



Issue Date: 04 October 2017

CASE NO.: 2017-AIR-00004
OSHA NO.: 5-2210-14-036

In the Matter of:

BRENT WETHINGTON,
Complainant,

v.

AAR CORPORATION,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT
AGREEMENT AND DISMISSING COMPLAINT**

This proceeding arises from a claim of whistleblower protection under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. §42121 (“the Act” or “Air 21”) and the implementing regulations at 29 C.F.R. Part 1979. On September 1, 2014 the Complainant filed a complaint alleging that the Respondents violated the Act. On September 7, 2017, the parties filed a Joint Motion to Approve Settlement Agreement, Dismiss Claim, and File Redacted Document under Seal for my review and approval. On September 8, 2017, I held a telephone conference with counsel regarding my concerns with the proposed settlement agreement and subsequently issued an order regarding the conference. On September 25, 2017, the parties resubmitted a Joint Motion to Approve Settlement Agreement, Dismiss Claim and File Document under Seal (hereinafter “the Agreement”), which incorporated the changes discussed. The Agreement is attached hereto and is incorporated herein by reference. The Agreement has been signed by the parties. I have the authority to approve the Agreement pursuant to 29 C.F.R. § 1978.111(d)(2).

My review of the Agreement is limited to a determination of whether its terms are fair, adequate and reasonable. The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to public interest. The Agreement may encompass settlement of matters under laws other than Air 21. However, my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the

applicable statute. Therefore, I approve only the terms of the Agreement pertaining to the Complainant's Air 21 claim, 2017-AIR-00004.

The Agreement includes a provision regarding confidentiality of its terms (paragraph 9). Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties' submissions in this case, including the Agreement, become a part of the record in this case, and are subject to the Freedom of Information Act ("FOIA").¹ FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *See, e.g., Fish v. H and R Transfer*, ARB No. 01-071, ALJ Case No. 2000-STA-56, slip op. at 2 (ARB April 30, 2003).

Paragraph 8 of the Agreement proves that the Agreement shall be governed and construed under the laws of the State of Indiana. This choice of law provision is construed as not limiting the authority of the Secretary of Labor or any Federal court, which shall be governed in all respects by the laws and regulations of the United States. *See Seater v. Southern California Edison Co.* ARB No. 97-072, ALJ No. 1995-ERA-13 (ARB Mar. 27, 1997).

After consideration of the Agreement, I find that the terms and conditions are fair, adequate and reasonable under the Act, and that the terms adequately protect the Complainant. Furthermore, I believe it is in the public interest to approve the Agreement as a basis for administrative disposition of this case, and I therefore approve the Agreement.

IT IS THEREFORE ORDERED that:

1. The Agreement is **APPROVED**.
2. The Complaint is hereby **DISMISSED WITH PREJUDICE**.
3. The Agreement shall be designated as confidential and maintained in a separate sealed envelope, subject to the procedures requiring disclosure under FOIA.
4. In accordance with the regulations, the Agreement constitutes the final order of the Secretary of Labor and may be enforced pursuant to 29 C.F.R. §1979.113.

LARRY A. TEMIN
ADMINISTRATIVE LAW JUDGE

¹ 5 U.S.C. § 552.