



In the Matter of:

RICHARD EVANS,

ARB CASE NO. 10-058

COMPLAINANT,

ALJ CASE NO. 2006-AIR-022

v.

DATE: March 24, 2010

MIAMI VALLEY HOSPITAL,

and

CJ SYSTEMS AVIATION GROUP, INC.,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

**Robert A. Klinger, Esq., Brian J. Butler, Esq., *Robert A. Klinger Co., LPA,*
Cincinnati, Ohio**

For the Respondents:

**Avrum Levicoff, Esq., *Levicoff, Silko & Deemer, PC,* Pittsburgh,
Pennsylvania; Wayne E. Waite, Esq., Adam C. Armstrong, Esq., *Freund, Freeze
& Arnold,* Dayton, Ohio**

**ORDER APPROVING SETTLEMENT AND
DISMISSING COMPLAINT WITH PREJUDICE**

Richard Evans filed a complaint with the United States Department of Labor alleging that his employers, Miami Valley Hospital (MVH) and CJ Systems Aviation Group, Inc. (CJ), violated the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21 or the Act)¹ when they fired him after he raised concerns about air safety issues. After a hearing, a Labor Department Administrative Law Judge (ALJ) concluded that MVH and CJ violated AIR 21 and awarded Evans reinstatement, back pay, compensatory damages, and attorneys' fees. MVH and CJ appealed to the Administrative Review Board (ARB), and we affirmed the ALJ's decision.² Subsequently, both MVH and CJ appealed the ARB's decision to the United States Court of Appeals for the Sixth Circuit.

On December 4, 2009, Evans entered into a Confidential Settlement Agreement and Release of Administrative Claims with MVH. On January 29, 2010, Evans and CJ entered into a Confidential Settlement Agreement and Release of All Claims.³ Both Respondents then filed motions with the Sixth Circuit to remand Evans's complaint to the ARB. The court granted their motions on February 17, 2010.⁴

DISCUSSION

AIR 21 provides that “[a]t any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.”⁵

The implementing regulation provides for adjudicatory settlements if the participating parties agree and the settlement is approved by the administrative law judge

¹ 49 U.S.C.A. § 42121 (Thomson/West 2007). Regulations implementing AIR 21 appear at 29 C.F.R. Part 1979 (2009).

² See *Evans v. Miami Valley Hosp. & CJ Sys. Aviation Group, Inc.*, ARB Nos. 07-118, -121, ALJ No. 2006-AIR-022 (ARB June 30, 2009) (Final Decision and Order); *Evans v. Miami Valley Hosp. & CJ Sys. Aviation Group, Inc.*, ARB Nos. 08-039, -043, ALJ No. 2006-AIR-022 (ARB Aug. 31, 2009) (Award of Attorneys' Fees).

³ When Evans reached a settlement with MVH and CJ, he had filed an action against both Respondents in the United States District Court for the Southern District of Ohio (Western Division) to enforce the ARB's June 30, 2009 decision. See 49 U.S.C.A. § 42121(b)(6)(A).

⁴ *CJ Sys. Aviation Group, Inc. v. Evans*, Case No. 09-4042 (6th Cir. Feb. 17, 2010). *Miami Valley Hosp. v. Evans*, Case No. 09-3938 (6th Cir. Feb. 17, 2010).

⁵ 49 U.S.C.A. § 42121(b)(3)(A).

if the case is before the judge or by the ARB if a timely petition for review has been filed. A copy of the settlement shall be filed with the judge or the ARB.⁶ Further, any settlement approved by the ARB shall constitute the final order of the Secretary.⁷

In granting the Respondents' motions, the Sixth Circuit remanded Evans's complaint to the ARB for its review of the settlements. Subsequently, MVH and CJ each filed with the ARB a Joint Motion Requesting Unconditional Approval of Settlement Agreement and Dismissal of Underlying Complaint with Prejudice. Therefore, it is appropriate for us to review the settlement agreements between Evans and the Respondents.

In accordance with the Sixth Circuit's order, we have reviewed the settlement agreements of both parties and find their terms to be a fair, adequate, and reasonable settlement of Evans's complaint. However, review of the agreements reveals that they may encompass the settlement of matters under laws other than AIR 21.⁸

The ARB's authority over settlement agreements is limited to the statutes that are within our jurisdiction as defined by the applicable statute and to cases over which we have jurisdiction. *Bettner v. Crete Carrier Corp.*, ARB No. 07-093, ALJ No. 2006-STA-033, slip op. at 2 (ARB Sept. 27, 2007). Therefore, we approve only the terms of the agreements pertaining to Evans's AIR 21 claim, ARB Nos. 07-118, -121, 08-039, -043, and 2006-AIR-022.

Additionally, both agreements contain a confidentiality clause providing that the parties shall keep the terms of the settlements confidential.⁹ The ARB notes that the parties' submissions, including the agreements, become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2009).

FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act. *Norton v. Uni Group, Inc.*, ARB No. 08-079, ALJ No. 2007-STA-036, slip op. at 3 (ARB May 30, 2008). Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests. *Id.* Further, if the confidentiality agreement

⁶ 29 C.F.R. § 1979.111(d)(2).

⁷ 29 C.F.R. § 1979.111(e).

⁸ Confidential Settlement Agreement and Release of All Claims by Richard Evans Against CJ Systems Aviation Group, Inc. and Air Methods Corp. (CJ Settlement) at para. 5; Confidential Settlement Agreement and Release of Administrative Claims (MVH Settlement) at para. 4.

⁹ CJ Settlement at para. 2; MVH Settlement at 1.

were to be interpreted to preclude Evans from communicating with federal or state enforcement agencies concerning alleged violations of law, it would violate public policy and therefore constitute an unacceptable “gag” provision. *Kingsbury v. Gordon Express, Inc.*, ARB No. 07-047, ALJ No. 2006-STA-024, slip op. at 2-3 (ARB Aug. 31, 2007).

Accordingly, as construed, we approve the parties’ settlements and **GRANT** their joint motions to dismiss Evans’s complaint with prejudice. Each party shall bear its own costs for the proceeding before us.¹⁰

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

¹⁰ See *Baena v. Atlas Air, Inc.*, ARB No. 03-008, 2002-AIR-004 (ARB Jan. 10, 2003).