



**In the Matter of:**

**THOMAS A. BOHN,**

**ARB CASE NO. 10-089**

**COMPLAINANT,**

**ALJ CASE NO. 2009-AIR-023**

**v.**

**DATE: October 28, 2010**

**JETBLUE AIRWAYS CORPORATION,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearance:**

***For the Petitioner:***

**Thomas A. Bonn, Esq., *pro se*, Ormand-by-the Sea, Florida**

***For the Respondent:***

**Ellen C. Ham, Esq., *Ford & Harrison LLP*, Atlanta, Georgia**

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*, and Joanne Royce, *Administrative Appeals Judge***

### **FINAL DECISION AND ORDER DISMISSING APPEAL**

Thomas A. Bohn filed a complaint with the United States Department of Labor (DOL) Occupational Safety and Health Administration (OSHA) alleging that his employer, JetBlue Airways Corporation, violated the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21 or the Act)<sup>1</sup> when it terminated his employment as a flight attendant because he reported

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

airplane safety and security issues to JetBlue management. Following an investigation, OSHA dismissed the complaint on the ground that it was filed more than 90 days after the date on which JetBlue terminated Bohn's employment. Bohn requested a hearing before a Department of Labor Administrative Law Judge (ALJ).

On March 31, 2010, the ALJ issued a Summary Decision Dismissing Complaint on the grounds that Bohn failed to timely file his complaint.<sup>2</sup> Bohn filed a petition with the Administrative Review Board requesting the Board to review the ALJ's Summary Decision.<sup>3</sup>

On April 30, 2010, the ARB issued a Notice of Appeal and Order Establishing Briefing Schedule ordering Bohn to file an initial brief in this case "on or before **May 31, 2010.**" The Board's Order specifically provided, "If the Complainant fails to file the initial brief on time, the Board may dismiss his appeal. *See, e.g., McQuade v. Oak Ridge Operations Office*, ARB No. 02-087, ALJ Nos. 1999-CAA-007 to -010 (ARB Oct. 18, 2002); *Pickett v. TVA*, ARB No. 02-076, ALJ No. 2001-CAA-018 (ARB Oct. 9, 2002)." Bohn has not filed an opening brief in response to the Board's briefing order.

On June 29, 2010, JetBlue filed a letter stating that because Bohn had filed neither his initial brief, nor a motion for a continuance, the Board should dismiss Bohn's petition for review. Accordingly, we ordered Bohn to show cause no later than July 28, 2010, why we should not dismiss his appeal because he has failed to timely file his opening brief. The order cautioned that if the Board did not receive Bohn's response to its order on or before July 28, 2010, the Board could dismiss the appeal without further notice to the parties.

The Board did not receive a response from Bohn to its order to show cause. On August 9, 2010, JetBlue filed Respondent's Reply to Complainant's Motion for Continuance Filed in Response to the Administrative Review Board's Motion to Show Cause. In this reply JetBlue avers that it had received a Motion for Continuance from Bohn, postmarked July 28, 2010. Because the Board did not receive this document, we

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<sup>2</sup> The ALJ noted that after the ALJ gave Bohn full notice of the consequences of failing to reply to JetBlue's motion to dismiss or for summary judgment, Bohn called the ALJ's office on the date the response was due to say that he had no power and could not type his response. Summary Decision Dismissing Complaint, slip op. at 1-2. Bohn indicated that he would mail a request for enlargement of time to file his response that day, but the ALJ received no motion for enlargement or any further communication from Bohn. The ALJ surmised that Bohn had decided not to file a request for enlargement. *Id.* at 2.

<sup>3</sup> The Secretary of Labor has delegated her authority to appeals arising under AIR 21 to the ARB. *See* Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010); 29 C.F.R. § 1979.110.

attempted to contact Bohn so that he could forward a copy to us. Messages were left on voicemail at his telephone number of record, but Bohn neither contacted the Board, nor forwarded a copy of his motion for continuance as we requested. Ultimately, upon the Board's request, counsel for JetBlue provided the Board with a copy of the motion for continuance.

The Board's authority to effectively manage its docket, including the authority to require compliance with Board briefing orders, is necessary to "achieve orderly and expeditious disposition of cases."<sup>4</sup> This Board has authority to issue sanctions, including dismissal, for a party's failure to comply with the Board's orders and briefing requirements.<sup>5</sup> Bohn failed to file a brief in compliance with the Board's briefing order. When given the opportunity to explain his failure to timely file, Bohn responded with a Motion for Continuance that provided:

Do [sic] to personal illness and disabilities I was unable to file my opening brief on time. I hereby request a continuance to file my initial brief to August 23, 2010. This will give me time to fully recover and to find representation.<sup>[6]</sup>

As JetBlue argued in its reply to Bohn's motion, this request is an inadequate response to the Board's Order to Show Cause for several reasons. First, the request appears to have been untimely, because, as we cautioned Bohn, his response to the Order was to have been received by the Board no later than July 28, 2010. The Motion for Continuance that JetBlue received was postmarked on July 28th. Second, the motion includes no explanation of the nature or duration of the illness and disabilities, and third, there is no explanation of why he waited until the Board issued a show cause order, a month after his brief was due, to request a continuance. Furthermore, although Bohn stated that he could file a brief by August 23rd, he has failed to do so and our attempts to contact Bohn have been unsuccessful because he has failed to return our telephone calls. Because Bohn has failed to file a brief or to respond to the Board's attempts to contact

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<sup>4</sup> *Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

<sup>5</sup> *Blodgett v. TVEC*, ARB No. 03-043, ALJ No. 2003-CAA-007 (ARB Mar. 19, 2003). See also *Ellison v. Washington Demilitarization Co.*, ARB No. 08-119, ALJ No. 2005-CAA-009 (ARB Mar. 16, 2009), *aff'd sub nom. Ellison v. U.S. Dep't of Labor*, 09-13054 (11th Cir. June 17, 2010); *Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-102, ALJ No. 2004-AIR-006 (ARB Dec. 30, 2004, Reissued Jan. 5, 2005), *aff'd sub nom. Powers v. U.S. Dep't of Labor, et al.*, Nos. 04-4441/05-3266 (6th Cir. Jan. 26, 2006); *Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-035, ALJ No. 2003-AIR-012 (ARB Sept. 28, 2004), *aff'd sub nom. Powers v. U.S. Dep't of Labor, et al.*, Nos. 04-4441/05-3266 (6th Cir. Jan. 26, 2006); *cf.* Fed. R. App. P. 31(c) (allowing dismissal as sanction for failure to file a conforming brief); Fed R. App. P. 41(b) (permitting courts to dismiss a complaint for failure to comply with court orders).

<sup>6</sup> Motion for Continuance of the Briefing Schedule at 1.

him, it appears that Bohn has decided not to prosecute his appeal.

The Board clearly informed Bohn in the April 30, 2010 Order establishing a briefing schedule that if he failed to file the initial brief on time, the Board could dismiss his appeal. However, Bohn failed to file a brief as ordered. The Board's Order to Show Cause offered Bohn the opportunity to explain his failure to file a brief, but his explanation was untimely and inadequate. Furthermore, although he requested an enlargement until August 23, 2010, to file a brief, he has failed to do so and he has failed to respond to the Board's attempts to contact him. While the Board does not hold pro se parties to the same standards of professional expertise as those represented by counsel, even pro se parties have an obligation to take the orders of the Board seriously and to comply with them.<sup>7</sup>

Thus, given Bohn's failure to submit an opening brief as ordered and to proffer an adequate explanation for his failure to do so, we find that Bohn has failed to prosecute his case. Accordingly, we **DISMISS** Bohn's appeal.

**SO ORDERED.**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**JOANNE ROYCE**  
**Administrative Appeals Judge**

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<sup>7</sup> *Reid v. Constellation Energy Grp.*, ARB No. 04-107, ALJ No. 2004-ERA-008, slip op. at 3-4 (ARB Dec. 17, 2004); *Tucker v. Connecticut Winpump Co.*, ARB No. 02-005, ALJ No. 2001-STA-053, slip op. at 5 (Mar. 15, 2002).