



Issue Date: 19 September 2016

Case No.: 2016-AIR-00019

In the Matter of

RON GIERSDORF

Complainant

v.

PENINSULA AIRWAYS, INC.

Respondent

**ORDER APPROVING SETTLEMENT, DISMISSING CLAIM, SEALING
SETTLEMENT DOCUMENTS AND FILING REDACTED SETTLEMENT
DOCUMENTS**

This matter arises under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 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 67 Fed. Reg. 15453 (Apr. 1, 2002). Per 49 U.S.C. § 42121(b)(2)(A), and as implemented by 29 CFR § 1979.100(b), the hearing in this matter is to commence expeditiously, except upon a showing of good cause or other agreement by the parties.

On June 29, 2016, this Tribunal issued a Notice of Hearing, setting the hearing date in this matter to begin on December 6, 2016. Subsequently, by letter dated September 6, 2016, the parties submitted a Notice of Settlement and Request for Dismissal. In the letter, the parties requested that the settlement terms not be disclosed, the settlement agreement be maintained in confidence by the Department of Labor, and that third parties be restricted access to the agreement to the full extent that the law allows. On September 13, 2016, the parties submitted a Revised Settlement Agreement correcting a provision of the agreement setting forth the District Court of Alaska as the venue should a dispute arise as to the terms of the agreement.

I find the revised Settlement Agreement is proper, and I approve it with some caveats. First, language in the agreement purports to settle, release, or otherwise address claims or potential claims that far exceed the statute involved in this action. *See, e.g.*, paragraph 6. I limit my review to the asserted whistleblower claims only, as anything beyond that limitation exceeds

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

this Office's jurisdiction. Second, I **ORDER** paragraph 1(a.), containing confidential financial information, to be sealed. I do not find that the parties have set forth sufficient the reasons to seal the remaining portions of the agreement when weighed by the presumption of public access. *See* 29 C.F.R. § 18.85(b). Moreover, I inform the parties that the records of this Office are subject to the Freedom of Information Act ("FOIA") and are generally public.

This Office will place the Settlement Agreement in a sealed envelope with the public file.² A copy of this Order will be affixed to this envelope. A copy of the Settlement Agreement, with paragraph 1(a) redacted, will be placed in the public file.

In the event that a request is made for access to the unredacted copy of the Settlement Agreement, the Department of Labor will provide the parties with pre-disclosure notification and an opportunity to respond before any disclosure is made. *See* 29 C.F.R. § 70.26. However, the parties are reminded that the pre-disclosure notice procedure does not, in any way, constitute a finding that the settlement agreement, or any portion thereof, will be exempt from disclosure under FOIA. Similarly, this procedure does not suggest that the appropriate disclosure officer would ultimately decline disclosure of the settlement agreement to the FOIA requester, if such a FOIA request were received. *See* 29 C.F.R. § 70.26(f).

Order

1. The parties' Stipulation and Application for Settlement is **GRANTED**. A copy of the Settlement Agreement, with paragraph 1(a) redacted, will remain in the administrative file.
2. The proposed settlement agreement is fair and reasonable as to the claims under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. None of the terms are against the public interest. The proposed settlement agreement is **APPROVED**, and the parties are **ORDERED** to comply with its terms.

This matter is **DISMISSED** with prejudice.

SO ORDERED.

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey

² *See* 29 C.F.R. § 18.56