

**U.S. Department of Labor**

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**Issue Date: 03 March 2009**

CASE NO.: 2009-NTS-00001

In the Matter of:

ROBERT BAILEY,  
Complainant

v.

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY,  
Respondent

**ORDER TO SHOW CAUSE**

The above-captioned case is scheduled for a hearing conducted under the employee protection provisions of the National Transit Systems Security Act of 2007, 6 U.S.C. § 1142 (“NTSSA”) beginning on April 1, 2009 in Cleveland, Ohio. On February 20, 2009, the complainant submitted a Motion to Withdrawal his complaint. Complainant stated that although his position has not changed, he signed a settlement agreement with the respondent regarding a union grievance. In the agreement, the complainant agreed to withdrawal his NTSSA claim.

Under the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (“AIR 21”),<sup>1</sup> a withdrawal “must be a voluntary, considered decision” which is consistent with the concern for public safety. *Farley v. Alaska Airlines*, Case No. 2005-AIR-25 (A.L.J. July 13, 2005) citing *Harnois v. American Eagle Airline*, Case No. 2002-AIR-17 (A.L.J. Sept. 9, 2002). OSHA’s comments to the regulation permitting withdrawal under the Act, 29 C.F.R. § 1979.111(c), state that the regulation is intended to “permit a complainant to freely withdraw his or her complainant without prejudice. The purpose of the . . . approval is to help insure that the complainant’s withdrawal is, indeed, made freely without threat of coercion or unlawful promise.” 68 Fed. Reg. 14100, 14106 (Mar. 21, 2003). The withdrawal must be knowing, intelligent, and voluntary.

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<sup>1</sup> According to the Joint Explanatory Statement of the Conference Committee, the NTSSA employee protection provision is modeled on the employee protection provisions of the Federal Rail Safety Act, 49 U.S.C. § 20109, and the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century. 49 U.S.C. § 42121.

The NTSSA states:

Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

6 U.S.C. § 1142(g). The construction of this subsection, and its effect on the request to withdraw the claim, is not entirely clear as the NTSSA is a relatively new statute without accompanying regulations and the associated comments. It is clear, however, that the language does not prevent the settlement of NTSSA claims as 6 U.S.C. § 1142(c)(3)(A) provides for the issuance of settlement agreements in such claims.

IT IS HEREBY ORDERED that the Respondent is required to show cause as to why Complainant's Motion for Withdrawal should be granted. Respondent must file its response with the undersigned on or before March 11, 2009.

**A**

RICHARD A. MORGAN  
Administrative Law Judge