U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 13 October 2016

Case No.: 2016-AIR-00010
2016-AIR-00012
2016-AIR-00014
2016-AIR-00015

In the Matter of

DAVID J. SCOTT
RICHARD DEPINAY
RICHARD SKYLAK, JR., and
SCOTT PARKER
Complainants

v.

NETJETS AVIATION, INC.
Respondent

ORDER APPROVING SETTLEMENTS, DISMISSING CLAIMS, AND PARTIAL SEALING OF SETTLEMENTS

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 CFR Part 1979, published at 67 Fed. Reg. 15453 (Apr. 1, 2002).

On March 21, 2016, this Tribunal issued an Order of Consolidation; Notice of Hearing; and Pre-Hearing Order, setting a hearing date of October 24, 2016 through October 28, 2016 in Columbus, Ohio. Complainant and Respondent submitted their respective Pre-Hearing Statements on March 17, 2016 pursuant to my March 3, 2016 Notice of Assignment. By letter dated October 10, 2016, Respondent submitted the parties' Joint Motion to Dismiss and Approval of Settlement Agreements.[2] In the letter, the parties requested that Settlement Agreements (Exhibit A) be placed under seal.

I find the proposed Settlement Agreements are proper, and I approve them with some caveats. First, language in the agreement purports to settle, release, or otherwise address claims

[1] Pub. L. 106-181, tit. V, § 519(a), Apr. 5, 2000, 114 Stat. 145. *See* 49 U.S.C. § 42121.
[2] Each Complainant signed a separate agreement, but except for paragraph one, they are identical in substance.

that far exceed the statute involved in this action. *See e.g*. the last sentence of paragraph 4. I limit my review to the asserted whistleblower claims only, as anything beyond that limitation exceeds this Office's jurisdiction. Second, I find that paragraph 1 ONLY of each settlement agreement contains confidential financial information, and therefore I **ORDER** that portion of each agreement only to be sealed. I do not find that the parties have set forth sufficient reasons to seal the remaining portions of the agreements 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 Agreements in a sealed envelope with the public file.[3] A copy of this Order will be affixed to this envelope. A copy of the Settlement Agreements, with paragraph 1 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 Agreements, 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' Stipulations and Applications for Settlement are GRANTED. A copy of the Settlement Agreements, with paragraph 1 redacted, will remain in the administrative file.

2. The proposed settlement agreements are 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 agreements are APPROVED, and the parties are ORDERED to comply with the terms of their respective agreement.

These matters are **DISMISSED** with prejudice.

SO ORDERED.

Digitally signed by Scott R. Morris
DN: CN=Scott R. Morris, OU=Administrative Law Judge, O=US DOL Office of Administrative Law Judges, L=CHERRY HILL, S=NJ, C=US
Location: CHERRY HILL NJ

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey

[3] *See* 29 C.F.R. § 18.56.