

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

Issue Date: 28 October 2016

CASE NO.: 2015-AIR-00001

In the Matter of:

RODERICK C. EDGAR,
Complainant,

v.

MESA AIRLINES, INC.,
Respondent.

Before: Timothy J. McGrath, Administrative Law Judge

APPEARANCES:

Roderick Edgar, pro se

Stephanie Quincy, Esq., and Lindsay Fiore, Esq., Quarles & Brady, LLP, Phoenix, AZ, for the Respondent

DECISION AND ORDER DISMISSING COMPLAINT

I. STATEMENT OF THE CASE

This case arises from a claim for whistleblower protection filed by Roderick Edgar (“Complainant”) against his employer, Mesa Airlines, Inc. (“Respondent”), 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 August 27, 2014, the Secretary of Labor acting through his agent, the Regional Administrator for Occupational Safety and Health Administration (“OSHA”), found Complainant’s allegations to be without merit. On October 10, 2014, Complainant filed an objection to OSHA’s findings and requested a formal hearing before the Office of Administrative Law Judges (“OALJ”) pursuant to 29 C.F.R. § 1979.106 (2015).¹

A hearing was held before the undersigned Administrative Law Judge in Charlotte, North Carolina on June 25, 2015. At the hearing, the parties were afforded the opportunity to present evidence and arguments. The Hearing Transcript is referred to herein as “TR.” Formal papers were admitted into evidence as Administrative Law Judge Exhibits (“ALJX”) 1-10, and the

¹ Respondent never raised the issue of timeliness.

parties' documentary evidence was admitted as Complainant's Exhibits ("CX") 1-8, and Respondent's Exhibits ("RX") 9-16. The following witnesses testified at the hearing: Complainant; Byron Davis, Respondent's lead A&P mechanic; Robert Bridges, Respondent's foreman; James Mathers,² a former fleet maintenance manager at Respondent; and, Laura Hoefle, former human relations ("HR") manager. The record is now closed, and the parties submitted post-hearing briefs ("Compl. Br." and "Resp. Br.," respectively).

II. STIPULATIONS AND ISSUES PRESENTED

The parties stipulated to the following facts: (1) Respondent hired Complainant as an A&P mechanic on May 21, 2013; (2) Complainant worked at Respondent's Charlotte, North Carolina facility; (3) Complainant's direct supervisor was Jim Mathers; and, (4) The first year of Complainant's employment was a probationary period.

Although not specifically stipulated to by the parties, I note the OSHA investigator determined:

Respondent is an air carrier within the meaning of 49 U.S.C. Section 42121 and 49 U.S.C. Section 40102(a)(2). Respondent provides air carrier services as a domestic regional airline. Complainant was employed by Respondent as an Airframe and Powerplant (A&P) mechanic, and is an employee within the meaning of 49 U.S.C. 42121. Complainant and Respondent are, therefore, covered by the Act.

CX-4 at 1. In the absence of any evidence or arguments to the contrary, I find Complainant and Respondent are both covered by the Act.

The issues before me are: (1) Whether the Complainant engaged in protected activity; (2) Whether protected activity was a contributing factor in Respondent's adverse personnel actions against Complainant; and, (3) Whether Respondent demonstrated that it would have terminated Complainant for cause irrespective of the existence of Complainant's protected activity.

Based on the record as a whole, I find that Complainant did engage in protected activity under AIR21; however, Complainant failed to demonstrate his protected activity was a contributing factor in Respondent's decision to terminate him.

III. FINDINGS OF FACT

A. Complainant's Testimony

1. Background

In 2007, Complainant completed a two year program at the Aviation Institute of Maintenance and became a certified A&P mechanic. TR 30, 61. After he obtained this certification, Complainant underwent an apprenticeship and "a series of other trainings." TR 30.

² James Mathers, former base manager at Respondent, was permitted to testify telephonically. TR 248.

He then worked for a number of different airlines, including: TransStates, ExpressJet, Piedmont Airlines, and Bombardier. TR 61-62. Complainant testified he left each of those companies voluntarily and was neither disciplined nor discharged. TR 62-64.

On May 21, 2013, Complainant began working for Respondent as an A&P mechanic at their Charlotte, North Carolina location. TR 27; ALJX-10 at 1. His first year of employment with Respondent was a probationary year.³ TR 27; ALJX-10 at 1. He worked the third shift which spanned from 9:00 PM to 9:00 AM. TR 31. Complainant's direct supervisor was Jim Mathers. TR 27; ALJX-10 at 1. Complainant confirmed that he received an employee handbook. TR 64.

Complainant testified about the general responsibilities of an A&P mechanic and the process by which he was required to complete tasks at Respondent. TR 29. According to Complainant, A&P mechanics are responsible for ensuring aircraft are operating normally and repairs, if needed, must be performed in compliance with the work cards provided to them. *See* TR 29. At the start of a shift, the lead mechanic provided assignments to A&P mechanics via work cards. TR 32-33. Work cards contain "a brief description [of] . . . the task," at which point the A&P mechanic would then "go to the computer and print the reference" that contains detailed instructions on how to complete the assignment. TR 33. The instructions within the reference are Federal Aviation Administration ("FAA") approved directives produced by the aircraft manufacturers. TR 34. Complainant emphasized that compliance with the steps of the reference is pivotal: "[W]e always have to work out of references. So it doesn't matter, even if you know, do it a hundred times, you still have to work out of the reference." TR 34.

During cross-examination, Complainant affirmed there were "some tasks that were higher priority than other tasks" and some more difficult tasks took longer to complete than others. TR 102-03. In fact, the more difficult tasks should be started earlier in the shift so if a problem is found, an A&P mechanic has sufficient time to remedy the situation and a flight does not need to be delayed. TR 103.

Complainant admitted he engaged in "a lot of arguments and assertiveness" during his time at Respondent. TR 68-69. He explained he got defensive and "very passionate" when he saw something he believed was a "disregard for safety." TR 69. Complainant clarified, however, that he did not seek out heated arguments. When asked if it was appropriate to have heated conversations in the workplace, he testified: "It is not appropriate to have arguments and

³ Respondent's employee handbook discusses at-will employment and a probationary period. RX-9 at 6-7. It states:

All employment at [Respondent] is AT-WILL in nature unless the subject of a written contract of employment signed by the President (including CBAs). AT-WILL status means you are free to leave the Company at any time for any reason; and you may be asked to leave the Company at any time and for any reason, or no reason, in accordance with all applicable governing statutes.

Id. at 6. It also prescribes that the "first year of . . . employment is considered [a] probation period" that provides new employees with an opportunity to get oriented with the job, supervisors, and "determines whether [they] can perform the assigned work according to [Respondent's] standards." *Id.* at 7. "It is important to note that [the] probationary status . . . does not alter the AT-WILL nature of . . . employment." *Id.*

heated conversation. As much as possible, you avoid it. But sometimes things escalate and it get [sic] into that mode.” TR 71.

Within the first few weeks of working for Respondent, Complainant observed a number of safety issues. TR 128. He testified he noted a variety of unsafe conditions, including: improper short-signing; individuals “taking shortcuts,” not satisfying each step of a reference card, and signing-off as if they fully completed tasks; not having the proper tools to complete certain tasks; and, a tug that did not operate correctly in wet conditions. TR 128-29; *see* CX-1 at 8. Complainant voiced these concerns to Mathers. TR 128-29; CX-1 at 8-9. He stated that in response to his disclosing concerns about the tug, Mathers sarcastically requested that Complainant find a part number to fix it. TR 129. Complainant did not discuss how Mathers responded to the other safety concerns. *See* TR 128-29.

2. August 6, 2013

On or around August 6, 2013, Complainant received his first written warning for failing to “short sign” an assignment. TR 71; RX-12. Respondent’s procedural manual⁴ provides:

Short Signing is a method of capturing work accomplished by more than one individual assigned to a specific task. Each individual will document and sign for the work performed and will mark an “X” on the Short Sign section on the Job Card . . . and enter the steps completed during the task. . . . In the event a maintenance task requires more than one individual to complete the task due to work interruptions, shift turnovers and/or short signing, each individual must document, date and sign for the work performed.

RX-12 at 6; *see* TR 72. Complainant testified he received training about short signing—a practice is utilized throughout the aviation industry. TR 81.

During his shift that day, Complainant received instructions to apply protective tape to a damaged aircraft door. TR 81; RX-12. He began the task and applied tape to the door, but he was unable to fully complete the assignment because the requisite tool he needed was unavailable and his shift was ending. TR 90-97; RX-12. Rather than wait for the tool to arrive and work overtime, Complainant finished his shift and turned the assignment over to another A&P mechanic. *See* TR 71-97. He did not, however, short sign the work card in compliance with the employee handbook. TR 71-97; RX-12.

At hearing, Complainant maintained he did not comply with the procedural manual and short sign the work card because he was never provided with a work card; the task was a “verbal command . . . given to [him] by his lead.” TR 72. In fact, Complainant testified:

⁴ Complainant testified that Respondent’s procedural manual provides “general procedure[s]. It tells you what the company’s policies as to different signing, expectation, overtime, just name it, the whole overall aspect of the company and what is required.” TR 84. He clarified, however, that the general procedures “don’t override[] the maintenance manual or the reference that is being used for repairing the aircraft.” TR 84.

[T]he first time I saw the paperwork was when I came in to work [on my next shift], and I was called in the office by the lead [mechanic], and he handed me the written [warning] . . . along with the Mesa procedure. . . . [and] that paperwork.

TR 72-73; CX-1 at 4-12 (describing several grievances, including this written warning, to Laura Hoefle, HR manager). During cross-examination, Complainant admitted “it was his responsibility” to get the paperwork; however, he maintained he asked about it and was instructed to proceed without it. TR 76-77. He also stated it was “not common” to carry out instructions without the requisite paperwork, but he did so in this instance because he did as he was told. TR 85.

In addition to penalizing Complainant’s failure to short sign the order, there were also other violations stemming from the same incident discussed during the hearing; however, the only violation explicitly stated on the written warning was Complainant’s failure to “comply with maintenance short sign procedures.”⁵ See TR 81; RX-12.

3. August 19, 2013

Complainant testified that on or around August 19, 2013, he was assigned the task of performing a “detailed inspection of a main landing gear retraction gear.” TR 149; see CX-1 at 2. Initially, the work card indicated that Complainant merely had to perform a “visual inspection.” TR 150; see CX-1 at 2. Upon closer review, however, Complainant discovered that the card demanded a detailed inspection—“a much lengthier, a much harder job.” TR 150; see CX-1 at 2. He alerted the lead mechanic, Byron Davis, of the need for a lengthier, detailed inspection that included removing the actuator. TR 150; see CX-1 at 2. Complainant alleged an argument ensued between Davis and himself, because Davis wanted to limit Complainant to conducting a visual inspection. TR 150; see CX-1 at 2.

After a heated debate, Complainant told Davis he would not sign off on the card unless he completed a full detailed inspection. TR 150-51; see CX-1 at 2. As a result, Davis took Complainant’s card and assigned the task to another mechanic. TR 151; see CX-1 at 2. During the following shift, Mathers approached Complainant as he was pulling an airplane into the hangar. TR 151-52; see CX-1 at 2-3. Mathers shook Complainant’s hand, told him he did a good job this morning, and handed Complainant a broken bolt from the actuator that Complainant wanted to remove and inspect. TR 152; see CX-1 at 2-3. Complainant told

⁵ According to Respondent’s attorney, Complainant received the written warning because he failed to both short sign the work order and apply the tape correctly. TR 83, 94. Complainant acknowledged that Jim Mathers, his direct supervisor, had to redo the taping that Complainant had started and not finished. TR 94. Respondent’s attorney also highlighted that Complainant should have stayed late to complete the task because, as provided in the employee handbook, employees may be required to stay beyond their scheduled shift to finish a task. TR 91-96; see RX-9 at 7-8. Rule “2.3 Work Hours” provides, in pertinent part: “It is also important to recognize that there will likely be times when you will be required to modify your scheduled shifts to accommodate the needs of the Company. For example, flights running late require ground personnel to extend shifts accordingly.” RX-9 at 7. Similarly, “2.5 Overtime Pay” states: “In order to maintain adequate coverage over all shifts or to complete additional work by certain deadlines, there are time when employees may be eligible or required to work overtime. If overtime is required, eligible employees may be asked to volunteer to pick up these additional shifts.” *Id.* at 8. Complainant refuted Respondent’s counsel’s interpretation and insisted that Respondent needed to ask employees to stay on for overtime; it was not an inherent requirement. TR 91-96.

Mathers he was not going to accept the compliment because he was simply doing what was supposed to be done. TR 152; *see* CX-1 at 3. Complainant did not cross-examine Davis or Mathers about this event. *See* TR 175-207; TR 264-99.

4. August 22, 2013

On or around August 22, 2013, Complainant emailed Laura Hoefle in the HR department. TR 97-98, 134-35; CX-1 at 4-12; Comp. Br. at 20. Therein, he contested the written warning he received on August 6, 2013, and he alluded to other safety concerns. CX-1 at 4-12. In discussing the written warning he received for failing to short sign the work order, Complainant summarized a follow-up conversation he had with Mathers:

I took the papers with me and I showed him and ask him, “do you really want to go down this route?” And I ask him again, “do you really want to go down this route”? Because my name is on this paper work and people are going to be implicated in this. He told me implicate who I got to implicate so I said fine. So I ask him because it had now became obvious to me that Mr. Mather’s had a problem with me. Do you have a problem or something against me? He said no, so I said “no”? it is obvious that you have a problem with me, when I first got here about 3 weeks ago we had a better communication channel but it seems like communication has broken, so I said you are upset with me because I left this morning, so in order to get back at me you wrote me up? He said, No, you did undocumented work.

So I explained to him that I was given a verbal command by my lead to do such and such plus the work was nt complete because we did nt have the equipments at the time to jack and swing the gear, so he started pointed to the REO here it is, I said to him this is the first time I was seeing this document why was I then not given this when the lead was showing me what to do? Then he said I should have asked for it. So then I asked him “Should nt I accept verbal command from my leads?” he said yes so I said okay this was what I did, the lead told me, this was what he wanted me to do and that was what I did.

We continued back and forth conversing. By this time now, I realized what I was up against. So I said to him, “Mr Mather’s I’m not going to be made a scapegoat to be made an example off.” Then I ask him, “was anyone else written up for this same incident?” Then I said that’s why I ask if you were sure you wanted to go down this route because I didn’t wanted to implicate other people then said whoever needed to be implicated and written up, will be written up!

Id. at 6-7. Ultimately, Complainant indicated to Hoefle that he was the only one disciplined for performing work without short signing a work card because “Mr. Mathers [wa]s on a vendetta to get [him] because he [wa]s upset with [him] about leaving work at the end of [his] shift and if he thinks [Complainant was] wrong about that then Mr. Mathers has a very high and skillful level of showing prejudice and bias.” *Id.* at 7. Complainant did not present testimonial or documentary evidence that implicated other A&P mechanics or supervisors.

Complainant also informed Hoefle about other instances in which he “had some disagreeing and challenging instances with Mr. Mathers to which I believe is playing a crucial roll in all of this.” CX-1 at 9. First, Complainant briefly alluded to his observations about “shortcuts taken, lack of resources and equipment[]” that took place within his first couple of weeks at Respondent. *Id.* at 8; *see supra* p. 4.

Next, Complainant recalled another event in which Mathers was upset that an aircraft was still in the hangar. CX-1 at 9. Complainant explained the aircraft was still in the hangar because there was a lot of work, one aircraft came in late, and “manpower was short.” *Id.* Two days later, Mathers called a meeting with all the mechanics and “was saying this can[']t happen again what happen on such morning and began repeating it cannot happen again and then another mechanic voice her opinion ‘no this f-ing thing can’t happen against this f-ing thing has to stop.[']” *Id.* Complainant raised his hand and said, “‘Mr. Mathers are you being very honest about what had happened that morning?’ And then [he] ask[ed] him again, ‘ [A]re you for real being really honest about what happened[?]’” *Id.* Complainant then summarized what he told Mathers:

And I went on to say, first of all the majority of us mechanics here are new its our second week here, and I feel that we were thrown to the wolves. Then I said we were short manpower because two mechanics was out plus he had told us the new mechanics he was still short of mechanics. So I ask him again Are you really being very honest about this and the reason why the aircraft was late that morning. Then I said that night everyone was busy bursting their backs to get the plane out but there was just a lot of work that particular night. I went on to give some suggestions as to enhancing productivity from what I observed for the week or two I was there.

Id. Complainant did not provide Hoefle with any information about whether Mathers responded to Complainant’s statement. *Id.*

The last incident in Complainant’s email to Hoefle concerned Respondent’s policy that mechanics must stay late if there is still an aircraft in the hangar at the end of the shift and the lead or foreman asks the mechanic to stay late. CX-1 at 9. One evening, the foreman informed the mechanics that they must ask the lead or foreman for permission to leave at the end of their shifts if there is an aircraft in the hangar. Complainant questioned the policy and said it was an infringement of his rights and it sounded like slavery. *Id.* Complainant did not indicate who he said this to or how that individual responded. *Id.*

The following morning, as Complainant’s shift was ending, he approached the foreman “not to ask but t[ell] him” that his shift was over and he was leaving. CX-1 at 10. The foreman asked him to “close the engine cowl,” and Complainant said that his shift was ended and he was leaving. *Id.* The foreman asked Complainant if he had an emergency, and Complainant explained that he did not have an emergency, but it was 7:00 AM and he did not need to have an emergency to leave at the end of his shift. *Id.* The foreman looked at his watch, saw that it was 7:00 AM, and told Complainant it was okay for him to leave. *Id.*

5. September 10, 2013

On September 10, 2013, around 4:00 AM, Complainant began working on his final work card. TR 28. At hearing, he recalled the job entailed “an operational check of the brake accumulate pre-charge pressure and verification of freedom of movement of the accumulator pistons.” TR 28; CX-5. When he got to procedure number three, step D, Complainant “realized that the number two brake accumulator gauge was reading good psi, but number three was low”; “way under” the minimum of 550 psi prescribed in the work order. TR 28; CX-5 at 5. He then restarted the work order with the assistance of Steven Little, and discovered the same leak within the number three hydraulic system. TR 28, 35.

Complainant testified he then approached lead mechanic, Byron Davis, disclosed the issue, and informed him that he was going to begin troubleshooting the issue. TR 35. As Complainant was troubleshooting, Davis approached him and an argument ensued.⁶ TR 36-39. Complainant recalled Davis chastising him about finding the issue at that point in time, when he had given the work order to Complainant so much earlier in his shift. TR 36-37. Complainant did not believe he did anything wrong and defended his work. TR 36-38. He told Davis, “[T]here is not supposed to be a . . . special time when I’m supposed to report a problem, I just found the problem and I brought it to your attention.” TR 37. Complainant went on to state, “I’m sick and tired of this.” TR 37. He admitted he raised his voice during this exchange. TR 110-11.

At hearing, Complainant explained why he was frustrated by Davis’s actions. TR 37-38. He testified that whenever an issue arose with an aircraft that was almost ready to go, Respondent habitually responded angrily and questioned why the issue was found last minute—“it was like making it look like I shouldn’t find any problem” in those situations. TR 37. The conflict on September 10, 2013 was yet another example of this behavior. *See* TR 37-38.

During cross-examination, Respondent’s attorney characterized the work order that gave rise to this conflict as a “number one priority task” that “runs the risk of having problems discovered while doing it”; accordingly, it should have been started at the beginning of Complainant’s shift. TR 104; *see supra* p. 3. Complainant rejected this claim. TR 103-07. The work order was a functional check, not a service card. TR 103. “Compared to a servicing . . . which takes much longer,” he explained, “[t]he functional test with that specific card was just simply turning on the system, looking at the gauge and mak[ing] sure that the parameters was just like—that was it. That was all I was supposed to do.” TR 104-05. In response to Complainant’s explanation, Respondent’s attorney asked a few follow-up questions:

⁶ Complainant testified that when Davis approached him, there were two A&P mechanics who witnessed the developments: Steve Little and Xia Xiong. TR 36; *see infra* pp. 23-24. Upon review of Xiong’s statement describing what he saw on September 10, Complainant concluded that Xiong is a biased liar because Complainant did not, nor does he ever, use foul language. TR 116-21. Complainant did not provide an explanation as to why Xiong would lie about Complainant telling Davis to “F off.” TR 117-18. Other than allegedly telling Davis to “F off,” Complainant did not object to the rest of Xiong’s statement. TR 120-21.

- Q. Did you understand, [Complainant], that the problem that morning was not that you found a leak, the problem was that you should have found it earlier in the night? Did you understand that?
- A. No, I don't understand that.
- Q. Isn't that what Mr. Davis was trying to explain to you?
- A. No, that's not what he was trying to explain.

TR 106.

The argument between Complainant and Davis became increasingly heated until Davis returned to his office. TR 38. Shortly thereafter, Robert Bridges, the foreman, approached Complainant and he reiterated what Davis had been saying—"why now, [Complainant] . . . why is it now that you're finding this problem?" TR 38-39. In response to being approached by Bridges, which Complainant again described as chastising, Complainant summarized what transpired and repeated what he already explained to Davis:

[L]ook, I just found the problem, I brought it up to the attention of lead, Byron Davis, and he was giving me attitude. You know, he wasn't . . . trying to help me find a resolution of how we're going to fix it, here you come and you're having the same disposition. . . . I'm really sick and tired of the way you guys are acting.

TR 40-41.

Complainant testified he never threatened Bridges; however, he acknowledged the argument became increasingly heated.⁷ TR 41. Eventually, Bridges told Complainant to check out and leave for the day. TR 41. Complainant refused to follow Bridges's directive and stated, "You're not my boss, you're not my direct supervisor." TR 41. After Bridges informed Complainant he was going to call airport security, Complainant continued to stand his ground. TR 41-42.

Airport security arrived and, after hearing that Bridges asked Complainant to leave, they requested that Complainant leave the premises. TR 42. Complainant explained his side of the story and argued that Bridges lacks authority to send him home for the day because he is not his immediate supervisor. TR 42. The officer reiterated his request for Complainant to leave and Complainant then complied. TR 43. Complainant began packing up his box of personal tools,

⁷ On cross-examination, Complainant acknowledged that he received an employee handbook and is familiar with Respondent's policy on insubordination and work place violence. TR 64-67. Complainant defined insubordination as "knowingly or willfully for no lawful reason disrespect or disregard the superiors, the authority of the superiors." TR 66. Respondent's employee handbook defines insubordination as "belligerent or disrespectful behavior towards your supervisor, and refusal or failure to follow lawful instructions and perform work in the manner assigned by your supervisor or other management personnel will not be tolerated." RX-9 at 40; TR 155. Complainant testified that he did not engage in insubordination on September 10, 2013 because "the nature of the conflict was safety related and it was not insubordination of just willfully trying to be rude to – to Mr. Bridges or to the authority. It was more of trying to get the attention, to pay attention to the safety of what was going on." TR 67. He confirmed, however, that the handbook does not have provide an excuse for insubordination. TR 66. Complainant also stated that it's not okay to scream, yell, or swear in the workplace. TR 108. In his opinion, Complainant raised his voice with Davis and Bridges, but he never yelled, screamed, or swore. TR 109-11. Swearing in the workplace would be disrespectful. TR 156. Complainant does not consider the word "shit" to qualify as a swear word. TR 121.

and Bridges stopped him saying, “Oh, you’re not fired, you’re not fired.” TR 43. Complainant left his tools, but gathered the rest of his belongings. TR 43. Before he was escorted out the door, the officer requested Complainant’s badge. TR 43. Complainant gave the officer the badge and was then escorted off the premises. TR 43. He estimated he left the property somewhere between 5:30 and 6:00 AM.

Complainant’s concern for the impaired airplane did not cease because he was forced to end his shift early and leave the premises. TR 44-48. He contacted coworkers via text message and inquired about the status of the plane and whether any troubleshooting was performed. TR 44. Complainant testified that a woman named Victoria Simons said Respondent “just told them to close it, close up the panels that were open and take the aircraft outside.” TR 44.

Upon receiving that information, Complainant contacted the FAA and left a message on their answering machine describing the events of that morning and similar past conflicts with Respondent’s lead mechanic. TR 44-45. An agent of the FAA responded initially via email and eventually via telephone around 2:00 PM that afternoon. TR 44-48. At 2:12 PM, Al Westrom, a Whistleblower Protection Program Coordinator at the FAA, provided Complainant with a link to www.whistleblower.gov and informed him the employment discrimination component of his complaint would fall under AIR21. TR 46-48; CX-1 at 1. Westrom also requested that Complainant “[p]lease let [him] know the details of the lack of inspection on the aircraft from two weeks ago where the broken bolt was found (date, tail number, etc).” CX-1 at 1; *see supra* pp. 5-6.

At approximately 6:05 PM that same evening, Complainant contacted his direct supervisor, Jim Mathers, and requested updates about the situation. TR 27, 49. Complainant recalled Mathers stating that Laura Hoeffle, HR manager, called him and indicated that Complainant was going to be suspended for one week. TR 49. Mathers then asked Complainant if he would like to talk about the incident. TR 49.

Shortly after this conversation, between 6:30 and 7:00 PM, Complainant arrived at the airport to talk with Mathers. TR 50. Mathers mentioned he heard accounts from a number of witnesses and would like to hear Complainant’s version of the story. TR 51. Complainant provided a detailed description of what happened that morning, including that he did not think Bridges could discipline him because he was not his direct supervisor. TR 52. Complainant testified Mathers corrected Complainant, emphasizing that when he is not present, the foreman “is in charge . . . [and] could use [his] discretion . . . to prevent a situation from escalating.” TR 52.

After Complainant finished relaying his narrative to Mathers, Mathers told him the suspension was still valid pending the outcome of the investigation. TR 52. In view of the suspension and ongoing investigation, Complainant told Mathers he would be returning home to Connecticut until the investigation is completed and he is reinstated.⁸ TR 53. He gave Mathers his sign off stamp and employee badge to hold so if the suspension became a termination he did not have to “worry about mailing it or driving twelve hours back down [to Charlotte].” TR 53;

⁸ Complainant did not have a residence in Charlotte, North Carolina at that time; rather, he stayed in a hotel room. TR 53.

see TR 126-27. In fact, Complainant testified he specifically recalled telling Mathers he was not turning in his badge or stamp; merely gave it to Mathers to “hold” and Mathers indicated that he understood.⁹ TR 53-54. Complainant did, however, take his personal toolbox with him when he left that day. TR 54.

6. Aftermath

On September 11 and 13, 2013, Complainant sent follow up emails to Westrom at the FAA. CX-1 at 2. In addition to providing the requested details about the broken bolt incident, Complainant informed Westrom about another alleged incident from September 5, 2013 concerning the servicing of landing gear struts, in addition to providing details about what transpired on September 10. *Id.* at 2-4; CX-6; *see supra* pp. 5-6 (summarizing broken bolt event). Complainant also included the email he sent to Hoefle on or around August 22, 2013 which detailed a variety of safety concerns, but primarily focused on his challenging the appropriateness of the written warning he received on August 6, 2013. CX-1 at 4-12; *see supra* pp. 6-7 (detailing Complainant’s email to Hoefle).

In a letter dated September 16, 2013, Douglas Peters, manager of the FAA’s audit and analysis branch, informed Complainant the FAA received his AIR21 complaint against Respondent. CX-2 at 1. Peters explained the case was assigned a complaint number, his office would conduct “an intake analysis” of the complaint and, “if appropriate, assign for investigation to determine if a violation of an order, regulation or standard of the FAA related to air carrier safety occurred.” *Id.* He clarified, however, that complaints pertaining to discharge or alleged discrimination must be filed with OSHA. *Id.*

By September 17, 2013, seven days removed from the conflict on September 10, Complainant did not hear anything from Respondent about being reinstated. TR 54. On or around September 23, Complainant noticed a \$250.00 deduction on his electronic paystub with the note that said “badge.” TR 55. In order to determine what occurred, Complainant spoke with payroll, who then forwarded him to Hoefle in human resources. TR 55. Hoefle told Complainant she did not know about this employment status, but would speak with the director. TR 55.

A few days passed and Complainant did not hear back from Hoefle or anyone else from Respondent. TR 56. At that point, he realized he was not suspended, but terminated.¹⁰ TR 56.

⁹ Complainant denied he ever told Mathers that working for Respondent was uncomfortable, not a good fit, or that he could not return to work. TR 125-26. He also denied that Mathers offered solutions to the situation, such as working on a different shift. TR 126.

¹⁰ Complainant did not discuss this exhibit at hearing, but within the record there is an email, dated October 1, 2013, from Hoefle to Complainant. *See* RX-14. Hoefle stated:

[W]e will not be removing the resignation from our records. Based upon the documentation, we concluded that you verbally resigned for your position, took your personal belongings and relinquished your company property to your manager. I will communicate with Payroll that you need to be reimbursed for the \$250 deduction for your employee badge. Mr. Mathers has possession as you stated.

Accordingly, he submitted an application for unemployment assistance and filed an AIR21 claim with OSHA on September 25, 2013. TR 56; *see* CX-2 at 2.

Complainant confirmed that no one at Respondent ever told him not to report safety concerns. TR 132-36. He never reported safety concerns through Respondent's anonymous safety hotline or to Gary Appeling, senior vice president of maintenance; Jeff Wyman, director of maintenance; or to Mike Lotz, president. TR 132-33. Lastly, Mathers and Hoefle never told Complainant they did not want to hear about safety concerns. TR 134-36.

B. Byron Davis

On June 23, 2012, Davis began working for Respondent as an A&P mechanic. TR 164. Shortly afterwards, in July or August of that year, Davis was promoted to lead mechanic. TR 164-65. As lead mechanic, Davis was responsible for “oversee[ing] that every task get done for the night so that the aircraft can make it to the gate on time.” TR 165. He testified that he worked on the third shift with Complainant. TR 165. He was responsible for, and assigned tasks to, Complainant. TR 165. Davis's recollection of the events on September 10, 2013 was presented through a written statement he drafted the day of the incident and his testimony at the hearing on June 25, 2015. RX-13 at 6; TR 164-206.

Depending on what needed to be done, Davis assigned Complainant a variety of tasks ranging “from the extreme to the menial.” TR 165. Some of the tasks were routine and others were non-routine. TR 165-66. The routine tasks were something that “the aircraft was required to have during that time”; “things that had to get done on a certain timely basis.” TR 165, 170. For example, changing the oil or air filters are routine tasks because the tasks must be performed after a specific number of hours. TR 169-70. Non-routine tasks dealt with “something that was like broke.” TR 166. The non-routine tasks sometimes took “three days to thirty to forty-five days.” TR 166. Davis affirmed that changing a light bulb or a torn piece of carpet would be a non-routine work order. TR 170. Respondent's procedures mandate that routine tasks are completed before non-routine. TR 166, 168-70.

Davis was the lead mechanic on the morning of September 10, 2013. TR 166. Davis assigned several tasks to Complainant including oil service cards and a non-routine card to fix a seat back table.¹¹ TR 167; RX-13 at 6. Both Davis's trial testimony and his contemporaneously drafted written statement indicate he stressed the importance of the oil service cards to Complainant. TR 167; RX-13 at 6.

Id. At hearing, there was some debate between Complainant and Respondent's attorney as to whether he resigned or was terminated. TR 64-67. According to Respondent's attorney, Respondent's computer system indicates Complainant resigned. TR 64. Notwithstanding Respondent's rebuttal, Complainant maintained he was terminated and stated, “I have the documentation to prove I was terminated.” TR 64.

¹¹ It is unclear if the brake accumulator assignment was included in the initial disbursement of work cards. Davis's written statement and testimony only explicitly touch upon issuing service oil cards and a non-routine card to fix a seat back table. *See* TR 167-70, 175-76; RX-16 at 3. Within the context of the conversation, however, it seems likely that Davis categorized the brake accumulator assignment as service oil card. TR 176. Also, during cross-examination, Davis stated that he “vaguely” remembers assigning other tasks to Complainant—such as towing another aircraft—in addition to the work cards to which he testified. TR 185.

Sometime between 4:00 to 4:30 AM, Davis approached Complainant about his progress with his work cards. TR 171; RX-13 at 6. An argument ensued when Davis learned that Complainant had not completed any of his routine work cards; in fact, he had six or seven routine work cards remaining because he had been working on non-routine cards.¹² TR 171. After a brief debate, Davis instructed Complainant to alter his approach and begin working on his routine service cards.¹³ TR 171; RX-13 at 6. In compliance with this directive, Complainant began working on the brake accumulator service card. TR 171.

According to Davis's testimony, a brake accumulator service card is a task that should be started at the beginning of a shift. TR 171. He explained: "The card is a simple let me look at the accumulator, see if it's good. Nine times of out ten, it's good. It's that one time that it's not good—but you got all night to do it." TR 171.

Not long after Davis had this discussion with Complainant, Davis conducted another progress report, and after he approached Complainant, Complainant told him there was an issue with the brake accumulator. TR 172; *see* RX-13 at 6. Davis testified he told Complainant, "It's not going to make it to the gate because you took all night to look at this task." TR 172. Complainant responded angrily to Davis's input and an argument ensued. TR 172-73; RX-13 at 6.

Davis recalled being "so angry that night" because he "was a new lead" and Complainant "had . . . many cards left and the aircraft was supposed to be at the gate in less than an hour." TR 185. He testified, "I wasn't upset that there was a leak. I was upset that we found the leak at 4:15." TR 188-89. Complainant yelled at him and indicated his frustration stemmed from a previous argument that Complainant had with Mathers.¹⁴ TR 172-73. Davis eventually excused himself from the argument and retreated back to his office when Complainant continued to yell about "what a good time is or not to find discrepancies on the aircraft." RX-13 at 6; *see* TR 173. About fifteen minutes after Davis entered his office, he saw "airport ops" through the window of his office and learned that Bridges and Complainant engaged in an argument about the same issue. RX-13 at 6. Complainant was asked to go home for the night and, when he refused, was escorted off the property by police. *Id.*

The plane containing the problematic brake accumulator originally had a "target time of 0515 [hours] to push the aircraft out of the hangar to make [Davis's] gate time of 0545 [hours]." RX-13 at 6. In light of the time that Complainant discovered the issue, the plane was unable to

¹² During his cross-examination of Davis, Complainant argued that he completed ten work cards. TR 182.

¹³ Davis's written statement provides that he "redirected other mechanics to help [Complainant] finish his work." RX-13 at 6.

¹⁴ Davis testified that Complainant's behavior changed and everything had to be by the book after this alleged argument with Mathers. TR 173. Davis admitted "we operated out of the book and we operated in a vicinity of the book, we still veered away a little bit. You know, we didn't have this we used that. We didn't have that, we used this." TR 173. During cross-examination, Complainant asked Davis if he remembered what he said about the grievances and arguments Complainant had with Mathers. TR 186. Davis admitted, "I don't recall what [Complainant] said. I don't recall the argument. I just remembered we argued." TR 186-87.

be rolled out by its target time. TR 173. The plane was fixed and then it went to the gate around 7:00 or 8:00 AM.¹⁵ TR 174.

C. Robert Bridges

Robert Bridges began working for Respondent in March 2013 as an A&P mechanic.¹⁶ TR 208. In May 2013, Bridges was promoted to foreman where his duties consisted of “oversee[ing] general maintenance in the hangar on third shift. [He] would coordinate with the manager, maintenance control, maintenance planning, let them know our capabilities there in Charlotte[,] . . . look ahead for planning five to seven days out, and just make corrections as I saw fit.” TR 209. He also had supervisory authority over A&P mechanics. TR 209. In the absence of the base manager, Bridges testified he had the authority to dismiss employees from the premises. TR 239. He was trained on Respondent’s anti-discrimination and retaliation policies. TR 210. Bridges’s recollection of the events on September 10, 2013 was presented via the final written warning he drafted on the day of the incident and his testimony at the trial on June 25, 2015. RX-13 at 1-2; TR 228, 247.

Bridges recalled difficulties he had in working with Complainant. TR 215. The first incident involved issuing Complainant a written warning for failure to short sign a work order. TR 216. Bridges explained that in the event a lead or supervisor fails to provide an A&P mechanic with the requisite work card, it is the A&P mechanic’s responsibility to seek out and acquire the documentation and procedures for a task because no tasks “should [be] perform[ed] . . . without procedures.” TR 217-18. Complainant was disciplined because he performed a task without the written procedures and failed to short sign the incomplete task in violation of Respondent’s policies. TR 216; RX-12. Bridges drafted the written warning himself. TR 216; RX-12.

Bridges recalled another event in which he had to correct Complainant’s inefficient approach to completing task cards. TR 218. During one shift, task cards had been misplaced and, as a result of not being able to ensure the tasks were completed, the mechanics on shift began re-accomplishing the tasks provided in the missing task cards. TR 218. Bridges observed Complainant carrying around a bucket of fuel waste as provided in a work order. TR 219. Bridges asked him to put it down and focus on another task because he could be getting other more important work done. *See* TR 219.

Complainant became “a little heated,” “a little frustrated,” and told Bridges he “shouldn’t be telling him what to do, he’s doing his job, he’s doing one thing at a time and that’s how he was going to operate.” TR 219. Bridges tried to explain that dumping fuel does not impact the

¹⁵ During cross-examination, however, Davis testified the plane did not leave the hangar. TR 182. There was also some debate as to why Davis signed off on the work card about the brake accumulator without noting that completion of the card was more complex than the initial routine function check implied. TR 198-206; RX-15 at 36. Davis proffered a number of explanations, including that there were multiple work cards and this wasn’t the final one, he signed off on this work card after they fixed the problem because they rushed, or that a non-routine work card was issued until a review of the record indicated that no such card was issued. TR 199-206; RX-15 at 3, 36. It is clear that Davis could not recall why a non-routine card was not issued when Respondent’s procedures indicate that one should be issued whenever a routine work card requires a more substantial fix. TR 199-206.

¹⁶ Prior to working for Respondent, Bridges was an A&P mechanic in the United States Air Force. TR 210.

airworthiness of the airplane; therefore, it's something that can wait until after the airplane is out. TR 219. Although Complainant raised his voice, Bridges denied that Complainant was yelling during this incident. TR 219.

The last event Bridges recalled pertained to Complainant's final shift working at Respondent. TR 220. On the morning of September 10, 2013, between 4:00 and 5:00 AM, Bridges noticed an open panel on an aircraft that he was hoping to "start moving . . . to the gate at 5:00 AM"; accordingly, "panels should have been long closed." TR 220-21. Upon approach of the open panel, Bridges discovered "[Complainant] standing there with another employee."¹⁷ TR 221; *see* RX-13 at 1. After the other mechanic standing there informed Bridges about the problematic brake accumulators Bridges asked, "Why are we finding it so late in the morning, so late in our shift, why are we finding this so late?" TR 222; *see* RX-13 at 1.

Bridges testified he was frustrated by the discovery of the brake accumulator because it was found so late in the shift. TR 222. The work card at issue was an inspection card that required a check to be completed every seventy-two hours. TR 222. Completing these routine work cards first was a "good practice that [Respondent] like[d] to follow" because if the routine check uncovered a problem that warranted more substantial time and effort, the A&P mechanics had time to fix it without delaying the airplane. TR 246. Respondent's A&P mechanics were trained to complete these routine work cards first.¹⁸ TR 246.

In response to Bridges's inquiry, Complainant "lost his temper, and raised his voice." TR 222; *see* RX-13 at 1. Complainant screamed, "I'm sick of this shit, it's not important when we find the problem with the airplane, it's important that we found it and [we] . . . fix it." TR 223, 235; *see* RX-13 at 1. This was not the first time that Complainant had raised his voice with Bridges; however, this was the first time Complainant screamed in a "belligerent" and "irate" manner. TR 218-20, 224. After Bridges attempted to explain Respondent "ha[s] priorities, certain things have to be prioritized so we can make the gate times," Complainant told Bridges "to get away from him and he's tired of talking to [Bridges]," and began to say "get out of here before I beat," but stopped himself from completing the warning.¹⁹ TR 223-24; *see* RX-13 at 1.

Bridges testified that he was shocked by Complainant's behavior. TR 224. Bridges was aware of Complainant's tendency to quickly lose his temper because of the bucket of fuel incident, but Complainant was "much louder," and his "facial expressions, . . . and body language . . . w[ere] different than [Bridges] had ever seen . . . before." TR 223, 235; *see supra* p. 14. Bridges concluded Complainant "was in no emotional state to be working on airplanes or to be around anybody at that time"; therefore, Bridges asked Complainant to leave the premises and Complainant refused. TR 224-25, 240; *see* RX-13 at 1.

¹⁷ Bridges testified that Complainant was initially standing there with Steven Little and several other A&P mechanics. TR 221, 247. By the time the argument ended, however, it was only Complainant and Bridges left because "it got so uncomfortable that everyone else had walked away." TR 247.

¹⁸ In addition to confirming that employees were trained to complete routine cards first, Bridges explained: "There's nothing that said they must be performed first. But ideally it's a good practice that we'd like to follow because otherwise it can end up biting us." TR 246.

¹⁹ During cross-examination, Bridges testified that he did not think Complainant was making a threat. TR 231. That said, Bridges still believed it was appropriate to send Complainant home because he was so "emotionally attached . . . to the situation" that Bridges "didn't feel like [he] was capable [of] safely working on an airplane." TR 240.

At hearing, Complainant asked Bridges if he understood what Complainant had been screaming about:

Q: Next question, okay, do you think that the things that I w[as] saying, was it relating to safety, like the what I was bringing—the concern I was bringing to your attention, was it related to the safety of the aircraft? Would you say it was related towards the safety of the aircraft? Even though I may have been screaming, but, you know, I'll use the term I was screaming, whatever, would you say that it was related towards the safety of the aircraft?

A: I believed part of it was related to the safety of the aircraft. I always thought you were a hard worker, but, at the same time, I have a job to do. My job is to make sure you're doing your job the right way, and you weren't doing your job the right way.

Q: Okay.

A: And you failed to understand that.

TR 236-37. Complainant further inquired if arguments regarding procedure were commonplace at Respondent:

Q: Okay, what I wanted to know, like how often did we, you know, run into situations of that nature where we get into little arguments over either a procedure or something, I say to do this, a DVI or VI, visual inspection, how often did we run into—speaking in general terms, like mechanic at [Respondent], how often did we run into little issues like that that where we needed clarification?

A: With you, there were quite often clarifications required.

Q: Okay. And was that a good thing, or was it a bad thing?

A: Normally it was a good thing. Several situations, it turned into a very bad thing.

Q: Okay.

A: And this is one of them.

TR 238.

Bridges ultimately left Complainant alone and began making phone calls to address the situation. TR 225; *see* RX-13 at 1-2. First, he called the control tower and “let [them] know that this airplane is going to be late” and then asked for security’s phone number. TR 225. Prior to the phone call, Bridges was unaware that the airport’s security was actually just the Charlotte-Mecklenburg police department. TR 225. As a result, Charlotte Airport’s operations sent some employees out “just to assist if assistance was needed.” TR 226; *see* RX-13 at 2. Shortly afterwards, the police arrived. TR 226; *see* RX-13 at 2.

Even after the police appeared, Complainant did not think Bridges had authority to ask him to leave. TR 226; *see* RX-13 at 2. The police informed Complainant that Bridges had the

authority to ask him to leave. TR 226. The police then suggested to Bridges that he take Complainant's badge so that Complainant could not reenter the premises without permission. TR 226. Accordingly, Complainant handed the badge to airport operations who proceeded to escort him off of the property.²⁰ TR 226; *see* RX-13 at 2. Just before Complainant was escorted away, Bridges remembers Complainant stating that he wanted to get all his tools because "he was done, he wasn't coming back." TR 226. Bridges clarified that he informed Complainant he "wasn't firing him . . . and if he doesn't come back that's up to him at that point." TR 227; *see* RX-13 at 2. Complainant did not ultimately take his toolbox with him at that point. TR 241.

Bridges testified that after the episode concluded, he immediately began drafting a statement "while it was fresh in [his] memory." TR 227; RX-13 at 1-2. At hearing, Bridges clarified that he drafted the final written warning, but the hand written notes and signature were not his. TR 243-44; RX-13 at 1-2. He did not think he called Mathers because "[i]t was so late in the morning that [Mathers] was probably due in in a few minutes anyways." TR 227. He confirmed, however, that he did speak with Mathers about the incident when Mathers arrived that morning. TR 227.

Bridges testified the problematic brake accumulator was fixed prior to sending the plane out to the gate. TR 229. During cross-examination, he admitted he could not recall exactly when the plane was moved out to the gate, but believed it was after this morning shift was completed. TR 230.

Respondent's attorney asked Bridges if Complainant ever reported safety related concerns to him. TR 220. He testified:

I don't remember specifics, but I remember him voicing concerns. And I remember me telling him that his responsibility is, if he sees things that are unsafe, he has as much responsibility as anyone to address something to fix them or try his best to remedy them. But he never gave definite safety issues. He would just speak in general terms, if that makes sense. And there was really nothing to correct in anything that he was bringing to my attention.

TR 220.

D. James Mathers

On November 12, 2012, James Mathers was hired to be the fleet maintenance unit manager—also known as base manager—for Respondent. TR 249. Prior to working for Respondent, Mathers worked as a quality control and compliance manager at Colgan Air. TR 250. At the time of the hearing, he had been licensed as an A&P mechanic for approximately thirty-five years. TR 250. As base manager, Mathers "oversaw the maintenance operation for the station," which involved "scheduled, unscheduled maintenance for the aircraft, personnel hiring, disciplinary actions, general housekeeping, supplies, [and] requisitions." TR 250. During the relevant time period, he was Complainant's manager. TR 250.

²⁰ Bridges testified that airport operations provided "procedures on how we go about getting [Complainant's security badge] back." TR 226.

At hearing, Mathers recalled two “performance problems” with Complainant. TR 252. The first instance concerned a written warning for failure to short sign a work card that he did not complete. TR 253. Mathers explained that A&P mechanics at Respondent—and A&P mechanics throughout the entire industry—were trained to short sign a work card whenever a card could not be completed. TR 252. He explained that regardless of cause—whether it’s the end of the mechanic’s shift, the mechanic went home sick, the mechanic was injured on the job, or the task could not be completed the requisite part or a piece of equipment was unavailable—it is imperative that mechanics short sign the card and certify their progress so that another mechanic can pick up where he or she left off. TR 252-53.

Complainant was ordered to apply speed tape to a nose landing gear door in a specific pattern. TR 254. He began the task; however, he did not finish it because his shift was ending and a requisite tool was allegedly unavailable.²¹ TR 255. Despite Mathers protesting that Complainant should stay and finish the job, he left without short signing the work card.²² TR 253-54. The next day, Mathers gave Complainant a written warning for failing to sign off on his work card.²³ TR 253-54.

Complainant protested that he applied the tape incorrectly and did not sign off because he was never given the work order. TR 254. He also alleged the written warning was in retaliation for Complainant’s refusing to stay beyond the end of his scheduled shift and finish the task. TR 254-55. Mathers testified that Complainant’s excuse did not shield him from discipline, because it was Complainant’s responsibility to question his lead or the supervisor on duty at the time about the missing work card. TR 254. Mathers stated he has disciplined other mechanics, lead mechanics, and supervisors for failing to short sign a work order in the past. TR 255.

The second “performance problem” Mathers discussed concerned Complainant lashing out at supervisors when he was confronted about an unfinished task. *See* TR 253. Mathers explained that some of the tasks assigned to mechanics have a higher priority than others. TR 250. He testified, “Some tasks cards are either calendar-oriented, where they fall in on a certain date. Some task cards are hourly. It would vary on the task.” TR 251. In contrast to the time-oriented, routine tasks, there are other tasks that are less significant because they do “not impact the airworthiness of the aircraft.” TR 251. For example, something like a passenger reading light would be on the “minimum equipment list” and would not be as much of a priority as a routine task because it would not impact the safe operation of the aircraft. *See* TR 251-52.

²¹ During Complainant’s cross-examination of James Mathers, foreman, it became clear that there was some uncertainty as to whether the appropriate tool was in fact available. TR 284-86.

²² Complainant also failed to apply the speed tape correctly. TR 254. As a result, the repair had to be done all over again. TR 254.

²³ During cross-examination, Complainant alleged that Bridges—not Mathers—gave Complainant the written warning. TR 276. Mathers testified that he could not recall whether that was accurate. TR 276. Regardless of who initially provided Complainant with the written warning, Mathers and Complainant had a discussion about it. TR 276-77. Complainant refused to sign the written warning; accordingly, Inspector Woody entered the office and both Mathers and Woody signed the written warning per Respondent’s protocol. TR 277. Other than noting that Inspector Woody was the “lead inspector,” neither Mathers nor Complainant provided further details about him. TR 277.

At approximately 4:30 AM on September 10, 2013, Mathers received a phone call from Bridges. TR 257, 297. Bridges told Mathers there had been an argument between Complainant, Byron Davis, and himself. TR 257. Complainant was yelling and swearing, and when Bridges told him to go home, he refused to leave; ultimately, Complainant had to be removed by the police. TR 257. Bridges indicated that Complainant said he could not work for Respondent anymore, that he was done, and this was not the place for him. TR 257. Mathers “instructed Bridges to call airport security and have him removed from the property.” TR 257. This was the first time Mathers had to have an employee escorted off the property by the police. TR 259. He explained it was his standard practice to personally escort a terminated employee off the property, but he never before required police involvement. TR 258-59.

A few hours later, Mathers arrived at the workplace. TR 258. To get a thorough understanding of what happened earlier that morning, he requested that Davis, Bridges, and anyone else who witnessed the conflict record their observations in a written statement.²⁴ TR 258. Accordingly, Mathers also telephoned Complainant several times that day to “get his side of the story.” TR 259. Later that evening, Complainant called Mathers back and Complainant agreed to come back into work so that they could discuss what happened. TR 259-60.

Mathers testified that Complainant was frustrated by the short time frame between Davis’s and Bridges’s inquiries as to why the brake accumulator task was taking so long. TR 260. Complainant admitted that he screamed and used foul language during the confrontation. TR 261. He also disclosed that “he was unhappy, that it wasn’t a good fit, that he couldn’t work there anymore.” TR 261. Mathers suggested that working for another supervisor or on another shift might improve his outlook on working for Respondent. TR 261. Complainant rejected Mathers’s offer. TR 261.

Complainant proceeded to hand Mathers his company badge and stamp; he did not provide his SIDA badge because that had already been taken from him prior to being escorted off the premises by the police. *See* TR 261, 274-75. In compliance with Respondent’s procedures, Mathers searched Complainant’s toolbox to “make sure no company materials [we]re leaving the premises.” TR 262. He then walked Complainant to the door, shook hands, and said goodbye. TR 262. Mathers believed Complainant resigned. TR 262, 292.

Mathers testified that prior to Complainant indicating he was resigning, he told Complainant the HR department would conduct an investigation. TR 267, 292. At no point did Mathers indicate that Complainant was suspended pending the outcome of the investigation. TR 262-63, 267, 297-98. Mathers denied that Complainant asked him to hold his badge and stamp until the investigation was completed; rather, Mathers was certain Complainant resigned. TR 262, 292, 297-98. An investigation would have been conducted regardless of whether Complainant resigned that day because of the police department’s involvement. TR 292.

After Mathers escorted Complainant off of the premises, he contacted Laura Hoeffle of Respondent’s HR department. TR 262. He summarized the conflict Complainant had during his

²⁴ Mathers testified that one of the reasons he asked Bridges to record witnesses’ statements was because Respondent’s HR department was inevitably going to be part of the investigation in light of security’s involvement in the ordeal. TR 258.

shift, the subsequent conversation he had with Complainant later that day, and “that [Complainant] had handed over his badge and said that he could no longer work at [Respondent].” TR 263.

Mathers was not involved in HR’s investigation of the incident. TR 264. Respondent’s “policy for any termination less than a resignation is that it will come from HR as to the disposition of what happened.” TR 297. Mathers did, however, add a handwritten note and signed the final written warning on September 11, 2013. TR 263, 267-68, 297; RX-13 at 1-2. Mathers’s handwritten note under the section, “Supervisor comments” stated: “By direction Roderick ‘Chili’ Edgar was terminated from Mesa – CLT, 10 Sept 2013[.] Sida ID, Company ID + stamp was returned[.] Uniforms are yet to be all accounted for.” RX-13 at 2. At hearing, Mathers clarified that the term “termination” does not indicate that Respondent fired Complainant. TR 263, 293. Respondent uses the word “terminated” to apply in circumstances of resignation or termination because, regardless of whether it was voluntary or involuntary, the employment relationship has ended. TR 263; RX-13 at 1-2.

Respondent’s attorney asked Mathers if Complainant had voiced complaints about his work environment. TR 255. Mathers testified that Complainant would present general complaints to him, but it was never anything specific. TR 256. When Complainant confronted Mathers with general complaints, Mathers would tell him “he would need to be specific in those terms, whether it be equipment or personnel, so that it could be corrected.” TR 256. Mathers testified that Complainant never provided more specific information. TR 256. Nevertheless, Mathers followed up on Complainant’s vague complaints and “ask[ed] the leads and supervisors on duty that worked with [Complainant] if they had—or, if he had approached them with any concerns” and “both of their answers were that [Complainant’s complaints] were in general terms, nothing specific.” TR 256.

During cross-examination, Complainant asked Mathers about other occasions in which Complainant allegedly brought safety concerns to his attention. TR 270-74. Complainant asked about circumstances in which “an aircraft was late one night,” and when Mathers came in that morning he called a meeting with all of the mechanics and “was saying what happened that particular night, this cannot happen anymore.” TR 270. Mathers testified, “I remember having a conversation with all of the shifts because individuals were leaving before the end of their shift and not clocking out, that every individual needed to check with their lead or supervisor prior to leaving the premises, yes.” TR 270. Complainant rephrased his question and asked about different circumstances in which “there was a couple of aircrafts in the hangar” that had upset Mathers and, the following day, Mathers held a meeting with the mechanics to “address what really went on.” TR 271. After Mathers “made [his] comment,” Complainant “rhetorically asked [him], ‘[A]re you really serious about why the aircraft was late that morning?’” TR 271. Mathers could not recall that event. TR 271.

Complainant then asked about safety concerns that he noticed during his initial training under the supervision of a man named Brad. TR 271. According to Complainant’s understanding, Brad e-mailed Mathers with the safety concerns Complainant identified and an invitation to discuss the concerns with Complainant and the other trainees. TR 271. Mathers testified he did not remember that conversation and stated, “I have had several conversations

over the course of the two years that I was at [Respondent] concerning training.” TR 271. Complainant further explained that when Mathers participated in this dialogue with the trainees, he brought some concerns to Mathers’s attention, including a complaint about long wait times for tools and screws and a suggestion for a free stock bin. TR 272. This extra detail seemed to trigger Mathers’s memory. TR 273-74. He testified remembered Complainant suggesting there should be a “free stock,” but he would have explained to Complainant—as he did at hearing—that implementing a “free stock” would have been a “violation of [Respondent’s] general procedures.” TR 273-74. Complainant responded by acknowledging the accuracy of Mathers’s testimony and stated, “We could agree on that definitely, okay.” TR 274.

E. Laura Hoefle

Laura Hoefle worked within Respondent’s HR department for approximately ten years. TR 300-01. She held a number of positions over that time period, including: HR supervisor, assistant HR manager, and HR manager. TR 300-01. She currently works for Respondent as a senior national recruiter. TR 300. For the relevant time period at issue in this case, she worked as an HR manager. TR 300. The HR department is heavily involved in personnel decisions. TR 313-15. According to the employee handbook, “no discipline more severe than a written warning will be given to an employee without the supervisor discussing the matter with human resources.” TR 314-15; RX-9 at 47.

Hoefle recalled that Complainant received a written warning in August 2013. TR 303. She testified she investigated the issue and confirmed that the written warning was appropriate. TR 303, 306. This investigation included questioning Mathers about what transpired that night, short signing procedures, and any training that Complainant would have received on the subject. TR 303. In addition to confirming Complainant’s behavior warranted a written warning, she also affirmed that two other employees were disciplined for the same kind of conduct in the past. TR 306.

Shortly after Complainant received the written warning, he contacted Hoefle to contest the disciplinary action. TR 303-04. She testified that Complainant believed he received the written warning in retaliation for bringing safety concerns to Mathers’s attention. TR 304. Hoefle also recalled that Complainant mentioned “confrontations with Jim Mathers regarding his unwillingness to stay at work.” TR 304. In response to Complainant’s allegation, Hoefle asked for more details so that she could investigate his concerns. TR 304-05. Despite her request, Complainant did not provide Hoefle with specifics that would have enabled her to investigate his alleged safety concerns. TR 305.

In addition to speaking to Complainant about safety concerns “at least . . . two times at length,” Hoefle also received an email from Complainant. TR 305. She testified that Respondent began investigating the concerns that Complainant noted in a “fairly lengthy” email. TR 305; CX-1 at 4-12. The contents of the email did not change Hoefle’s belief that the written warning Complainant received for failing to short sign the work order was appropriate. TR 305-06.

On September 10, 2013, Hoefle arrived to work to find a message from Mathers that “there had been a situation” that morning. TR 307. She contacted Mathers and he discussed what happened. TR 307. Hoefle requested that Mathers begin collecting witness statements, and he informed her that he had already initiated that process. TR 307. Mathers forwarded the statements to Hoefle upon their completion. TR 307; RX-13.

Mathers again contacted Hoefle after Complainant returned to Respondent’s premises and discussed the morning incident. TR 308. Mathers stated that Complainant provided his version of the story, gave Mathers his badge and stamp, took his toolbox home, and Complainant indicated that “he couldn’t work for [Respondent] anymore, it wasn’t a good fit for him.” TR 308. Mathers then escorted Complainant off the property—a normal procedure. TR 308. This summary of events led Hoefle to believe that Complainant had resigned. TR 309. Accordingly, Hoefle completed a termination personnel action form—“a form that Respondent used for any type of termination”—specifying that Complainant had resigned and entered the information into the system. TR 309-10.

Approximately a week later, Complainant contacted Hoefle concerning a \$250 deduction from his paycheck.²⁵ TR 310. Complainant was confused by the monetary deduction, because he was under the impression he was suspended from work pending the outcome of an investigation. TR 310. Hoefle was surprised by Complainant’s disposition because she was certain he had resigned. TR 310. Hoefle immediately asked Mathers if he ever indicated that Complainant was suspended; Mathers “said he never mentioned it” to Complainant.” TR 311.

After this initial conversation with Mathers, Hoefle informed HR director, John Wells, about Complainant’s alleged suspension. TR 312. A conference call with Wells, Mathers, and Hoefle ensued; ultimately, the group concluded “there was no discussion about a suspension, so there must have been some sort of miscommunication or some sort of misconception about what was happening.” TR 312. The senior vice president of HR made the ultimate decision to let the resignation stand. TR 313. Neither Hoefle nor Mathers were involved in the decision to let the resignation stand.²⁶ TR 313. In accordance with the decision, Hoefle emailed Complainant, clarifying Respondent’s position that Complainant had resigned, the resignation was final, and he would be reimbursed for the \$250 deduction.²⁷ TR 314; RX-14.

At hearing, Hoefle testified that neither she nor HR considered whether Complainant could return to work, because “we thought it was a resignation, all in all.” TR 312. Had he not

²⁵ Hoefle does not work within the payroll department; therefore, she cannot definitively testify as to why Complainant was incorrectly charged \$250 for a badge he returned. TR 310, 329. She believed there was most likely some sort of delay in the paperwork, likely caused by the retroactive method of paychecks. TR 310, 329-30. This was not the first time a timing incident like this occurred. TR 330.

²⁶ Hoefle’s involvement was limited to “providing the documentation and the information, but it was not [her] decision.” TR 313.

²⁷ Hoefle never called Complainant to inquire about his resignation because his statements and actions indicated that he resigned. TR 318-19. In light of what Mathers relayed to her, Hoefle felt “there was no reason for me to really reach out to [Complainant] at that time.” TR 319. HR protocol does not mandate that department members contact individuals who have resigned. TR 327, 333-34. In her years of employment with Respondent, Hoefle could not recall any instances of calling employees and asking them whether they truly resigned. TR 336. Employees who retired or were discharged for particular reasons, receive formal letters from HR in conclusion of their employment; however, employees who resigned do not receive these notices. TR 334.

resigned, Hoefle thought “we probably would have had to have released [Complainant] for his actions that evening.” TR 313.

During cross-examination, Complainant asked Hoefle why his overall performance at Respondent was not considered along with the “deficiencies” that Respondent noted. TR 321-325. Hoefle testified:

Performance-wise, we really didn’t have an issue with [Complainant]. What we would have an issue with if we overturned the resignation would have been—again, going back to [Complainant] and [his] supervisor, is that his conduct that evening where he was escorted—or, morning where he was escorted off the property would be something that we would not tolerate.

TR 326.

F. Xia Xiong

Xia Xiong worked as an A&P mechanic for Respondent. TR 36; RX-13 at 3. He worked the morning of September 10, 2013 and observed the confrontation between Complainant, Davis, and Bridges. TR 36; RX-13 at 3. His testimony is limited to a signed witness statement he submitted to Jim Mathers, dated September 11, 2013:

Approximately 5:00 AM on 9/10/2013. [Bridges] approach [Complainant] asked him calmly – why you still work on it at 5:00 AM. [Complainant] turned around and to [Bridges] to (F) off and I am tire[d] of this shits [sic]. [Bridges] told him just go home and clock out. [Bridges] repeated several times, and [Complainant] still refused to leave. [Bridges] told him that he will call security – [Complainant] told him that your [sic] not my boss and you did not nice me [sic]. [Complainant] challenges [Bridges] to call security.

Jim! My statements to this you [sic] should respect your upper management and work closely with them. With this attitude I just don’t think it works in a working world.

RX-13 at 3.

G. Steven Little

Steven Little was an A&P mechanic for Respondent. TR 36. When Complainant was having trouble with the brake accumulator work card, Little attempted to help him. RX-13 at 4. At hearing, Complainant indicated he wanted to proffer Little’s testimony, but Little was either unable or unwilling to attend. TR 23. Therefore, Little’s testimony is limited to the written statement he emailed to Mathers on September 11, 2013. TR 23; RX-13 at 4-5.

Little approached Complainant on the morning of September 10, and Complainant indicated he was having trouble with a work card for a brake accumulator pre-charge. RX-13 at

4. Little was “not quite certain how or why he got ahold of the card so late.” *Id.* Nevertheless, he attempted to help Complainant resolve the problematic work card. *Id.*

As the two men attempted to fix the problem, Little noticed Complainant was getting frustrated. *Id.* At some point Davis appeared. *Id.* Little could “not remember the conversation verbatim, but [he] was sure that [Davis] pressed [Complainant] to complete this task quickly because it needed to be at the gate soon.” *Id.* He noted, “On prior jobs, both [Complainant] and I had gotten frustrated because of last minute problems with the lack of calibrated tools and part and then being pushed to complete the job quickly.” *Id.* In fact, Little believed “this contributed to the situation that night, since [Complainant] also brought this up in his conversation with [Davis] and [Bridges].” *Id.*

“At some point, after [Complainant] got argumentative with [Davis], [Bridges] entered the picture . . . asked for [Complainant’s] input on the problem . . . [and] I’m sure reiterated [Davis]’s statement, ‘that this card should have been completed much earlier in the night and that the plane soon need to be at the gate.’” RX-13 at 4. Shortly after Bridge’s statement, Complainant became more upset, “and argued that he was tired of this push to get unfixed items out.” *Id.* at 5. “At some point . . . [Complainant] raised his voice with [Bridges] and told him to leave him alone so that he could work on the problem” and “you are not my manager and to go.” *Id.* Bridges then requested that Complainant leave, but he refused and “the rest is history.” *Id.*

H. Victoria Simons

Victoria Simons worked for Respondent. TR 23; RX-13 at 7. She was working during the morning of September 10, 2013. RX-13 at 7. Simons was unavailable to testify at the hearing. TR 162. Accordingly, her testimony is limited to the brief email she sent Mathers on September 11, 2013:

[O]n 9/10/2013 I walk standing [sic] by the door of the airplane and I hear [Bridges] say hey [Complainant] clock out go home and [Complainant] said your not my boss, and then [Bridges] walk off then I saw a couple minutes later the security van came in and the police van follow soon after[. Complainant] walk[ed] to his box the[n] the security asked him let me see ur [sic] badge and [Complainant] pull it out handed it over, he went back to his tool box and start pushing it and then I see the police follow behind him[.]

Id.

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).

A two-prong, burden shifting framework is used to analyze whistleblower complaints under the Act. 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.

It is important to note at the outset that Complainant did not obtain legal representation in this matter. The Administrative Review Board (“ARB or the “Board”) has held that it is proper to “construe complaints and papers filed by pro se complainants ‘liberally in deference to their lack of training in the law’ and with a degree of adjudicative latitude.” *Peck v. Safe Air International, Inc.*, ARB No. 02-028, ALJ No. 2001-AIR-00003, slip op. at 13 (ARB Jan. 30, 2004) (quoting *Young v. Schlumberger Oil Field Serv.*, ARB No. 00-075, ALJ No. 2000-STA-

00028, slip op. at 8-10 (ARB Feb. 28, 2003). At the same time, however, I cannot permit the Complainant “to shift the burden of litigating his case” to me—the impartial fact finder in this matter. *Id.* (quoting *Griffith v. Wackenhut Corp.*, ARB No. 98-067, ALJ No. 97-ERA-00052, slip op. at 10 n.7 (ARB Feb. 29, 2000)). Accordingly, I will do my best to give fair and equal consideration to the often times vague, confusing, and underdeveloped arguments and evidence Complainant submitted without shirking my duty to serve as an impartial adjudicator.

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”; not whether the information “‘definitively and specifically’ described one or more of those violations.”²⁸ *Sylvester v. Paraxel Int’l LLC*, ARB No. 07-123, ALJ Nos. 2007-SOX-00039, -00042 at 19 (ARB May 25, 2011).

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.

The testimony elicited at hearing, and most of the evidence presented, primarily focused on two alleged events of protected activity: the events leading up to the written warning

²⁸ I note that the United States Court of Appeals for the Fourth Circuit has yet to explicitly rule upon the conflict between the Board’s 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 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. 2004) (citing *Sylvester* for its reasonableness standard and forgoing any mention of the “definitive and specific” analysis). In the alternative that the Fourth Circuit continues to adhere to the “definitive and specific” standard, I admit that it would change my analysis, but not the outcome of this case.

Complainant received on August 6, 2013 and Complainant's last day of work on September 10, 2013. A closer scrutiny of Complainant's exhibits and post-hearing brief reveal that he alleges additional instances of protected activity. Complainant outlined his argument section with the following preface:

Whether on 09/10/2013, 08/06/2013-08/07/2013, 08/19/2013, 09/05/2013, dates prior to 09/10/2013 and after 9/10/2013, Mr. Edgar complained, reported, brought issues and or concerns, provided, caused to be provided, or was about to provide (with any knowledge of the employer) or cause to be provided to the attention of employer or Federal Government of information relation to any violation or alleged violation of any order, regulation, or standard of the FAA or any other provision of Federal law relating to air carrier safety and likewise whether on 09/10/2013, 08/06/2013-08/07/2013, 08/19/2013, 09/05/2013, dates prior to 09/10/2013 and after 9/10/2013, Mr. Edgar had filed, caused to be filed, or was 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 FAA or any other provisions of Federal law relating to air carrier safety under this subtitle or any other law of the United States?

Compl. Br. at 18. In comparing the arguments Complainant presented in his post hearing brief to the testimony and evidence he submitted at hearing, I conclude—to the best of my understanding—that Complainant argues he engaged in protected activity in seven instances:

1. Within the first couple weeks of working for Respondent, Complainant observed and complained about a variety of safety issues;
2. Complainant's August 6, 2013 refusal to stay beyond the end of his shift, which ultimately resulted in a written warning for failing to short sign a work order;
3. The August 19, 2013 argument with Davis about whether a detail or visual inspection was appropriate;
4. An August 22, 2013 email that Complainant sent to Hoefle in which he contested the August 6, 2013 written warning and briefly recounted other safety complaints;
5. September 5, 2013 argument between Complainant and Davis about the service of a landing gear struts;
6. The September 10, 2013 incident that gave rise to the end of his employment with Respondent; and,
7. The September 10-11, 2013 communications with the FAA and OSHA.

See supra pp. 3-11; *see also* Compl. Br. 1-3, 18-22. Some of these events were only tangentially developed at hearing and discussed more thoroughly within Complainant's exhibits. Respondent received these exhibits during the discovery process and, therefore, received adequate notice that these additional instances of protected activity may be at issue. Therefore, I find it appropriate to examine each of the seven instances of protected activity under the reasonableness standard, despite the often times scant amount of detail presented.

“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 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 through an objective lens. 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).

Complainant’s work background shows he completed a two-year program to become a certified A&P mechanic in 2007. Following the certificate, he completed an apprenticeship program and worked as an A&P mechanic for a number of employers for several years before he began working for Respondent in May 2013. In scrutinizing whether Complainant has successfully demonstrated that he subjectively believed that his complaints were in relation to a 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,” and this his belief was objectively reasonable, I will remain cognizant of Complainant’s two years of schooling and approximately six years of experience as an A&P mechanic that he had at the time he allegedly engaged in protected activity. 49 U.S.C. § 42121(a); *see supra* pp. 2-3.

1. “First Couple Weeks” – Variety of Safety Issues

Complainant’s first allegations of protected activity involved complaints he allegedly proffered to Mathers approximately two weeks after he began working for Respondent. He testified he observed coworkers taking short cuts, requisite tools were unavailable, and there was a malfunctioning tug. Complainant claimed he informed Mathers about his safety concerns. At hearing, Mathers recalled that Complainant would alert him about general safety complaints and, when pressed for more information, Complainant never provided more details. *See supra* pp. 3, 20; *see also* Compl. Br. at 18-19; Resp. Br. at 7-9.

Beyond Mathers’s testimony about Complainant’s vague complaints, Respondent did not present any evidence about this allegation. In its brief, Respondent argues that Complainant cannot demonstrate “he made specific complaints or that they were related to any particular federal statute, regulation, or order.” Resp. Br. at 9. Accordingly, Complainant’s “generalized complaints to Mr. Mathers” cannot constitute protected activity because even when pressed for more details by Mathers, Complainant could not explain “what statutes or regulations he believed [Respondent] had violated, when they were violated, how, or by whom; nor did he provide that information to [Respondent] during his employment.” *Id.*

In an effort to substantiate its argument, Respondent cites to ARB precedent that stated “protected complaints must be specific in relation to a given practice, condition, directive or event” and “[a] complainant reasonably must believe in the existence of a violation.” Resp. Br.

at 9 (*discussing Simpson v. United Parcel Serv.*, ARB No. 06-065, ALJ No. 2005-AIR-31 at 5 (ARB Mar. 14, 2008)). The complainant in *Simpson* did not succeed in proving protected activity because she “failed to communicate any specific safety defect that her employer could take corrective action on as required by AIR21,” and did not prove she her belief was reasonable. *Simpson*, ARB No. 06-065 at 5-6. Respondent proffered that Complainant’s alleged instances of protected activity closely mirror those of the complainant in *Simpson* because his “broad, non-specific complaints about tools, parts, or the work of other mechanics cannot and does not qualify as protected activity under AIR21.” Resp. Br. at 9.

As previously discussed, the stringent specificity standard applied in *Simpson* was abandoned by the ARB. In its place, 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 supra* p. 26 and n. 28; *Sylvester*, ARB No. 07-123, at 15, 19. Accordingly, I am unpersuaded by Respondent’s argument.

In reviewing Complainant’s testimony about coworkers taking shortcuts, missing requisite tools, and a malfunctioning tug, I find that he subjectively believed he was reporting violations of pertinent FAA regulations. I also believe an objective person with Complainant’s training and experience would believe those infractions could undermine the airworthiness of an aircraft and violate FAA or any other provisions of Federal law relating to air carrier safety.

2. August 6, 2013 – Written Warning for Failure to Short Sign

Complainant argues in his brief: “Mr. Mather[s]’s writing me up after I confirmed to him that the task was incomplete and could not be completed because the jack was unavailable is against FAA regulation standards.”²⁹ Compl. Br. at 28. Respondent maintained that Complainant received a written warning because “he performed a task without the appropriate paperwork, and not in accordance with written instructions for the task,” and “for failing to short sign his work”; two violations of Respondent’s policies and procedures. Resp. Br. at 3. Respondent also emphasized that Complainant admitted in an email he sent to Hoefle after he received the written warning that he believed he was “written up because Mathers was angry with him for refusing to stay late at work.” *Id.*; *see supra* p. 6. I am unpersuaded by Complainant’s argument for the following reasons.

²⁹ Complainant also argued within his brief and at hearing that Mathers should have investigated the work order because the incident would not have happened if his supervisor had given him the work order to begin with. *Id.* at 32-35; *see supra* p. 4. This argument is unpersuasive because of the admissions Complainant made at hearing. He acknowledged: A&P mechanics are required to utilize work orders that prescribe a specific, step-by-step approach to completion of tasks; in the event those FAA-approved work orders are not given to the A&P mechanic by his or her supervisor, it is the A&P’s mechanic’s responsibility to locate the work order before starting the task; and, in the event that an A&P mechanic cannot complete the tasks provided on the work order, the mechanic shall short sign the work order to certify his or her progress. *See supra* pp. 3-4. Therefore, Complainant’s argument is unpersuasive because his own testimony indicates he knew it was his burden to locate the requisite work order before starting the task.

First, I do not consider Complainant's communication to his supervisor in this instance to constitute a safety complaint. By informing his supervisor the job was incomplete, the requisite tool was unavailable, and that he was leaving because his shift was over, Complainant was merely performing the duties of his job and complying—albeit incorrectly—with the overarching principles of Respondent's short signing policy. The policy explicitly contemplates circumstances in which an employee needs to reassign a task to a coworker “in the event a maintenance task requires more than one individual to complete the task due to work interruptions, shift turnovers and/or short signing.” RX-12 at 6. Therefore, in light of this well-established policy, I believe Complainant's statement to his supervisor qualifies as an ordinary communication between an A&P mechanic and a supervisor, rather than a warning or complaint about an unsafe condition. *See supra* pp. 4-5.

In the alternative that the communication to his supervisor constitutes a safety complaint, the evidence demonstrates that Complainant did not subjectively believe he was reporting a potential violation of the Act. Notwithstanding the argument he proffered within his brief, a contemporaneous email he sent to Hoefle demonstrates his communication was not motivated by a safety concern or a potential violation of the Act; rather, he was merely alerting his supervisor that he wanted to go home because his shift ended. *See supra* pp. 5-7; *see also* CX-1 at 4-12.

On or around August 22, 2013, Complainant sent an email to Hoefle contesting the written warning he received for failing to short sign the work order. He described receiving verbal instructions from his supervisor and the work he did before a missing tool impeded any further progress. Confronted with the predicament of waiting for the tool versus ending his shift, Complainant opted to leave his shift on time. CX-1 at 4-12. He wrote:

After finishing applying the tape, it was time for us to jack the a/c and performed the clearance test. Then it was made known that we only had one jack, which was at the time being used on the a/c with the prox change. There was a second NLG jack in the hangar but was unserviceable. So it was said we had to wait until the jack in use became available which no one [k]new what time it would have been made available. At that time it was almost 15 minutes before the end of my shift which was a 12 hr shift. So realizing that we did nt had an available jack to accomplish the gear swing, and we did nt know what time the prox change would have been completed, and there was not any need for help with the prox change, since there was about four to five mechanic or more standing by, I started cleaning and packing away my tools. Then I went looking for my lead to find out what we going to do next, but at the time I saw the lead had his bag and was leaving. At that time it was after 9 am the end of our shift. So then I walk to Mr. Mather's office and told him I was leaving. He said to me, “No[!]” you are not leaving there is an aircraft in the hangar, I then said, “yes I was working such and such aircraft and we couldn't complete the job because there is no jack!” At that time our conversation was beginning to become heated and he was on a conference call so he told me he had to go on the conference call, so I left his office and waited until he was finished.

Id. at 5. Complainant elaborated that once Mathers’s conference call finished, the debate as to whether Complainant could leave “heated up” again. *Id.* He noted Mathers demanded that he not leave until his work order was completed, whereas Complainant was adamant that Respondent could not force him to stay. *Id.* Ultimately, Complainant received a written warning from Mathers when he arrived to work for his next shift.

At no point during his communication to Mathers, nor the contentious argument that followed, did Complainant indicate—either explicitly or implicitly—that he believed he was reporting a safety concern. Complainant’s motivation for initiating a conversation with Mathers was to inform him that he intended to leave the premises regardless of the job being incomplete. In fact, Complainant noted the presence of other mechanics and the impending arrival of the requisite tool, so as to demonstrate he was not creating a potentially dangerous situation by leaving Respondent without anyone to finish the job once the jack was available. Neither Complainant’s testimony nor additional documentary evidence suggest a concern for the safety or airworthiness of the aircraft. Accordingly, I find Complainant failed to demonstrate that at the time he disclosed his desire to leave, he subjectively believed he was reporting a safety concern under the Act.³⁰

3. August 19, 2013 – Detailed vs. Visual Inspection

Neither Complainant nor Respondent’s attorney asked Respondent’s witnesses about this incident. As a result, the scarce evidence chronicling this event is limited to Complainant’s brief testimony and the email he sent to the FAA. The email to the FAA included both a discussion of the event and an alleged image of the broken bolt. Respondent does not address the issue in its brief. In the absence of conflicting evidence, I find Claimant’s testimony and documentary evidence credibly summarizes the event. *See supra* pp. 5-6, 11.

Complainant explained an initial review of the work order indicated that he should conduct a visual inspection of the “main landing gear retraction gear.” A closer scrutiny of the work order revealed he was required to perform a detailed inspection of the landing gear. When he discussed the more time intensive task with his supervisor, Davis, an argument ensued because Davis wanted Complainant to limit his inspection to a visual one. Davis ultimately took the work order from Complainant and reassigned the task to another employee. Shortly thereafter, Mathers approached Complainant, showed him a broken bolt found during an inspection of the gear, and lauded his efforts. *See supra* pp. 5-6.

In refusing to limit his assignment to a visual inspection, Complainant engaged in protected activity under the Act. Complainant was trained to strictly adhere to the instructions provided in the FAA approved work orders and references. In fact, he testified: “[W]e always have to work out of references. So it doesn’t matter, even if you know, do it a hundred times,

³⁰ In the alternative that Complainant’s actions leading up to the August 6, 2013 written warning did constitute protected activity, this incident would not have satisfied the contributing factor analysis because Complainant himself stated that the discipline was motivated by the argument about staying beyond the end of his shift: “Mr. Mathers [wa]s on a vendetta to get me because he [wa]s upset with me about leaving work at the end of my shift and if he thinks I[’]m wrong about that then Mr. Mathers has a very high and skillful level of showing prejudice and bias.” CX-1 at 7.

you still have to work out of the reference.” TR 34. Based upon the evidence presented, I find Complainant rejected Davis’s instruction to limit his task to a visual inspection because he subjectively believed that failure to fully comply with the work order would potentially create a safety issue or constituted a violation of the Act.

Turning to the objective reasonableness standard, I must determine whether a reasonable person in the same factual circumstances with the same training and experience as the Complainant would believe he engaged in protected activity. I believe an individual with two years of schooling and approximately six years’ experience as an A&P mechanic, who was trained to always comply with each step of a work order, would consider Complainant’s protest to constitute a safety complaint or violation of the Act. The fact that the A&P mechanic who performed the work discovered a broken bolt during the inspection buttresses the objective reasonableness of Complainant’s subjective belief. Notably, Respondent did not present any evidence on this issue and, therefore, I conclude Complainant engaged in protected activity when he refused to comply with Davis’s directive to forgo the detailed inspection for a visible inspection.

4. August 22, 2013 – Complainant’s Email to Hoefle

On or around August 22, 2013, Complainant sent an email to Hoefle. Therein he contested the written warning he received on August 6, 2013 and briefly discussed three other alleged safety issues. The other safety issues consisted of witnessing coworkers taking short cuts, requisite tools being unavailable, and a malfunctioning tug within the first two weeks of employment; an argument with Mathers about a delayed airplane; and, whether Respondent could force A&P mechanics to stay beyond the end of their shifts.

Respondent did not present evidence on any of the specific events discussed within Complainant’s email. Instead, Respondent focused on Hoefle’s testimony in which she acknowledged Complainant provided her with verbal complaints and a lengthy email, but never provided enough detail for her to investigate. *See supra* pp. 21-22; Resp. Br. at 7, 9. In its brief, Respondent reiterated the same argument it provided regarding Complainant’s observations from the first couple weeks of working: the vague, generalized complaints Complainant communicated to Hoefle are insufficient under the ARB’s *Simpson* standard. Resp. Br. at 9; *see supra* pp. 28-29. As previously discussed, Respondent’s argument is unpersuasive because *Simpson* is no longer controlling precedent; therefore, a review of Complainant’s email is warranted. *See supra* pp. 26, 28-29 and n. 28.

In examining Complainant’s email, I note I already determined Complainant engaged in protected activity when he discussed with Mathers what he observed within his first two weeks of employment. *See supra* pp. 28-29. In contrast, I decided that Complainant did not engage in protected activity when he participated in a heated argument about whether Respondent could force him to stay beyond the end of his shift on August 6, 2013. *See supra* pp. 29-31. In determining whether this email constitutes protected activity, however, I must review the remaining two alleged instances of alleged protected activity.

a. Argument with Mathers Regarding Delayed Airplane

It is important to note that there is scarce evidence about this alleged instance of protected activity. Complainant's point of view is limited to two paragraphs from the email he sent to Hoefle whereas Respondent did not present any evidence on the issue. CX-1 at 9. In fact, Respondent's acknowledgement of the event is limited to the answers Mathers provided in response to Complainant's brief cross-examination—it did not directly discuss the issue within its brief. TR 270-74. To further complicate matters, Complainant's brief appears to meld the safety complaints he raised within his first two weeks of employment with the circumstances surrounding this issue. Comp. Br. at 18; CX-1 at 9. Since Complainant's email to Hoefle was more contemporaneous to the event than his post-hearing brief, I will disregard the confusion presented in his brief and rely upon the facts presented in the email and the testimony Mathers provided at hearing to analyze the issue.

In comparing Complainant's email to the testimony he elicited from Mathers, I find that Complainant did not engage in protected activity. Within his email to Hoefle, Complainant described how he explained to Mathers that an airplane was still in the hangar because there was a lot of work and manpower was short. Two days later, when Mathers rebuked Complainant and the rest of the A&P mechanics for their performance that night, Complainant defended their actions. He told Mathers that it was not their fault that tasks were behind schedule because their shift "was short of manpower because two mechanics w[ere] out" and most of the mechanics on the shift were new. CX-1 at 9. In addition to this defense, Complainant also provided "some suggestions as to enhancing productivity from what "he" observed from the week or two [he] was there." *Id.*

When Complainant cross-examined Mathers about this instance, Mathers testified he could not recall most of alleged events. The one exception was when Mathers recalled Complainant suggesting Respondent create a "free stock" bin to reduce the amount of time A&P mechanics had to wait for certain tools and equipment. Mathers testified Complainant's idea would violate Respondent's regulations—to which Complainant agreed. *See supra* pp. 20-21.

Complainant failed to demonstrate he subjectively believed he was submitting a complaint regarding a violation of the Act. His statements to Mathers do not rise above a discussion about the efficiency, or lack thereof, of the group of mechanics with whom Complainant worked. At no point does Complainant indicate the alleged staffing issue or the lack of free stock bin—which he admitted at hearing was an impermissible option—were safety issues or potential violations of the Act. Without more evidence, Complainant's actions are merely statements, or perhaps excuses, about how to improve the efficiency of the shift he was working on at that time. Therefore, I find Complainant failed to demonstrate he subjectively believed he engaged in protected activity when he spoke out against Mathers's chastisement.

In the alternative that Complainant did have a subjective belief that he engaged in protected activity under the Act, his belief would not be objectively reasonable. Complainant has not presented any evidence to indicate an A&P mechanic, with Complainant's education and years of work experience, would consider Complainant's actions to constitute a complaint about the violation of FAA or any other federal statutes related to air carrier safety. Therefore, I have

no reason to alter my belief that Complainant's actions were nothing more than an attempt to contest a supervisor's criticism and a suggestion to improve efficiency.

b. Challenging Respondent's Ability to Demand Overtime

The last incident included within Complainant's email to Hoefle concerned Respondent's policy that mechanics must stay late if an aircraft is still in the hangar at the end of the shift and the lead or foreman asks the mechanic to stay late. The three paragraphs Complainant included within the email recount Respondent's promulgating the new rule about forcing A&P mechanics to stay beyond the end of their shift, Complainant's response, and an event in which Respondent permitted Complainant to leave after he challenged the company's right to make him stay. Respondent did not present any evidence about this event, nor did it examine the event in its brief. *See supra* p. 7; CX-1 at 9-10.

The brief summary Complainant provided draws many parallels to Complainant's actions on August 6, 2013 when he received a written warning for failing to short sign a work order. In both circumstances, Complainant challenged Respondent's ability to force him to stay beyond the end of his shift. As I previously concluded, Complainant's evidence fails to demonstrate how this communication relates to a violation of FAA or other federal statutes concerning air safety. Accordingly, I find Complainant did not engage in protected activity when he contested Respondent's ability to force him to stay beyond the end of his shift because he did not have a subjective belief that Respondent was violating the Act. *See supra* pp. 7, 29-31.

In the alternative that Complainant did have a subjective belief that his refusal to work forced overtime constituted a complaint about a potential violation of the Act, I find Complainant has not presented any evidence to demonstrate his belief was objectively reasonable. As such, I have no basis upon which to determine that Complainant's subjective belief that his complaints about the overtime policy concerned a violation of FAA or related federal statutes was objectively reasonable.

In summary, of the four alleged instances of protected activity discussed within Complainant's email, I find that only one—the issues Complainant witnessed within his first few weeks of work—satisfied the two-prongs of the reasonableness test. Notwithstanding the fact that only one of the topics in the email concerns protected activity, it still logically follows that Complainant's email to Hoefle, on or around August 22, 2013, constitutes protected activity because of the subjectively and objectively reasonable complaint contained therein. Therefore, the email constitutes a separate and independent incident of protected activity under the Act.

5. September 5, 2013 – Argument with Davis about Landing Gear Strut

Complainant did not address this alleged instance of protected activity at hearing. The evidence is limited to the disclosure he made within the email he sent to the FAA on September 11, 2013. CX-1 at 3-4; *see supra* p. 11. Complainant offered the following summary in his brief to demonstrate his actions constituted protected activity:

On 09/05/2013 I brought to Respondent's Lead Byron Davis attention that unavailability of the aircraft landing gear strut servicing gauge a required tool I went to retrieve out of the store room in which we got into an argument over after he tried talking me out into using. Please see CX 1-3 to CX 1-4.

Compl. Br. at 21. Respondent neither submitted evidence or arguments concerning this allegation.

In his email to the FAA, Complainant noted that on September 5, 2013, he was working on a task card that required him to "perform a functional check of the Landing Gears Strut and second card was Servicing the LDG System with oil and nitrogen." CX-1 at 3. In the course of completing work orders on both the left and right strut, Complainant could not locate a requisite tool. *Id.* When he informed Davis about this, an argument ensued. *Id.* Davis did not want Complainant to take the time to measure the strut pressure, whereas Complainant maintained the work order demanded he do so. *Id.* Despite the initial argument, Davis made some telephone calls and was eventually able to borrow the tool from another airline. *Id.* Complainant completed the work on the left strut and a contractor performed the work on the right strut. *Id.* at 3-4. Complainant signed the work order certifying the work was completed and a twenty-four hour recheck should be completed. *Id.* at 4.

Based up the limited evidence Complainant presented, I find he did not subjectively believe he engaged in protected activity under the Act during his shift on September 5, 2013. The 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)). When Complainant complained of not having access to a requisite tool, Respondent found one for him to use. Thus, the controversy he identified was quickly resolved and the work was completed in accordance with the work order. 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.

In the alternative that the evidence meets the bare minimum necessary to demonstrate Complainant subjectively believed he engaged in protected activity, I nevertheless find that Complainant's subjective belief is not objectively reasonable. Complainant has failed to provide enough evidence to demonstrate that a reasonable person with Complainant's education and experience would consider his actions to constitute protected activity despite Respondent providing Complainant with the tool he demanded.

6. September 10, 2013 – Complainant's Last Day of Employment

Unlike the peripheral instances of protected activity that were tangentially developed in the record, the events of September 10, 2013 are the crux of the matter before me. Despite the fact that the clear majority of the testimony and evidence presented by the parties concerned this

event, Respondent's brief is oddly silent as to whether Complainant engaged in protected activity during his last shift on September 10. Resp. Br. at 9-10.

In contrast, Complainant's brief discusses how his actions that night qualify as protected activity under the Act.³¹ Comp. Br. at 14-17, 21-22. Complainant writes: "The morning of 9/10/2013 I presented, reported, brought an issue, a problem, a discrepancy which affected the airworthiness condition of an aircraft to Lead Byron Davis & Robert Bridges. An argument about Why it is now Chili? Why now? I gave you the cards how long, resurrected."³² *Id.* at 14. Complainant claimed that he initially responded in a calm demeanor and explained that he discovered the problem late in his shift because of the order in which he was completing his work cards. *Id.* It was only after Davis and Bridges repeatedly asked "Why is it now Chili?" that Complainant realized "their questioning was more to chastise" him "than to try to gather information to help solve the problem." *Id.*

Complainant questioned whether there was any such rule that demanded him to complete routine tasks before non-routine tasks. Comp. Br. at 16-17. He highlighted that Bridges testified there is no rule requiring that approach, but it's a "good practice that [Respondent] like[d] to follow." *Id.*; TR 246. Even if Complainant failed to follow a rule, Complainant argues their chastisement of him should have waited until after the job was safely completed. *Id.* at 17. Complainant concludes that "Davis & Bridges actions(chastisement, chastising questioning, un resolving explanations, non solution finding enquiry, comments and inputs)" were "an instigating contributing factor in the arguments leading towards my verbal rebuke of their consistent disregard for the safety of the aircraft that morning of 09/10/2013." Compl. Br. at 18.

Upon review of the record, I find most of the evidence presented about the events of the morning of September 10 is uncontested. Complainant was conducting an operational check of the brake accumulator pre-charge pressure when he discovered a problem. While he worked to resolve this issue, Davis approached him and inquired as to why Complainant was only starting this more complex task so close to when the plane needed to be pushed out to the gate.³³ Complainant and Davis engaged in a heated argument. Complainant was upset because he interpreted Davis's chastisement as disapproval of him discovering an issue that needed to be resolved. Complainant repeatedly yelled it not was not important when a problem is found; it only matters that a problem exists that needs to be resolved. Davis testified he was angry because if Complainant had started that task at the beginning of his shift—like A&P mechanics at Respondent are trained to do—then the fact the pressure check developed into a more complex task would not have been problematic. The argument ended when Davis walked away and retreated to his office. *See supra* pp. 8-13.

³¹ As previously noted, Complainant's brief—like the rest of his testimony and exhibits—are difficult to comprehend. *See supra* p. 26. Nevertheless, I did my best to try and dissect his arguments.

³² Chili is Complainant's nickname. TR 39.

³³ At hearing, Complainant testified that he originally approached Davis with the issue and it was only after Davis came around a second time that he approached Complainant and started yelling at him. *See supra* p. 8. The testimony of Davis and Little both indicate the argument started when Davis approached Complainant and do not mention that Complainant actively sought out Davis and informed him of the issue he discovered. *See supra* pp. 13, 24. I find Davis and Little's recollection to be more accurate.

Bridges, unaware of the argument that just occurred between Complainant and Davis, approached Complainant and asked why this work was being conducted so close to the airplane's scheduled departure. This inquiry further infuriated Complainant who again interpreted Bridges's comment as dissatisfaction with him discovering something that had to be fixed. Complainant explained to Bridges that it does not matter when a problem is found; the only important thing is that a problem was found and it needed to be fixed. Bridges, like Davis, explained at hearing that he was upset at Complainant's failure to comply with the training he received at Respondent and perform routine work cards first so in the event something goes awry, there is sufficient time to fix it without impacting the timing of the airplane. Bridges and Complainant continued to argue back and forth until Complainant lost his temper and told Bridges to get away from him "before [he] beats"—at which point he stopped himself from completing the threat. *See supra* pp. 8-11, 14-15.

Bridges testified he was familiar with Complainant's quick temper and propensity to argue, but he had never seen him this enraged. He told Complainant to go home because he was too emotional to safely work on an airplane, but Complainant refused because he did not think Bridges had the authority to send him home. Ultimately, Bridges called the police and Complainant was escorted out of the facility. *See supra* pp. 9-10, 14-17.

I carefully listened to and observed Complainant testify at hearing. I found his testimony about why he became so emotional and defensive that night to be credible. Complainant believed Respondent was more concerned with sending the airplane out on time than the safety of the airplane. In his mind, he discovered a significant issue while he was completing a simple task and, while he tried to resolve the issue, Respondent was chastising him for doing what had to be done to fix the airplane. Not only did he credibly testify about his actions and statements that night, but his testimony is closely aligned with what Davis, Bridges, Xiong, Little, and Simons reported he said. Accordingly, I believe Complainant subjectively believed he reported a safety complaint that could have potentially violated an order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to an air carrier.

Although Complainant subjectively believed he engaged in protected activity the morning of September 10, 2013, Complainant failed to demonstrate this belief was objectively reasonable. Davis, Bridges, and Mathers each credibly testified about Respondent's policy regarding routine and non-routine cards. Davis and Bridges each explained that the routine cards should be completed first even though they are typically simple inspections because, in the event something is wrong, the A&P mechanic has plenty of time to resolve the issue before it impacts the airplane's schedule. Mathers similarly testified that Respondent's A&P mechanics are trained to complete the routine work orders first because those are the cards that impact the airworthiness of the airplane, whereas non-routine cards—e.g., ripped carpet or a burnt out lightbulb—would not affect the safety of the airplane or its time schedule. *See supra* pp. 12-13, 15, 17-18.

A reasonable person with Complainant's education—including the training he received at Respondent—and years of experience would not consider Complainant's actions to constitute protected activity under the Act. I found the testimony elicited from Davis and Bridges to be credible. They were not chastising Complainant for finding a safety issue; rather, it was because

the timing of his discovery caused the airplane to miss its targeted time. If Complainant had adhered to his training and completed the routine work orders first, then he would have likely discovered the issue earlier in the shift and resolved it without needing to disrupt the airplane's schedule. There is no evidence in the record that indicated Davis and Bridges were attempting to push the airplane out of the hangar in its impaired state.

Complainant testified he could not understand the difference between being scolded for finding a safety issue and being scolded because a safety issue should have been found earlier in the shift. While this credible testimony enabled Complainant to satisfy the subjective belief standard, he failed to demonstrate how a objectively reasonable person would consider Davis and Bridges's justified frustration an unsafe condition 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.

7. September 10-11 and 13, 2013 - Complainant's Communication with the FAA

Complainant testified that on September 10, 2013, he called the FAA to complain about the events of September 10, 2013 and a variety of past safety concerns. On September 11, 2013, he sent an email in which he complained about the first five alleged instances previously discussed. *See supra* p. 27. On September 13, 2013, Complainant sent a follow-up email to the FAA adding more details about the events on September 10, 2013. *See supra* p. 11. Three days later, on September 16, 2013, the FAA informed Complainant they received his complaint and will begin investigating the matter. *See supra* p. 11. A little over a week later, after Complainant realized his employment with Respondent was terminated, he filed an AIR 21 complaint with OSHA on September 25, 2013. *See supra* pp. 11-12.

In his brief, Complainant acknowledges he engaged in these communications and does not analyze why it constitutes protected activity. *See* Comp. Br. at 22. Respondent briefly argues that Complainant's communications with the FAA do not constitute protected activity because "he failed to present any evidence that he reported specific statutory or regulatory violations to the FAA." Resp. Br. at 9. This argument is premised upon the *Simpson* line of cases that demanded Complainant's claims satisfy a specific and definitive standard. As previously discussed, this reasoning is unpersuasive because it has been abandoned by the ARB. *See supra* p. 26 and n. 28.

The question of whether Complainant's communications to the FAA and OSHA constitute protected activity under the Act is dependent upon whether each individual instance of protected activity qualifies. I have already reviewed each of the alleged instances of protected activity that Complainant communicated to the FAA and OSHA. I find Complainant had a subjective belief—which was objectively reasonable—that his complaints about what he observed within the first couple weeks, the argument he had with Davis about a detailed inspection, and the email to Hoefle constitute protected activity under the Act. Accordingly, I find that Complainant's communication to the FAA and OSHA constitute protected activity. *See supra* pp. 28-38.

B. Respondent's Knowledge

Respondent's knowledge of Complainant's protected activity is an essential element of a discrimination claim. *Peck*, ARB No. 02-028 at 10. "This element derives from the language of the statutory prohibitions, . . . that no air carrier, contractor, or subcontractor may discriminate in employment 'because' the employee has engaged in protected activity." *Peck*, ARB No. 02-028 at 10 (*paraphrasing* 49 U.S.C.A. § 42121(a)). This element extends to circumstances in which an employee "provided, caused to be provided, or is about to provide." 49 U.S.C.A. § 42121(a); *see Peck*, ARB No. 02-028 at 10.

I found that Complainant engaged in protected activity in four instances: when he complained to Mathers about his observations within the first couple weeks; argued with Davis regarding a detailed inspection; emailed Hoefle; and, contacted the FAA and OSHA. *See supra* pp. 28-38. Based on the evidence presented, I find that Respondent had knowledge of the first three instances of protected activity. Complainant's credible testimony and exhibits chronicled the complaints he made to Mathers within the first couple weeks and the argument he had with Davis concerning the detailed inspection.³⁴ Similarly, Hoefle acknowledged at hearing that the email Complainant included in his exhibits was the email she received from Complainant. Therefore, I find Respondent had knowledge of these three instances of protected activity.

Complainant has failed to demonstrate, however, that Respondent had knowledge of Complainant's contacting the FAA and OSHA when Complainant's employment with Respondent ended. Regardless of whether Complainant resigned or if Respondent terminated Complainant, Complainant has not presented any testimony or documentary evidence that indicates Respondent was aware of his contact with the FAA or OSHA when the employment relationship terminated. Accordingly, Complainant's communications to the FAA and OSHA will not be given further consideration.

C. Adverse Action

In determining what constitutes adverse actions under AIR21, "[f]undamentals of statutory construction dictate that . . . the starting point is the language in the statute itself and the implementing regulations construing the relevant statutory text." *Williams v. Am. Airlines*, ARB No. 09-018, ALJ No. 2007-AIR-00004 at 10 (ARB Dec. 29, 2010). The Act prohibits "discriminat[ion] against an employee with respect to compensation, terms, conditions, or privileges of employment." 49 U.S.C. § 42121(a). Although the term discrimination is undefined, the regulations provide: "It is a violation of the Act for any air carrier or contractor or subcontractor of an air carrier to intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against any employee because the employee" engaged in protected activity. 29 C.F.R. § 1979.102(b) (2013).

The ARB interprets the prohibited activities proscribed in Section 1979.102(b) broadly "and intended to include, as a matter of law, reprimands (written or verbal), as well as counseling sessions by an air carrier, contractor or subcontractor, which are coupled with a reference to potential discipline." *Sewade*, ARB No. 13-098 at 10 (*quoting Williams v. Am. Airlines*, ARB

³⁴ It is important to note that Respondent did not present any contrary evidence about Respondent's knowledge of these two incidents of protected activity.

No. 09-018 at 11). In fact, the ARB has gone so far as to state, “a written warning or counseling session is presumptively adverse where: (a) it is considered discipline by policy or practice, (b) it is routinely used as the first step in a progressive discipline policy, or (c) it implicitly or expressly references potential discipline.” *Williams*, ARB No. 09-018 at 11. Despite the broad interpretation, the term “adverse actions” refers to materially unfavorable employment actions that are more than trivial, either as a single event or in combination with other deliberate employer actions alleged.” *Williams*, ARB No. 09-018 at 15.

In his brief, Complainant argues that Respondent took adverse actions against him on three occasions, namely: the August 6, 2013 written warning; the reassignment of a task on August 19, 2013; and, his termination following the events of September 10, 2013. Compl. Br. at 22-29. The only adverse employment action Respondent analyzes in its brief is the alleged adverse action on September 10, 2013. Resp. Br. at 10. Notwithstanding the limited analysis from Respondent, I must review each alleged adverse action proffered by Complainant.

Complainant was issued a written warning on August 6, 2013 for failing to short sign a work order. *See supra* pp. 29-31. Respondent’s employee handbook provides: “Discipline may take many forms including but not limited to verbal or written warnings, suspensions, and/or termination.” RX-9 at 47. The written warning itself states: “The purpose of this written warning is to bring to your attention to deficiencies in your Job performance. The intent is to define for you the seriousness of the situation so that you may take immediate corrective action.” RX-12 at 1. After outlining that Complainant received the written warning for failing to comply with sign-off procedures, Respondent clarified: “You are expected to adhere to [Respondent] policy while performing assigned task. Future deficiencies in your job performance will be dealt with more severely.” *Id.*

In analyzing Respondent’s employee handbook and written warning through the lens of the ARB’s *Williams* decision, it is apparent the written warning constitutes adverse employment action. On its face, both the handbook and written warning indicate the written warning should be “considered discipline by policy or practice, . . . it is routinely used as the first step in a progressive discipline policy, . . . it implicitly or expressly references potential discipline.” *Williams*, ARB No. 09-018 at 11. Therefore, I find the written warning constitutes an adverse action.

On August 19, 2013, Complainant engaged in an argument with Davis about whether it was appropriate to conduct a visual inspection or a detailed inspection. In order to resolve the standoff, Davis took the work order from Complainant and assigned the task to another A&P mechanic. *See supra* pp. 31-32. In his brief, Complainant argued that Davis’s reassignment of the task is “a form of discrimination since card was taken away from me who wanted to do job the correct way and given to someone else? Is not this a case of Negative Compliance Discrimination?” Comp. Br. at 29.

