

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 18 April 2019

CASE NO.: 2018-AIR-00029

In the Matter of:

KAREN GRIMALDI,
Complainant

v.

JETBLUE AIRWAYS CORPORATION,
Respondent.

ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT

This matter arises under the employee protection provisions of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121 as implemented by 29 C.F.R. Part 1979.

On March 1, 2018, the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), acting as agent for the Secretary of Labor (“Secretary”), issued its letter detailing the results of its investigation into Ms. Grimaldi’s complaint against JetBlue. By letter dated March 28, 2018, Respondent objected to the Secretary’s findings and requested a de novo hearing before an administrative law judge pursuant to 29 C.F.R. § 1979.106. The matter was then assigned to me, a Notice of Hearing was issued and a trial date scheduled. After several continuances, the parties resolved their dispute through mediation.

On April 1, 2019, I received the “Agreed Motion For Approval of and Request to Seal Negotiated Settlement Agreement and Release” (hereinafter “Settlement Agreement”).

In reviewing the Settlement Agreement, I must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant’s allegations that the Respondent violated the AIR 21 whistleblower provisions. I find the Settlement Agreement complies with the standard required and it is APPROVED pursuant to 29 C.F.R. § 1979.111(d)(2), subject to my comments below.

The parties assert pre-disclosure notification rights in accordance with 29 C.F.R. § 70.26. Pursuant to the parties' request, the copy of the Settlement Agreement will therefore be maintained in a separate envelope that is identified as being "Personal Private Information" and "Confidential Commercial Information." *See Duffy v. United Commercial Bank*, 2007-SOX-00063 (Oct. 23, 2007). I find the Settlement Agreement contains financial information and business information that is privileged or confidential within the meaning of 29 C.F.R. §70.2(j), as well as personal information relating to the Complainant.

As to confidentiality, the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, all of their filings, including the Settlement Agreement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.* The Administrative Review Board noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine *at the time a request is made* whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

Seater v. S. Cal. Edison Co., USDOL/OALJ Reporter (PDF), ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

Two additional points require my brief attention. First, the Settlement Agreement contains a choice of law provision naming the State of New York as the law which shall govern interpretation of the Settlement Agreement, without regard to the conflict of law provisions thereof. The choice of law provision shall be construed as not limiting the authority of the Secretary of Labor or any federal court. *See Phillips v. Citizens. Assoc. for Sound Energy*, Case No. 1991-ERA-00025, slip op. at 2 (*Sec'y* Nov. 4, 1991).

I also note my authority over settlement agreements is limited to the statutes within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Settlement Agreement pertaining to Ms. Grimaldi's current AIR 21 case, 2018-AIR-00029. *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

Accordingly, it is **ORDERED** that:

- (1) The parties' request to approve the Settlement Agreement is **GRANTED**;
- (2) The Settlement Agreement is **APPROVED**;
- (3) The Settlement Agreement shall be designated as confidential and maintained in a separate sealed envelope, subject to the procedures requiring disclosure under FOIA; and

(4) The Complaint of Karen Grimaldi is **DISMISSED WITH PREJUDICE.**

SO ORDERED.

TIMOTHY J. McGRATH
Administrative Law Judge

Boston, Massachusetts