



**Issue Date: 30 June 2017**

Case No.: 2017-AIR-00014

In the Matter of

**ENA WONG**

Complainant

v.

**JETBLUE AIRWAYS**

Respondent

**ORDER APPROVING COMPLAINANT'S WITHDRAWAL OF HER OBJECTIONS TO  
THE SECRETARY'S FINDING, DISMISSING HER APPEAL, AND REINSTATING  
THE SECRETARY'S FINDINGS**

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.<sup>1</sup> Implementing regulations are at 29 CFR Part 1979, published at 68 Fed. Reg. 14,107 (Mar. 1, 2003). Per 49 U.S.C. § 42121(b)(2)(A), and implemented by 29 CFR § 1979.100(b), the hearing in this matter is to commence expeditiously, except upon a showing of good cause or otherwise agreed to by the parties.

Procedural History

On May 2, 2017, the Tribunal issued a Notice of Assignment and Conference Call which scheduled a pre-hearing conference call set for May 19, 2017.

On May 9, 2017, the Tribunal received a request from Respondent's counsel to reschedule this teleconference because its counsel most familiar with the matter was currently unavailable for medical reasons until May 17, 2017. Respondent requested until May 24, 2017 to submit its pre-hearing statement and that the Tribunal continue the teleconference for two weeks.

On May 11, 2017, the Tribunal issued an Order Granting in Part Respondent's Request to Reschedule the Date for Pre-Hearing Submission and Teleconference.

---

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

On May 26, 2017, a teleconference was held as rescheduled.

On June 1, 2017, the Tribunal issued a Notice of Hearing and Pre-Hearing Order, scheduling the hearing for September 6 through September 8, 2017 in New York, New York.

On June 8, 2017, the Tribunal received a letter from Respondent's counsel indicating that Complainant inquired as to how Complainant could withdraw her complaint. Counsel represented that Complainant consented to this letter.

On June 9, 2017, a member of this Tribunal's staff sent the parties an email informing Complainant that to withdraw her complaint, she would need to submit a letter requesting withdrawal representing that she was doing so freely and understands that the findings by OSHA would be reinstated and that the Tribunal would dismiss this case with prejudice.

On June 12, 2017, Complainant responded to that email. Complainant asked if the Tribunal had considered her original request for more time because of her *pro se* status and because it took OSHA a year to address her case. Complainant referenced unspecified medical and personal issues, and expressed concerns about Respondent's counsel having a potential conflict of interest.<sup>2</sup> Additionally, Complainant wrote: "can you please allow me to understand and confirm with you that [the Tribunal] is indicating that if I withdraw my appeal, that under no Legal right that I may have that this MUST be dismissed with 'Prejudice'? Please, I am not asking you for legal advise [sic], I am simply trying to comprehend under what law does this 'prejudice' apply."

On June 14, 2017, because the Complainant proceeds *pro se*, the Tribunal issued a Notice of Requirement for Withdrawal of Complaint.

On June 29, 2017, the Tribunal issued, Order Advising Parties of Telephone Conference Call set for July 5, 2017.

On June 30, 2017, this Tribunal's office received an email from Ms. Wong.<sup>3</sup> Embedded into the email was an image entitled "Request To Withdraw Complaint". This image was a picture of a document, and she requested that the telephone conference scheduled for July 5, 2017 be cancelled. This document was signed by Complainant, dated June 28, 2017 and states:

Per 29 C.F.R. § 1979.111(c), I, ENA WONG, hereby request that the Tribunal dismiss my complaint, DOL case number 2017-AIR-00014, with prejudice. I am voluntarily submitting the request and understand that my case will be dismissed with prejudice, and that the findings of the OSHA Secretary will be reinstated by

---

<sup>2</sup> During the May 26, 2017 teleconference, Complainant did assert that Respondent counsel's firm had a conflict of interest due to prior litigation. However, at that time, Complainant could provide very little information to Respondent's counsel so she could go back to her firm and attempt to determine if a conflict actually existed. Complainant was asked to cooperate with Respondent's counsel following the teleconference to provide as much information as possible in this regard.

<sup>3</sup> The email was also copied to Respondent's counsel.

the Tribunal. I represent to the Tribunal that there is no settlement agreement between myself and the Respondent in this matter.

This Tribunal interprets Complainant's request as a request to withdrawal her objections to the Secretary's findings with prejudice. A Complainant may withdraw her complaint at any time before a finding or an order becomes final. 29 C.F.R. § 1979.111(c). Although Complainant's request was sent via email,<sup>4</sup> it is a written request as required by the rule. Furthermore, the attachment was actually signed and dated by the Complainant, and it represents that the original copy of the form was being mailed to the Tribunal.

Accordingly,

- Complainant's written request to withdraw her appeal of the Secretary's Findings is **GRANTED**; her appeal of the Secretary's findings is hereby **DISMISSED** with prejudice
- OSHA's findings are **REINSTATED, AFFIRMED, and FINAL.**

SO ORDERED.

**SCOTT R. MORRIS**  
Administrative Law Judge

Cherry Hill, New Jersey

---

<sup>4</sup> The email from which this document was sent is the same email address the Complainant had used on previous occasions in communicating procedural matters to the Tribunal and Respondent's counsel.