



**In the Matter of:**

**STEVEN GRAY,**

**ARB CASE NO. 10-122**

**COMPLAINANT,**

**ALJ CASE NO. 2009-AIR-028**

**v.**

**DATE: August 31, 2010**

**DAL GLOBAL,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*, and E. Cooper Brown, *Deputy Chief Administrative Appeals Judge***

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

Steven Gray filed a complaint with the United States Department of Labor alleging that his employer, DAL Global, violated the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21)<sup>1</sup> when it initially suspended him and ultimately terminated his employment because he reported safety concerns on several occasions. On June 25, 2010, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order Granting Relief (R. D. & O.) finding that Gray established by an “overwhelming preponderance” of the evidence that DAL suspended and then fired him in retaliation for reporting safety issues.<sup>2</sup>

---

<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).

<sup>2</sup> R. D. & O. at 37.

On July 12, 2010, the parties jointly requested that the Administrative Review Board grant DAL an extension of 10 days to file its petition for review of the R. D. & O.<sup>3</sup> The Board granted the request. On August 9, 2010, the parties submitted a Notice of Settlement and Joint Request for Approval and Dismissal with Prejudice.

AIR 21's implementing regulations provide that the parties may settle a cases at any time after the filing of objections to the Assistant Secretary's findings if the parties agree to the settlement, they provide a copy to the Board (if the case is pending on appeal), and the Board approves the settlement.<sup>4</sup> The Board reviews a settlement under the whistleblower acts to assure that it is fair, adequate, and reasonable and is not contrary to the public interest.<sup>5</sup>

We note that while the parties' Separation Agreement and General Release encompasses the settlement of matters under statutes other than AIR 21, the Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by the applicable statute. Therefore, we only approve the terms of the agreement pertaining to Gray's current AIR 21 case, ARB No. 10-122, ALJ No. 2009-AIR-028.<sup>6</sup>

We also note that while the Separation Agreement and General Release provides that the settlement terms will be confidential, the parties' submissions, including the Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA).<sup>7</sup> FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.<sup>8</sup> Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.<sup>9</sup>

---

<sup>3</sup> The Secretary of Labor has delegated her authority to make final agency decisions in cases arising on appeal under AIR 21 to the Administrative Review Board. *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 (2009).

<sup>4</sup> 29 C.F.R. § 1979.111(d)(2).

<sup>5</sup> *Coogler v. Schneider Nat'l Carriers, Inc.*, ARB No. 09-133, ALJ No. 2009-STA-023, slip op. at 3 (ARB July 30, 2010).

<sup>6</sup> *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000- STA-056, slip op. at 2 (ARB Apr. 30, 2003).

<sup>7</sup> 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2010).

<sup>8</sup> *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996- TSC-005, -006, slip op. at 2 (ARB June 24, 1996).

<sup>9</sup> 29 C.F.R. § 70 *et seq.* (2009).

Finally, the Separation Agreement and General Release provides that the release shall be construed in accordance with the laws of the State of Georgia. We construe this choice of law provision as not limiting the authority of the Secretary of Labor and any federal court, which shall be governed in all respects by the laws and regulations of the United States.<sup>10</sup>

We have carefully reviewed the parties' Separation Agreement and General Release and find that it constitutes a fair, adequate, and reasonable settlement of Gray's AIR 21 complaint and is not contrary to the public interest. Accordingly, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

**SO ORDERED.**

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

**E. COOPER BROWN**  
**Deputy Chief Administrative Appeals Judge**

---

<sup>10</sup> *Trucker v. St. Cloud Meat & Provisions, Inc.*, ARB No. 08-080, ALJ No. 2008-STA-023, slip op. at 3 (ARB May 30, 2008).