TR 554-57. Resumes for potential pilots for the DAC Aviation/Chu account were compiled and reviewed by Miller, John Walter, then Executive Vice President of Flight Operations, and Scott Ashton, then Chief Commercial Officer. TR 50, 53, 308-09, 530-31. Based on the resumes presented by Gama, Chu selected the applicants he wanted to meet and then advised Gama who he “prefer[ed] fly on his account” following the interviews. *See* TR 531.

1. Gosselin's Initial Interview with Chu

Respondent arranged a meeting with Chu and his executive assistant, Mariella Brizzio to meet the potential candidates. TR 53, 162, 306, 308-09. This was so the client “could have a level of comfort” with the new pilot and so that Gama could “assess the interaction between the client and the crewmember and to make sure it's a good fit.” TR 53, 308-09. Miller invited Gosselin to meet with Chu. TR 557. The interview was held at a cigar bar in Manhattan with three potential applicants, including Gosselin, along with Chu, Brizzio, Walter and Ashton. TR 53-54, 309, 557.

Each applicant interviewed separately with Chu, Brizzio, Walter and Ashton for about fifteen minutes. TR 54, 309, 557. Chu and Brizzio's discussions with each applicant were primarily about airplanes, where the applicants lived, how quickly they could get to the airport, and where the client's aircraft was based. TR 55. Neither Chu nor Gama offered the job to Gosselin during this meeting. TR 56, 309-11.

Gosselin testified that during his interview, he spoke with Chu and Brizzio about his work experience and told them that it takes him roughly two hours to get to the airport from his home. TR 558-59. He testified that he told Chu and Brizzio that he would need a total of four hours' notice to get from his home to the airport for a flight during this meeting.²³ TR 559; *see also* ALJX 58 at 12. Gosselin explained, "I said [to Chu that] I could not accept any pop-up charter flights due to the nature of his availability and my availability to him for his fluid schedule." TR 560. Gosselin said he understood this agreement to mean "[t]hat [Part 135 flights] would be scheduled in advance, and that's as long as he [Chu] approved it and I had my prospective rest scheduled, [and] charter flights would not be an issue." TR 561.

2. Trial Flight with Chu and Job Offer from Gama

After the interview, Chu advised Gama that Gosselin was a satisfactory candidate to fly on his account. TR 531. Gama then hired Complainant on a part-time basis in order to evaluate his skills and assess his competency in the cockpit. TR 56, 327-28, 406-08, 562, 564. Gosselin was then assigned with Walter to fly a trial flight, on the Chu account, from the Teterboro Airport in New Jersey to Houston, Texas and back on December 14 and 15 of 2009. TR 58, 240-42. When Gama hires a pilot on a part-time basis, the client also has the opportunity to see how the pilots interact with each other. TR 406, 407; *see also* TR 328. Ashton explained Gama has a test flight for potential candidates so that Chu, as well as other clients, can "get to know the pilots that . . . [are] being considered" before a commitment is made. TR 328.

On December 16, 2009, Gama offered Gosselin a full-time aircraft captain position on the Chu account; Gosselin officially accepted the job offer that same day. ALJX 58 at 8; CX 9; RX 60; TR 49-50, 56, 409, 567. Gosselin testified that both Miller and Brizzio contacted him separately after the test flight to offer him the pilot position on the Chu account. TR 565; *see*

²³ Chu's aircraft was stationed at Teterboro Airport in New Jersey and Gosselin lived about two hours away from the airport in Connecticut. *See* TR 55, 559, 582.

also TR 531. Gosselin testified that Miller told him that the Chu account would be demanding and that Gosselin would not be able to consume alcohol while being available to Chu. TR 566-67. Gosselin stated that he was only able to consume alcohol “[w]hen [he] was on vacation or told that [he] was not working for either party [Gama or Chu].” TR 567.

G. Gama’s Client Communication Policy

Gama’s Crew Member Standards Guide Employee Handbook (“Gama Handbook”) is given to its employees to “provide guidance to pilots and other air carrier employees in the performance of their daily duties.” RX 1 at 8; TR 66-67, 419. Gama “[s]triv[es] to exceed customer and passenger expectation, both on the ground and in the air.” RX 1 at 10. Accordingly, the Gama Handbook provides employees specific guidelines about client communications. RX 1 at 57-58. Part 6.1.1.2 of the Gama Handbook indicates, “All crewmembers must be aware of and understand the private and personal nature of Gama Charters Inc. business.” RX 1 at 58. This provision expounds the “special[] type of environment,” including security, privacy, and safety that Gama provides its clients. TR 114, 439-40.

Gama expects its employees to maintain a professional attitude and to address clients appropriately by using, for example, “‘Sir,’ ‘Ma’am,’ ‘Madam Secretary,’ [and] ‘Your Highness.’” TR 111; *see also* RX 1 at 57. Under “Passenger Relations, 6.1.1.1,” the Gama Handbook states, “There should be no extemporaneous conversation unrelated to the flight between the crew and passengers.” RX 1 at 57-58; TR 113. During a flight, communications between crew members and passengers are “very small in nature” and should pertain only to “operational tactical issues,” such as take-off, rerouting the flight, issues with airport landings, flight turbulence or weather. TR 111-12, 313, 437. When a client is exiting the flight, crewmembers should only have limited, but “professional and cordial” conversation. TR 113. For instance, communications such as, “‘Goodbye. Thank you very much for flying with us[,]’ would be probably the extent of the conversation” between clients and crewmembers. TR 113.

The Gama Handbook also identifies four specific prohibitions about contact between customers and crewmembers. RX 1 at 58; TR 114-15, 440. A crewmember must never solicit a customer for their business or discuss commercial decisions, company business or personal business with a customer. RX 1 at 58; TR 114-15, 440. There are also protocols for a crewmember to follow if he or she is approached by a customer with a question. RX 1 at 58; TR

115. Specifically, when a crewmember is asked a question by a customer, the crewmember is required to refer the question to the broker or charter department and notify Gama of the conversation. RX 1 at 58.

Outside the flight, there should be no communication between the client and a pilot. TR 313, 438. Crewmembers are prohibited from contacting clients directly. TR 438. Instead, crewmembers are required to use Gama's schedulers and client relations manager as conduits for any type of communication with the client. TR 438. This way of communication is "customary in the industry," and all client communications should go through the schedulers and client relations manager. TR 314, 438.

When Gosselin was employed by Gama, and a client had concerns about operational issues, the client contacted Ashton, Gama's head of client services. *See* TR 313, 438. Likewise, if a client had a scheduling issue, he or she would contact their assigned scheduler. TR 313-14, 438. In 2012, DAC Aviation/Chu's scheduler and coordinator was Gama's Client Services Manager, Fareed Ramjohn, who acted as the liaison between Chu and Gama.²⁴ TR 307-08, 313-14, 495, 505.

1. Gosselin's Communications with Chu/Brizzio

Gosselin testified that he spoke with Brizzio "many times" throughout the course of his employment with Gama on the DAC Aviation/Chu account. TR 566. At the time he was hired at Gama in 2009, Gosselin said Brizzio instructed him to get a BlackBerry cell phone "[b]ecause they do 90 percent of their communications via texts. And the BlackBerry was a secure type system that they communicated through." TR 566. Complainant said Brizzio provided him with her email address and phone number. TR 575.

Although Gama pilots were not permitted to socialize with clients, Walter remembered one specific trip where Chu invited the crewmembers, including Gosselin and Walter, to have dinner with him at a restaurant. TR 116. At first, Walter declined because Gama "prefer[s] . . . to keep that professional distance, but he [Chu] insisted that we come." TR 116. Walter accepted Chu's invitation and directed Gosselin and the flight attendant to act professionally at the dinner. TR 116.

²⁴ At that time, Ramjohn also managed about twelve other client accounts. TR 499.

Gosselin recalled a trip to Saigon, Vietnam where he flew Chu and his family, and Chu invited the crewmembers to attend an event.²⁵ TR 577-58. Complainant was reluctant to attend, but said that Miller instructed him to accept Chu's invitation. TR 577-58. He also testified to having breakfast one morning with Chu and his family on this same trip to Vietnam. TR 577-58.

2. Gosselin's Vacation Time & Requests

When he wanted to take time off for vacation, Gosselin normally sent his vacation requests to Walter, his direct supervisor. TR 164. Walter would then talk to client services to make sure Chu's schedule was clear and Gama would either approve or deny the request internally. TR 164. At hearing, Walter explained, "We had to look at what the aircraft schedule was. So when an e-mail . . . is sent to a client from internally within the company . . . we would just be confirming that the schedule is clear and we're looking at approving vacation for this pilot" TR 165-66; *see also* TR 417. Gama always notifies the client of the pilot's vacation request because "[t]hey are very picky about who is in the airplane . . . They want to make sure when they get in the airplane that they know who is going to be flying it and who is going to be sitting up front" TR 418; *see also* CX 5. Gosselin, however, said he personally had direct contact with Chu/Brizzio when he requested time-off for vacation.²⁶ TR 570-71. Nevertheless, Gama clients do not have veto authority over a pilot's vacation.²⁷ TR 418.

3. February 2011—Gosselin's Communication with Brizzio

In February of 2011, Brizzio requested that Gosselin be removed from the Chu account. TR 192, 211, 315, 442. This request stemmed from a February 25, 2011 email from Gosselin, copied to Brizzio, about an issue with hotel room charges posted to his credit card account.²⁸ RX 26 at 1-2; TR 193, 315. In response to Gosselin's email to Gama and Brizzio, Miller emailed Gosselin admonishing him for involving Brizzio about the issue with the hotel bill. RX 26 at 1; *see also* TR 443-44. In this February 25, 2011 email to Gosselin, Miller wrote:

²⁵ It is not clear whether the dinner referenced by Walter and the event Gosselin testified to were the same occasion. Walter indicated that he was not aware of any other occasion, besides the dinner, where Gosselin socialized with Chu outside of a flight. TR 116.

²⁶ Gosselin sent an email to Gama, with a copy to Brizzio on at least two occasions, requesting vacation days. CX 1; CX 5; TR 483.

²⁷ To the contrary, Gosselin testified that his vacation requests always went through Chu and he recalled times when Chu denied his request for time off. TR 571, 572, 573.

²⁸ The email was sent from Gosselin's address to a Gama representative. RX 26 at 1.

Why do you continue to include Mariella (our client) in these inter-company communications? This is totally inappropriate. I have repeatedly asked that you not include her as a cc to these correspondences. Our job is to insulate the client from this type of thing. We have an aircraft management group to help you in this type of matter should you require it.

RX 26 at 1. Thereafter, Gama wanted to find a pilot replacement for the Chu account because Gosselin “had involved the client in these communications that were not appropriate, and she [Brizzio] was very upset about being . . . copied on this.” TR 195; *see also* TR 316. Connelly explained that Gosselin should not have contacted the client about this type of issue. TR 443. Instead, Gosselin should have contacted Gama’s expense processing clerk for assistance. TR 443. Gama did not permit Gosselin to contact Chu or Brizzio about any employment-related concern. *See* TR 419. But Gosselin said he was not aware that his communications with Brizzio were contrary to any Gama policy. TR 609.

Brizzio called Ashton and “requested that we [Gama] change out the crew and remove [Complainant] from the account.” TR 316. Around the time Brizzio requested Complainant’s removal from the account, Miller, Ashton and Walter compiled and vetted pilot resumes. RX 27; TR 194-95, 316-17, 444. On March 10, 2011, Ashton emailed Brizzio several resumes to review for Gosselin’s replacement. RX 27; TR 318. However, Gosselin was not removed from the DAC Aviation/Chu account at that time because the replacement “just got overtaken by events in time, and he [Complainant] just remained on the account just through inertia.” TR 318. Connelly believes Miller attempted to rectify the situation with Ashton and Chu/Brizzio and the request to remove Gosselin from the account “just kind of passed without action.” TR 446.

H. Alleged Protected Activities

1. April 3, 2012—Part 135 Charter Flight

On April 3, 2012, Gama scheduled Gosselin to fly a pop up charter from Teterboro Airport to Dallas, Texas. TR 117. According to Gosselin, this was the first time he was asked by Gama to fly a pop up charter flight. TR 583. Gosselin testified he received a voicemail on his phone on April 3 at around 4:20PM from Gama, stating, ““Get in your car and drive to the airport for a pop[.]up charter.”” TR 584. Gosselin said he returned the dispatcher’s call and told him that he could not accept the assignment because he did not meet the prospective rest

requirements as he had been available to fly Chu all day. TR 584-85. The dispatcher then suggested Gosselin speak with Walter about the flight assignment. *See* TR 585.

According to Walter, Gama Flight Operations called him around 8:30AM on April 3 and told him about the assignment issue; Flight Operations then connected the call to Gosselin.²⁹ TR 117. At the time Walter received the call, he was training another pilot. TR 117. At trial, Walter described the conversation he had with Gosselin that morning:

Glenn was very emotional, and, you know, he was saying things like, . . . “What are you doing? You’re trying to make me fly through a tornado.” And I said, “Glenn, wait a second here. No one is trying to make you fly through a tornado. Let me just ask a question, Glenn: Have you looked at the weather today?” And he said, “No.” And I was shocked because, you know, if someone is going to approach me about something I’m trying to make them do, I would think they would have some kind of information to back that up.

[W]hen I asked him if he knew what the weather was and he said, no, he didn’t, and I was so shocked, I said, “Well, obviously” -- you know, I was thinking in my mind, obviously this is not about the tornado in Dallas; this is about something else. And so . . . as Glenn went on and on, I just determined that he was not of the right mind to fly. It wasn’t that long a conversation, but it was an elevated conversation emotionally. The other person could hear him on the other end of the phone from 15, 20 feet away.

And I said, “Glenn, I want you to understand I’m taking you off this trip because you’re not of the right mind to fly. Not to do with anything else. I’m making the judgment that you are not of the right mind to fly. You’re off the trip. We’ll work it out.”

TR 117-19. This conversation lasted about two or three minutes. TR 120. After the phone call, when Walter determined Gosselin was not fit to fly, he left the training and went into a prospective rest period so that he could take over the flight to Dallas for Gosselin that night.³⁰

²⁹ Gosselin’s timeline of events on April 3 significantly differs from Walter’s version. Although the timing of events on April 3 will not affect the outcome of my decision, I note I credit Walter’s testimony over Complainant’s. Walter testified he learned about Gosselin refusing the April 3 assignment “very early in the morning,” because he remembers that he had “requested that a person I was training meet me at the hangar very early in the morning, because I had some other meetings that I had set up for the day” TR 117.

³⁰ The April 3 charter took off from Teterboro Airport at 7:25PM. RX-32; TR 121. Walter and the other pilot on Chu’s account, John Dvorak, flew the April 3 charter. ALJX 58 at 9; RX 32. Dvorak also flew the Part 135 scheduled charter with Gosselin the day prior on April 2. RX 30; RX 31; TR 122.

TR 120, 287. Walter looked at the weather report prior to flying and determined the flight was safe to conduct.³¹ TR 121-22; *see also* RX 32.

Walter removed Gosselin from the April 3 charter flight because he believed Gosselin was not in the right mindset to work. TR 117-19, 287. Complainant conversely testified that Walter took him off the Dallas flight for “cumulative fatigue” because he was tired and needed to catch up on sleep after three hard months of flying. TR 585, 586. Gosselin did not file an event log about the April 3 charter assignment. TR 186.

Walter testified that he did not recall Gosselin mentioning that he did not meet his prospective rest requirement to take the Dallas flight assignment; he only remembers their conversation being about a tornado. TR 119, 283-84. However, Gosselin testified he told Walter that he had not met his prospective rest requirements because he had been on duty and available to Chu. TR 585. He testified, “I should have been relieved of this duty [for Chu] the previous evening to meet the prospective rest requirements of this trip.” TR 585. However, Complainant acknowledged he also discussed tornadoes with Walter during the call. TR 637.

At trial, Gosselin explained that while he was employed with Gama assigned to the Chu account, he was “always” available to Chu, unless Gama told him otherwise. TR 580, 581. While he was available to Chu, he said he had to keep his BlackBerry phone with him at all times, he had to be within four hours from the airport and he could not consume alcohol. TR 582. Because of these limitations, Gosselin considered the time he had to be on call or available to Chu as official standby/duty time. *See* TR 580, 581, 582, 583-84, 585.

2. April 24, 2012—Gosselin’s March 2012 Flight and Duty Log

Gama requires its pilots to submit monthly flight and duty logs by the fifth of each month detailing assigned work periods for the previous month. TR 104-05, 517. A flight and duty log “describes the periods that are assigned by the air carrier for duty periods, flight periods[,] . . . standby periods, [and] training periods.” TR 103-04. The logs capture Zulu time because, “in aviation, almost all the communications and things that we [Gama] receive are recorded in Zulu time, because you travel through many different time zones and so the information is usually recorded in Zulu time.” TR 262-63. The air carrier provides the log, which is set up as an Excel

³¹ There were 13 passengers on the April 3 charter flight, including New York newscasters. RX-32; TR 122.

spreadsheet, to the pilots to fill out themselves. TR 104, 255, 524. Pilots are responsible for submitting their completed logs to the air carrier. TR 104.

In 2012, flight logs were sent by crewmembers to Laura Gawricki, Miller's assistant, who reviewed the logs for any red flags. TR 104-05, 516-17. If she identified any issues with a pilot's log, Gawricki notified Miller or Walter. TR 104-05. On April 17, 2012, Gawricki notified Gosselin that his flight and duty log for the previous month was overdue. ALJX 58 at 10; RX 37 at 1; TR 134. On April 18, 2012, Gosselin forwarded his March flight log to Gawricki via email. ALJX 58 at 10; RX 37 at 3-5; TR 518. Gawricki reviewed Gosselin's flight log, but "it didn't make sense to [her] when it was submitted." TR 518, 522. That same day, she sent Gosselin the following email: "I don't believe it's [the flight log] correct. You have reported 33 duty days and there are only 31 days in March." ALJX 58 at 10; RX 37 at 3; TR 518, 522, 586. Gawricki asked Gosselin to correct his log. ALJX 58 at 10; RX 37 at 3.

At trial, Gawricki explained, "[Complainant] reported 33 days for the month of March. The month of March only has 31 days. He had actually submitted an additional sheet with an additional five days, which I hadn't even noticed at the time."³² TR 518; *see also* TR 137-38. Gosselin's March flight log actually reflected 38 duty days, which Gawricki did not notice until later on.³³ RX 37 at 5-6; TR 137-38, 522.

³² Gawricki noticed an issue with Gosselin's flight log because it listed more duty days than there were days in the month of March. TR 524-25. She explained that usually when there is a deficiency with a flight log, the Excel spreadsheet flags it in red or highlights it. TR 522. However, the Excel spreadsheet did not flag anything wrong with Gosselin's March flight log. TR 524-25.

³³ On the same day Gosselin sent Gawricki his March 2012 flight and duty log, he also sent Liz Pagliaro, Gama's Human Resources Administrator, an email asking for Gama's old and current overtime policy for pilots. RX 39; TR 126, 177. Later that day, Pagliaro responded that Walter was not aware of any Gama overtime policy. RX 39; TR 126. At trial, Walter was asked about his impression of Gosselin's request for Gama's overtime rules:

Q. What did you think of Mr. Gosselin's request for information on overtime pay for pilots?

A. Well, you know, it was all part of this web that Mr. Gosselin seemed like he was trying to weave to get more money. We don't pay pilots overtime. They're salaried employees and . . . we had a policy in effect that would pay them a bonus if they worked over a certain number of days. He's correct in that the policy was changed over a period of time, but . . . it didn't have to do with overtime. It was bonus pay.

Q. And was there ever overtime pay to pilots during the time that Mr. Gosselin was employed by Gama?

A. Not that I'm aware of.

Later that day, Gosselin responded to Gawricki via email explaining that he had 14-hour duty days and multiple duty periods on the same day reflected in his log. ALJX 58 at 10; RX 37 at 3; TR 519. Gawricki then emailed both Walter and Miller asking them whether Gosselin's flight log was correct.³⁴ RX 37 at 3; TR 135-36, 520. Walter and Miller agreed that Gosselin's log was incorrect. See TR 136-38. At that point, Miller asked Gawricki to modify Gosselin's flight log by removing the "Standby Entry" days and fixing the inappropriate carryover time. TR 520, 522, 533; see also ALJX 58 at 10; CX 10 at 30-32; RX 37 at 19.

At trial, Miller explained that he asked Gawricki to change many of Gosselin's entries on the March 2012 flight log because they were in violation of Rule 7 of the Crew Member Flight and Duty Records Instructions ("Records Instructions"). JX 25; RX 37 at 5, 8; TR 534, 541. In Miller's view, per the Records Instructions, a consecutive period of duty time is captured on a flight log on one single line, not on two separate lines. JX 25; RX 37 at 5, 8; TR 138-39, 140. More specifically, Instruction #7 states, "For days where there are two duty periods separated by

TR 127. After he received Pagliaro's email response, Gosselin contacted Walter separately about overtime. RX 37; RX 38; TR 127-29. In his April 18, 2012 email and attached letter, Gosselin wrote to Walter in part:

The attached file compares my paid salary over the past 2+years to a contract pilot salary. My average salary per flight day is \$749 while my average salary per DUTY day is \$710 versus the contract rate of \$1200 paid to pilots in the absence of an account pilot. I understand the security that comes with being a full time employee versus contract; on the other hand the intrinsic value that a good employee provides to an employer is unwavering. Please understand, as an employee I give 100% and would like to be compensated accordingly. Along with this comparison is additional data from the 2011 Salary Survey to justify an increase in compensation. This demonstrates the value that I bring to Gama and the client. Not to mention, the difficulties that I endured during my first 1+ year and most recently on this account.

RX 37 at 12, 13; RX 38 at 1, 2. Gosselin also attached two salary surveys to his email to Walter. RX 37 16-17; RX 38 at 5-6; TR 127. Based on this letter, Walter believed Gosselin wanted Gama to increase his salary. TR 130. At some point thereafter, Walter and Gosselin had a conversation about the overtime request. TR 133. Walter testified:

We had a conversation. And, you know, to be honest with you, I was a little bit feeling like . . . I was trying to be bamboozled, because he was not providing me with accurate information. And I had previously looked at the salary survey, and I . . . was aware of what his salary was, and he was at the top range of what the salary survey was for the type of pilot that he was asked to be for the company.

TR 133. Thereafter, Connelly and Walter briefly discussed Gosselin's request for a higher salary. TR 458. In Connelly's opinion, the email was "an attempt from [Complainant] to refine the rate." TR 458-59.

³⁴ This was the first time Gawricki contacted Walter and Miller about Gosselin's monthly flight log. TR 520.

a rest period, you may add another row of the same date” JX 25. This suggests that only “[i]f you have a rest period . . . break it out into a separate day.”³⁵ JX 25; RX 37 at 8; TR 264.

Gosselin also inappropriately logged “standby” time on his March 2012 flight log. CX 10 at 31-32; RX 37 at 5-6, 8; TR 139, 147, 148. “Standby” time is

a duty period that is assigned by the air carrier for some type of imminent activity . . . [I]f there was a flight that was possibly in the works for maybe a pop-up trip that we [Gama] thought might be occurring that day, and someone had asked us to put a crew on standby for it, we would possibly assign standby duty for a crew.

TR 80; *see also* TR 82, 540. Standby time is reflected on a flight log as an assigned duty period, which can only be directed by Walter or Miller. RX 3; TR 71-72, 81, 82, 97, 148, 171, 540.

Gama implements policies and procedures to ensure pilots have sufficient prospective rest under Part 135. ALJX 58 at 11; RX 4; RX-5. For example, Gama uses the Flight Operation System to flag pilots who do not have prospective rest or sufficient quarterly rest. TR 88-89. Gama’s Operations Department Notification #9 and #11³⁶ provides the following information to flight followers:

The Federal Aviation Administration has stated that we are required to provide prospective rest periods for our crewmembers. Therefore until further notice all crews, **unless scheduled otherwise**, will be considered “Off Duty” from 2000 local until 0600 local the next day. If the ISG [Integrated Service Group]³⁷ wants a crewmember to be available sometime within that prospective rest period they must schedule the crew accordingly so that they receive adequate rest prior to the assignment.³⁸

RX 4 (emphasis in original); *see also* RX 5; TR 90, 95-97. In order to contact a crewmember, Gama must (1) call the crewmember’s cell phone and leave a message if there is no answer; (2) if there is no answer on the cell phone, then Gama must call the crewmember’s home phone and leave a message if there is no answer; and, (3) if communication is not established by either cell

³⁵ As an example, Walter explained that Gosselin’s logged entries on March 1st and March 2nd were incorrect because Gosselin was “logging his duty off for that day [March 1] at midnight, essentially, Zulu time.” TR 138. However, he stated that Gosselin continued that same duty period onto the next line for March 2, for one additional day, which reflected one hour. TR 139. Instead, Gosselin should have captured this duty period on one single line or “on the first line where it says 1400 to 0100” on March 1. *See* TR 139.

³⁶ Notifications #3, #9 and #11 were issued in September 2004 by Flight Services Group, the same air carrier and certificate as Gama. *See* RX 3; RX 4; RX 5; TR 47, 91, 93, 334, 528. The policies were in effect at Gama in 2012. TR 93.

³⁷ Integrated Service Group consists of Gama’s flight coordinators, who “worked in the flight coordination department . . . [and] helped supervise the duty periods in the aircraft and the crew members.” TR 90, 91.

³⁸ Pilots have access to Operations Department Notification #9 on Gama’s website. *See* TR 92-93.

phone or home phone, then operations will issue a page to the crewmember if a pager is available. RX 4; RX 5; TR 93-94. Operations Department Notification #9 and #11 also indicate that if there is no “positive crew contact,” a pilot is not considered “on duty.” RX 4; RX 5; TR 94. Therefore, unless assigned to a flight, the pilot was considered off duty and in a rest period from 8:00pm until 6:00am the following day. RX 1 at 60; RX 3; RX 4; RX 5; TR 98-99, 100.

Occasionally, Gama needed to put a pilot on standby for the weekend. RX 1 at 60; RX 3; TR 97. Pursuant to Operations Notification #3, a pilot must be notified by Friday 1800 local time if there was a weekend duty assignment.³⁹ RX 3; TR 98-99. Gama put a pilot on standby very rarely. TR 81. Miller testified that he only places a pilot on standby about four or five times each year, while Walter never placed a pilot on standby while at Gama. TR 81. Gosselin was not placed on standby in March 2012. *See* TR 148.

Despite Gama’s written standby policy, Gosselin logged “standby” time in his March 2012 flight log on some days with “0.00” total duty time, but also entered “11.0” total duty time on other “standby” days. CX 10 at 31-32; RX 37 at 5-6; TR 148-49. Gosselin did not explain to Walter why he indicated eleven hours of duty time on some “standby” days, but zero hours on others. TR 148-49. Walter testified, “[T]here’s no time off [on some of the standby days]. I don’t know where he’s coming up with 11 hours or how that is getting entered in there, because it usually requires on a “Time On” and “Time Off” to come up with a “Total Duty Time.”⁴⁰ RX-37 at 5; TR 146-47. Gosselin’s original March 2012 flight log spanned two-pages and reflected the following “duty” time with twenty-six flight days and twelve standby days:

³⁹ Gama’s Operations Department Notification #3 states:

When standby duty is required and we assign a crew to standby, it must be understood that the crew is “on duty” during the assigned standby period. Therefore . . . unless scheduled otherwise, the crew must go off duty for rest at 2000 local until 0600 local the next day. Should operations want to change the 0600-2000 scheduled duty period they must contact the Director of Operations for prior permission, and if granted, the crew must be thereafter informed in a timely manner of such notice.

RX 3; *see also* TR 97.

⁴⁰ The flight logs require a pilot enter in a “Time On,” showing when the pilot is on duty, and a “Time Off,” which indicates when the pilot is off duty. JX 25; RX 37 at 8; TR 139. Gosselin did not enter in a “Time Off” in some of his “standby” flight log entries in March 2012. CX 10 at 31-32; RX 37 at 5; TR 146-47.

**CREWMEMBER
MONTHLY FLIGHT AND DUTY TIME RECORD**

CREWMEMBER NAME:		Glenn Gosselin							BASE: TEB				MONTH / YEAR	March-12			
DATE	DUTY TYPE	TIME ON	TIME OFF	TTL DUTY	PIC HRS.	SIC HRS.	NITE HRS.	IFR HRS.	IFR APP.	DAY T/O	DAY LDG	NITE T/O	NITE LDG	REMARKS	FAR 91	FAR 135	RON
3/1	GA-450	14:00	0:00	10.0	6.0			0.2	ils	1	1				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/2	GA-450	0:00	1:00	1.0											<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/2	GA-450	17:00	22:00	5.0	1.3										<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/3	GA-450	14:00	21:00	7.0	4.5			0.2	ils	1	1				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/4	STAND-BY			0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/5	STAND-BY			0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/6	GA-450	11:00	0:00	13.0											<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/7	GA-450	0:00	1:00	1.0											<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/7	GA-450	22:00	0:00	2.0	1.1		1.1	0.1	ils			1	1		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/8	GA-450	0:00	2:00	2.0											<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/8	GA-450	21:00	0:00	3.0	1.0		1.0								<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/9	GA-450	0:00	4:30	4.5	3.6		3.6	0.2							<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/9	GA-450	17:30	0:00	6.5	3.0										<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/10	GA-450	0:00	6:00	6.0	4.0		5.1	0.2	ils			1	1		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/11	GA-450	16:00	0:00	8.0	6.5			0.2							<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/12	GA-450	0:00	2:30	2.5											<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/12	GA-450	21:00	0:00	3.0	0.7			0.2	ILS						<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/13	GA-450	0:00	2:30	2.5	2.5				ILS	1			1		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/13	GA-450	14:00	0:00	10.0	1.2			0.1	ils	1	1				<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/14	GA-450	0:00	0:30	0.5											<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/14	GA-450	14:00	0:00	10.0	2.9		1.0	0.1	ILS	1			1		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/15	GA-450	0:00	1:30	1.5											<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/16	GA-450	16:00	22:30	6.5	2.6										<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/17	GA-450			0.0											<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/18	GA-450	16:00	0:00	8.0	2.6		2.0			1			1		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/19	GA-450	0:00	2:00	2.0											<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/20	STAND-BY	13:00		11.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/21	STAND-BY	13:00		11.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/22	STAND-BY	13:00		11.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/23	STAND-BY	13:00		11.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/24	STAND-BY			0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/25	STAND-BY			0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/26	STAND-BY			0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL				159.5	43.5	0.0	13.8	1.5		6	3	2	5		Total RONs: 24		

ADMIN.	DISCR.	FLIGHT	STAND-BY	TRAINING	TRAVEL	VACATION	TOTAL DUTY DAYS
0	0	24	9	0	0	0	33

**CREWMEMBER
MONTHLY FLIGHT AND DUTY TIME RECORD**

CREWMEMBER NAME: Glenn Gosselin								BASE: TEB				MONTH / YEAR	March-12				
DATE	DUTY TYPE	TIME ON	TIME OFF	TTL DUTY	PIC HRS.	SIC HRS.	NITE HRS.	IFR HRS.	IFR APP.	DAY T/O	DAY LDG	NITE T/O	NITE LDG	REMARKS	FAR 91	FAR 135	RON
3/1	GA-450	14:00	1:00	11.0	6.0			0.2	ils	1	1				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/2	GA-450	17:00	22:00	5.0	1.3										<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/3	GA-450	14:00	21:00	7.0	4.5			0.2	ils	1	1				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/4				0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/5				0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/6	GA-450	11:00	1:00	14.0											<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/7	GA-450	22:00	2:00	4.0	1.1		1.1	0.1	is			1	1		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/8	GA-450	21:00	4:30	7.5	4.6		4.6	0.2							<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/9	GA-450	17:30	6:00	12.5	7.0		5.1	0.2	ils			1	1		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/10	GA-450	16:00	22:00	6.0											<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/11	GA-450	16:00	2:30	10.5	6.5			0.2							<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/12	GA-450	21:00	2:30	5.5	3.2			0.2	ils						<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/13	GA-450	14:00	0:30	10.5	1.2			0.1	ils	1	1				<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/14	GA-450	14:00	1:30	11.5	2.9		1.0	0.1	ils	1			1		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/15	GA-450	0:00	1:30	1.5											<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/16	GA-450	16:00	22:30	6.5	2.6										<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/17	GA-450			0.0											<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/18	GA-450	16:00	0:00	6.0	2.6		2.0				1		1		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/19	GA-450	0:00	2:00	2.0											<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3/20				0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/21				0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/22				0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/23				0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/24				0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/25				0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/26				0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/27				0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/28				0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/29				0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3/30	GA-450	15:00	22:30	7.5	3.7			0.2	ils	1	1				<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3/31	GA-450	13:00	23:00	10.0											<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4/1				0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4/2				0.0											<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL				140.5	47.2	0.0	13.8	1.7		5	5	2	4		Total RONs: 19		

ADMIN.	DISCR.	FLIGHT	STAND-BY	TRAINING	TRAVEL	VACATION	TOTAL DUTY DAYS
0	0	19	0	0	0	0	19

CX 10 at 30; RX 37 at 22. Gosselin told Gawricki that he would be in contact with Walter about the log changes. RX 37 at 19; TR 521. In an April 24, 2012 email to Walter, Gosselin wrote:

I went to the Instruction page again and reviewed the steps and in Step 7[,] it specifically instructs one to insert a second line to a specific date to indicate multiple duty periods on a specific date as I originally submitted. Even if you eliminate what standby days that I have listed it equates to 26 flight days...and duty periods...but what I was assigned by Fareed [w]as standby for [M]r[.] Chu or for charter in that period...

I myself am available for [M]r[.] [C]hu trips whenever he has plane barring days off and vacation and when advised by Fareed...but per my understanding of the operations rule is that unless otherwise advised I am to assume availability for a trip between the hours of 0800-1800 daily when released to charter, which I need to confirm with you and our manuals. I have to know so I can differentiate between 91 and 135 which Fareed has been doing when he tells me aircraft is on hold for [M]r[.] Chu or if it is released for charter.

Standby and flight days for contract pilots are accounted for so [I] would assume [I] would have to account for both as well...

I hope this helps you understand my concern with the logging of standby[,] but more importantly the correct monthly flight log should be reflected in my record...the reworked flight log is still inconsistent with step seven even if you eliminate all my standby days and log just the flight days it remains to be 26 as my original flight log indicates.

Please let's find a resolution for this question as we all want to be in compliance with our operations specifications and regulations.

What was reworked is not consistent with step 7 from the instructions or with my [M]arch 31, 2011 meeting with Tom Miller and Cheryl [D]ykstra when they were auditing [f]light logs and approved how mine were recorded at that time...

JX 8 at 2-3 (ellipses in original). On April 24, Miller also called Gosselin to discuss the issues with the flight log and advised Gosselin that he removed the standby time because Gama did not authorize Gosselin to be placed on standby. JX 21; TR 587. Gosselin ultimately disagreed with both Walter and Miller's interpretation of standby time. TR 587, 588. In an April 25, 2012 email to himself, Gosselin documented his phone conversations with Tom Miller about his March flight log:

4/24/2012

Tom Miller called at 9:25am regarding flight and duty report. We discussed our differences. Tom requested I change the report to list all flight on a single date line regardless of time. I explained this is inappropriate per instruction #7 as outlined on the instruction tab of the flight and duty excel report file. I said I was running errands. He said he would rework with Laurie Gawricki and send me a copy. He said to consider it as a training event.

I emailed Laurie, Tom and John with explanations as to why his report is inaccurate.

4/25/2012

I called Tom Miller @ 8:34am to discuss my finding regarding the Flight sum box related to the flight and duty report. The box is inappropriately calculating the sum of flight days. I email[ed] recommen[.]dation to John Walter, Tom Miller and Laurie Gawricki. I asked that my flight log remain in my file as it is accurately reflecting my flight and duty times. This request is per the

3/09/2009 FAA letter stating it is the employee[']s responsibility to ensure the operator logs the employee[']s time accurately. The only open item is the recording of stand by time.

I spent 8 hours on 4/24/2012 researching and trying to reconcile Tom's reworked log to my submitted log.

I spent 3 hours [on] 4/25/2012 researching all the pertinent manuals and internet for regulations to substantiate appropriate logging of time.

JX 21. Complainant testified he told Walter and Miller that he disagreed with their interpretations of "standby" time. TR 587.

Prior to April 2012, Gama did not question Gosselin's flight logs, although Gosselin testified that he consistently filled them out the same way as he had done in March 2012. *See* TR 608. When asked on cross-examination about some of Gosselin's previous monthly flight logs, Walter acknowledged that Gosselin was filling out his flight logs incorrectly for several months prior to March 2012. TR 273. Gosselin's previous flight logs, including his August 2011, September 2011, November 2011 and February 2012 logs, were also filled out incorrectly, but were not flagged by Gama. *See* TR 252-54; CX 10 at 21, 22, 24 & 27. Walter testified he did not personally review every pilot's duty log each month, and Gawricki explained she flagged the March 2012 log because it had more total duty days than the number of days in the month.⁴¹ TR 137-38, 274, 295, 296, 518, 522.

In an April 28, 2012 email to himself, Gosselin memorialized a conversation with Ramjohn about Chu's upcoming flight schedule and standby time:

He [Ramjohn] advised me that [C]hu had the airplane from wed 5/2-5/8/12... I SPECIFICALLY ASKED WHAT MY DUTY WAS? He advised I was not on stby and I was not contacted by either Tom Miller or John Walter who specifically advised me that I was not to consider myself on stby anymore unless specifically advised by them, this was all discussed during our conversation pertinent to my conversation relating to my compensation and flight and duty logs correspondence over the last two weeks...

JX 8 at 1 (emphasis and ellipses in original). Gosselin testified he was concerned about the original March 2012 flight log he submitted to Gama because it demonstrated that he did not meet his 13-day quarterly rest requirement pursuant to Part 135. *See* TR 588. He said he told Miller that he had not met his 13-day required quarterly rest and that it was unsafe. TR 591.

⁴¹ Gosselin's total number of duty days on his August 2011, September 2011, November 2011 and February 2012 flight and duty logs did not exceed the total number of days in the given month. *See* CX 10 at 21, 22, 24 & 27.

Gosselin did not file an event log for Gama's reworking of his March 2012 flight and duty log. TR 186.

3. May 11, 2012—Pop up Charter Flight

Around 7:30AM on May 11, 2012, Nicola Spence, a Gama dispatcher, called Gosselin for a pop up charter assignment.⁴² ALJX 58 at 11; TR 592. At the time Gosselin received the call, he was at home in his kitchen about to make breakfast. TR 592. The pop up charter flight was scheduled to depart from Teterboro Airport at 10:30AM and arrive at Washington Dulles International Airport at 11:42AM.⁴³ ALJX 58 at 11; RX 9; TR 153. Gosselin testified he told Spence, "I can't accept that. That's an illegal assignment, Nicola. I've been available to Mr. Chu through the evening and yesterday, actually since May 8th, since my arrival, since May 8th, and I haven't been relieved of that duty. So I don't meet the prospective rest requirements."⁴⁴ TR 592. Gosselin asked Spence to be put in contact with John Walter. TR 592.

Prior to Spence's call, Gosselin had last flown three days earlier on May 8, 2012. ALJX 58 at 10. When Gosselin landed on May 8 at around noontime at Teterboro Airport, Ramjohn informed him that there were no flights scheduled until May 15.⁴⁵ ALJX 58 at 10; TR 501. As a result, Gosselin went home and worked on his car which had broken down on his way home from the airport on May 8.⁴⁶ ALJX 58 at 10; TR 593. At trial, Gosselin said that he had been up until 1:00AM fixing his car the night prior to receiving Spence's call on May 11. ALJX 58 at 10; TR 625.

After he hung up with Spence, Gosselin gathered his things and got into the car with his wife to go get a rental car and pick up a clean uniform at the dry cleaners so that he could get to the airport.⁴⁷ ALJX 58 at 11; TR 593. While in the car, Gosselin answered a call around 7:40AM from Walter, who was in South Bend, Indiana conducting a flight check on an aircraft.

⁴² Gosselin said he woke up on May 11 at around 7:15AM. TR 625.

⁴³ The arrival time on the return trip back to Teterboro was expected to be 12:42PM that same day, which would equate to five duty hours. RX 9; TR 153.

⁴⁴ The call with Spence only lasted about one minute. ALJX 58 at 11.

⁴⁵ Although Ramjohn indicated that he told Gosselin that May 15 was Chu's next scheduled flight, Gama's aircraft schedule for May 2012 actually shows that Chu's next scheduled flight was on May 14. RX 19 at 11-12. The parties also stipulated that Ramjohn told Gosselin that Chu's next scheduled flight was on May 14. ALJX 58 at 10.

⁴⁶ Because Gosselin's car broke down after his May 8 flight, he explained that his wife would be able to help him get a car if needed to get to the airport to fly Chu on four hours' notice. TR 593.

⁴⁷ Gosselin said Gama required a uniform, but Chu did not. TR 593.

ALJX 58 at 11, 12; RX 8; TR 152, 155, 156, 594. Walter described the conversation with Gosselin that morning:

He [Gosselin] was already a little riled up emotionally, and . . . I was saying, “Glenn, what’s going on here? What are you not able to do here?” And he was saying, you know, very excitedly he was saying, “What are they doing trying to put me on a charter? . . . [D]on’t they know my car . . . is not ready to go, and I don’t have my uniform.” I’m like, “Okay. Well, do you have some other clothes you can wear or” -- and he just kind of kept going on.

And again, you know, just like the previous conversation I had had with him before [on April 3], he was emotional and he was very excited. And I said, “Glenn, . . . I don’t understand. Why are you not ready to go to work? Why are you not ready to do a flight and go to work?” And he didn’t really have an answer for that. [He said,] “I’m in the car with my wife and we’re going to pick up a car.” And I was confused as to whether or not his car was not working or whether he was picking up a rental car or what he was doing, but he didn’t have his normal transportation available to him.

TR 156-57. As their discussion escalated, Walter determined Gosselin “was not in the right mind to fly” and removed Gosselin from the trip.⁴⁸ TR 158, 160. Gosselin said Walter directed him to meet him at the Gama offices in Stratford, CT for a final discussion the following day. TR 596. At that point, Gosselin expected Gama to terminate his employment.⁴⁹ TR 596, 598, 599.

Walter described his phone call with Gosselin as a “heated conversation.” TR 158. As Gosselin’s direct supervisor, Walter “was curious as to why he [Complainant] was not ready to actually go to work when he was called to be able to go to work.” *See* TR 158. Gosselin told Walter that he did not have his car, a clean uniform, and that he had to go to the dry cleaners and pick up a rental car. ALJX 58 at 11; TR 159-60. Gosselin advised Walter that he had less than three hours to drive to the airport, pick up his things, and complete a pre-flight inspection in order to make a 10:30AM flight departure. ALJX 58 at 11. Gosselin testified that he also told Walter that he had not met his prospective rest requirements because he had been available to fly for Chu since May 8. TR 593-94. He said that Walter nonetheless directed him to get to the airport for his flight assignment. TR 594-95. He testified:

⁴⁸ John Dvorak took over the May 11 charter flight as captain and James Gregory Savko was second in command. RX 9; TR 154.

⁴⁹ Gosselin testified he had only been to the Gama offices twice. TR 596.

I was being asked to do an illegal assignment that I just disagreed with. And . . . there was no reasonable explanation from Gama[][,] . . . which I allowed them to explain to me . . . But he [Walter] couldn't explain to me any regulatory reason as to why this trip was legal.

TR 595. Although Gosselin testified he believed the trip was illegal at the time, he began driving to the airport because: “[I] was hoping my discussion with John Walter would bring him to the same conclusion that I had, that I wasn’t legal to fly the aircraft. I ultimately was not going to fly the aircraft. I was doing what my boss told me to do.” TR 597. He explained that a flight assignment is only “accepted when you arrive at the airport and [when] you sign the voyage report,” and that driving to the airport did not mean he agreed to the assignment. TR 597.

Gosselin testified he was so upset by the conversation with Walter that he had to pull his car over on the side of the road because it was not “safe to continue driving” in his present mindset.⁵⁰ TR 595. He further explained:

I was unfit to fly. I was upset. I had an argument with my boss. And ever since I started flying, I carried this little checklist, “I’m safe.” The FAA recommends it that if you’re ever in a situation, to go to it, to recognize your deficiencies, to declare whether or not you’re safe to fly the aircraft.

TR 595-96. Gosselin deemed himself “unfit to fly,” following the phone call because he was “not mentally prepared” to fly a plane and went back home. TR 597, 603, 604.

Later that morning, after he returned home, Gosselin emailed Brizzio and also left a voice message on her phone about what transpired with his flight assignment earlier.⁵¹ ALJX 58 at 12; JX 2; TR 600. Gosselin testified:

The reason why I contacted her [Brizzio] is because I had been available since May 8th, and she had operational control since May 8th until the time that it was released to Gama for the pop-up charter. And my concern was the unsafe practices. She had operational control, and she released her crew in the aircraft to do a pop-up charter when it wasn’t in compliance. And I needed to let her know that this wasn’t safe.

TR 598. He also contacted her “hoping that she could . . . intervene with what had happened with John Walter . . . [and] sav[][e] my job if he was going to terminate me” TR 598. In

⁵⁰ Gosselin said his conversation with Walter lasted about nine minutes. TR 596.

⁵¹ Complainant did not get approval from Gama to contact Brizzio. ALJX 58 at 14.

his voicemail to Brizzio, he indicated that there were some “work-related issues” he wanted to discuss, but did not mention prospective rest. TR 686-87.

Brizzio returned Gosselin’s call around noontime to discuss what happened earlier that morning. ALJX 58 at 12; TR 598, 600. Gosselin said he told Brizzio, “I hadn’t met my prospective rest requirements for the pop-up charter, and that there were unsafe practices relative to duty logs that had been discussed with Gama in that period of time.”⁵² TR 601, 602. He also mentioned his alleged arrangement with Chu about the required four hours’ notice prior to any flight. ALJX 58 at 12. Gosselin said that Brizzio asked him to send her an email about his concerns so that she could later discuss them with Ramjohn. TR 604. At 1:28 PM, Gosselin emailed Brizzio the following memorandum:⁵³

Upon my return on May 8th from a 5 day owner trip, F[a]reed informed me that I was off until the scheduled charter on May 15th. At that time I asked Fareed if I was on standby for charter. Fareed replied “no”, you will not fly until the May 15th charter because J. Dvorak would be on vacation.⁵⁴ He then continued to inform me upon my return May 23rd, I would be flying the owner the next day.

This morning at 7:31 Nicola Spense called me for a pop up charter for 10:30 departure. I informed her I did not know if I could meet this request, that I need 4 hours for departure from the notification. At that time she asked me to hold while she checked with someone. At 7:38 Nicola called again and stated to get there as quickly as possible as the flight was still to depart at 10:30am. I told her I was off and did not have a uniform as it was at the dry cleaners, I did not have a vehicle to drive, and I would do my best. I then asked why I was being called as no one notified me I was on standby for a charter and F[a]reed told me I was off. Nicola said she did not know why no one last night advised me I was on standby because she was not there. She said it was a pop up and that did not matter. I relayed the regulations regarding calling pilots. Nicola asked if I wanted her to call John Walter, I replied yes please.

While I was driving to retrieve my car, Nicola put me in touch with John Walter. I made him aware of the above statements/discussion with Nicola, and also reminded him of my agreement when hired. There would be no pop up charters, only scheduled, and I would have 4 hours notification for any owner trip. He claims to not remember these details. I further informed John this is not an issue with me; this is an issue between Fareed who told me I was off, and operations who just call me when I am told I am off. Furthermore, it is not fair to Nicola who is in the middle calling me, or to me who has a mindset that I am off and in the middle of personal commitments.

I further stated this is unsafe as I have not eaten breakfast, I am running to get my car, and running to get to the airport for an unrealistic departure and now stressed out discussing about how this came about. John said to consider myself off the trip and he has had enough of having to deal with this and to come in tomorrow so we can have a final discussion about this.

⁵² Gosselin testified, “The way they represented the [May 11] pop-up charter to her [Brizzio] is that they had approached me first to check . . . that I was okay with it. And she said [to me] [“]I approved releasing the aircraft for that pop-up charter under the assumption that you were in agreement with it.[”]” TR 601.

⁵³ By the time Complainant sent his email to Brizzio at 1:28PM, Walter had already removed him from the flight. CX 2; JX 3; TR 169.

⁵⁴ At hearing, Ramjohn explained that he told Gosselin following the May 8, 2012 flight there were no flights assigned to Gosselin before May 15, 2012. TR 501.

The 4 hours were agreed upon during my job acceptance with the client. 2 hours to drive, 1 hour to preflight and prepare the aircraft, 1 hour to be ready in the event the client shows early.

This is the second time that Gama has done this to me within the last two months....

[T]he last time they left a message at the end of the day that demanded I get in my car and drive to the airport for a pop up trip approved by the owner with no advance warning when I was off after a long day of commitments...

I am a hard worker and never complain but when the company puts unrealistic demands on me that were never agreed upon and they compromise the safety/and regulatory subjects of the operation then it is my responsibility to vocalize my disagreements to protect the safety of the crew and the integrity of the organization as a whole, to include the world class service for the client that is expected....

If I am available for charter pop ups that is considered on-call/reserve/standby...

If they want me on call to take a pop up then I need to be advised to be ready as the client was contacted for approval and given the reasonable opportunity, as I would need to get to the airport for a trip...

I answered my phone, I gathered my things, I started driving to airport...I did everything I was asked to do while advising Gama that the time expectations were not realistic and compromising trip safety...

ALJX 58 at 12-14; CX 2; JX 3; JX 4; JX 26; RX 10 (ellipses in original).

At hearing, Gosselin testified that in addition to him failing to meet prospective rest requirements, the pop up charter assignment was unsafe because he needed two hours to get to the airport and at a minimum one hour to conduct his pre-flight requirements mandated by the FAA; however he only had three hours between the time he received the call from Gama flight operations and the time of take-off. *See* TR 603. He also said he could not accept the assignment because he did not have breakfast that morning and was stressed out about his discussion with Walter. TR 603.

That same morning around 10:00AM, Gosselin also contacted the FAA and asked to speak to Ed O'Dell, an administrator, who he had worked for as a chief pilot years prior. ALJX 58 at 12; TR 605. Gosselin was told Mr. O'Dell had recently died and then spoke with an FAA inspector, but does not recall his name. TR 605-06. That person was unable to provide Gosselin with any help. TR 606. Gosselin did not file an event log about his May 11 pop up charter flight assignment.⁵⁵ TR 186.

⁵⁵ Gosselin had filed event logs during his employment with Gama. RX 49—RX 54; TR 186-92, 432-34. Gosselin filed these event logs about various safety issues or problems with the plane, and was never disciplined for submitting them. TR 186-92, 432-34.

Later that day, Brizzio called Ramjohn about her conversation with Gosselin and she forwarded the email she received earlier that afternoon.⁵⁶ ALJX 58 at 14; JX 26 at 1-2; TR 496-97. At around 3:00 PM, Ramjohn forwarded Gosselin's email to Walter, Connelly and Pagliaro. JX 4 at 1; JX 26 at 1; TR 496-97, 501-02. In conjunction with Gosselin's memo to Brizzio, Ramjohn stated in his own email:

Please note that at no point in my communications with Glenn verbal or otherwise did I ever insinuate that he was off . . . [Brizzio] has indicated that he has told her about the unsafe practices at Gama, which I have told her is not true [and] that we abide by the highest standards in the industry.⁵⁷

JX 3; JX 4; JX 26 at 1.

At some point that afternoon, Brizzio telephoned Ramjohn a second time and requested that Gama remove Gosselin from Chu's account. *See* TR 126, 210, 449, 504-05. After speaking with Brizzio, Ramjohn notified Walter "that the client was upset and she [Brizzio] wanted him [Complainant] removed [from the Chu account]." TR 504, 505. At that time, Ramjohn also notified Connelly that Brizzio requested Gosselin's removal from the account. *See* TR 366, 449, 505.

Upon learning of Brizzio's removal request, Connelly investigated the situation and discussed Gosselin's email with Walter and Miller.⁵⁸ TR 160, 367, 370, 449-50, 473-74. At trial, Connelly testified, "Tom Miller and I discussed the e-mail. And from two guys who had been in the safety and regulatory business for a combined 60 years read it, and the thing spoke for itself." TR 370, 473-74. Connelly viewed Gosselin's email as a "litany of personal drama and issues," noting that Complainant's listed concerns had "nothing to do with aviation and safety regulatory items." *See* TR 451, 474. He did not discuss the matter with Gosselin, Brizzio or Chu. TR 370, 474, 504-05.

⁵⁶ When asked by Complainant's attorney whether Brizzio mentioned a complaint about lack of rest, he replied, "Yes." TR 499. However, Ramjohn did not recall the rest complaint being specific to quarterly rest or prospective rest. TR 502-03.

⁵⁷ Ramjohn did not have authority to put a pilot or crewmember on standby. TR 171. Walter explained Ramjohn's role was to "try and give him some information . . . [because] he felt like he knew essentially what was going to transpire with the aircraft in the future. But it wasn't Fareed's job to notify him [Gosselin], put him on standby or any of those things." TR 171.

⁵⁸ Walter returned from South Bend, Indiana late in the afternoon and went to the Gama offices. TR 160, 166.

At Connelly's request, Walter had a brief telephone conversation with Gosselin about his contact with Brizzio later that day.⁵⁹ See TR 161, 368. Gosselin admitted to Walter that he had contacted Brizzio earlier that day, and Walter told him, "Why do you keep doing this? You're doing things that we're asking you not to do. How do you expect me to help you? You opened a can of worms, and I can't help you anymore." TR 161. Walter said his comments to Gosselin referred "to the fact that he [Complainant] had been told . . . previously to not contact . . . Gama's client in that manner about issues like that had nothing to do with the flight."⁶⁰ TR 161; see also TR 166-67. In Walter's opinion, the substance of Gosselin's email was about "[a] guy who was trying to justify his not being prepared to go to work." See TR 175.

I. Termination

Following the incident on May 11, Gama removed Gosselin from Chu's account. TR 367, 454. As a result, Complainant was taken off the flight scheduled for Chu on May 14, 2012.⁶¹ RX 63; TR 176. Connelly explained, "He [Complainant] had been removed. He had been requested to be removed by the customer, and we respected those wishes." TR 454. Although Gosselin was removed from Chu's account, he was still employed by Gama.⁶² TR 454.

⁵⁹ In a May 11, 2012 email to himself summarizing his discussion with Walter that afternoon about client communications, Gosselin wrote:

I received a phone call from John Walter at 14:21 and told me he had heard that I spoke to the client this afternoon telling me that I am not to have any discussions with the client going forward...He advised me I was opening up a can of worms...I asked him if he had resolution on our discussion about duty periods and he advised me he would not speak to me about that at this time...

RX 10 at 1 (ellipses in original).

⁶⁰ Walter was aware that Miller had previously told Gosselin not to have inappropriate conversations with Gama's clients. TR 161-62.

⁶¹ Walter flew the May 14, 2012 flight originally assigned to Gosselin. TR 176.

⁶² Connelly testified that there were "many times" when a pilot was removed from a client account, but kept on as a pilot for Gama. TR 420. He elaborated:

[I]f a crew member is removed from an account and they have been a good employee and they are good people and we think they are assets to the company, it's very likely that we will keep them.

If a crew member is removed from an account for egregious behavior or about being involved in some kind of scam that just sounds like it's not a good thing to us, . . . we won't put them on another account to let them duplicate that behavior.

On May 16, 2012, Connelly placed Gosselin on paid administrative leave pending further investigation of his conduct on May 11. JX 9; TR 176-77, 453. Gama did not contact Chu or Brizzio for permission to place Complainant on administrative leave. TR 453. Walter and Pagliaro prepared a letter, approved by Connelly, notifying Gosselin that Gama was placing him on administrative leave in light of the inappropriate contact with Brizzio about intercompany issues. ALJX 58 at 14; JX 9 at 2; TR 177, 453. Liz Pagliaro, Gama's Human Resources Administrator, on behalf of Walter, sent the following letter to Gosselin on May 16, 2012:

It was extremely troubling to learn that you took it upon yourself to communicate with the client about issues and concerns you had which should have been addressed internally. We were provided with a copy of the email you sent to Ms. Mariella Brizzio. Contacting the Client directly is totally inappropriate and unacceptable behavior. Internal operational issues should be addressed with your employer, Gama, not with the client being served. It is completely inappropriate to subject a client to an airing of your personal feelings about being called to service the client. Gama prides itself with offering the very best client service. Our business is strictly defined by our ability to provide hassle-free flying to clients, and demonstrating, at every occasion, that we hold them in high regard and gladly service them. Your email to Ms. Brizzio, the Assistant to the Owner, directly violates every principle of how Gama expects pilots and every one to handle themselves with clients.

Putting aside what you believe were the terms and conditions of your employment, the fact that you somehow think you are not required to respond to pop up charters and/or that somehow you were on vacation and did not have breakfast as the time you were called, one thing is clear—your direct communication with the client on matters of internal operations is a serious breach of our policies and expectations. It defies common sense and professionalism that you would think it was appropriate to share this type of communication with a client.

As a result of your actions you are being placed on administrative leave pending further consideration of your actions. While you were free to express your opinion about any concern directly with Gama management personnel, your lack of good judgment and utter disregard for client relations has placed Gama in a very difficult situation.

You will be advised once a decision has been made regarding your improper communication with Ms. Brizzio. Until then, you must refrain from communicating with the client and you should carefully consider your conduct moving forward with regards to handling of these issues. Please acknowledge receipt of this letter.

JX 9 at 2. In response, that same day, Gosselin sent the following email to Pagliaro:

Thanks for the phone call. It is disturbing to me that I am being reprimanded and placed on administrative leave for an action that I have been trying to rectify with my employer, GAMA, with no resolve, since my conversations and emails with both John Walter and Tom Miller in early April. Also in the past, as the lead captain, John Walter has advised me to speak with Mariela. I was also advised by Tom Miller upon the departure of Ilka and Enrique to speak with Mariela. All I did was advise her of the facts concerning my discussion with John Walter. It is confusing that the rules keep changing.

During the April conversations, Tom and John advised me that I was not on standby unless one of them directed me. John also directed me to work with Fareed regarding schedules. According to Part 135 regulations, pop ups are to be assigned to a stand by crew who is on duty. If I am available for charter pop ups that is considered on-call/reserve/standby duty. Due to the demanding schedule for this particular account, with only two pilots, it makes it very difficult to comply with the 135 regulations. Per GAMA and the client's request, during the interview process for the replacement of the second pilot, I was involved in the discussion between Marwan and Mr. Chu regarding a third pilot. They agreed at that time to approve a third pilot with 50% to be shared with another account. I felt this was fair in order to meet the 135 regulations regarding standby duty for charters and Mr. Chu, along with additional support GAMA would supply. This has yet to come to fruition. This is an example of the involved discussions I have had with this client and GAMA to provide the best service possible. This reprimand relates back to this subject matter.

Upon my return on May 8th from a 5 day owner trip, Fareed informed me that I was off until the scheduled charter on May 14th. At that time I asked Fareed if I was on standby for charter. Fareed replied "no", you will not fly until the May 14th charter because J. Dvorak would be on vacation. He then continued to inform me upon my return May 23rd, I would be flying the owner the next day.

Friday May 11th at 7:31am Nicola Spense called me for a pop up charter for a 10:30 departure. I informed her that I did not know if I could meet this request, that I need 4 hours for departure from the notification. The 4 hours were agreed upon during my job acceptance with the client. 2 hours to drive, 1 hour to preflight and prepare the aircraft, 1 hour to be ready in the event the client shows early. At that time she asked me to hold while she checked with someone. At 7:38 Nicola called again and stated to get there as quickly as possible as the flight was still to depart at 10:30am. I told her I was off and did not have a uniform as it was at the dry cleaners, I did not have a vehicle to drive, and I would do my best. I then asked why I was being called as no one notified me I was on standby for a charter and F[a]reed told me I was off. Nicola said she did not know why no one last night advised me I was on standby because she was not there. She said it was a pop up and that did not matter. I relayed the regulations regarding calling pilots. Nicola asked if I wanted her to call John Walter, I replied yes please.

While I was driving to retrieve my car, Nicola put me in touch with John Walter. I made him aware of the above statements/discussion with Nicola, and also reminded him of my agreement when hired. There would be no pop up charters, only scheduled, and I would have 4 hours notification for any owner trip. He claims to not remember these details. I further informed John this is not an issue with me; this is an issue between Fareed who told me I was off, and operations who just call me when I am told I am off. Furthermore, it is not fair to Nicola who is in the middle calling me, or to me who has a mindset that I am off and in the middle of personal commitments. I was up until midnight, fixing my car which broke down on the highway on my way home from the May 8th trip. If I were placed on standby, I would have had my uniform, and a rental car in the event I was called for a trip.

I further stated this is unsafe as I have not eaten breakfast, I am running to get my car, and running to get to the airport for an unrealistic departure and now stressed out discussing about how this came about. I tried to explain if they moved the trip up I would be able to meet the demand. John replied that was unacceptable and that the standard response time is 2 hours and that it was not my place to discuss anything with operations except advise them when I could be at the airport. I advised John I was already ready on my way to get my car, it was rush hour, and baring no traffic I would be at the airport for 10:00. John said to consider myself off the trip and he has had enough of having to deal with this and to come in tomorrow so we can have a final discussion about this.

I answered my phone, I gathered my things, I started driving to the airport, I did everything I was asked to do while advising Gama that the time expectations were not realistic and compromising

trip safety and customer satisfaction if I was late. This is the second time that Gama has done this to me within the last two months. The last time they left a message at the end of the day, demanding I get in my car and drive to the airport for a pop up trip approved by the owner. Once again, Fareed told me upon arrival the night before, I was off. John Walter and I had a conversation regarding Nathan's inappropriate message, and the amount of previous flying I had prior to this trip. I stated it was unsafe to fly into a tornadic situation through the night when I was tired, up all day, and considered off. John agreed I would not fly, and it was considered cumulative fatigue.

I received a phone call from John Walter Friday May 11th at 14:21, at which time he told me he had heard that I spoke to the client. John instructed me twice that I am not to have any discussions with the client going forward. He advised me I was opening up a can of worms. I asked him if he had resolution on our discussion about duty periods/standby and he advised me he would not speak to me about that at this time. Once again, I am trying to resolve the underlying issue that created this event. This was the last conversation I had with John Walter, and there was no discussion regarding administrative leave.

On Monday, May 14th, in preparation for the charter, I picked up my rental car at 11:00am and went to bed. At 2:01pm I received a call from Larry in operations. He advised me that John Walter did not want me to waste my time in bed and that John would be flying the charter trip. There was no mention as to why this change occurred.

I am a hard worker and never complain, but when the company puts realistic demands on me that were never agreed upon, and they compromise the safety and regulatory subjects of the operation, then it is my responsibility to vocalize my disagreements to protect the safety of the crew and the integrity of the organization as a whole to include world class service for the client that is expected. Per Operations Department Notification #30, supplied to me by Tom Miller upon arrival to the account, it is part of the Aircraft Resource Manager to ensure the highest level of operational safety and standardization on their assigned aircraft, etc... This was my guidance in the decisions I have made.

JX 10 at 1-2. Pagliaro gave Gosselin's May 16 email response to Connelly for review. TR 454, 455. On May 18, 2012, Connelly sent Walter and Miller an email asking what instruction, if any, they provided to Gosselin about client communications. RX 22 at 1-2. Connelly testified, "I had seen Glenn's [May 16 email] response [and] that he made an allegation that Tom [Miller] and/or John [Walter] had told him it was okay to contact the client." TR 461. Connelly simply wanted to know whether Gosselin's allegation contained in his May 16 email was true. TR 461.

Walter and Miller denied telling Gosselin that client communications were appropriate.⁶³ RX 22; RX 23; TR 462. Miller responded to Connelly via email stating, "I have never nor would

⁶³ Walter also testified he never advised Gosselin to speak with Brizzio and that he knew that Tom Miller told Gosselin not to have inappropriate conversations with Gama's clients back in February of 2011. See TR 161-62, 178. In fact, in February 2011, Gama asked Walter to "smooth things out" when Brizzio first requested Gosselin be removed from the account. See TR 178-79. Walter explained:

I was actually assigned to fly with Glenn the first time when Mariela had requested that he be removed from the aircraft . . . And so they [Gama] asked me to go out and fly with Glenn to kind of smooth things out, and they said . . . I would just kind of smooth things

I ever authorize a pilot to communicate with a client on internal company issues as Glenn has. I recommend that Glenn be terminated for his unprofessional conduct.” RX 22 at 1; *see also* TR 462. Walter similarly responded to Connelly’s email, “I would and have never recommended that a pilot contact the client or his/her representative concerning such issues which are and always to be internally directed.” RX 23 at 1; *see also* TR 463.

In Connelly’s opinion, Gosselin “had a lot of personal issues that morning and really didn’t want to do it [the May 11 charter flight], and was trying to throw a lot of things at the wall and see what would stick, and see if he could get out of the trip.” TR 455. Connelly did not view Gosselin’s emails as raising any safety or regulatory concern. *See* TR 455-56. On May 17, 2012, Gosselin sent a follow-up email to Pagliaro with attached excerpts of the Gama Handbook. RX 21. Gosselin’s email stated:

In contrary to the statement that was made from the administrative leave letter, I have been working with Gama’s internal departments short of HR for the following subject matter as you will note.

My contact with Mariel[1]a was to clarify the terms of my employment agreement with the client because of my discussion with John Walter regarding the terms.

Attached you will find issues I began to discuss with you on the phone and you had asked that I send it to you in an email.

I also provided two spread sheets one that was sent to John Walter and Tom Miller and another that was tweaked after having access to the crew members guide and recognition pay schedule.⁶⁴

RX 21; *see also* TR 457.

Both Walter and Miller recommended to Connelly that Gosselin be terminated in light of his May 11 communications with Brizzio. *See* TR 368, 371, 542. On May 22, 2012, Connelly terminated Gosselin’s employment with Gama for communicating with Brizzio about internal

out and help make sure that Glenn was . . . doing all the right things and . . . to just kind of mentor him and advise him and just kind of watch over things.

TR 178-79.

⁶⁴ Connelly did not construe this email as a safety concern. TR 457.

company issues.⁶⁵ JX 11; TR 463-64, 466-67. The termination letter, signed by Walter stated in part:

On May 11, 2012, unbeknownst to Gama Charters, you sent the representative of one of our clients an email underscoring your displeasure with having to provide service to the client. Your inappropriate email led the client's representative to communicate their displeasure with the fact that you had interjected them into employment issues which should not have been the subject of the client's concerns. While you are free to discuss and communicate with Gama Charter[']s management any and all concerns, it is clearly understood that Gama Charters is retained by clients to provide the most problem-free flying experience. It demonstrated a gross lack of professionalism and good judgment to have taken it upon yourself to send such a communication to the client's representative.

Upon learning of your actions you were placed on administrative leave while receiving your full compensation. In response to the concerns raised with you, you indicated that Gama's Chief Pilot/Vice President of Flight Operations, John Walter, had instructed that you should have these types of communications with the client. While it is a long-standing Gama policy that such communications are not appropriate and should not take place, in an effort to ensure that we had obtained all the necessary information, we conducted an investigation which included communication with Mr. Walter and other management personnel. Our investigation confirmed that while you clearly must communicate with the client and his/her representative about routine flight issues, no one at Gama condones or permits employees to interject clients into personnel issues, and most certainly, communications which suggest that their assigned pilot does not particularly want to be providing service to them during a flight.

