



Issue Date: 03 April 2017

Case No.: 2015-AIR-00031

In the Matter of

TERRENCE PETERMAN
Complainant

v.

VISION AIRLINES, INC.
Respondent

ORDER DISMISSING COMPLAINT WITH PREJUDICE

This matter arises under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“AIR 21” or “the Act”), which was signed into law on April 5, 2000. The Act includes a whistleblower protection provision, with a Department of Labor complaint procedure.¹ Implementing regulations are at 29 C.F.R. Part 1979, published at 68 Fed. Reg. 14,107 (Mar. 1, 2003). A hearing in this matter is currently scheduled for April 11-14, 2017 in Las Vegas, Nevada.

Procedural Background

On September 9, 2015, this Tribunal issued a Notice of Assignment and Conference Call.

On October 2, 2015, this Tribunal issued a Notice of Hearing and Pre-hearing Order setting discovery deadlines and setting the hearing to begin April 18, 2016 in Las Vegas, Nevada.

On November 4, 2015, the Tribunal received a letter from the parties indicating that they had reached a settlement agreement and requesting a stay of the proceedings to work out the remaining details.

¹ Pub. L. 106-181, tit. V, § 519(a), Apr. 5, 2000, 114 Stat. 145. See 49 U.S.C. § 42121.

On November 9, 2015, this Tribunal issued an Order Staying Proceedings for Settlement, granting a stay until January 8, 2016 for the purpose of facilitating a settlement.

On December 15, 2015, this Tribunal issued an Order Approving Settlement, Dismissing Claim, Sealing Settlement Documents, and Filing Redacted Settlement Documents.

On February 10, 2016, Complaint filed a Motion for Reconsideration or in the Alternative for Relief from the December 15, 2015 Order Dismissing Matter with Prejudice. In this motion, Complainant correctly noted that, as part of the Settlement Agreement, this Tribunal was to retain jurisdiction over the matter until the parties satisfied all provisions of the agreement. Respondent failed to respond to Complainant's motion.

On March 15, 2016, this Tribunal issued an Order granting Complainant's Motion for Reconsideration and vacating the Tribunal's Order dismissing this matter and set a pre-hearing teleconference for April 22, 2016 to reestablish new hearing, motion, and discovery deadlines.

On April 27, 2016, this Tribunal issued a Notice of Hearing and Pre-hearing Order again setting a hearing in this matter in Las Vegas, Nevada. This hearing was set to begin September 12, 2016. This Notice again established new discovery and motion deadlines. Also, on April 27, 2016, the Tribunal issued an Order to Show Cause Directing Respondent to Respond, noting its failure to appear during the teleconference.

On August 24, 2016, the Tribunal received a fully executed Settlement Agreement.

On August 26, 2016, the Tribunal issued an Order Cancelling Formal Hearing, for it had approved the second settlement on this date as well. In approving the Settlement Agreement, the Tribunal specifically instructed that it "will retain jurisdiction over this matter until the conditions specified in the Settlement Agreement are fulfilled."

On January 10, 2017, this Tribunal held a teleconference at Complainant's request. During this teleconference, Complainant informed the Tribunal that Respondent had failed to comply with the terms of the second settlement agreement.² Consequently, Complainant requested that this Tribunal reset the hearing.

On February 6, 2017, this Tribunal held a teleconference. During this teleconference the parties indicated that they were unable to resolve the matter. Complainant specifically requested that this Tribunal proceed with a hearing and make a finding on the merits.³ Consequently, this Tribunal set the hearing in this matter for the week of April 11, 2017. Later that day, this Tribunal issued a third Notice of Hearing and Pre-hearing Order formally setting the hearing date to begin April 11, 2017. The Tribunal yet again reset discovery and motion deadlines.

On March 20, 2017, this Tribunal received a facsimile copy of document entitled Joint Stipulation of the Parties and Request for Order Continuing Trial Date. In this document, the

² January 10, 2017 teleconference transcript, at 7.

³ February 6, 2017 teleconference transcript, at 6.

parties jointly requested that the hearing date be moved again “until an acceptable date in the Summer of 2017” and that “[a]ll deadlines for completion of fact discovery and expert demands, disclosures and discovery, and discovery motions, shall be tied to the new trial date.”

On March 21, 2017 this Tribunal issued an Order denying the parties’ request to continue this matter.

This Tribunal received a fax from the Complainant’s counsel on March 30, 2017 entitled “Request for Withdrawal and Dismissal.” In this request Complainant’s counsel represented that the matter has been resolved by other means and Complainant no longer desired to pursue his complaint. Complainant’s counsel specifically represented that this request for withdrawal was voluntary and not the result of coercion. Complainant can withdraw his complaint at any time before the findings or order become final. 29 C.F.R. § 1979.111(c).⁴

Accordingly,

- Complainant’s written request to withdraw his August 13, 2009 complaint to OSHA is **GRANTED**; his complaint is hereby **DISMISSED** with prejudice.
- The hearing set to begin April 11, 2017 is hereby **CANCELLED**.

SO ORDERED

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey

⁴ Additionally, as Complainant is withdrawing his complaint, his request can also be construed as a request that the matter be dismissed for abandonment by the party who filed the original complaint. During the final pre-hearing teleconference in this matter, held on April 3, 2017, Complainant’s counsel verified its intent to withdraw and abandon the complaint. He was also specifically asked and stated that he understood that this Tribunal loses jurisdiction of this matter once this Order is issued.