

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

Issue Date: 09 October 2020

CASE NO.: 2020-AIR-00008

In the Matter of:

DARYL CREESE,
Complainant,

v.

PIEDMONT AIRLINES, INC.,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT, CANCELING
HEARING AND DISMISSING CLAIM**

This matter arises from a complaint of discrimination filed under the employee protection provision of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“AIR21”), 49 U.S.C. § 42121, as implemented by the regulations at 29 C.F.R. Part 1979 (2003). The formal hearing is scheduled for December 1, 2020 by video conference.

On September 29, 2020, the parties submitted a Settlement and Release Agreement (“Settlement Agreement”) for review and approval pursuant to 29 C.F.R. §§ 1979.111(c) & (d)(2). In reviewing the Settlement Agreement, the Court must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant’s allegations that Respondent violated the SOX whistleblower provisions. The Settlement Agreement complies with the standard required and it is **APPROVED**, pursuant to 29 C.F.R. § 1980.111(d)(2).

With regard to confidentiality of the Settlement Agreement, 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.A. § 552 *et seq.* The Administrative Review Board has 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.

In reviewing the Settlement Agreement, the Court also notes that its authority over settlement agreements is limited to the statutes that are within the Court's jurisdiction as defined by the applicable statute. Therefore, only the terms of the Settlement Agreement pertaining to Creese's current AIR21 case, 2020-AIR-00008, are approved. *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

Accordingly, it is **ORDERED** that:

- (1) The Settlement Agreement is **APPROVED**;
- (2) The hearing scheduled for December 1, 2020, is **CANCELLED**;
- (3) The Settlement Agreement shall be designated as confidential, subject to the procedures requiring disclosure under FOIA; and
- (3) The Complaint of Daryl Creese is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

JERRY R. DeMAIO
Administrative Law Judge

Boston, Massachusetts