Because of your unprofessional conduct and lack of good judgment, Gama is not in a position to continue to trust that you will provide our clients with the service that they expect and deserve. Therefore, your employment is being terminated effective today, May 22, 2012. The client will be informed of this decision and you should refrain from further contact with the client or the client's representatives.

JX 11 at 2. Attached to the letter was a contract outlining the separation agreement between Gama and Complainant. JX 11 at 3-6.

On May 30, 2012, Gosselin responded to Gama's separation agreement with a counter offer and again stated that he contacted Brizzio in order to "clarify my agreement with John

⁶⁵ Although Gosselin's termination letter was signed by Walter, Connelly ultimately made the decision to terminate Gosselin from Gama. TR 464. Connelly chose not to personally confront Gosselin or Brizzio about the May 11 incident, testifying:

I read through what Glenn was saying [in his email to Brizzio], and . . . it just was totally contrary to what I thought the facts were, and he didn't seem to admit or be contrite about the fact that he had violated company policies repeatedly and . . . disregarded orders from his supervisor repeatedly to do that stuff, and he was throwing every excuse that he could find at it. And I just didn't think there was any point in me talking to Mariel[]a or Glenn after I read that.

TR 460. Connelly said but for Gosselin's May 16 and May 17 emails to Gama, he would have spoken to Gosselin "just out of fairness to get [his] side of the story." TR 460. However, Connelly considered these emails to be Gosselin's "side of the story." TR 460.

[Walter] and the client.” RX 25 at 2; *see also* TR 464. Pagliaro sent Gosselin another email on June 8, 2012, on behalf of Gama, denying Gosselin’s counter request. RX 25 at 1. On June 11, 2012, Gosselin ultimately denied Gama’s offer. RX 25 at 1.

IV. CONCLUSIONS OF LAW

The employee protection provisions of AIR21 are set forth at 49 U.S.C. § 42121. The Act prohibits discrimination against airline employees who engage in protected activity:

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 any knowledge of the employer) or cause to be provided to the employer or Federal Government information 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;
- (2) has filed, caused to be filed, or is about to file (with any 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 such a proceeding; or
- (4) assisted or participated or is about to assist or participate in such a proceeding.

49 U.S.C. § 42121(a); *see also* 29 C.F.R. §§ 1979.102(b)(1)-(4).

The Act provides a two-prong, burden shifting framework to analyze whistleblower complaints. *See* 49 U.S.C. §§ 42121(b)(i)-(iv). In order to avail himself of the protections provided in the Act, a complainant must demonstrate—by the preponderance of the evidence—a *prima facie* case. *Benjamin v. Citationshares Mgmt., LLC*, ARB No. 12-029, ALJ No. 2010-AIR-00001 at 5 (ARB Nov. 5, 2013). As such, a complainant must prove: 1) he or she engaged in a protected activity; 2) the respondent knew that the complainant engaged in protected activity; 3) the complainant suffered an adverse employment action; and, 4) the protected activity

was a contributing factor in the adverse action. *See* 49 U.S.C. § 42121(b)(2)(B)(i); *Bechtel v. Admin. Review Bd.*, 710 F.3d 443, 447 (2d Cir. 2013); *Harp v. Charter Commc'ns, Inc.*, 558 F.3d 722, 723 (7th Cir. 2009); *Allen v. Admin. Review Bd.*, 514 F.3d 468, 475-476 (5th Cir. 2008).

If complainant demonstrates by a preponderance of evidence that protected activity was a contributing factor in the adverse employment action, then the burden shifts to the respondent. *Speegle v. Stone & Webster Constr., Inc.*, ARB No. 13-074, ALJ No. 2005-ERA-00006 at 19-20 (ARB Apr. 25, 2014); *see Benjamin v. Citationshares Mgmt., LLC*, ARB No. 14-039, ALJ No. 2010-AIR-00001 at 2-3 (ARB July 28, 2014). Respondent may avoid liability if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse employment action in the absence of any protected activity. 29 C.F.R. §§ 1979.109(a); *see Benjamin*, ARB No. 12-029 at 11-13.

A. Protected Activity

“An employee engages in protected activity any time he or she provides or attempts to provide information related to a violation or alleged violation of an FAA requirement or any federal law related to air carrier safety, so long as the employee’s belief of a violation is subjectively and objectively reasonable.” *Occhione v. PSA Airlines, Inc.*, ARB No. 13-061, ALJ No. 2011-AIR-12 at 9 (ARB Nov. 26, 2014) (*quoting Benjamin*, ARB No. 12-029 at 5-6). “[T]he critical focus is on whether the employee reported conduct that he or she reasonably believes constituted a violation of federal law” as opposed to whether the information “‘definitively and specifically’ described one or more of those violations.”⁶⁶ *Sylvester v. Paraxel Int'l LLC*, ARB No. 07-123, ALJ Nos. 2007-SOX-00039, -00042 at 19 (ARB May 25, 2011).

⁶⁶ I note that the United States Court of Appeals for the Fourth Circuit has yet to explicitly rule upon the conflict between the Administrative Review Board’s (“ARB” or “the Board”) decision in *Sylvester* and the Court’s decision in *Welch*. *See Feldman v. Law Enforcement Assocs. Corp.*, 752 F.3d 339, 344 n.5 (4th Cir. 2014) (finding it unnecessary to rule upon the Board’s decision to dismiss the “definitive and specific” standard); *Welch v. Chao*, 536 F.3d 269, 275 (4th Cir. 2008) (confirming the definitive and specific standard is appropriate within whistleblower claims); *Sylvester*, ARB No. 07-123 at 19 (finding the definitive and specific standard inappropriate in whistleblower claims). I find, however, that the Court is likely to ultimately agree with the Board’s reasonableness standard presented in *Sylvester*; therefore, that is the standard I will apply in this case. *See Puffenbarger v. Engility Corp.*, 151 F.Supp.3d 651, 659 n.6 (E.D.Va. 2015) (discussing how the “definitive and specific” standard was embraced through deference to the Department of Labor and—although the Fourth Circuit has yet to do so—other circuits have embraced the reasonableness standard of *Sylvester* via the same application of deference); *Knox v. U.S. Dept. of Labor*, 434 F.3d 721, 725 (4th Cir. 2006) (discussed by the ARB in *Sylvester* as justification to abandon

If the employee's belief is subjectively and objectively reasonable, it is irrelevant whether an actual FAA violation occurred. *See Sewade v. Halo-Flight, Inc.*, ARB No. 13-098, ALJ No. 2013-AIR-00009, at 8 (Feb. 13, 2015). It is important to note, however, that while a complainant's belief must satisfy the reasonableness standard, the complainant is not required to communicate the reasonableness of his or her belief to the employer or agencies. *Sylvester*, ARB No. 07-123, at 15 (ARB May 25, 2011) (citing *Knox v. U.S. Dept. of Labor*, 434 F.3d 721, 725 (4th Cir. 2006)). Although it is unnecessary that the complainant "actually convey [the] reasonable belief to his or her employer," communications that convey the reasonable belief to the employer "may provide evidence of reasonableness or causation." *Sylvester*, ARB No. 07-123 at 15.

Complainant purports three instances of protected activity on April 3, 2012, April 24, 2012 and May 11, 2012. Compl. Br at 27. There are two incidents—on April 3, 2012 and May 11, 2012— where Complainant alleges he communicated to Respondent that he was being assigned to fly in violation of the Part 135 prospective rest requirements. *Id.* at 27; *see also* RX 2. Complainant did not consider himself at rest when on call and available to fly for Chu. Compl. Br. at 27-28. In Gosselin's opinion, he was available to fly Chu on April 2 and 3, 2012 and on May 10 and 11, 2012. *See id.* Because of his alleged continuous on call status, Complainant avers he did not meet Part 135's prospective rest requirements to fly the charter flights on April 3 and May 11. *See id.*

Complainant also argues he engaged in protected activity on April 24 when he reported to Respondent that Miller reworked his March 2012 flight and duty log in order to "create a false impression . . . [that he met the required] quarterly rest" under Part 135. Compl. Br. at 27. Specifically, Complainant argues that Gama's removal of "standby" days, which reflected his availability time for Chu, and the alteration of his carryover days incorrectly reflected he had met the Part 135 quarterly rest requirement. *Id.* at 27-28.

"To satisfy the subjective component of the 'reasonable belief' test, the employee must actually have believed that the conduct he complained of constituted a violation of relevant law." *Sylvester*, ARB No. 07-123 at 14 (citing *Harp v. Charter Commc'ns*, 558 F.3d 722, 723 (7th Cir. 2009)). In determining whether an employee "actually believed the conduct complained of

the inappropriate "definitive and specific" standard); *see also Hartzman v. Wells Fargo & Co.*, 2015 U.S. Dist. LEXIS 33945 at 9-10 (M.D.N.C. 2015) (citing *Sylvester* for its reasonableness standard and forgoing any mention of the "definitive and specific" analysis).

constituted a violation of pertinent law,” “the plaintiff’s particular educational background and sophistication [is] pertinent.” *Sylvester*, ARB No. 07-123 at 14-15 (*quoting Day v. Staples, Inc.*, 555 F.3d 42, 54 n.10 (1st Cir. 2009)).

After determining whether a complainant’s subjective belief is reasonable, a factfinder must analyze the alleged protected activity objectively. The objective reasonableness of a complainant’s protected activity “is evaluated based on the knowledge available to a reasonable person in the same factual circumstances with the same training and experience as the aggrieved employee.” *Id.* at 15 (*quoting Harp*, 558 F.3d at 723).

I carefully listened to Complainant and observed his demeanor over the course of the three-day trial. I observed Complainant interact with the questioners, closely listened to his answers, and asked my own questions at times for further clarification. In my review of the record, I found that much of Complainant’s testimony about the events in question either conflicted with witness testimony or the documentary evidence presented at trial. I found some of Complainant’s story outright implausible and disingenuous, especially compared with the credible and consistent testimony of other witnesses. Upon review of the record, it appears pertinent details of Complainant’s narrative were either embellished or distorted in order to bolster his case.

I am first compelled to note that several details of Gosselin’s testimony are unsubstantiated by the evidence or are contradicted by multiple witness accounts. One critical example is Gosselin’s testimony about the discussion he said he had with Chu at his initial interview. *See supra* Part III.F.1. More specifically, Complainant alleges that he had an agreement with Chu for at least four hours’ notice prior to departure for any imminent flight and he would not be assigned to any pop up charters. TR 559, 560, 561. In stark contrast, both Walter and Ashton, who were present at the interview, did not recall any such discussion or employment agreement between Gosselin and Chu. *See* TR 54-55, 182, 309-11. Gosselin’s testimony is belied by the fact that at the meeting, there was neither an employment offer from Gama nor any indication from Chu that he wanted Gosselin to fly on his account. TR 56, 309-11. In light of the credible testimony elicited from Walter and Ashton, I find Gosselin’s testimony that he and Chu reached such an employment agreement during this interview highly suspect.

I also found Complainant's apparent perception that he was exempt from Gama's client communication policies self-serving and insincere. Based on the record before me, it is abundantly clear that Gama prohibited outside communications between clients and crewmembers. *See supra* Part III.G. Yet, Gosselin refused to acknowledge awareness of any Gama policy prohibiting communication between clients and crewmembers. TR 609.

On February 25, 2011, Miller told Gosselin via email to stop communicating with Chu/Brizzio about intercompany issues after Gosselin copied Brizzio on an email about a hotel bill. TR 443-44; RX 26 at 1. In his email, Miller specifically referred Gosselin to Gama's aircraft management group responsible for rectifying these matters. RX 26 at 1. On cross-examination, Gosselin acknowledged receipt of Miller's email, but dismissed it, testifying, "[T]here's part of the e-mails missing. There's another e-mail that I responded to this that should be above this, that's whited out. It's not included. And in order for me to properly answer your questions, I think that should be there as well." TR 697-99. Gosselin's refusal to directly answer certain questions on cross-examination appeared less than forthright.

My concerns about Complainant's dishonesty grew when I learned he had not been candid on a job application after being terminated from Gama and he was not forthright about it on cross-examination. RX 55; TR 663-65. Respondent's attorney asked Gosselin twice whether he was honest on his August 2, 2012 job application with Continental Airlines. TR 663-65. Gosselin affirmed both times that he had been truthful. TR 663-65. However, Complainant listed, "United Continental. Recall," as the reason for leaving Gama in May 2012. RX 55 at 10. He did not indicate he had been recently terminated. *See id.* Ultimately, Gosselin admitted, "I mischaracterized what had happened. I filled that out incorrectly." TR 665.

In light of Gosselin's lack of veracity on his less than forthright job application, the deficiencies in his story, and his inability to provide sound or honest answers when prompted about those discrepancies, I find it appropriate to assign little credibility to Complainant and his testimony.

In contrast, I found Gama's former and current employees candid and knowledgeable. Their testimony pieced together a consistent narrative documenting the events on April 3, April 24 and May 11, 2012. In particular, I found Gosselin's direct supervisor, John Walter, to be credible and he was able to explain his communications with Gosselin on April 3 and May 11

based on personal experience.⁶⁷ I also found Fareed Ramjohn and Scott Ashton believable, and particularly instructive in explaining how Gama deals with and services its clients. Likewise, Laura Gawricki and Thomas Miller painted a clear and reliable picture about the incidents surrounding Gosselin's March 2012 flight and duty log.

The testimony from the Gama employees provided a cohesive and comprehensive overview of Gama's policies, procedures and systems, all which help ensure the highest level of service to clients as well as safety and compliance with the regulations. In particular, Thomas Connelly, the CEO and President of Gama, provided an informative summary of Gama's extensive safety protocols and policies and I found his testimony to be forthright. Gama is frequently audited by the FAA and third-party agencies, and it was evident Connelly was extremely proud of the company's emphasis on safety and professionalism. Given Gama's extensive programs which help ensure FAA compliance, I find Gosselin's allegations or beliefs even less credible.

⁶⁷ At trial, Walter testified that he did not recall Gosselin mentioning lack of prospective rest on May 11. Part III.H.3. On cross-examination, Gosselin's attorney questioned Walter about his previous testimony at his September 30, 2014 deposition relating to his May 11 conversation with Gosselin. TR 208-10. I admitted into evidence a two-page portion of Walter's deposition containing the following question and answer:

Q. Okay. In your opinion, why did Glenn Gosselin try to get away from not flying the charter flight on May 11th? Was it because he was under -- you believe he was under the impression he was working all night and day or was it for some other reason? You heard his testimony.

. . . .

A. The fact that he [Gosselin] was trying to say he didn't have any rest when he had not been assigned any duty for a number of days, that he had a normal time period at home and then when he was called during a normal business day to conduct a flight that he was completely unprepared to conduct that flight and in my estimation he was being lazy, unprepared and unprofessional about his job and his responsibilities.

TR 208-10, 292; TX 2. In his brief, Complainant states:

Opposing counsel argued that Walter's deposition testimony was not about what he had remembered Gosselin saying in 2012[,] but about what he remembered him saying at Gosselin's own earlier deposition. Reading the deposition transcript pages clarifies this matter. Complainant submits that Walter was very clearly testifying about his own recollections and views of what Gosselin had been saying and doing on May 11th not what Gosselin had testified to at Gosselin's own earlier deposition.

Compl. Br. at 25 (citation omitted). I disagree with Complainant. Without further context of Walter's deposition testimony, his answer is unclear and I accord it little weight.

April 3, 2012—Part 135 Charter Flight

Complainant's first purported incident of protected activity involved a complaint to Walter about the April 3 charter assignment. Specifically, Complainant argues he engaged in protected activity when he told Walter that he could not accept the April 3 charter assignment because he lacked the required prospective rest under Part 135. Compl. Br. at 36. I am unpersuaded by Complainant's argument for the following reasons.

Initially, I do not find Gosselin's communication to Walter on April 3 about the charter assignment to constitute a safety complaint. Walter credibly testified that Gosselin only raised the subject of possible tornadoes that day during the April 3 phone call. TR 117-20. Yet, Gosselin does not argue he engaged in protected activity because he raised a safety complaint to Walter about tornadoes on April 3. *See* Compl. Br. at 36-37. In fact, he adamantly asserted at trial, "I would never refuse a flight . . . and say it was because I was going to fly through a tornado."⁶⁸ TR 637.

⁶⁸ On cross-examination, Respondent's attorney questioned Gosselin about the inconsistencies between his testimony and Walter's recollection of the April 3 phone conversation:

- Q. His [Walter's] testimony was that the call was about you claiming that you were being asked to fly into a tornado. Did he just make that up?
- A. No . . . I felt that I was being ridiculed, because what had happened, there was a rash of tornadoes in the Texas area in that time period. And that would explain why it was that pop-up, because the rash of tornadoes I believe that took place around 1:00 or 2:00 in the afternoon, and the phone call I received was around 4:30 in the afternoon. And there was a pop-up. And it was a last minute charter to bring, as I heard testified, Al Roker and news anchor Lester Holt to that area so they could investigate it.
- Q. And you felt like you were being ridiculed because why?
- A. Because no pilot in their right mind would fly through a tornado, and I would never refuse a flight . . . and say it was because I was going to fly through a tornado. That's just ridiculing a pilot's ability and knowledge of how to navigate and circumvent such issues.
- Q. Why would there be a discussion about tornadoes if you didn't have prospective rest?
- A. Because at the time he asked me about the weather as part of our conversation, that I didn't testify to. And in that discussion[,] I said, "John, I believe there's some tornadic areas of activities in that region." He said, "Have you looked at the weather?" And I said, "No, but I understand there's a problem and that could have an effect on this trip." And he said, "Well, you could go wherever you want. We're just going to make more money to go around and circumvent. It's a

On direct-examination, Complainant testified he explicitly told Walter that he lacked the prospective rest required for the pop up charter on April 3. TR 585-86. Yet, there is scarcely a showing that Complainant communicated any safety complaint relating to prospective rest to Walter on April 3. Respondent's attorney questioned Walter about whether Gosselin suggested that he lacked prospective rest for the April 3 charter, and Walter affirmatively responded, "No." TR 119. Even Complainant's own account of the pop up charter assignment back in May 2012 does not allude to any lack of prospective rest on April 3. *See* JX 10 at 2. In the May 16, 2012 email to Pagliaro, Gosselin wrote:

[On April 3, 2012], they [Gama Operations Department] left a message at the end of the day, demanding I get in my car and drive to the airport for a pop up trip approved by the owner. Once again, Fared told me upon arrival the night before, I was off. *John Walter and I had a conversation regarding Nathan's inappropriate message, and the amount of previous flying I had prior to this trip. I stated it was unsafe to fly into a tornadic situation through the night when I was tired, up all day, and considered off.* John agreed I would not fly, and it was considered cumulative fatigue.

JX 10 at 2 (emphasis added). Instead, Gosselin's May 16 email only suggests that the "tornadic situation" coupled with being "tired" precluded him from safely accepting the flight assignment, not a lack of prospective rest. *See id.*

In fact, Complainant did not mention tornadoes as a subject of his April 3 conversation with Walter until cross-examination when Respondent's attorney questioned him about Walter's conflicting version. TR 635-38. On cross-examination, Gosselin admitted he had discussed tornadoes with Walter on April 3. TR 636-38. Complainant then appeared to complicate his account by adding, "[W]hat I had really expanded on during that discussion was the fact that I had a hard three months of flying the previous three months." TR 638. Based on Complainant's inconsistent and evolving narrative about his communication to Walter on April 3, I find it difficult to discern any credible safety complaint.

The documentary evidence presented also shows that Gosselin did not mention prospective rest related to the April 3 charter flight assignment *until* his September 14, 2014

charter. This is how we make our money." This is part of the reason why he took advantage of the situation to ridicule me.

TR 636-37.

declaration.⁶⁹ JX 5 at 1-19; Resp. Br. at 50; *see* JX 10; RX 12 at 26-27; RX 13 at 26-27; RX 16; RX 17 at 5. Prior to September 14, 2014, documents referring to the April 3 incident do not mention a lack of prospective rest. *See* JX 10 at 2; RX 12 at 26-27; RX 13 at 26-27; RX 17 at 5.

Despite my finding that Gosselin did not raise a safety complaint to Walter on April 3, for purposes of any appeal, I will analyze whether Gosselin subjectively believed he was reporting a potential violation of the Act. Complainant's alleged safety complaint communicated to Walter on April 3 wholly hinges upon his assertion that he had been "on call" for Chu on April 3 and therefore he lacked the required prospective rest to safely accept the charter assignment.

First, Complainant's subjective belief that he was reporting a safety violation to Walter about lack of prospective rest is undermined by his own May 16 email to Pagliaro. *See* JX 10 at 2. In that email, Gosselin stated that he was "considered off" at the time he received notice of the pop up charter assignment on April 3. *Id.* Yet, now it seems Gosselin views his alleged on call time for Chu as an official "duty" period.⁷⁰ At trial, Complainant explained he did not meet his prospective rest requirement to fly the Part 135 pop up flight on April 3 because he was always ready to fly Chu at any moment, unless he was on approved vacation time.⁷¹ *See, e.g.,* TR 585-86. It appears Gosselin embellished or fabricated his on call/availability time for Chu after the events in question perhaps in an attempt to bolster the lack of prospective rest theory he put forth at trial.⁷²

⁶⁹ For example, Gosselin's August 7, 2014 Response to Gama's First Set of Interrogatories and September 3, 2014 Amended Response to Gama's First Set of Interrogatories do not mention lack of prospective rest related to the April 3 charter flight assignment. RX 12 at 26-27; RX 13 at 26-27.

⁷⁰ It is not clear what Gosselin considers his alleged on call/availability for Chu to be. For example, when testifying about the April 3 incident, Gosselin noted, "I said [to Walter] that I had not met my prospective rest requirements for that [assignment]; that I had been available for Mr. Chu, and *nobody relieved me of that duty* prior to this assignment." TR 585 (emphasis added); *see also* Compl. Br at 36. But, later on in his testimony, Gosselin said that his availability time for Chu was not considered a rest period or a duty period. *See* TR 628. Also contrary to this statement, Gosselin logged his on call time for Chu as "standby," which is a duty period, in some of his flight and duty logs. *See supra* Part III.H.2. Gosselin indicated that he captured his on call for Chu as standby on his logs because "that was the only term available to me in my flight and duty records that I could choose closest to that term that I had been using throughout my employment." TR 627.

⁷¹ As Respondent pointed out, had Complainant believed he lacked prospective rest on April 3, his additional alleged complaints about fatigue from "three hard months of flying," would be irrelevant. Resp. Br. at 26 n.15; *see also* TR 585-86.

⁷² Gosselin's allegation that his on call time for Chu was official duty time is further diminished by the fact that his April 2012 flight and duty log does not indicate "standby" on April 3; that day was left blank. CX 10 at 33; RX 28.

Most pertinent to whether Complainant subjectively believed he was reporting a safety violation related to prospective rest, Complainant's last flight assignment ended at 6:00PM the day prior on April 2. RX 31. At the time he received notice of the charter on April 3, he had been off duty for *over* 10 hours. Based on Gosselin's own April 2 voyage report, he indicated he was next eligible to fly a Part 135 flight at 4:00AM on April 3—10 hours following his duty end time on April 2. *See* RX 31. In fact, Gosselin consistently listed his "next available flight time" on his voyage reports as 10 hours from when he was last released from duty from that trip. *See* CX 14; RX-31; RX 32; RX 69. Therefore, it appears Gosselin did not consider himself *always* on call/on duty for Chu.

At trial, Complainant said he considered himself not at rest when on call for Chu because he had to keep his BlackBerry phone with him at all times, he had to be within four hours from the airport and he could not consume alcohol.⁷³ TR 580-85, 628; *see also* Compl. Br. at 15, 36, 39-40. He testified, "[I] was not free from restraint, and I had an obligation to answer the phone and go to work should the occasion arise." TR 581. He also said his availability time for Chu was neither rest nor duty time. TR 628.

⁷³ In his brief, Complainant cites to the case, *Aviators for Safe and Fairer Regulations, Inc. v. FAA*, 221 F.3d 222 (1st Cir. 2000). Compl. Br. at 15. In that case, a trade association petitioned review of the FAA's notice of enforcement policy interpreting flight crew rest requirements. *Aviators for Safe and Fairer Regulations*, 221 F.3d 222, 224. Without proper notice or rulemaking, the FAA issued its notice of enforcement policy, which stated:

The FAA has consistently interpreted the term rest to mean that a flight crewmember is free from actual work from the air carrier or from present responsibility for work should the occasion arise. Thus the FAA previously has determined that a flight crewmember on reserve was not at rest if the flight crewmember had a present responsibility for work in that the flight crewmember had to be available for the carrier to notify of a flight assignment.

221 F.3d at 224 (*quoting* Notice of Enforcement Policy, 64 Fed. Reg. 32176, 32176 (1999)). The issue discussed by the Court was whether this particular notice addressed both a "duty-to-report" and "duty-to-be-available" circumstance. *Id.* A duty-to-report scenario is when a "crewmember who is nominally off duty has a responsibility during the period to leave a contact number, to be fit to fly, to take any telephone calls or other communications notifying him of a flight assignment, and to report for that assignment in a reasonable time (*e.g.*, two hours)." *Id.* at 224. In contrast, a duty-to-be-available circumstance is the same as the duty-to-report scenario, but the crewmember "has the option to accept or decline a flight assignment that is offered during this off-duty period." *Id.* at 224-25. Ultimately, the Court denied the petition related to the duty-to-report scenario as the FAA's interpretation was "plausible," and "consistent over time." *Id.* at 230. However, the Court found the FAA's duty-to-be-available circumstance unripe for review. *Id.* at 231.

When Gosselin received the call from the dispatcher on April 3, he claims he was at his daughter's field hockey game.⁷⁴ TR 584, 633-35. He also stated that he did not pick up his phone when Gama called—the dispatcher had to leave him a voicemail about the flight. *See* TR 584, 634-35. In light of these circumstances alleged by Gosselin himself, it defies logic that he believed he was not at rest, but in a constant “available to fly” status, expecting to be called by Chu to take a flight at any moment on April 3.⁷⁵

I note that it is highly unlikely that Gosselin actually expected to fly for Chu on April 3 or at all before his next scheduled flight with Chu, despite his allegation that he was always on call. Walter frequently flew on Chu's account and testified that Chu was “fairly scheduled,” and Gama generally knew “in advance [about] when he [Chu] was actually traveling.” TR 87. This further diminishes the veracity of Gosselin's assertion that he was on call/available to fly because he was expected to be ready to fly Chu under Part 91 at a moment's notice. Walter did not recall *any* pop up trips with Chu while he flew on the account. TR 87. This significantly undercuts any subjective reasonableness of Complainant's alleged safety complaint that he lacked prospective rest to accept the April 3 charter.

Even if Complainant had a subjective belief that he communicated to Walter a violation of the Act or safety complaint related to rest on April 3, I do not find his belief objectively reasonable. Gosselin is a seasoned pilot, has over 30 years of experience and is familiar with Part 91 and Part 135 flight requirements. ALJX 58 at 8; TR 548-52. The testimony presented by

⁷⁴ Although not crucial to my determination, I note that Walter testified he was notified that Gosselin did not want to accept the charter assignment on April 3 at around 8:30AM, while Gosselin alleges he was not notified of his flight assignment until he received a voicemail from Gama at about 4:20PM. *See supra* Part III.H.1. The time when Gosselin was notified of the flight assignment on April 3 does not change my analysis. Even if Gama had not notified Gosselin until 4:20PM of the charter, in light of the foregoing, I do not find that he reasonably believed his flight assignment on April 3 violated any air safety regulation or law.

⁷⁵ Complainant argues that Respondent admitted that he was always on call and expected to report for Part 91 client flights. Compl. Br. at 11 n.4. I ultimately do not find Gosselin's testimony that he was always available and ready to fly Chu at a moment's notice to be credible. Ramjohn stated a client's request to fly must be “within reason” and “[t]hey [the clients] have to let [Gama] know where they want to go because we have to get crews available.” TR 500. To accept Gosselin's version of his on call/availability time for Chu would mean that the only days where he ever received sufficient rest were on vacation days or “hard days off.” Gama's Handbook defines “Hard Days Off” as follows: “No crewmember will plan a hard day off without prior permission from their supervisor who will coordinate with operations. If a crewmember needs a hard day for personal reasons, it should be scheduled, as far in advance as possible to assure it is available.” RX 1 at 60. A hard day off is similar to a personal day or vacation time. TR 417.

both Walter and Miller—both highly experienced individuals in the aviation industry—also diminishes any objective reasonableness of Complainant’s subjective belief.

As Executive Vice President of Flight Operations, Walter was responsible for ensuring that pilots who had been flying a “back-to-back with a proper rest” and “crossing a lot of time zones,” received “extra days off so that they have plenty of rest time, beyond what the regulations . . . require[.]” See TR 79. Walter testified that Gama’s policies are designed in conjunction with all FAA regulations.⁷⁶ TR 231, 234. At Gama, pilots were only officially “on duty” when actually assigned to a flight or placed on “standby” duty. TR 80-81, 540. A “standby” assignment was considered a “duty” period, but it was only assigned when directed by Walter or Miller for a flight that was “planned or imminent.” *Id.* It is undisputed that Gosselin was not placed on standby by Walter or Miller prior to the dispatcher’s call on April 3.

In Gosselin’s opinion, he “should have been relieved of this [on call] duty [for Chu] the previous evening to meet the prospective rest requirements of th[e] [April 3] trip.” TR 585. However, pursuant to Gama’s Operations Notifications #9 and #11, pilots were required to go off duty for rest at 8:00 PM until 6:00AM the next day. RX 3; RX 4; RX 5; TR 95-97. These policies were created in order to ensure that each pilot had sufficient prospective rest under Part 135. ALJX 58 at 11. Therefore, at a minimum, once Gosselin was relieved of duty at 6:00PM on April 2, he was aware he was required to go into a mandated rest period that night. It is unlikely that Gosselin, an experienced pilot and long-time employee at Gama was not aware of Gama’s policies and procedures.⁷⁷

I find it entirely unreasonable for a person with Complainant’s training and experience to believe that the April 3 charter assignment violated any rest requirements under the FAA when he had not flown an airplane since 6:00PM the night before.⁷⁸ Based on the foregoing, I

⁷⁶ Walter explained, “[A]ll our operations manuals and programs are overseen by the FAA and are developed in conjunction with the FAA, and the operations manual is submitted to the FAA for approval.” TR 231.

⁷⁷ Gosselin claims he was unaware of Gama’s Operations Notifications #3, #9 and #11 prior to April 25, 2012. See TR 717, 718.

⁷⁸ For purposes of any appeal, I also note Complainant briefly suggested that he raised concerns to Walter about fatigue on April 3 due to “three hard months of flying.” TR 585, 586. Although these concerns were not developed in Complainant’s brief as most of his argument focused on lack of prospective rest, he points out that “pilots who tell their employer they cannot fly due to fatigue have engaged in protected activity.” Compl. Br. at 36. In support of his argument, Complainant relies on *Douglas v. Skywest Airlines*, ARB Nos. 08-070, 08-074, ALJ No. 2006-AIR-00014 (ARB Sept. 30, 2009) and *Rooks v. Planet Airways, Inc.*, ARB No. 04-092, ALJ No. 2003-AIR-00035 (ARB June 29, 2006). For the reasons set forth below, I find the evidence fails to demonstrate that Complainant subjectively

conclude that neither the testimony nor documentary evidence demonstrate that Complainant genuinely believed—subjectively or objectively—that he was reporting a safety concern to Walter on April 3 under the Act.

April 24, 2012—March 2012 Flight and Duty Log

Complainant argues that he engaged in protected activity on April 24, 2012 when he complained to Gama about his “reworked” March 2012 flight and duty log. Compl. Br. at 37. More specifically, he avers this constitutes a safety complaint because Gama altered his carry over days and removed his standby duty time in order to “create a false appearance [to the FAA] that he had the required 13 days of rest during the first quarter of 2012.” *Id.*

There is no testimonial or documentary evidence to corroborate Gosselin’s claim that he complained to Walter and Miller on April 24 about Gama’s alleged attempt to cover up that he did not meet his 13-day rest requirement in the first quarter of 2012 as required by Part 135. In Gosselin’s own April 25, 2012 email to himself documenting his conversations with Miller, he does not mention that his original March log demonstrated a lack of quarterly rest. JX 21. Miller said his conversation with Gosselin was solely about incorrectly logging both standby time and carryover days in violation of Gama’s policies and Records Instructions. TR 540-41. Miller did not recall Gosselin raising lack of required quarterly rest as a concern in relation to his

believed he was reporting a safety violation when he allegedly communicated to Walter that he was tired from “three hard months of flying.”

First, Walter only recalled Gosselin mentioning tornadoes during the conversation on April 3. See TR 117-19. Therefore, based on the record before me, fatigue was only initially brought up when Gosselin attempted to explain his refusal of the April 3 assignment to Gama in his May 16 email to Pagliaro, stating, “[I]t was unsafe to fly into a tornadic situation through the night when I was tired, up all day, and considered off. John agreed I would not fly, and it was considered cumulative fatigue.” JX 10 at 2. In stark contrast, Walter, a witness I found believable, specifically articulated at trial that he removed Gosselin from the April 3 flight because he determined in the course of their conversation that Gosselin was “not of the right mind to fly,” and “not to do with anything else.” See TR 117-19.

The only reason proffered by Complainant at trial for being “tired” on April 3 is that he had had “three hard months of flying.” TR 585, 586. If Gosselin made a safety complaint about fatigue on April 3, and subjectively believed flying in his physical condition would have violated FAA regulations, it is inconceivable that he would have accepted *any* flight assignment from Gama for either Chu under Part 91 or a charter under Part 135. Although Part 91 does not have specific rest requirements, Gama uses a flight risk analysis in order to assess a pilot’s fitness for flight under Part 91. TR 434. Under Part 91, pilot could not be on duty 24 hours a day, seven days a week because according to Walter, “[Pilots] have the responsibility to be rested and safe to be able to take a flight.” TR 68. Nevertheless, at trial, Gosselin maintained that he was in an “on call” status for Chu all day on April 3. See *supra* Part III.H.1. Gosselin’s apparent willingness and ability to fly Chu on short notice on April 3, but inability to accept a Part 135 flight due to fatigue is absurd.

