

U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

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U.S. DEPT OF LABOR
ADMIN LAW JUDGES
WASHINGTON, DC

In the Matter of:

CHARLES McLEAN,

ARB CASE NO. 12-005

COMPLAINANT,

ALJ CASE NO. 2010-AIR-016

v.

DATE: MAY 23 2013

AMERICAN EAGLE AIRLINES, INC.,

RESPONDENT.

ORDER STAYING PROCEEDINGS

Charles McLean filed a complaint under the whistleblower protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21 or Act), alleging that his employer, American Eagle Airlines, Incorporated, fired him in violation of the Act.¹ After a hearing, a Department of Labor (DOL) administrative law judge (ALJ) dismissed McLean's complaint. McLean appealed to the Administrative Review Board (ARB).

While his appeal was pending, American Eagle submitted a Notice of Suggestion of Bankruptcy to the ARB and moved to stay the proceedings before the ARB. According to the notice, American Eagle filed a petition under chapter 11² in the United States Bankruptcy Court for the Southern District of New York on November 29, 2011. The court documents list McLean as an unsecured creditor.

On February 12, 2013, the ARB issued an Order to Show Cause why the ARB should consider the proceedings in this case stayed. McLean responded requesting that the stay be lifted.

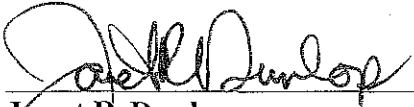
¹ 49 U.S.C.A. § 42121 (Thomson/West 2013). Regulations implementing AIR 21 appear at 29 C.F.R. Part 1979 (2012).

² 11 U.S.C.A. § 101 et seq. (Thomson/West 2013).

The ARB has held that the Bankruptcy Code's automatic stay provision applies to cases litigated by private parties under the whistleblower statutes the ARB adjudicates.³ The code provides for the "continuation of any judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement" of the bankruptcy case.⁴ American Eagle filed its chapter 11 bankruptcy petition while McLean's complaint was still pending.

Accordingly, the ARB will **STAY** the proceedings in this case until a final disposition of American Eagle's bankruptcy case. American Eagle is ordered to provide the Board with a status of the bankruptcy proceedings every sixty days and to notify the Board when the bankruptcy proceedings are concluded.

FOR THE ADMINISTRATIVE REVIEW BOARD:



Janet R. Dunlop
General Counsel

³ *Taylor v. Express One Int'l., Inc.*, ARB No. 02-054, ALJ No. 2001-AIR-002 (ARB Aug. 23, 2007).

⁴ 11 U.S.C.A. § 362(a)(1)(2013).