



Issue Date: 06 July 2017

Case No.: 2017-AIR-00001

In the Matter of

**RICHARD FREEMAN**

Complainant

v.

**AIRVAC EMS, INC.**

Respondents

**ORDER APPROVING SETTLEMENT, DISMISSING CLAIM, SEALING  
SETTLEMENT DOCUMENTS, AND FILING REDACTED SETTLEMENT  
DOCUMENTS**

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.<sup>1</sup> Implementing regulations are at 29 CFR Part 1979, published at 67 Fed. Reg. 15453 (Apr. 1, 2002).

On June 27, 2017 by email, Complainant submitted the parties' Settlement Agreement and General Release ("Settlement Agreement").

This Tribunal finds that the proposed Settlement Agreement is proper, and approves it with several caveats. First, language in the Settlement Agreement purports to settle, release, or otherwise address claims or potential claims that far exceed the statute involved in this action. *See* Paragraphs 4 and 6 (insofar as Paragraph 6's prohibition regarding Complainant's potential recovery of individual monetary relief in federal, state, or local governmental claims). The Tribunal limits its review to the asserted whistleblower claims only, as anything beyond that limitation exceeds this Tribunal's jurisdiction.

Second, this Tribunal **ORDERS** Paragraph 1 (including subparagraphs a-c) of the original unredacted Settlement Agreement permanently sealed due to the confidential commercial and financial information contained therein. A redacted version of the Settlement

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

Agreement, as explained below, will be included in the public file. 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.

Finally, language in the Settlement Agreement mistakenly provides that it shall be governed by and construed under the law of the State of Texas. *See* Paragraph 14. 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 the extent Paragraph 14 is inconsistent with the statute, that paragraph is void and unenforceable.

This Office will place the Settlement Agreement in a sealed envelope within the public file.<sup>2</sup> 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-c) of the Settlement Agreement contains confidential commercial and financial information. Therefore, that paragraph shall be redacted from the version of the agreement placed in the public file.

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’ request to approve the Settlement Agreement and General Release is GRANTED. The unredacted Settlement Agreement is hereby SEALED. A copy of the Settlement Agreement with Paragraph 1 (including subparagraphs a-c) redacted will be placed in the public file.
2. The parties are advised that this Tribunal does not bind the parties to the provisions in Paragraphs 4 and 6 (to the extent that Paragraph 6 prohibits Complainant’s potential recovery of individual monetary relief in federal, state, or local governmental claims). Moreover, jurisdiction over the Settlement Agreement belongs to the appropriate United States District Court, which is currently the Northern District of Texas.
3. 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 and General Release” is APPROVED, and the parties are ORDERED to comply with its terms.

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<sup>2</sup> *See* 29 C.F.R. § 18.56.

This matter is **DISMISSED** with prejudice.

SO ORDERED

**SCOTT R. MORRIS**  
Administrative Law Judge

Cherry Hill, New Jersey