



Issue Date: 13 August 2014

Case Number: 2014-AIR-00014

In the Matter of:

DONNA KRAFT,

Complainant

v.

U.S. AIRWAYS,

Respondent

ORDER OF DIMISSAL

This case arises under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“AIR21”), 49 U.S.C. § 42121.

On May 1, 2014, Donna Kraft (“Complainant” or “Kraft”) filed a letter with the U.S. Department of Labor, Office of Administrative Law Judges (“Office” or “OALJ”) seeking a hearing under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“AIR21”), 49 U.S.C. § 42121. Complainant objected to the dismissal letter issued by the Occupational Safety and Health Administration (“OSHA”), San Francisco Regional Office, U.S. Department of Labor, dated April 3, 2014.

Before OSHA issued a decision in her case, Kraft reached a settlement with U.S. Airways in early February of 2014. On April 3, 2014, OSHA issued its findings letter dismissing Kraft’s complaint because “the parties have failed to respond to repeated requests that they submit an executed copy of the settlement agreement for OSHA’s review and approval. Consequently, the complaint is dismissed for lack of cooperation.”

In Complainant’s May 1, 2014 letter to this Office, she objected “to the dismissal of my complaint. . . .” She alleged, among other things, that OSHA did not investigate her case, and further stated: “If OSHA had acted in a timely manner I would not have settled with US Airways. I had no choice but to make a decision and act on it. Had I known OSHA would be

dismissing my case, my decision would have been different.” Kraft then requested that the investigation continue.

On May 13, 2014, I issued a Notice of Docketing and Order to Show Cause directing the parties to file briefs addressing the question of whether a settlement agreement signed by the parties in February 2014 resolved the AIR21 Complaint filed by Kraft with OSHA

On June 13, 2014, Complainant filed a request for an extension of time to file her brief, which I granted on June 17, 2014. I extended the filing deadline to on or before Wednesday, July 16, 2014. I stated that no further extension would be granted and cautioned Complainant that failure to respond may result in the dismissal of her complaint.

On June 17, 2014, Respondent filed its Response to Notice of Docketing in which it argues that the settlement agreement contains “clear and unambiguous language indicating that all claims of any nature fall within the general release.” Respondent states that “the parties agreed to language by which Complainant specifically waived individual recovery under her then pending AIR21 complaint.” Respondent quotes the following section from the settlement agreement:

Nothing in this Agreement shall prevent Kraft from cooperating in any investigation by a government agency, including the pending OSHA matter (Case No. 9-0370-11-023). Kraft, however, hereby waives any right she has to obtain an individual recovery if a governmental agency pursues a claim against the Company based on any actions taken by the Company up to the effective date of this Agreement.

Respondent contends that the language “clarifies that Complainant’s OSHA/AIR21 matter is included in the general release.” Respondent argues that “[i]t is simply unreasonable for Complainant to now claim that she did not understand that she was settling all claims related to her employment.” Respondent also points out that Complainant was represented by the Association of Flight Attendants (“AFA”) or AFA counsel “at all times” and “had sufficient time to review and consider the terms of the agreement.”

To date, this Office has not received a response from Complainant to my May 13, 2014 Order to Show Cause. OALJ’s regulations provide at 29 C.F.R. § 18.6(d)(2)(v) that:

If a party or an officer or agent of a party fails to comply . . . with an order, . . . the administrative law judge, for the purpose of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may . . . [r]ule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

Complainant’s failure to respond to my June 13, 2014 Order to Show Cause alone justifies dismissal of her complaint pursuant to § 18.6(d)(2)(v).

In *Trechak v. American Airlines*, ARB No. 03-141, ALJ No. 2000-AIR-5 (ARB Mar. 19, 2004), the Administrative Review Board (“ARB”) stated that a “settlement agreement is a contract and once entered into is binding and conclusive. Like any other contract it can only be challenged upon a showing of fraud, duress, illegality, or by mutual mistake.” *Id.* at 2. “[A]n opposing party’s improper conduct may render a settlement agreement voidable.” *Id.*, citing *Beliveau v. Naval Undersea Warfare Ctr.*, ARB No. 99-070, ALJ No. 1997-SDW-6, slip op. at 2 (ARB June 30, 1999). The ARB concluded that “neither lack of counsel, nor financial stress, nor the combination of the two, can be a ground for voiding a settlement agreement.”

In this case, Complainant fails to allege any improper conduct on the part of Respondent. I find no reason to invalidate the settlement agreement, and, given the information before me, I find that the settlement agreement signed by Complainant resolved the issues now pending before this Office.

Accordingly, Complainant’s complaint is hereby **DISMISSED** with prejudice pursuant to 29 C.F.R. § 18.6(d)(2)(v), as well based on Complainant’s failure to demonstrate any basis upon which her settlement agreement with Respondent should be voided.

SO ORDERED.

STEPHEN L. PURCELL
Chief Administrative Law Judge