



Issue Date: 10 January 2017

Case No.: 2016-AIR-00031

In the Matter of

JOHN TALTY

Complainant

v.

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

This Tribunal issued the Notice of Hearing and Pre-hearing Order in this matter on November 10, 2016, which set the hearing for April 4, 2017 through April 7, 2017 in the Dallas/Fort Worth area.

On November 11, 2016, Respondent submitted its Motion for Protective Order and its Memorandum in Support of its Motion for Protective Order, requesting a protective order that would prohibit dissemination beyond these proceedings of its Confidential Business Information (“CBI”) produced to OSHA. Respondent argued that disclosure of such materials, which included information regarding proprietary maintenance procedures and processes that its competitors may not have, would present Respondent with a potential competitive disadvantage and hardship.

On November 16, 2016, Complainant filed his Memorandum in Opposition to Respondent’s Protective Order. Complainant argued that Respondent’s own identification of

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

these documents as pertinent to its defenses renders them ineligible for a protective order and that it did not substantiate a specific harm or prejudice in seeking protection of these materials.

By Order dated November 18, 2016, this Tribunal granted Respondent's motion, with specific guidance directing Complainant not to disclose the information contained in documents with Bates stamp AA-Talty-0000285 to AA-Talty 0000349 inclusive, as well as any other documents identified by OSHA as CBI relating to this case to anyone other than is necessary for the purpose of conducting discovery or preparing its case for hearing in this matter. The Order also directed Respondent to immediately produce these documents to Complainant. Finally, the Order instructed the parties to submit a proposed protective order for this Tribunal's approval with specified terms and conditions within 10 days of the date of the Order.

Upon this Tribunal granting the parties a one-day extension, Respondent submitted the parties' Proposed Protective Order on November 29, 2016. On December 1, 2016, this Tribunal issued its Protective Order, incorporating the Proposed Protective Order.

On January 5, 2017, Respondent submitted the Parties' Stipulated Joint Motion for Approval of Settlement Agreement and Filing Under Seal to this Tribunal, with the Confidential Settlement Agreement and General Release attached.

I find the proposed Settlement Agreement is proper, and I approve it with several 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.*, paragraphs 5 and 9. I limit my review to the asserted whistleblower claims only, as anything beyond that limitation exceeds this Office's jurisdiction. Second, I order paragraphs 1, 2, and 4 of the original, unredacted settlement agreement to be sealed per the parties' request; moreover, I have previously informed the parties, and now restate 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 within the public file.² A copy of this Order will be affixed to this envelope. A redacted copy of the Settlement Agreement will be placed in the public file. Per 29 C.F.R. §18.85(b), I specifically find that paragraphs 1, 2, and 4 of the Settlement Agreement contain confidential commercial and financial information.

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).

² *See* 29 C.F.R. § 18.56.

Order

1. 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.
2. The Settlement Agreement is hereby **SEALED**. A copy of the Settlement Agreement, with paragraphs 1, 2, and 4 redacted, will remain in the administrative file.

This matter is **DISMISSED** with prejudice.

SO ORDERED

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, NJ