



In the Matter of:

MICHAEL HARDING,

ARB CASE NO. 12-031

COMPLAINANT,

ALJ CASE NO. 2011-AIR-005

v.

DATE: May 22, 2013

**SO. CAL. PRECISION AIRCRAFT;
NORTON AIRCRAFT MAINTENANCE
SERVICES, INC.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Michael Harding, *pro se*, San Bernardino, California

For the Respondent:

Matthew L. Taylor, Esq.; *Law Offices of Matthew L. Taylor, A.P.C.*; Rancho Cucamonga, California

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*; E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*; and Luis A. Corchado, *Administrative Appeals Judge*

FINAL DECISION AND ORDER

This case arises under the whistleblower protection provisions of the Wendall H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C.A. § 42121 (Thomson/West 2007), and its implementing regulations at 29 C.F.R. Part 1979 (2012). Complainant Michael Harding filed a complaint alleging that So. Cal. Precision Aircraft (SCPA) retaliated against him in violation of AIR 21's whistleblower protection provisions for raising air transportation safety concerns. Following a hearing on the complaint, a Department of Labor

Administrative Law Judge (ALJ) issued a Decision and Order Granting Relief (D. & O.), awarding Harding reinstatement, back pay, costs, and expenses. We summarily affirm.¹

Stated succinctly, the ALJ determined that Harding engaged in activity protected by AIR 21 when he complained to SCPA's Quality Control Manager about SCPA's FAA violations, and when he provided copies of a letter describing some of those concerns to the FAA and SCPA employees. The ALJ concluded that these protected activities contributed to Harding's discharge and that NAMS was liable as the successor-in-interest to SCPA, relying on numerous factors that included NAMS's purchase of SCPA's assets. The ALJ ordered NAMS to reinstate Harding, but he accepted NAMS's argument that Harding's back pay award be reduced by the salaries he earned working for other employers following his discharge. D. & O. at 28-29.

Substantial evidence supports the ALJ's essential factual findings, and those findings support his ultimate conclusion. The record supports the ALJ's finding that Harding's protected activity contributed to his discharge and NAMS failed to demonstrate that this finding was an error. *See* Petitioning Party's Supporting Legal Brief and Points and Authorities at 4-6. On appeal, NAMS only challenged the evidentiary basis for the ALJ's finding that NAMS was a successor-in-interest, but the witnesses' testimony and record evidence supports the ALJ's finding on this issue. D. & O. at 15-19.² Finally, the record indicates that Harding worked at several companies following his discharge. Complainant's Exhibit 1; Transcript (Tr.) at 44-54. We therefore agree with the ALJ's conclusion that Harding's back pay award should be reduced by the amounts he earned during those periods of employment. D. & O. at 29.

¹ The Secretary of Labor has delegated her authority to this Board to issue final agency decisions in AIR 21 cases. Secretary's Order No. 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69379 (Nov. 16, 2012); 29 C.F.R. § 1979.110(a). The Board reviews the ALJ's factual determinations under the substantial evidence standard, and his legal conclusions de novo. 29 C.F.R. § 1979.110(b); *see, e.g., Luder v. Continental Airlines, Inc.* ARB No. 10-026, ALJ No. 2008-AIR-009, slip op. at 5 (ARB Jan. 31, 2012).

² We note that, at the end of the hearing, the ALJ suggested that counsel for NAMS submit a post hearing brief "in which he'll argue his positions," and the ALJ "assume[d] a lot of that will be related to whether NAMS is a successor, a legal successor-in-interest to SCPA." Tr. at 263. NAMS submitted a "Post Trial Brief," but it did not contain any argument regarding NAMS's status as a successor-in-interest to SCPA.

Accordingly, we **AFFIRM** the ALJ's Decision and Order Granting Relief to Harding.

SO ORDERED.

LUIS A. CORCHADO
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge