



Issue Date: 18 September 2019

Case No.: 2018-AIR-00041

In the Matter of

KARLENE PETITT

Complainant

v.

DELTA AIR LINES, INC.

Respondent

ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION

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. Implementing regulations are at 29 C.F.R. Part 1979. The hearing on this matter was held on March 25 to March 29, 2019, April 25, 2019, and April 29 to May 1, 2019.

On July 19, 2019, Respondent filed a Motion for Protective Order requesting the Tribunal order Complainant's counsel to remove the deposition videos from the Internet, prohibit further publication or disclosure of the deposition videos, and requesting an immediate injunctive order mandating removal of the deposition videos from the Internet pending the Tribunal's resolution of Respondent's motion. On July 21, 2019, Complainant responded to the above motion, asserting that no protective order was warranted.

The Tribunal issued an Order dated August 20, 2019, denying Respondent's request for a protective order.

On September 3, 2019, Respondent filed a Motion for Reconsideration and to Certify for Interlocutory Review Order Denying Motion for a Protective Order and Memorandum of Points and Authorities. It noted that Complainant's counsel had posted the contested video depositions on YouTube within days of this Tribunal's August 20 Order, and that another group affiliated with Complainant had also republished the videos. Respondent requests that this Tribunal reconsider its August 20 Order in light of these new developments. It asserts that publication of these videos carries the potential of subjecting individuals to unwanted exposure, and that allowing such publication will chill participation in the judicial process. Alternatively, Respondent requests that this issue be certified for interlocutory appeal.

On September 4, 2019, Complainant filed an Opposition to Motion for Reconsideration and Interlocutory Order. She argues that the Tribunal’s original decision was correct and that new circumstances do not warrant reconsideration. She further argues that Respondent has failed to meet the standard for immediate appeal.

Upon review of the parties’ arguments, the Tribunal again finds that no good grounds for issuance of a protective order. Respondent presents no instances of abuse that have resulted from publication of the Bastian or Graham video depositions. Further, its suggestion that the likelihood of misuse will increase over time the longer the videos remain on the internet—while perhaps theoretically true—is speculative at best. At bottom, Respondent has articulated no distinct harm that would result from these videos sufficient to justify issuance of a protective order. Respondent’s embarrassment that such depositions will be available for public viewing is “insufficient to constitute serious harm.” *Welsh v. City & County of San Francisco*, 887 F. Supp. 1293, 1297 (N.D. Cal. 1995).

The undersigned also finds that this issue is inappropriate for interlocutory appeal. Specifically, Respondent has failed to justify how, under the collateral order doctrine, this issue is “important.” *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978). It argues that this issue involves “important principles,” and notes that development of clear rules related to use of video depositions will become increasingly important. However, again missing from its argument is an explanation of why the issue *in this case* is pressing. Respondent’s allegations of mere embarrassment and the potential for misuse of these video depositions simply fail to demonstrate that this question should be considered an “important issue” under the collateral order doctrine.

Accordingly, Respondent’s Motion for Reconsideration and to Certify for Interlocutory Appeal is DENIED.

SO ORDERED.

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey