

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 05 March 2018

Case No.: 2018-AIR-00006
2018-AIR-00007
2018-AIR-00008
2018-AIR-00009
2018-AIR-00010
2018-AIR-00011

In the Matter of

**NINO F. DIMAGGIO, MATTHEW T. FLYNN,
HAROLD E. PAINTER, ROBERT C. TOMPKINS,
MICHAEL A. MULLENS, AND MARK ZABRANSKY,**
Complainants

v.

SOUTHWEST AIRLINES, CO.
Respondent

ORDER APPROVING SETTLEMENT AND DISMISSING CLAIM

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 C.F.R. Part 1979, published at 68 Fed. Reg. 14,107 (Mar. 1, 2003).

On March 5, 2018, the parties submitted a Joint Motion to Approve Settlement Agreement, Dismiss Claims, and File Documents Under Seal. To this Joint Motion, the parties attached a full version of the "Confidential Settlement Agreement and Release of Claims" along with a redacted version, and request that this Tribunal file the redacted version while placing the full version under seal.

This Tribunal finds that the proposed Settlement Agreement is proper, and approves it with several caveats. First, language in this agreement purports to settle, release, or otherwise address claims or potential claims that far exceed the statute involved in this action. *See* Paragraphs 3, 6, and 7. The Tribunal limits its review to the asserted whistleblower claims only, as anything beyond that limitation exceeds this Tribunal's jurisdiction.

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

Second, language in the Settlement Agreement mistakenly provides that it shall be governed by the laws of the State of Texas, such that venue for any disputes regarding the Settlement Agreement will lie solely in Dallas County, Texas. *See* Paragraph 17. Per 49 U.S.C. § 42121(b)(6), the appropriate United States District Court shall have jurisdiction, without regard to the citizenship of the parties, to enforce final orders issued under the Department of Labor's complaint procedure. To the extent Paragraph 17 is inconsistent with the statute, that paragraph is void and unenforceable.

Third, this Tribunal ORDERS Paragraph 1 (including subparagraphs a and b) of the unredacted Settlement Agreement to be sealed per the parties' request. Moreover, the Tribunal has previously informed the parties, and now restates that the records of this Tribunal are subject to the Freedom of Information Act ("FOIA") and are generally available to the public.

This Office will place the Settlement Agreement in a sealed envelope within the public file. 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), this Tribunal specifically finds that Paragraph 1 of the Settlement Agreement contains 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).

Order

1. The parties' requests to approve their Settlement Agreement and dismiss their AIR 21 claims are GRANTED. **However, the parties are advised that this Tribunal does not bind the parties to the provisions in Paragraphs 3, 6, and 7 that are beyond its jurisdiction.**
2. 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 "Confidential Settlement Agreement and Release of Claims" is APPROVED, and the parties are ORDERED to comply with its terms.

This matter is DISMISSED with prejudice. The hearing in this matter is hereby CANCELLED.

SO ORDERED

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey