



In the Matter of:

ANTHONY BATTON,

ARB CASE NO. 11-085

COMPLAINANT,

ALJ CASE NO. 2009-AIR-029

v.

DATE: March 2, 2012

RYAN INTERNATIONAL AIRLINES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

John C. Ireland, Esq., *The Law Offices of John C. Ireland, Aurora, Illinois*

For the Respondent:

Kirsten A. Milton, Esq., *Morgan Lewis, Chicago, Illinois*

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge* and Luis A. Corchado, *Administrative Appeals Judge*

FINAL DECISION AND ORDER DISMISSING APPEAL

On October 4, 2011, the Administrative Review Board issued a Notice of Appeal and Order Establishing Briefing Schedule in this case arising under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21).¹ The terms of the Board's order required the Complainant,

¹ 49 U.S.C.A. § 42121 (Thomson/West 2007). Regulations implementing AIR 21 appear at 29 C.F.R. Part 1979 (2011). The Secretary of Labor has delegated her authority to

Anthony Batton, to file an opening brief, not to exceed thirty (30) double-spaced typed pages, on or before October 19, 2011. The Board further cautioned the Complainant that if he failed to timely file his brief the Board could dismiss his petition for review or impose other sanctions. The Complainant did not file an opening brief as ordered.

On November 2, 2011, the Respondent Ryan International Airlines, Inc. filed a Motion to Dismiss Complainant's Petition for Review for Failure to Prosecute Appeal. In its motion Ryan avers that because Batton has failed to file a brief in support of his petition for review as ordered, the Board should dismiss the petition for review and the ALJ's decision should become the final order of the Secretary as provided in 29 C.F.R. § 1979.110.

On November 16, 2011, twenty-eight days after the Complainant's brief was due, Batton sent a letter to the Board in which he informed the Board that he was unable to continue with the appeal because he could not afford to pay the "thousands of dollars" that it would cost to obtain a copy of the transcript. He stated that if the Board would provide him with a copy of the transcript or waive the obligation to file copies of the hearing transcript on which he relied, he requested unspecified additional time to file his appeal. The Complainant's letter offered no explanation for why he had not sought a copy of the transcript before the time period for filing the brief had expired, nor did it explain why he had not timely sought an enlargement of time to file the brief. While the Complainant had been cautioned in the October 4th Notice of Appeal and Order Establishing Briefing Schedule that "All motions and other requests for extraordinary action by the Board (including, but not limited to, requests for extensions of time or expansion of page limitations) shall be in the form of a motion appropriately captioned, titled, formatted and signed, consistent with customary practice before a court," the Complainant ignored this requirement by moving for an enlargement of time in a letter, with no caption, that was faxed to the Board without the necessary hard copies following. The November 16th letter was not recognized as a motion for enlargement.

On December 5, 2011, the Board issued an Order to Show Cause. In the Order the Complainant was ordered to demonstrate no later than December 19th, 2011, why the Board should not dismiss his appeal because he failed to timely file his opening brief. The Order to Show Cause cautioned the Complainant that if he did not file his response on or before December 19th, "the Board may dismiss the appeal without further notice to the parties."² On December 8, 2011, the Respondent filed an Opposition to Complainant's November 16, 2011 Request for Extension of time to File Appeal. The Complainant did not respond to the Board's Order to Show Cause.

decide this matter to the ARB. *See* Secretary's Order 1-2010, 75 Fed. Reg. 3924 (Jan. 15, 2010); 29 C.F.R. § 1979.110.

² Order to Show Cause at 2.

The Board's authority to effectively manage its docket, including authority to require compliance with Board briefing orders, is necessary to "achieve orderly and expeditious disposition of cases."³ This Board has authority to issue sanctions, including dismissal, for a party's failure to comply with the Board's orders and briefing requirements.⁴

Although warned that failure to timely file a brief in compliance with the Board's briefing order could result in dismissal of the Complainant's appeal, the Complainant failed to timely file his opening brief. Twenty-eight days after the brief was due and fourteen days after the Respondent filed its Motion to Dismiss, the Complainant finally communicated with the Board. But when he did so, requesting an unspecified amount of time to file the brief and waiver of the requirement of citing to and including transcript pages in his appendix, he filed this request in a letter, rather than in motion form as the briefing order had specified. Nor did the letter explain why the Complainant waited almost a month after the brief was due to request an enlargement of time to file it. Although the Board cautioned the Complainant that failure to respond to the Order to Show Cause could result in dismissal, the Complainant filed no response. The Complainant has failed to show the necessary diligence in complying with the Board's Briefing and Show Cause Orders that the Board expects of a party represented by counsel. Accordingly, we **GRANT** the Respondent's Motion and **DISMISS** the Complainant's appeal.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge

³ *Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

⁴ *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).