

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 10 January 2020

Case No.: 2019-AIR-00015
2019-AIR-00016
2019-AIR-00017

In the Matter of

**JOE ESPARZA, BRIAN THIBAUT, and
STEPHEN ANDREWS**
Complainants

v.

AMERICAN AIRLINES, INC.
Respondent

ORDER APPROVING SETTLEMENT AND FILING UNDER SEAL

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 January 3, 2020, the parties submitted a Joint Motion to Approve Settlement Agreement and Filing under Seal. The submission includes a full copy of the executed Settlement Agreement, and the parties requested that pursuant to 29 C.F.R. 18.85(b), certain portions be placed under seal because it contains sensitive commercial or financial information which, if disclosed, could be used to the Parties’ disadvantage.

This Tribunal finds that the proposed Settlement Agreement is proper, and approves it with some caveats. First, the language in this agreement purports to release, acquit, or otherwise address claims or potential claims that far exceed the statute involved in this action. *See* Paragraphs 3, 4, 5, 6. The Tribunal limits its review to the asserted whistleblower claims only, as anything beyond that limitation exceeds this Tribunal’s jurisdiction.

Second, language in the Settlement Agreement provides that it shall be governed by the laws of the State of Texas. *See* Paragraphs 18 and 19. 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

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

procedure. To the extent paragraphs 18 and 19 are inconsistent with this statute, that paragraph is void and unenforceable.

Third, this Tribunal ORDERS that Paragraph 1 (including subparagraphs “a” through “b”) of the unredacted Settlement Agreement to be sealed per the parties’ request. 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 (including subparagraphs a through b) of the Settlement Agreement contains sensitive commercial or financial information and could result in a competitive disadvantage if disclosed, and that the parties would otherwise hold this information private within the ordinary course of business. *See Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 915 (2019).

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 claim are GRANTED. **However, the parties are advised that this Tribunal does not bind the parties to the provisions in Paragraphs 3, 4, 5, and 6 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 Settlement Agreement is APPROVED, and the parties are ORDERED to comply with its terms.

The above matters are DISMISSED with prejudice.

SO ORDERED

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey