



**In the Matter of:**

**ROBERT STEVEN MAWHINNEY,**  
**COMPLAINANT,**

**ARB CASE NO. 15-013**

**ALJ CASE NO. 2012-AIR-014**

**v.**

**DATE: January 21, 2015**

**TRANSPORTATION WORKERS UNION,**  
**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearance:**

***For the Complainant:***

**Robert Steven Mawhinney, *pro se*, LaJolla, California**

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; and Lisa Wilson Edwards, *Administrative Appeals Judge***

**ORDER DISMISSING INTERLOCUTORY APPEAL**

Complainant Robert Steven Mawhinney has filed an interlocutory appeal of a Department of Labor Administrative Law Judge’s Order on Remand, in which the Administrative Law Judge (ALJ) deferred ruling on Mawhinney’s request that a hearing date be scheduled in case No. 2012-AIR-014, until the Administrative Review Board ruled on a related case currently pending before the Board (ARB No. 14-060, ALJ No. 2012-AIR-017).<sup>1</sup>

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<sup>1</sup> The ALJ determined, “Because it is unknown at this point whether that case [ALJ No. 2012-AIR-017] will also be remanded for additional proceedings, it would not be efficient to schedule a hearing – the length of the hearing, number of witnesses, identities of witnesses, and many other logistical issues depend on whether a hearing will be held only on

The Secretary of Labor has delegated authority to issue final administrative decisions in cases arising under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century,<sup>2</sup> under which this case arises, to the Administrative Review Board.<sup>3</sup> The Secretary's delegated authority to the Board includes, "discretionary authority to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute."<sup>4</sup> Because the ALJ has not issued a final Decision and Order in this matter fully disposing of Mawhinney's complaint, his request that the Board review the ALJ's Order is an interlocutory appeal.

Where an ALJ has issued an order of which the party seeks interlocutory review, the ARB has elected to look to the procedures providing for certification of issues involving a controlling question of law as to which there is substantial ground for difference of opinion, an immediate appeal of which would materially advance the ultimate termination of the litigation, as set forth in 28 U.S.C.A. § 1292(b) (Thomson/West 2006), to determine whether to accept an interlocutory appeal for review.<sup>5</sup> In *Plumley v. Federal Bureau of Prisons*,<sup>6</sup> the Secretary ultimately concluded that because no ALJ had certified the questions of law raised by the respondent in his interlocutory appeal as provided in 28 U.S.C.A. § 1292(b), "an appeal from an interlocutory order such as this may not be taken."<sup>7</sup> Furthermore, the Secretary of Labor and the Board have held many times that interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals.<sup>8</sup>

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this case or on both cases." *Mawhinney v. Transportation Workers Union*, No. 2012-AIR-014, slip op. at 1 (Nov. 19, 2014). Nevertheless, the ALJ ordered that discovery should proceed in the interim. *Id.* at 1-2.

<sup>2</sup> 49 U.S.C.A. § 42121 (Thomson/West 2007)(AIR 21). AIR 21's implementing regulations are found at 29 C.F.R. Part 1979 (2013).

<sup>3</sup> Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1979.110(a).

<sup>4</sup> *Id.* at § 5(c)(48).

<sup>5</sup> *Powers v. Pinnacle Airlines, Inc.*, ARB No. 05-138, ALJ No. 2005-SOX-065, slip op. at 5 (ARB Oct. 31, 2005); *Plumley v. Federal Bureau of Prisons*, 1986-CAA-006 (Sec'y Apr. 29, 1987).

<sup>6</sup> 1986-CAA-006 (Sec'y Apr. 29, 1987).

<sup>7</sup> *Id.*, slip op. at 3 (citation omitted).

<sup>8</sup> Order to Show Cause, slip op. at 3 (ARB Dec. 16, 2014). See e.g., *Gunther v. Deltek*, ARB Nos. 12-097, 12-099; ALJ No. 2010-SOX-049, (ARB Sept. 11, 2012); *Welch v.*

Mawhinney did not seek certification of the issues arising in the ALJ's interlocutory order in this case. Accordingly, by Order dated December 16, 2014, the Board ordered Mawhinney to show cause why the Board should not dismiss his interlocutory appeal. His response was due no later than fourteen (14) days following the date upon which the order was issued. The Order notified Mawhinney that failure to timely respond could result in dismissal of the appeal without further order.<sup>9</sup>

Mawhinney did not respond to the Order to Show Cause. Accordingly, he has failed to demonstrate why the Board should consider his interlocutory appeal, and therefore we **DISMISS** his petition for interlocutory review.

**SO ORDERED.**

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

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

**LISA WILSON EDWARDS**  
**Administrative Appeals Judge**

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*Cardinal Bankshares Corp.*, ARB No. 04-054, ALJ No. 2003-SOX-015 (ARB May 13, 2004); *Hibler v. Exelon Generation Co., LLC*, ARB No. 03-106, ALJ No. 2003-ERA-009 (ARB Feb. 26, 2004); *Amato v. Assured Transp. & Delivery, Inc.*, ARB No. 98-167, ALJ No. 1998-TSC-006 (ARB Jan. 31, 2000).

<sup>9</sup> *Accord Edmonds v. TVA*, ARB No. 05-02, ALJ No. 2004-CAA-015, slip op. at 3 (ARB July 22, 2005).