I am unpersuaded by Complainant’s argument that reassigning the task to another A&P mechanic constitutes an adverse action. There is no indication that Davis’s action constituted discipline, could lead to future discipline, or resulted in a loss of monetary benefit to Complainant. As broadly as the ARB interprets Section 1979.102(b), Complainant has given me

no reason to think the ARB would consider the reassignment of a task to constitute adverse action. Accordingly, I have no reason to consider the reassignment of the inspection to constitute anything more than an “isolated trivial employment action” that inflicted de minimis harm—if any—to Complainant. *See Wilson*, ARB No. 09-018 at 15.

The third and final alleged adverse action concerns the way in which Complainant’s employment relationship with Respondent ended. Complainant argues that when he returned to the workplace to provide Mathers with his side of the story, Mathers told him that he was suspended for one week without pay pending an investigation by HR. In an effort to save money by avoiding additional nights at a hotel, Complainant allegedly informed Mathers he was going to drive back to his home in Connecticut during his one week suspension. Complainant took his toolbox and asked Mathers to hold onto his ID badge and stamp, so if in the worst case scenario if he was terminated, he would not have to worry about returning his badge and stamp or retrieving his toolbox. *See supra* pp. 10-11.

A few days later, on September 13, 2013, Complainant sent a follow-up email to the FAA to provide additional details about the events on September 10, 2013. Therein, he described how Mathers informed him he was suspended for one week without pay pending the HR department’s investigation. CX-6 at 4. He concluded the section about September 10 by stating: “Then [Mathers] went on to explained its in HR hands and I should be hearing from then, and that they might need me to send an account of what happened. So I am waiting to hear from them.” *Id.*

Approximately one week later, when he had \$250 deducted from his paycheck for his badge, Complainant realized Respondent terminated him. Complainant contacted Hoefle about the charge and the apparent termination. After some internal meetings, Hoefle emailed Complainant and informed him that Respondent believed Complainant resigned and they decided to let his resignation stand. *See supra* pp. 10-11, 22; Comp. Br. at 23-27.

Respondent argues that when Complainant returned to the workplace to speak with Mathers on September 10, 2013, he gave resignation. Resp. Br. at 10. When he arrived and spoke with Mathers, Complainant recalled the events of that morning, including his views that Bridges did not have authority to send him home for the day. Mathers told Complainant that in his absence Bridges had authority to send employees home. He also said the HR department was going to conduct an investigation because the police had been involved. Mathers testified at hearing that at no point did he tell Complainant he was suspended. Complainant then told Mathers he was unhappy, Respondent was not a “good fit,” and he wished to resign. Mathers attempted to provide Complainant with options to improve his morale and persuade him to stay. Notwithstanding Mathers’s efforts, Complainant was adamant that he wanted to resign. Mathers accepted Complainant’s badge and stamp, searched his toolbox according to Respondent’s protocols, and escorted him off of the property. *See supra* pp. 19-20.

After Complainant left, Mathers contacted Hoefle and told her Complainant handed in his badge and resigned. Mathers then completed the final written warning that Bridges had drafted and added a handwritten note, stating: “By direction Roderick ‘Chili’ Edgar was terminated from Mesa – CLT, 10 Sept 2013[.] Sida ID, Company ID + stamp was returned[.] Uniforms are yet

to be all accounted for.” RX-13 at 2. Mathers testified Respondent uses the word “terminated” in circumstances of resignation or termination. *See supra* p. 20; Resp. Br. at 10.

Hoefle testified that when she received this information from Mathers, she completed a “termination personnel action form” specifying that Complainant resigned; however, this form was not submitted into evidence. When Complainant telephoned a week later alleging he was only suspended, Hoefle was surprised by Complainant’s disposition because she was certain he had resigned. Ultimately, Hoefle, Mathers, and the HR director convened and determined that Complainant resigned on September 10 and Respondent was going to let his resignation stand as final. Hoefle testified at hearing that even if Complainant had not resigned, he would have probably been terminated for his actions that morning. *See supra* p. 22-23; Resp. Br. at 10.

There is an apparent split as to how Complainant’s employment with Respondent came to an end. Complainant’s testimony and contemporaneous email indicate he believed he was suspended pending the outcome of HR’s investigation. Respondent’s witnesses—Mathers and Hoefle—uniformly testified that Complainant resigned from his position. Respondent’s documents, however, do not fully substantiate their claim.

First, the record contains the final written warning document upon which Mathers indicated Complainant’s employment was terminated—without any detail to indicate Complainant resigned. Mathers testified that regardless of how the employment relationship ended, it is always characterized as a termination. No evidence was provided to demonstrate this was a uniform practice at Respondent. Secondly, and more damning to Respondent’s argument, is the missing document that Hoefle allegedly authored. After Hoefle received word from Mathers that Complainant resigned, she allegedly completed a termination personnel action form that specified Complainant withdrew from employment by resignation. Respondent’s attorney neither cited to a specific exhibit in its brief, nor was I able to locate the document on my own. Accordingly, I am confident concluding the document was never entered into the record.

Upon review of the testimony and evidence presented, I am more persuaded by Complainant’s portrayal of the events. Not only did he credibly testify, but his statements were supported by contemporaneous documents that indicate he truly believed he was suspended pending the outcome of HR’s investigation. While the Respondent provided uniform testimony, it did not substantiate its claims with persuasive documentation.

I find further support for my decision in ARB precedent. *See Nagle v. Unified Turbines, Inc.*, ARB No. 11-004, ALJ No. 2009-AIR-00024 (ARB Mar. 30, 2012); *Klosterman v. E.J. Davies, Inc.*, ARB No. 08-035, ALJ No. 2007-STA-00019 (ARB Sept. 20, 2010); *Minne v. Star Air, Inc.*, ARB No. 05-005, ALJ No. 2004-STA-00026 (ARB Oct. 31, 2007). The Board has found that in the “absence of an actual resignation by the employee, an employer who decides to interpret an employee’s actions as a quit or resignation has in fact decided to discharge that employee.” *Nagle*, ARB No. 11-004 at 5. In applying this standard to this case, I find that Complainant did not submit his unequivocal resignation to Respondent, but Respondent interpreted his actions as such. Accordingly, I find Complainant was discharged by Respondent.

D. Contributing Factor

I have determined that Complainant engaged in three instances of protected activity, Respondent had knowledge of the protected activity, and Complainant suffered adverse actions. In turning to the last element, I must determine whether Complainant satisfied his burden of demonstrating, by a preponderance of the evidence, that his incidents of protected activity were a contributing factor in the adverse action. *See* 49 U.S.C. § 42121(b)(2)(B)(i). “A contributing factor is ‘any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision.’” *Sievers v. Alaska Airlines, Inc.*, ARB No. 05-109, ALJ No. 2004-AIR-00028 at 4 (ARB Jan. 30, 2008) (*quoting Marano v. Dep’t of Justice*, 2 F.3d 1137, 1140 (Fed. Cir. 1993)). A complainant need not show that protected activity was the only or most significant reason for the unfavorable personnel action, but rather may prevail by showing that the respondent’s “reason, while true, is only one of the reasons for its conduct, another [contributing] factor is the complainant’s protected” activity. *Benjamin*, ARB No. 12-029 at 11 (*quoting Hoffman v. NetJets Aviation, Inc.*, ARB No. 09-021, ALJ No. 2007-AIR-007 (ARB Mar. 24, 2011)).

Complainant may satisfy the preponderance of the evidence standard through the presentation of direct or indirect evidence. *Sievers*, ARB No. 05-109 at 4. Direct evidence—also known as “smoking gun” evidence—is evidence that “conclusively links the protected activity and the adverse action,” whereas indirect evidence relies upon inference. *Id.* at 4-5 (*quoting Coxen v. UPS*, ARB No. 04-093, ALJ No. 2013-STA-00013, slip op. at 5 (ARB Feb. 26, 2008)). “Circumstantial evidence may include a wide variety of evidence, such as motive, bias, work pressures, past and current relationships of the involved parties, animus, temporal proximity, pretext, shifting explanations, and material changes in employer practices, among other types of evidence.” *Benjamin*, ARB No. 12-029 at 12. Complainant did not produce direct evidence; therefore, he will rely upon indirect evidence to satisfy the preponderance of the evidence standard.

Of the various allegations Complainant proffered, I found three instances of protected activity that both satisfied the subjective and objective reasonableness test and that Respondent had knowledge of. The three events are: Complainant’s statements to Mathers about what he observed within the first couple weeks of employment; the argument with Davis about a detailed inspection on August 19, 2013; and his email to Hoefle on or around August 22, 2013. Complainant must prove that these incidents were a contributing factor in Respondent’s decisions to issue a written warning on August 6, 2013 and Complainant’s discharge on September 10, 2013.

Complainant has failed to prove, by a preponderance of the evidence, that his protected activity was a contributing factor in Respondent’s issuance of a written warning on August 6, 2013. The first instance of protected activity—his complaints to Mathers about a variety of issues he observed within the first couple weeks—cannot satisfy the preponderance of the evidence standard. Complainant’s evidence on this matter is limited to his own terse testimony. At hearing, Mathers indicated he was familiar with Complainant making vague safety complaints; however, whenever he asked for more detail Complainant would never follow up

and provide it. Mathers could not recall Complainant making the specific complaints about his observations from the first two weeks of employment.

Complainant was able to satisfy the protected activity and knowledge elements largely because the Board does not require that complainants demonstrate the reasonableness of their belief to their employer. As contemplated by the Board in *Sylvester*, however, that lack of detail makes it impossible for Complainant to prove by a preponderance of evidence that this incident of protected activity was a contributing factor in Respondent's decision to issue him a written warning. Without more substantial evidence to demonstrate that Mathers or any other member of Respondent had a genuine knowledge of Complainant's complaints during this time frame, he cannot prove a causal relationship between the protected activity and the adverse action.

Complainant's other two instances of protected activity fail because they occurred in the aftermath of Complainant's written warning. Respondent issued the written warning on August 6, 2013, whereas the other two alleged events of protected activity occurred on August 19, 2013 and on or around August 22, 2013. Accordingly, these two events could have not served as a contributing factor to Respondent's decision to issue a written warning because the events occurred after the adverse action.

Turning to the second adverse action, I find that Complainant has failed to demonstrate, by a preponderance of the evidence, that any of the three instances of protected activity were a contributing factor to Respondent's decision to discharge Complainant. The first alleged instance of protected activity—the complaints about his observations within the first couple weeks—fails for the same reasons previously discussed. Complainant failed to demonstrate at hearing that Mathers or anyone at Respondent ever had a thorough understanding of what these safety complaints were about. Without more comprehensive evidence to demonstrate knowledge on the part of Respondent, I cannot find that the protected activity was a contributing factor to Respondent's decision to terminate Complainant.

Similarly, Complainant has failed to demonstrate that the protected activity he engaged in when he was arguing with Davis was a contributing factor to his discharge. According to the evidence Complainant presented, Davis took the work order away from him when it was apparent he would not back down from his desire to conduct a detailed inspection. The next day, after Davis had another A&P mechanic complete the task, Mathers congratulated Complainant for remaining resolute about the detailed inspection. Complainant indicated he did not accept Mathers's praise because he was only doing what was right.

The small amount of evidence in the record demonstrates that Complainant was ultimately praised for his work on August 19, 2013. Complainant has not presented any evidence that reveals Mathers's praise was disingenuous or that the event worsened his relationship with Mathers and Davis. Therefore, I find Complainant has failed to demonstrate, by a preponderance of the evidence, that his argument with Davis about the detailed inspection contributed to Respondent's decision to discharge him.

Lastly, Complainant has failed to demonstrate that the email he sent to Hoefle on or around August 22, 2013 was a contributing factor in Respondent's decision to discharge him.

Complainant testified that approximately two to three weeks before he began his last shift on September 9, 2013 he sent Hoefle a complaint. Within this message, he contested his written warning and briefly discussed a variety of alleged safety concerns, including: the issues he observed and complained about to Mathers within his first two weeks of employment, an argument with Mathers about a delayed airplane, and whether Respondent could force A&P mechanics to stay beyond the end of their shifts.

Hoefle testified she spoke to Complainant about his concerns on at least two different occasions and regularly told him to supply more information so she could investigate the matter. She also acknowledged receiving the “fairly lengthy” email and indicated the HR department began investigating the incidents. Notwithstanding this testimony, Hoefle maintained Complainant’s vague communications never provided enough detail for her to fully comprehend the safety issues he was raising.

Complainant’s circumstantial evidence cannot demonstrate that his email to Hoefle was a contributing factor to his discharge beyond a preponderance of the evidence. Beyond the tenuous temporal proximity (of two to three weeks), there is no circumstantial evidence in the record indicating the email—which focused on contesting his August 6 written warning—was a contributing factor to Complainant’s discharge. Not only has Complainant failed to identify links in a chain of causation between the two events, but I also found Hoefle’s testimony, about regularly asking Complainant for more details whenever he disclosed vague safety complaints, to be credible. This finding is buttressed by the fact that the majority of the complaints I evaluated in this case were difficult to comprehend due to the scant amount of detail Complainant provided. Therefore, I find all three instances of protected activity did not contribute to Respondent’s decision to discharge Complainant.

Having negated the causal relationship of Complainant’s instances of protected activity, I am left with a distilled version of the facts. I believe Complainant was a hard working probationary employee with a propensity to argue whenever he sensed the right way of doing things was threatened. As Bridges testified, I believe that many times Complainant’s outspokenness was a good thing, but there were a number of occasions—such as the one on September 10, 2013—in which it was a very bad thing.

On September 10, 2013, Complainant engaged in an egregious amount of insubordination and was on the verge of threatening of physical violence to a supervisor because he was unable to understand the appropriateness of Respondent’s chastisement. Bridges was left with no choice but remove Complainant from the property when Complainant, in his incensed state, failed to cooperate. As Mathers testified, this was the first time while working at Respondent that the police had to be called to escort an employee off the property. Employers have a vested interest in ensuring a safe and productive work environment. When confronted with an employee like Complainant, who publically refused to follow orders and nearly threatened physical violence, I find Respondent was justified in terminating his employment for the sake of maintaining a safe and unified workforce. In consideration of the events of September 10, 2013, in conjunction with the warranted written warning issued on August 6, 2013, I believe Respondent was justified in bringing Complainant’s probationary employment to an end.

V. ORDER

Based upon the foregoing findings of fact and conclusions of law, I find that Complainant engaged in protected activity, but failed to demonstrate by a preponderance of the evidence that his protected activity contributed to the adverse actions Respondent imposed. Accordingly, **IT IS HEREBY ORDERED** that Roderick Edgar'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. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1979.110(a). In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov. Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1979.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. § 1979.110(a).

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).