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Office of Administrative Law Judges
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Issue Date: 16 May 2005

Case No. 2005-AIR-3

In the Matter of

STEPHEN C. DAVIDSON

Complainant

v.

MIAMI AIR INTERNATIONAL, INC.

and

AMERICAN AIRLINES, INC.

Respondents

BEFORE: RUDOLF L. JANSEN
Administrative Law Judge

ORDER GRANTING COMPLAINANT'S MOTION TO DISMISS WITH PREJUDICE
ALL CLAIMS AGAINST AMERICAN AIRLINES, INC.

This is a proceeding under the provisions of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("Air 21" or "Act"). 49 U.S.C. §42121. On April 5, 2005, I received a joint statement from Complainant's counsel and counsel for American Airlines, Inc. (American) stating that Stephen C. Davidson (Davidson or Complainant) has agreed to dismiss with prejudice his claims against American. After evaluating the statement, I determined that the parties appeared to have entered into a settlement concerning Davidson's AIR 21 complaint and I Ordered the parties to submit the appropriate documents to this office while taking into consideration the provisions of 29 C.F.R. Section 1979.111. It was also noted

that Federal Rule of Civil Procedure 41(a)(1) would not apply since a Motion for Summary Judgment had already been filed.

On April 22, 2005, my law clerk received a call from Complainant's counsel, Mr. Nicolas A. Manzini, Esq., stating that American is unwilling to sign a settlement agreement. Therefore, in lieu of submitting a settlement agreement, Mr. Manzini filed "Complainant's Motion to Dismiss with Prejudice Claims Against Respondent American Airlines, Inc." dated April 22, 2005. The Motion cites no authority in support of the propriety of the Motion. On April 25, 2005, American filed a "Notice of Non-Opposition to Complainant's Motion to Dismiss with Prejudice."

Voluntary dismissal of a whistleblower complaint is covered by Rule 41 of the Federal Rules of Civil Procedure. *Rainey v. Wayne State University*, 90-ERA-40 (Sec'y Jan. 7, 1991) (order to show cause), slip op. at 3, *dismissed*, (Sec'y Feb. 27, 1991). Rule 41(a)(1)(i) applies where the Respondent has not filed the functional equivalent of either an answer to the complaint or a motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(i). See *Reece v. Detroit Edison*, 92-ERA-1 (Sec'y Apr. 9, 1992), slip op. at 2; *Hendrix v. Duke Power Co.*, 90-ERA-32 (Sec'y Sept. 2, 1990), slip op. at 2. However, pursuant to Rule 41(a)(1)(ii), where the complainant files a motion, signed by the parties, states that withdrawal of the complaint does not involve any settlement, and requests dismissal with prejudice, the motion with the respondent's written concurrence constitutes a stipulation of dismissal by the parties. Fed. R. Civ. P. 41(a)(1)(ii). See *Dysert v. Florida Power & Light Co.*, 92-ERA-26 (Sec'y June 28, 1993).

As Davidson seeks a voluntary dismissal with prejudice and American has indicated that it does not oppose Complainant's Motion and that it seeks no costs or fees, it now appears to me that the parties would like to have this matter treated as a stipulated dismissal under Rule 41(a)(1)(ii). However, the Complainant seeks the voluntary dismissal of fewer than all of the parties in his original complaint. Therefore, a question arises as to whether the provisions of Rule 41(a)(1)(ii) applies. "The answer to this question turns on [the] interpretation of the word "action" in Rule 41(a)(1), and whether it refers to the entire controversy against all the defendants, or to the entirety of claims against any single defendant." *Pedrina v. Chun*, 987 F.2d 608, 609 (9th Cir. 1993).

There exists a split in authority on this question among the Circuit courts. While the Second and Sixth Circuits contend that Rule 41 dismisses the entire controversy, the majority of the Circuit courts hold that Rule 41(a)(1) allows a plaintiff without a court order to dismiss fewer than all of the named defendants. *Id.* at 609-10. As this claim arises in the Eleventh Circuit, Complainant is permitted to voluntarily dismiss one party "even though the case might remain pending against other defendants." *Cordis Corp. v. Siemens-Pacesetter, Inc.*, 682 F.Supp. 1200, 1201 (S.D.Fl. 1987) (citing *Plains Growers, Inc. Fl. M.I. Co. v. Ickes-Braun Glasshouses, Inc.*, 474 F.2d 250, 255 (5th Cir. 1980)).

Complainant also requests that his claims against American be dismissed "with prejudice." A dismissal with prejudice results not only in the Complainant being time barred from filing again under AIR 21, but the doctrine of *res judicata* would prevent Complainant from refileing a claim against American based on these facts in a state or any other court. *Sites v. Houston Lighting & Power Co.*, 87-ERA-41 (Sec'y Sept. 29, 1989) (citations omitted). Additionally, a dismissal under Rule 41(a)(1) is without prejudice, unless the parties have otherwise stated it in their notice of dismissal or stipulation. Fed. R. Civ. P. 41(a)(1)(ii); *Pedrina*, 987 F.2d 610n.3.

In view of the above, it appears that Complainant has chosen on his own accord to dismiss his claim against American with prejudice. American's written response that it does not oppose the dismissal of the Complaint with prejudice and that it will bear its own costs and fees, together with Complainant's notice of voluntary dismissal, I find constitutes a stipulation of dismissal by the parties satisfying the requirements of Rule 41(a)(1)(ii). See *House v. Tennessee Valley Authority*, 92-ERA-9 (Sec'y Jan. 4, 1993); *Kleiman v. Florida Power and Light Co.*, 91-ERA-50 (Sec'y Feb. 21, 1992, slip op. at 1-2; *Nunn v. Duke Power Co.*, 84-ERA-27 (Sec'y Sept. 2, 1989), slip op. 3-4.

ORDER

Complainant's Motion to Dismiss With Prejudice Claims Against Respondent American Airlines, Inc., is hereby GRANTED for the reasons indicated.

As American Airlines, Inc. is no longer a party to this matter, I ORDER the caption to be changed as follows:

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MIAMI AIR INTERNATIONAL, INC.

Respondent

A

Rudolf L. Jansen
Administrative Law Judge