



In the Matter of:

JOHN SWINT,

COMPLAINANT,

v.

NET JETS AVIATION, INC.,

RESPONDENT.

ARB CASE NO. 03-124

ALJ CASE NO. 03-AIR-26

DATE: November 25, 2003

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Michael A. Moulis, Esq., *Ft. Lauderdale, Florida*

For the Respondent:

Celeste M. Wasielewski, Esq., Piper Rudnick, *Washington, D.C.*

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This case arises under the employee protection provision of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21), 49 U.S.C.A. § 42121 (West Supp. 2003). John Swint filed a complaint alleging that Net Jets Aviation fired him in violation of AIR21. On July 9, 2003, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order dismissing Swint's complaint as untimely filed. *Swint v. Net Jets Aviation, Inc.*, ALJ No. 2003-AIR-26 (ALJ July 9, 2003). Swint timely filed a petition for review of the order below pursuant to 29 C.F.R. § 1979.110(a) (2003).

On August 29, 2003, the Complainant filed a Notice of Voluntary Dismissal with Prejudice based on a Settlement Agreement and Complete and Permanent Release of Claims agreed to by the parties. "At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and

the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board.” 29 C.F.R. § 1979.111(d)(2).

The Board requires that all parties requesting settlement approval provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or certify that the parties have not entered into other such settlement agreements. See *Biddy v. Alyeska Pipeline Service Co.*, ARB Nos. 96-109, 97-015, ALJ No. 95-TSC-7, slip op. at 3 (ARB Dec. 3, 1996). In the instant case the parties have certified that the agreement constitutes the entire and only settlement agreement with respect to the Complainant’s claims. See Settlement Agreement, ¶ IF.

Review of the agreement reveals that it may encompass the settlement of matters under laws other than AIR21. See Settlement Agreement ¶¶ IE, IF, IG. The Board’s authority over settlement agreements is limited to such statutes as are within the Board’s jurisdiction and is defined by the applicable statute. Therefore, we approve only the terms of the agreement pertaining to the Complainant’s AIR21 claim. *Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56 (Apr. 30, 2003).

Section II of the agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions. We have held, “[t]he parties’ submissions, including the agreement become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.” *Coffman v. Alyeska Pipeline Services Co. and Arctic Slope Inspection Services*, ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. Part 70 (2002).¹

Our approval is limited to settlement of the instant case, and we understand the settlement terms relating to release of AIR21 claims as pertaining only to the facts and circumstances giving rise to this case.

¹ “Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h).” *Coffman*, slip op. at n.2.

CONCLUSION

The parties have agreed to settle the Complainant's AIR21 claim. Accordingly, we **APPROVE** the agreement and **DISMISS** the complaint.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Law Judge

JUDITH S. BOGGS
Administrative Appeals Judge