March flight log. TR 541. Likewise, Walter said that during his entire tenure as chief pilot, he was not aware of *any* Gama pilot complaining that he or she lacked quarterly rest. TR 108.

It is clear that Complainant's communications with Walter and Miller involved a dispute about the proper way to log standby and carryover time on the flight and duty logs. *See supra* Part III.H.2. Specifically, on April 24, 2012, Gosselin wrote to Walter via email, "Please let's find a solution for this question as we all want to be compliance with our operations specifications and regulations." JX 8 at 3. As previously noted, the ARB abandoned the stringent specificity standard applied in *Simpson*. Instead, the Board has implemented a liberal framework that more accurately captures the intent of AIR21 and other whistleblower provisions. Most pertinently, while a complainant's belief must satisfy the reasonableness standard, the complainant is no longer required to relay specific and definitive complaints nor communicate the reasonableness of his or her belief to the employer or agencies. *See Sylvester*, ARB No. 07-123, at 15, 19. Accordingly, I will analyze whether Complainant's communications to Miller and Walter about his March "reworked" flight and duty log constitutes protected activity.

At trial, Complainant testified he told Miller on April 24 that his flight logs for the first quarter of 2012 revealed he did not meet his quarterly rest requirements and that it was "unsafe." TR 591. Complainant's argument rests in part upon his allegation that Gama removed his on call time for Chu, which he logged as standby duty.⁷⁹ It is undisputed that Complainant was never placed on standby duty by either Walter or Miller in March 2012 per Gama's policy.⁸⁰ *See* TR 148. The only restrictions Gosselin admittedly had when he was "on call" for Chu is that he said he had to keep his phone close by, be within four hours from the airport, and he could not consume alcohol. *See* TR 580, 581, 582, 583-84, 585. In light of the credible testimony elicited from Walter and Miller coupled with Gama's standby and rest policies, I find Gosselin's interpretation of on call/availability for Chu time wholly contrived. *See supra* Parts III.H.1 & 2.

⁷⁹ Based on Gosselin's assertion, it appears that no Gama pilot who was *always* "on call" for a specific client account would meet quarterly rest requirements under Part 135. If Gosselin genuinely believed that his on call/"standby" time interfered with his ability to meet his quarterly rest requirements in the first quarter of 2012, the issue would likely have been raised at some point in the past two-and-a-half years of his employment with Gama while on Chu's account. However, Gosselin did not consistently log standby time in the past nor did he ever raise concerns about quarterly rest. I find Gosselin's belief that he was *always* on call for Chu, and therefore not at rest simply not credible.

⁸⁰ Gosselin acknowledged that his alleged on call time for Chu was not standby time as Gama defined it. TR 583-84.

Nevertheless, on his own volition, Gosselin logged his “on call” time for Chu as standby time because in his opinion, “[t]here was no other way to account for it.” TR 583-84; *see also* Compl. Br. at 37.

I initially question the genuineness of Complainant’s belief that he was reporting a safety violation to Gama when he complained about his reworked March 2012 log for several reasons. First, Gawricki, who is unfamiliar with the technical aspects of flight logs, convinced me that the only reason Gosselin’s March 2012 flight log was flagged was because she noticed the number of duty days he listed exceeded the 31 days in the month of March. *See* TR 518, 519, 521, 522. I found Gawricki very credible. She was able to clearly articulate the issues she first noticed with Gosselin’s March flight log. This was the only flight and duty log Gosselin submitted since he began his employment with Gama in December 2009 where the duty days exceeded the physical number of days in the given month. *See* TR 524-25.

Upon further investigation by Miller, at Gawricki’s request, Gama discovered problems with Gosselin’s entries on his flight log. *See supra* Part III.H.2. When first questioned by Gawricki about the log, Gosselin’s email response was simply that, “It[’]s set to a 14hr duty day I have had multiple duty periods on the same day,” but he did not mention lack of quarterly rest or any safety complaint. *See* RX 37 at 3. I find it problematic that Gosselin only allegedly raised this safety concern *after* Gawricki told him his log had more duty days than the 31 days in March. *See* Compl. Br. at 37; Resp. Br. at 51; RX 37 at 3; TR 519. Complainant admits he only initially discovered that he did not meet the 13-day quarterly rest requirement on April 24 during his discussions with Gama about his March 2012 log. *See* TR 615. But it was only when Gosselin was pressed further by Miller and Gawricki to modify his duty day entries in accordance with Gama’s policies that he raised any issues with the March flight log. *See supra* Part III.H.2.

As a pilot, Gosselin knew he was responsible for tracking his own flight time and filling out his flight logs. *See, e.g.,* TR 615-16. I find it highly suspect that Gosselin genuinely believed his March 2012 flight log was somehow not in compliance with FAA safety regulations, but apparently did not raise the concern to Miller *until* it was changed by Gama.⁸¹

⁸¹ Respondent also argues that Gosselin never raised any issue related to lack of quarterly rest in his contemporaneous emails. Resp. Br. at 32. Specifically, Gosselin’s April 25, 2012 “note to self” email only addressed Instruction # 7, not quarterly rest. *See id.*; JX 7 at 2; JX 21 at 1. Respondent also highlights

At trial, Gosselin claimed he was not aware he was flying in violation of his quarterly rest requirements at the time, which I also find highly questionable. *See* TR 615. On cross-examination, Respondent's attorney questioned Gosselin about when he allegedly learned he was flying in violation of the quarterly rest requirement:

Q. You flew in violation of the quarterly rest requirements?

A. I did.

Q. And you were aware of it at the time?

A. No. I was not. It was discovered through my flight and duty records when they were completed at the April 24th incident discussion when it was conveyed.

Q. As a pilot, don't you have an independent obligation under your license to keep track of your duty time?

A. Yes.

Q. And were you not properly keeping your duty time?

A. I was, but my computer had been damaged by a passenger on the aircraft.

TR 614-15. Given Complainant's experience, training and responsibility as a pilot to track his duty time in order to assess his fitness to fly, I find his claim that he was not aware he was flying in violation of the FAA's quarterly rest requirement until after he submitted his flight log to Gama wholly unreasonable. Complainant's testimony that his damaged computer hindered his ability to track duty time appears less than honest.⁸²

the fact that Gosselin did not mention lack of quarterly rest in either his DOL complaint or in Gama's interrogatory requests. *See* Resp. Br. at 32; RX 12 at 26-27; RX 13 at 26-27; RX 16.

⁸² Even more suspicious, on the same day Gosselin submitted his March 2012 flight log to Gama, he also sent an overtime request letter to Walter about compensation for additional "on duty" days each month. *See* RX 37 at 13. In his letter, he referenced Gama's Crew Member Recognition Program which states, "Any full-time, salaried flight crew member employee of Gama Charters Inc. whose Flight and Duty totals more than sixty flight days per calendar quarter is entitled to receive \$250/day as a bonus for each addition duty day of flight duty performed." RX 21 at 4; RX 37 at 13. Days that qualify under this program are: "Days Spent in Travel (related to Flight Duty) and Standby Days Assigned by Gama Charters Inc." RX 21 at 4. The contemporaneous overtime request and Gosselin's complaint on April 24 that Gama inappropriately removed standby duty days and modified carryover days on his March 2012 log puts his motive into question.

Gosselin proffers two reasons why his belief that Gama's alteration of the log violated FAA regulations was subjectively and objectively reasonable. Compl. Br. at 37. First, Complainant argues he had completed his March 2012 flight and duty log in the same manner as he had for two-and-a-half years without question or correction from Gama. *Id.* Gosselin further argues the flight log "did not have any specific instructions as to how to enter time spent when 'on call' or 'available' to fly or when flight hours carried over two calendar days." *Id.*

I find Complainant's argument unpersuasive. Complainant testified he logged "on call" time for clients as standby time in both his first and second term of employment at Gama. TR 583-84. Yet, his flight logs spanning from 2009 to 2012 are replete with inconsistent entries.⁸³ See CX 10. Ultimately, I find the sincerity of Gosselin's belief that he was *always* "on call" and therefore on standby duty for Chu to be undermined by his own flight and duty logs.⁸⁴ For example, some of Complainant's flight and duty logs between December 2009 and May 2012 do not include standby time at all.⁸⁵ See CX 10 at 1-6, 14-16, 19-23, 26. In fact, on many of the monthly logs where Gosselin included standby time, he only notated standby time on *some* days

⁸³ In fact, the entries in Gosselin's March 2012 flight and duty also contain inexplicable discrepancies related to his logged standby time. For example, Gosselin included twelve total standby duty days in March 2012. RX 37 at 5-6. Of those twelve standby days, four days reflected "11.0" hours of duty time with no "duty off" time, while the other eight days indicated "0.0" hours of duty time without a "duty on" or "duty off" time. See *id.* Walter testified that "there is no such thing as zero duty time for standby." TR 139. Walter also said Gosselin's 11.0 hours of standby duty was inappropriate because the log "requires a 'Time on' and 'Time off'" in order to calculate the total duty time. TR 146-47. However, Gosselin did not explain why he included eleven hours on some on call/"standby" days, but zero hours on others. TR 148-49.

⁸⁴ Gosselin did not include any standby days as recent as January 2012. JX 20 at 1. The first time he actually logged any standby time was back in June 2010—six months after he began flying for Chu. See CX 10 at 1-7.

⁸⁵ It is impossible to discern any difference between Gosselin's off duty days, where he did not indicate any type of duty, and his standby time where he logged zero duty hours. In fact, Complainant acknowledged at trial that "zero duty" means "no duty." TR 646. I note that Gosselin's January 2012 and February 2012 flight logs reflect a total of 8 blank entries (1/1, 1/5, 1/6, 1/7, 1/8, 1/9, 1/10, 2/23) with no duty listed and zero duty time. CX 10 at 26 & 27. However, Gosselin maintained that he was *always* available to Chu unless scheduled otherwise. See *supra* Parts III.H.1—3.

Therefore, it appears Gosselin chose to indicate standby time on only *some* days and months when he was allegedly on call for Chu. For example, in the last quarter of 2011 (October 2011 through December 2011), Gosselin included standby days in November and December of 2011, but not in October 2011. See CX 10 at 23-25. According to his October 2011 flight log, Complainant had 11 days where he was not scheduled, but did not notate any standby duty on those days. *Id.* at 23. In stark contrast, in November 2011, for each day in that month where he was not scheduled, he listed zero hours of standby duty. *Id.* at 24. In fact, similar to his March 2012 originally submitted to Gama with 38 total duty days, his November 2011 log does not indicate *any* "off duty" days. CX 10 at 24, 31-32.

where he was not assigned to a scheduled flight.⁸⁶ See CX 10. Based on the entire record before me, it appears the manner in which Gosselin logged standby time each month was a mere preference, and not motivated by a desire to comply with any specific FAA regulation or safety protocol.⁸⁷

Alternatively, if Complainant had a subjective belief that he engaged in protected activity under the Act, I find his belief is not objectively reasonable.⁸⁸ As Director of Operations responsible for overseeing the operations and safety at Gama, Miller was particularly instructive about how Gama expected its pilots to fill out their flight and duty logs.⁸⁹ TR 527-29. A reasonable person with Complainant's training and experience as a pilot in the same circumstances would not believe the March 2012 flight log reflected violations of FAA's

⁸⁶ As I previously noted, Gosselin only first logged standby duty on days with zero hours of duty time in his June 2010 flight and duty log. CX 10 at 7. In that same log, however, he also left days blank where he was not assigned to a flight. See *id.* Most significant, I note Gosselin's April 2012 flight log does not indicate "standby" time on April 3, although he claims that he could not safely fly a Part 135 flight that day because he was on call/standby for Chu all day on April 3. RX 28; see *supra* Part III.H.1. Review of Gosselin's logs between 2009 and 2012 demonstrate no consistent pattern with respect to his alleged on call days for Chu. See CX 10.

⁸⁷ I also find Complainant's belief that Gama conspired to create a false impression to the FAA that he met his quarterly rest subjectively wholly unreasonable. Connelly's extensive overview of Gama's safety measures, protocols and procedures at trial cast significant doubt on the "reworked" flight log conspiracy alleged by Gosselin. See *supra* Part III.E. Miller persuaded me that he modified Gosselin's March 2012 log in accordance with Gama's Records Instructions because it contained two legitimate errors—standby entries and incorrect carryover days in violation of Gama's standard operation procedures. See *supra* Part III.H.2. Based on the entire record before me, I find Gosselin's alleged belief that Gama reworked his March 2012 log in order to hide a lack of required quarterly rest to be entirely fabricated.

⁸⁸ Miller informed Gosselin that his March 2012 flight log inaccurately reflected carryover time specifically in violation of Rule 7 of Gama's Records Instructions. See *supra* Part III.H.2. Miller explained that pursuant to Gama's Crew Member Flight and Duty Record Instructions, a consecutive period of duty time is captured on a flight log on one single line, not on two separate lines or duty periods. JX 25; RX 37 at 5, 8; TR 138-39, 140.

Yet, Gosselin argues that his assigned flight/duty time which carried over two calendar days should be captured as two separate duty periods. Compl. Br. at 37. On cross-examination, however, Complainant acknowledged that he previously admitted at his deposition that he made a mistake in computing carry over time. TR 589-90, 641. But he testified that Respondent's attorney "convinced me that he made a mistake, and I agreed with him." TR 590. Gosselin changed his testimony at trial, noting that now he believes Miller was incorrect about how to compute carryover time. *Id.* In light of the foregoing, I do not credit Complainant with a good faith subjective belief that his carryover days as indicated on the March 2012 flight log as originally submitted to Gama constituted a violation of the FAA's quarterly rest requirements.

⁸⁹ Walter also explained, "Duty for flight or any other duty is assigned by the air carrier. . . . The duty period ends when they are released from the air carrier." TR 76. The consistent testimony of Walter and Miller confirmed that "standby" duty per Gama's policies and procedures was only assigned by Gama when a flight was pending or imminent. See *supra* Part III.H.2. This policy was also explicitly set forth in the company's Guide which was available to Complainant during his employment. *Id.* In particular, Gama Operations Department Notifications dictate that standby duty is an *assigned* duty period by the air carrier. RX 3; RX 4; RX 5; see also TR 97.

quarterly rest requirements.⁹⁰ As I noted earlier in the decision, I do not find Complainant's assertion that he was on call for Chu, and therefore not at rest, to be credible.

There is no evidence in the record demonstrating that Gosselin held a reasonable objective belief that Miller reworked Gosselin's March flight log in order to hide quarterly rest violations from the FAA.⁹¹ The testimony elicited from both Connelly and Walter strongly suggests otherwise. Gosselin acknowledged that Gama uses the Flight Operations System in order to track duty time and to comply with the FAA's rest requirements. *See* TR 616. All pilot voyage reports are entered into Gama's FOS system, a program designed to collect data including records of flight times, aircraft maintenance, duty times, training periods and vacation periods. *Resp. Br.* at 11; TR 88, 103, 106. FOS specifically flags pilots who do not have prospective rest or sufficient quarterly rest. TR 88-89.

Notably, Connelly testified, "[T]here's no way there could be a systemic safety . . . or cultural issue without it being brought out in one of these audits, because we [Gama] are . . . audited by independent agencies all day long, and our culture is to find that stuff and deal with it in a positive way." TR 427. Connelly's trial testimony convinced me that had Gosselin not met his quarterly rest in March 2012 or in any month prior, it would have been likely identified by FOS or one of Gama's extensive audits. *See supra* Part III.E. Since Gosselin knew his voyage reports would be submitted to FOS and ultimately available for review by the FAA, I find his alleged conspiracy theory that Gama attempted to hide any violation of the FAA wholly inconceivable. Thus, I find a reasonable person with Complainant's training, knowledge and experience would not consider the communication to Walter and Miller on April 24 to constitute protected activity under the Act.

⁹⁰ I note that the other Gama pilot assigned to Chu's account, John Dvorak, did not include standby time on either his March or April 2012 flight and duty log. RX 29; RX 30. He also flew the unscheduled April 3 flight to Texas when he had also flown the night before on April 2 with Gosselin. RX 32; TR 125.

⁹¹ Gosselin stated:

When you're flying, you put a start and an end time to acknowledge whether or not you've met your – you have exceeded your 14-hour duty day if it's Part 135, or to acknowledge how much flight time you've flown and to acknowledge when you were off duty so you can account for prospective rest if you had a 135 trip following that trip.

TR 650-51. According to Gosselin's last quarter flight logs, he had a total of 23.3 hours of flight time in January 2012, 35.9 hours of flight time in February 2012 and 47.2 hours of flight time in March 2012. CX 10 at 26-32; TR 652-53.

May 11, 2012—Pop up Charter Flight

Finally, Complainant alleges he engaged in protected activity on May 11 through his phone call to Walter and his communications to Brizzio⁹² about lacking prospective rest related to the assigned pop up charter. I find Gosselin's purported complaints on May 11 about lacking prospective rest for the pop up charter less than credible for the following reasons.

