

U.S. Department of Labor

Office of Administrative Law Judges
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ISSUE DATE: 01 JULY 2016

OALJ CASE No: 2015-AIR-00018
OSHA CASE No. 9-3290-12-144

In the Matter of:

IAN GATES,
Complainant,

v.

GULFSTREAM AEROSPACE CORP.
INCONEN, INC.
Respondent.

Final Order of Dismissal

This case arises under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121 (AIR21). It came here after the Findings the Assistant Regional Administrator of OSHA entered on behalf of the Secretary of Labor on March 25, 2015 dismissed the claim. Mr. Gates, the Complainant objected, and requested a hearing. Proceedings in AIR cases before the Office of Administrative Law Judges initiated by the objection follow the rules of practice and procedure before the Office of Administrative Law Judges, codified at part 18 of title 29 of the Code of Federal Regulations, and the AIR21 program regulations published at 29 C.F.R. part 1979.

An airworthiness inspector for Gulfstream Aerospace for about 10 weeks, Ian Gates asserts he was not promoted, and was fired as retaliation for a protected activity, that Gulfstream harassed him by complaining to the FBI about him, and by causing two entities that later employed him to fire him. Jeremiads he has filed so far fail to coherently explain his theory of the case, what documents he will rely on, what witness he will offer or what they will say.

On many occasions¹ he was ordered to make his mandatory pretrial disclosures, information Gulfstream needs to defend this matter. Mr. Gates was warned that his failure to comply with pre-hearing disclosure orders could result in serious sanctions.²

Gulfstream moved to dismiss the claims on June 21, 2016. Mr. Gates has filed several lengthy responses. Having considered the motion and responses, I am persuaded that this matter should be dismissed.

Because Mr. Gates is not a lawyer I detailed for him those things he was required to tell Gulfstream under the pretrial disclosure rules.³ On September 4, 2015, I ordered Mr. Gates to file a pre-trial statement that would give a brief statement of the issues for hearing, a statement of the specific relief he requests including a computation he relies on for the amount of any damages he claims, a witness list containing the name and business address of each witness who actually will testify at the hearing; a precise statement of what the testimony of each will prove; and an estimate of the time required for the direct examination of each witness; and exhibit list with copies of those exhibits to be provide to the Gulfstream's lawyer.

That order specifically warned that I would consider dismissing the claims should Mr. Gates fail to comply with my order. No pretrial statement with those elements was filed. I now have given him four (4) more opportunities to make those disclosures:

On December 7, 2015, I issued another Pretrial Order requiring the pretrial statement to be filed within 28 days.

On January 14, 2016, at the request of the Complainant, I issued an order granting an extension to file on or before February 28, 2016.

On February 19, 2016 I granted him another extension requiring his pretrial statement be filed by April 5, 2016.

On March 9, 2016, I issued another order granting a final extension to May 7, 2016.

¹ Orders entered on Sept. 4, 2015; Dec. 7, 2015; Jan. 14, 2016; Feb. 19, 2016; Mar. 9, 2016.

² Pretrial Order issued on September 4, 2015.

³ See 29 C.F.R. § 18.50.

Mr. Gates filed on May 4, 2016, a document entitled “Forced Premature Pretrial Statement.” Gulfstream’s Motion to Dismiss details the shortcomings in the filing and the prejudice to its ability to defend the claims. What Mr. Gates has filed as his pretrial statement neither complies with the orders nor constitute a good faith effort to do so. Mr. Gates has made clear by his conduct that he intends to do only what he wants, when he wants.

This case has much in common with *Saporito v. Nextra Energy*, OALJ Case No. 2011-ERA-00007, which sanctioned an obdurate pro se litigant. Although the complainant in *Saporito* had made employment protection claims under the Energy Reorganization Act, the same sanctions are available in claims filed under AIR.

The Administrative Procedure Act (APA) at 5 U.S.C. § 556(c)(5) authorizes a judge to regulate the course of the hearing. The authority includes taking action to assure the soundness of the fact finding process.⁴ The Administrative Review Board held that ALJs in whistleblower cases have some inherent authority to control the cases before them.⁵

The Board recognized that the “right of access to the courts is neither absolute nor unconditional and conditions and restrictions on each person’s access are necessary to preserve judicial resources for all other persons.”⁶ “Conditions and restrictions on each person’s access are necessary to preserve the judicial resource for all other persons. Vexatious law suits threaten the availability of a well-functioning judiciary to all litigants.”⁷

Finally, the authority to dismiss a case also comes from an administrative law judge’s inherent power to manage and control his or her docket and to prevent undue delays in the orderly and expeditious disposition of pending cases. See *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962).⁸

⁴ See e.g., *Atlantic Richfield Co. v. U.S. Dep’t of Energy*, 769 F.2d 771, 796 (D.C. Cir.1984), which the Secretary relied on in the Preface to the recent amendments to the OALJ rules of procedure at 80 Fed. Reg. at 28771 (May 19, 2015).

⁵ See *Saporito v. Florida Power & Light Co.*, ARB Nos. 09-009, 010; ALJ No. 2008-ERA-014, slip op. at 2 (Feb. 28, 2011); see also *Blodgett v. Tennessee Dep’t of Env’t & Conservation*, ARB No. 03-138, ALJ No. 2003-CAA-015 (ARB Mar. 22, 2004)(recognizing inherent authority in administrative adjudications); *Secretary of Labor v. Daanen & Janssen, Inc.*, 19 F.M.S.H.R.C. 665 (1997)(same).

⁶ *Saporito v. FP&L Co.*, ARB Case Nos. 09-072, 128, 129 141, 2009 ERA 1, 6, 9 12 (ARB Apr. 29, 2011) citing *Cofield v. Ala. Pub. Serv. Comm’n*, 936 F.2d 512, 516 (11th Cir.1991) (quoting *In re Green*, 669 F.2d 779, 785 (D.C. Cir. 1981)).

⁷ *Miller v. Donald*, 541 F.3d 1091, 1096 (11th Cir. 2008).

⁸ See *Townsend v. Bigdog Holdings, Inc.*, 2016-SOX-00028 (March 14, 2006).

Based on his refusal to comply with the many orders that required him to make filings required for the orderly presentation in this case, sanctions are appropriate. See 29 C.F.R. § 18.57(c), incorporating § 18.57(b)(1)(v)(c).

The repeated refusals to comply with orders shows that a lesser sanction than dismissal would not bring the Complainant into compliance. Taking the seemingly lesser step of forbidding him to present at final hearing theories and evidence not disclosed would only result in a trial where no evidence would be admitted.

Accordingly, for the reasons stated above, this claim is **DISMISSED**. The Findings issued on March 5, 2015 that dismissed Mr. Gates' claims become the Final Order of the Secretary.

So Ordered.

William Dorsey
ADMINISTRATIVE LAW JUDGE

San Francisco, California

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).