



**Issue Date: 03 February 2021**

CASE NO.: 2019-AIR-00022

*In the Matter of:*

**DARREN KOSSEN,**  
*Complainant,*

vs.

**EMPIRE AIRLINES,**  
*Respondent.*

**ORDER DENYING MOTION TO RECUSE**

This is a claim under the whistleblower-protection provision of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. section 42121, and applicable regulations thereunder (“AIR21”). It is currently set for video hearing on March 11, 2021.

Complainant moves for an Order recusing me from presiding in this case. Respondent opposes the Motion.

Complainant urges me to disqualify myself by reason of bias. First, he avers I am “biased and prejudiced against [him] because [I have] already ruled unfavorably against [him] *dismissing* [his] case on 11/9/20 in *Kossen v. Asia Pacific Airlines* OALJ 2019-AIR-00011, currently on appeal with the ARB” (emphasis added) (Motion, p. 2). In particular, Complainant contends I excluded evidence in that case that should have been admitted. Second, he argues I am

. . . biased in favor of [Asia Pacific Airlines] due to [my] pilot son’s career at United Airlines out of Guam, where APA’s chief witness in Judge Larsen’s Hearing, Ralph Freeman, was head of Continental which became United and Ralph Freeman’s son is a check airmen *[sic]* for United and potentially has great power over [my] pilot son.

(*Id.*)

First, I conclude the contention that my rulings in *Kossen v. Asia Pacific Airlines* manifest bias towards the Complainant is without merit. I did not dismiss *Kossen v. Asia Pacific Airlines*, but issued a thirty-three-page decision on the merits in November, 2020, after a three-day hearing on February 25-27, 2020, at which Mr. Kossen appeared, was represented by counsel, and presented his case. My rulings excluding evidence in that case were based on Mr. Kossen's failure to comply with disclosure requirements set forth in the Rules of Practice and Procedure, 29 C.F.R. Part 18, Subpart A, and in an applicable Pre-Hearing Order. Mr. Kossen appears dissatisfied with my evidentiary rulings and with the Decision I issued in that case, but his dissatisfaction does not show I ruled against him out of bias or prejudice of any kind. "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States* (1994), 510 U.S. 540, 555, 127 L.Ed.2d 474, 114 S.Ct. 1147;<sup>1</sup> *see also* 13D Federal Practice and Procedure (Wright & Miller), Jurisdiction § 3549 (3d ed.). As he notes in his motion, Mr. Kossen is currently pursuing an appeal of my decision. He was, and is, represented by experienced counsel in *Kossen v. Asia Pacific Airlines*.

Second, the contention that my son's employment with United Airlines constitutes grounds for recusal is likewise without merit. The notion that I could advance or prejudice my son's circumstances or career by ruling for or against Mr. Kossen either in the *Asia Pacific Airlines* case, or in this one, is baseless, and objectively unreasonable. To be sure, in the *Asia Pacific Airlines* case, Ralph Freeman in fact testified as a witness, and mentioned a son who was employed as a captain at United Airlines (Hearing Transcript, p. 452). But beyond that mention, I knew nothing about Mr. Freeman's son when I decided *Kossen v. Asia Pacific Airlines* – and the only additional information I have now about Mr. Freeman's son is what Mr. Kossen alleges about him in his Motion. Mr. Kossen's allegations about the younger Mr. Freeman's potential "great power" over my son are unsupported by any evidence or testimony under 29 C.F.R. section 18.16, subsection (b), and I have no other reason to think them credible. In any event, even if I wanted to curry favor with United Airlines or Asia Pacific Airlines, this case affords me no opportunity to do it, because neither is involved in this case.

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<sup>1</sup> In fact, the Supreme Court in *Liteky* went on to observe, 510 U.S. at 555, "Not establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display" (emphasis in original). In his Motion, Mr. Kossen offers no criticism whatsoever of my demeanor or temperament. He is only critical of my rulings.

Mr. Kossen has articulated no basis for my disqualification under 29 C.F.R. section 18.16, and I am not independently aware of any basis for disqualification. The Motion is denied.

SO ORDERED.

CHRISTOPHER LARSEN  
Administrative Law Judge