Walter's recollection of the conversation with Gosselin on the morning of May 11 was that Complainant could not accept the assigned charter because he did not have a uniform or a car to get to the airport. TR 155-57. Complainant's email to Brizzio on May 11 outlining his concerns about the assigned charter does not reference a lack of prospective rest as the basis for refusing the flight. See CX 2; JX 3; JX 4; JX 26; RX 10. Based on the email, which is consistent with Walter's testimony, it appears Gosselin's concern was that he did not have at least four hours' notice from the flight departure time and that he did not have a clean uniform or a car to get to the airport. See *id.* In this email, he also noted the trip was unsafe because, "I have not eaten breakfast, I am running to get my car, and running to get to the airport for an unrealistic departure and now stressed out discussing about how this came about." *Id.*

After Gosselin was placed on administrative leave on May 16, he sent an almost identical email to Pagliaro reiterating that he could not fly the pop up flight because he did not have four hours' notice from departure, a uniform, or a car and had not eaten breakfast that morning. JX 10 at 1-2. Gosselin did not indicate he lacked prospective rest.⁹³ See *id.* Then, in a follow-up

⁹² Respondent argues that Gosselin's communications to Brizzio on May 11 do not constitute protected activity because complaints to third parties are not protected under the Act. Resp. Br. at 56. Complainant asserts, however, that Chu was a joint employer for AIR21 purposes. Compl. Br. at 26-34. Although I do not reach the joint employer issue, I will nevertheless address whether Gosselin's alleged communications to Brizzio on May 11 constitute protected activity for completeness of the record and for possible appellate purposes. Complainant also argues the following: "AIR 21 provides, in relevant part, that employers may not retaliate against employees who provide or 'caused to be provided' to the employer any information related to an alleged FAA order, regulation or standard or any federal law related to air carrier safety." Compl. Br. at 40 (citation omitted) (emphasis in original). Specifically, Gosselin avers that "he contacted Brizzio because he thought that, as the operator of the aircraft and the account, the client would intervene if they were made aware of the unsafe practices." *Id.*

⁹³ When questioned by Respondent's attorney on cross-examination why he excluded any mention of prospective rest in his May 11 email, Gosselin replied, "It was quite a stressful morning and quite a stressful day. And to write -- write an e-mail under those conditions, I'm sure you're well aware of, you may miss you a few things." TR 703-04. I found Complainant's evasive responses throughout trial to diminish his credibility. See, e.g., *id.* As the Respondent pointed out, Complainant admitted at trial that he told the DOL investigator on August 19, 2013 that he sent Brizzio his email after he was removed from the flight and had time to digest what had happened earlier that morning. See Resp. Br. at 40, 55; TR 706. It difficult to believe that Gosselin's most pertinent concern—lack of prospective rest would have been omitted from both his May 11 and May 16 emails.

email from Gosselin to Pagliaro on May 17, he wrote: “My contact with Mariel[I]a [Brizzio] was to clarify the terms of my employment agreement with the client because of my discussion with John Walter regarding the terms.”⁹⁴ RX 21; *see also* TR 457. Based on these contemporaneous emails, it appears the crux of Gosselin’s complaints on May 11 was about his apparent exemption from flying pop up charters under Part 135 and entitlement to a mandatory four hours’ notice of any imminent flight pursuant to an alleged agreement with Chu/Brizzio.⁹⁵

On cross-examination, Respondent’s attorney questioned Gosselin about his statements during an interview with a Department of Labor (“DOL”) investigator on March 22, 2013. TR 708-13. In response, Gosselin admitted he told the investigator that he thought he was off duty on May 11.⁹⁶ *See id.* Even more damning to Gosselin’s allegations, on cross-examination,

Gosselin testified he also complained to Walter and Brizzio about needing four hours’ notice from any flight departure. TR 594, 707. On cross-examination, Respondent’s attorney asked Gosselin, “What difference would four hours notice make if you’re not fit to fly because you don’t have prospective rest?” TR 707. Gosselin merely answered, “To refresh her recollection to the terms that were agreed to when they hired me” *Id.*

⁹⁴ Complainant also argues that his phone call and email to Brizzio constitutes protected activity because he contacted her “due to his belief that he would be terminated the following day by Walter and hoped that she would act to prevent that.” Compl. Br. at 41. In support, he cites to *Benjamin*, ARB No. 12-029, where the Board found that the complainant’s tape recording of a meeting with his supervisor following his safety complaint report was protected activity. Specifically, the Board found the evidence established that the complainant “reasonably believed that the imminent meeting at headquarters was ‘indirect pressure’ to discourage pilots from writing up maintenance issues . . . [and] Benjamin’s attempt to record the ‘yelling’ he expected was a protected attempt to document the unlawful intimidation he raised in his March 22nd ASAP.” Slip op. at 9. I find this case inapplicable to the present facts as I do not find Complainant reasonably believed he was making any genuine safety complaint on May 11. Walter’s credible testimony convinced me the heated conversation with Gosselin was not about safety concerns, and was simply Gosselin communicating that he was not prepared to report to work. *See* TR 156-58.

⁹⁵ I also decline to find that Gosselin’s complaint about not having four hours’ notice prior to the flight departure constitutes protected activity. Gosselin avers that he was entitled to four hours’ notice from any flight departure pursuant to an agreement with Chu and Brizzio. *See supra* Parts III.F.1 & III.H.3. However, I find there was no agreement to provide Gosselin with four hours’ notice; both Connelly and Walter testified that no Gama pilot has been given such pre-flight notice accommodations. TR 172-73; 452. Walter testified that three hours’ notice of a flight departure is lawful under the FAA, and that the two pilots who accepted the pop up flight on May 11 were given the same notice as Gosselin. *See* TR 173.

Even if there was such an agreement, I do not find Gosselin had a subjective or objective reasonable belief that his complaint about his alleged required pre-flight notice constituted protected activity. Gosselin is an experienced pilot who is extremely familiar with Part 91 and Part 135 flight requirements and acknowledged at trial that there is no requirement under the FAA which mandates four hours’ notice of an imminent flight. TR 613-14, 619-20. It appears Gosselin’s complaint related to the fact that he felt Gama did not honor the alleged agreement he had with Chu. *See, e.g.*, JX 9 at 2. In fact, he clearly articulated in his email to Pagliaro on May 16 that he only contacted Brizzio to clarify the terms of his agreement with Chu. *Id.*

⁹⁶ Further, Gosselin’s May 11 email to Brizzio mentioned more than once that he was off duty that day. *See* CX 2; JX 3; JX 4; JX 26; RX 10. This email undermines Complainant’s allegation that he was always available and on duty for Chu unless told otherwise. In his email, Gosselin wrote: “It is not fair . . . to me *who has a mindset that I am off* and in the middle of personal commitments.” *Id.* (emphasis added).

Gosselin acknowledged his past statements to the DOL investigator, including that (1) he *never* refused the charter assignment during his conversation with Walter; and (2) that he only needed more time to get his uniform and a rental car in order to fly the trip. TR 710-13. I find these past statements undercut Gosselin’s alleged complaints to Walter and Brizzio about lack of prospective rest.⁹⁷

Even if I found Complainant’s purported safety complaints reliable, I find Complainant did not subjectively believe his concerns about the May 11 pop up charter constituted safety issues or potential violations of the Act. Complainant stated that after receiving Gama’s call from dispatch about the pop up assignment, “I went and retrieved some items and then [I] rushed to the airport.” TR 675. But, Gosselin also testified that he had already determined he could not accept the flight based on lack of prospective rest *prior* to leaving his house. TR 682. On cross-examination, Complainant tried to explain why he left for the airport despite his belief that he lacked prospective rest:

[I] was making an attempt to go to work and give John Walter an opportunity to explain to me why he thought or the company thought it was legal. And it was not an intent to fly the airplane. It was an intent to address and work with the company to get to the airport at their request. But I knew I wasn't going to fly the aircraft.⁹⁸

TR 676; *see also* TR 677-78, 682, 683. Gosselin admitted he did not know where Walter was that morning,⁹⁹ but he “hop[ed] to resolve the issue prior to arriving at the airport.” TR 676-77. If Gosselin subjectively believed his flying an airplane would violate prospective rest requirements, I find it unlikely he would have attempted to get to the airport for any reason. The fact that Gosselin proceeded to pick up his uniform and a rental car and then began driving to the

Gosselin testified his references in his email about being off duty solely related to Part 135 charter flights. TR 703. Yet, Complainant’s indication that he had personal commitments on May 11, and therefore could not accept the charter assignment undercuts any assertion that he was on call or available to Chu on May 11.

⁹⁷ Gosselin testified he was confused by the DOL investigator’s question, specifically “[a]bout the fact that she was relating everything to Part 91 and that the trip in question on May 11th she understood it to be a client trip.” TR 725-26. At trial, he acknowledged that he would have flown the May 11 pop up if it had been a Part 91 client trip. TR 727. However, I find Gosselin’s explanation about his statements to the DOL investigator makes little sense.

⁹⁸ Gosselin also testified he went to the airport because he had a family to support and he feared losing his job. TR 596.

⁹⁹ At trial, Gosselin admitted that Gama’s offices were not at the airport, and that he did not expect Walter to be at Teterboro Airport on May 11. TR 676-77. Gama’s offices are located in Stratford, Connecticut. TR 63.

airport for the assigned flight casts significant doubt on any belief that he could not safely fly because he lacked prospective rest.¹⁰⁰

It is undisputed that Gosselin had not flown an airplane since May 8. ALJX 58 at 10-11; JX 26; TR 500. When Gosselin landed on May 8, Ramjohn told him that Chu did not have anything scheduled until May 15.¹⁰¹ TR 501. Gosselin was aware of Gama's Operations Department Notification #9 at the time he received the call from dispatch at around 7:30AM on May 11. TR 717, 718. That notification specifically provides that pilots, **unless scheduled otherwise**, will be considered "off duty" from 8:00PM to 6:00AM. RX 4 (emphasis in original); *see also* RX 5; TR 90, 95-97. Therefore, Gosselin knew he was supposed to be in a mandatory rest period from 8:00PM to 6:00AM in order to be eligible to fly during the day.¹⁰² *See* TR 502. Moreover, both Miller and Walter clarified with Complainant when discussing his March 2012 flight log that a pilot is only placed on standby duty when actually assigned by the air carrier.¹⁰³ *See supra* Part III.H.2. Gosselin was clearly not "scheduled otherwise" under Gama's policy

¹⁰⁰ Gosselin also claims he engaged in protected activity when he complained to Walter that he was not fit to fly because he had not eaten breakfast, did not have enough time to get to the airport for the scheduled flight time, and was stressed about their heated conversation. Compl. Br. at 40. Complainant argues that a "pilot's refusal to fly due to concerns about fatigue or medical issues is 'protected activity.'" *Id.* In support, Gosselin relies on *Furland v. American Airlines, Inc.*, ARB Nos. 09-102, 10-130, ALJ No. 2008-AIR-011 (ARB July 31, 2011) and *Douglas*, ARB Nos. 08-070, 08-074.

I find Gosselin's subjective belief that he was not fit to fly also undermined by the fact that he proceeded to drive to the airport for the flight. *See supra* Part III.H.3. Based on Walter's testimony, the only discernable complaints from Gosselin were that he did not have a uniform, a car or breakfast to allow him to make the flight. *See id.* In fact, Walter testified that Gama would have provided Gosselin with a uniform, a car and a meal at the airport to allow him to make the flight. TR 287; *see also* ALJX 58 at 12.

Both Walter and Gosselin acknowledged that the May 11 conversation was "heated;" Gosselin said he pulled over while driving because he was stressed from the argument and Walter subsequently removed him from the flight because he determined Gosselin was not in the right mind to fly. *See supra* Part III.H.3. Thus, Gosselin's concern about stress was already resolved by Walter on the phone, and therefore this complaint about stress cannot be considered protected activity. *See infra* p. 63. Furthermore, it appears Gosselin's concerns about not eating and stress would be moot as he claims he already deemed himself unfit to fly before ever leaving his house on May 11 because he lacked prospective rest. *See* TR 682. Accordingly, I do not find Gosselin reasonably believed—subjectively or objectively—that he engaged in protected activity when he told Walter that he was stressed and did not have a uniform, a car or breakfast in order to fly.

¹⁰¹ Although Ramjohn testified he told Gosselin that Chu's next flight was on May 15, it appears Chu's next flight was actually May 14. ALJX 58 at 10; RX 19 at 11-12; TR 501.

¹⁰² Gosselin testified he was provided with the company's Operations Notifications #3, #9 and #11 on April 25, 2012 via Gama's website. TR 717, 718.

¹⁰³ John Dvorak, Chu's other pilot, flew the May 11 pop up flight. RX 19 at 11; TR 154. The last time Dvorak flew a plane prior to the May 11 trip was also on May 8. RX 19 at 11. Walter testified that Dvorak lived in Connecticut at the time of the May 11 charter. TR 154.

because his alleged “on call” time for Chu was not assigned by Gama. *See id.* Gosselin testified he did not wake up until 7:15AM on May 11. TR 625.

The Administrative Review Board has held, “[o]nce an employee’s concerns are addressed and resolved, it is no longer reasonable for the employee to continue claiming a safety violation, and activities initially protected lose their character as protected activity.” *Malmanger v. Air Evac EMS, Inc.*, ARB No. 08-071, ALJ No. 2007-AIR-00008 at 8 (ARB July 2, 2009) (citing *Carter v. Marten Transp., Ltd.*, ARB Nos. 06-101, 06-159, ALJ No. 2005-STA-063, slip op. at 9 (ARB June 30, 2008) (employee’s complaints about previously resolved motor vehicle safety issues not protected)). Complainant’s alleged concern about rest time and the issue about his purported on call status for Chu was rectified prior to May 11. Yet, Gosselin claims he would not have been eligible to fly until 5:30PM on May 11—10 hours following the time he was notified of the charter assignment that morning, despite his awareness of Gama’s mandated rest period and the fact that he was asleep until 7:15AM that day. *See* TR 673. In light of the foregoing, I find any belief that he could not accept the charter assignment on May 11 due to lack of prospective rest wholly unreasonable. Therefore, I find that Complainant did not engage in protected activity because he did not subjectively believe he was complaining to Respondent about a violation of FAA or other federal statutes concerning air safety.

Alternatively, if Complainant had established a subjective belief that he engaged in protected activity on May 11 through his reports to Walter and Brizzio, his belief is not objectively reasonable. Complainant failed to present any evidence demonstrating that a pilot, with Complainant’s training and 30 years’ experience, would consider Complainant’s communications on May 11 to constitute a complaint about violations of the FAA or any other federal statute related to air carrier safety.¹⁰⁴

Solely for the purpose of any appeal, in the event protected activity could be found, it would be my finding that Complainant would have been terminated from Gama notwithstanding any protected activity. The testimony elicited from Gama’s employees, and in particular Walter

¹⁰⁴ Gosselin’s purpose for contacting the FAA on May 11 stemmed from similar complaints allegedly communicated to both Walter and Brizzio that same day. *See* Compl. Br. at 38-41. Because AIR21 extends protection to those *about to provide* information relating to any air safety violation, I find it pertinent to briefly address Gosselin’s phone call to FAA on May 11. *See* § 42121(a)(1). For the reasons previously discussed in this section, I do not find Gosselin’s attempt to provide information to the FAA on May 11 constitutes protected activity. I also note there is no evidence in the record demonstrating that Connelly had any knowledge of Complainant’s attempt to provide information to the FAA on May 11 at the time he decided to terminate Gosselin’s employment.

and Miller, convinced me that Complainant's problematic behavior and persistence in communicating with Chu and Brizzio against Gama's policy was the reason for Gosselin's termination. *See supra* Parts III.G.3, III.H.3 & III.I. Complainant was told well before the incidents in question back in February 2011 by Miller to stop including Chu and Brizzio on communications about intercompany issues. TR 695-99. In fact, at that time, Brizzio requested Gosselin be removed from Chu's account because he continued to inappropriately include her on these communications. *See supra* Part III.G.3.

I was persuaded by Walter and Miller that Gosselin defied Gama's policy for communications between crewmembers and clients more than once. Walter, Ashton, Miller and Connelly all consistently testified that any outside communication with clients were strictly prohibited and were contrary to the professional and insulated atmosphere Gama sought to provide its clients. Through Connelly's testimony, it is clear Gama prides itself on the protection and service provided to its clients, and I find Gosselin impeded this core company principle on more than one occasion by inappropriately communicating with Chu/Brizzio. Thomas Connelly, the final decision maker, credibly testified he terminated Complainant because of the inappropriate communication with Brizzio on May 11 in violation of Gama's client communication policy.

V. ORDER

Based upon the foregoing findings of fact and conclusions of law, I find that Complainant failed to prove by a preponderance of the evidence that he engaged in protected activity. Accordingly, **IT IS HEREBY ORDERED** that Glenn Gosselin's claim under AIR21 is **DENIED** and his complaint is **DISMISSED**.

SO ORDERED.

TIMOTHY J. MCGRATH
Administrative Law Judge

Boston, Massachusetts

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).