



Issue Date: 08 February 2019

OALJ No. 2018-AIR-00043
OSHA No. 3-6600-15-077

In the Matter of:

NANCY CASTIGLIONE,
Complainant,

v.

TEM ENTERPRISES,
d/b/a/ XTRA AIRWAYS,
Respondent.

ORDER APPROVING SETTLEMENT AGREEMENT,
CANCELLING HEARING AND DISMISSING COMPLAINT

This matter arises under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“AIR-21” or “The Act”). 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 68 Fed. Reg. 14,107 (Mar. 1, 2003).

On or about August 15, 2015, Nancy Castiglione (“Complainant”) filed a complaint with the U.S. Department of Labor’s Occupational Safety and Health Administration (“OSHA”) alleging her employer, Xtra Airways (“Respondent”), retaliated against her by terminating her employment on August 5, 2015 for making safety related complaints. After conducting an investigation, the Secretary of Labor, acting through the Regional Administrator for the Occupational Safety and Health Administration’s Philadelphia office, issued a final determination letter on or about September 7, 2018 finding no reasonable cause to believe Respondent violated the Act, and dismissed the complaint. On September 11, 2018, Complainant filed objections to the *Secretary’s Findings* and requested a hearing before an administrative law judge. By notice issued November 14, 2018, this matter is currently scheduled for formal hearing on March 12, 2019 in Fort Lauderdale, Florida.

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

On January 30, 2019, Complainant notified the court that she wished to “withdraw my hearing scheduled for March 12th 2019. The Respondent and I have come to a settlement that I am agreeable with.” On February 5, 2019, the parties submitted an executed *General Release and Settlement Agreement* (“Settlement”) for my review. 29 C.F.R. § 1979.111(d)(2).²

The Settlement resolves the controversy arising from the complaint of Nancy Castiglione against Xtra Airways. This Settlement is signed by Complainant and Respondent’s President and Chief Executive Officer. The Settlement provides that Complainant will release Respondent from claims arising under AIR-21 as well as various other laws. This Order, however, is limited to whether the terms of the Settlement are a fair, adequate and reasonable settlement of Complainant’s allegations that Respondent violated AIR-21.³

The Settlement provides that Respondent shall make payment to Complainant of the amount agreed upon by sending a check within five business days of when an order approving the agreement is issued. The parties represent that the compensation terms are fair and reasonable in relation to the claim. The Settlement also provides that Complainant will release any and all claims against Respondent related to the matters at issue in this case.

Having been advised of the settlement terms and having reviewed the Settlement, I find the terms of the Settlement to be fair, adequate, reasonable, and not contrary to public policy. The terms and conditions of the settlement agreement are adopted and incorporated by reference into this Order, and the Settlement Agreement is hereby approved. Upon my approval, the parties shall implement the terms of the Settlement. This Order shall have the same force and effect as one made after a full hearing on the merits.

Accordingly, **IT IS HEREBY ORDERED** that the General Release and Settlement Agreement filed on February 5, 2019 is **APPROVED**, and thereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. § 1979.113.⁴

IT IS FURTHER ORDERED that the hearing in the instant case scheduled for March 12, 2019 in Fort Lauderdale, Florida be, and is hereby, **CANCELLED**.

² The parties have designated the settlement agreement to be confidential business information. The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily. 20 C.F.R. § 70.26(b) (2001). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a FOIA request is received seeking release of that information. Accordingly, the Settlement in this matter will be placed in an envelope marked “PREDISCLURE NOTIFICATION MATERIALS.” Consequently, before any information in this file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. *See* 29 C.F.R. § 70.26 (2001). Furthermore, the undersigned will refrain from discussing specific terms or dollar amounts contained in the Settlement.

³ As stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987), “the Secretary’s authority over the settlement agreement is limited to such statutes as are within [the Secretary’s] jurisdiction and is defined by the applicable statute.” I have therefore limited my review of the Settlement to determining whether the terms thereof are a fair, adequate and reasonable settlement of the Complainant’s allegation that the Respondent had violated AIR-21.

⁴ 29 C.F.R. § 1979.111(e).

IT IS FURTHER ORDERED that the complaint filed in this matter is dismissed without prejudice, to ripen into with prejudice upon payment of the agreed sum.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge