

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

WILLIAM BARRETT,

ARB CASE NO. 2023-0032

COMPLAINANT,

ALJ CASE NO. 2022-AIR-00010
ALJ EVAN H. NORDBY

v.

EMPIRE AIRLINES, dba
OHANA BY HAWAIIAN,

DATE: June 22, 2023

RESPONDENT.

**Before HARTHILL, Chief Administrative Appeals Judge, and BURRELL,
Administrative Appeals Judge**

DECISION AND ORDER DISMISSING PETITION FOR REVIEW

PER CURIAM:

This case arises under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21).¹ William Barrett (Complainant) alleges Empire Airlines (Respondent) retaliated against him in violation of the employee protection provisions of AIR 21. On April 25, 2023, a United States Department of Labor Administrative Law Judge issued an Order Granting Respondent's Motion to Dismiss, in which he dismissed Complainant's claim.

On May 5, 2023, the Administrative Review Board (Board) received from Complainant a document titled "Petition for Review; Certificate of Service; Exhibit" (Petition). The text of the Petition read, in its entirety: "Complainant William Barrett hereby files a Petition for Review ('Petition') with the ARB ('Board') TO APPROVE SETTLEMENT AGREEMENT, DISMISS COMPLAINT, AND FILE

¹ 49 U.S.C. § 42121, as implemented by the regulations at 29 C.F.R Part 1979 (2022).

SETTLEMENT AGREEMENT UNDER SEAL.” Complainant attached to his Petition a document titled “Settlement Agreement and General Release” (Settlement Agreement). The Settlement Agreement appeared to reflect the terms of a settlement between Complainant and Respondent which, among other things, resolved and released Complainant’s AIR 21 claim against the company.²

AIR 21’s implementing regulations provide that litigants desiring to enter into a settlement of a case being adjudicated within the Department of Labor must submit a copy of their settlement agreement to the ALJ or ARB, as appropriate.³ The ALJ or the ARB then reviews the agreement to determine whether it is fair, adequate, reasonable, and not contrary to the public interest.⁴

On May 17, 2023, the Board issued an Order Accepting Petition for Review, Denying Request for Approval of Settlement Agreement, and Directing Parties to Show Cause on May 17, 2023 (Order to Show Cause). In the Order to Show Cause, the Board stated that it was unable to review or approve the terms of the parties Settlement Agreement.⁵ The Board observed that the Settlement Agreement was not fully and finally executed by the parties.⁶ The Board also noted other irregularities in the proposed settlement submitted by Complainant, which suggested that the Settlement Agreement may not be final and which were inconsistent with the posture of the case.⁷

Consequently, the Board denied Complainant’s request for approval of the Settlement Agreement, without prejudice.⁸ The Board stated that if the parties desired the Board to review a settlement, they were required to submit a joint motion, signed by both parties or their authorized representatives, requesting such action within 14 days of the issuance of the Order to Show Cause, along with a copy

² On May 8, 2023, the Board received from Complainant a document titled “Petition for Review *in addendum*; Certificate of Service; Exhibit” (Addendum). The Addendum did not elaborate on the Settlement Agreement or attach a final and fully executed agreement.

³ 29 C.F.R. § 1979.111(d)(2).

⁴ *Bell v. Bald Mountain Air Serv.*, ARB No. 2019-0002, ALJ No. 2016-AIR-00016, slip op. at 2 (ARB Dec. 23, 2019) (citation omitted).

⁵ Order to Show Cause at 2.

⁶ *Id.* at 2-3.

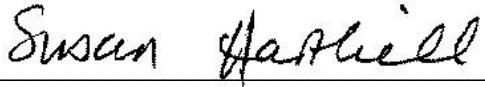
⁷ *Id.* at 3.

⁸ *Id.*

of their fully executed, dated, and final settlement agreement.⁹ Alternatively (and in the absence of any settlement agreement), the Board ordered Complainant to file a brief within 14 days explaining why his appeal should not be dismissed for failure to identify the findings, conclusions, or orders to which exception is taken.¹⁰ The Board warned that “[f]ailure to respond as directed in this Order may result in the issuance of sanctions, including dismissing of this appeal.”¹¹ Neither party filed a response to the Board’s order.

The Board has the inherent “authority to effectively manage its docket” to ensure case efficiency.¹² The Board has authority to dismiss a case “for a party’s failure to comply with the Board’s orders and briefing requirements.”¹³ Complainant failed to either file a joint motion along with Respondent asking for the Board’s review and approval of a final and fully executed settlement agreement or to file a brief explaining why his appeal should not be dismissed for failure to identify the findings, conclusions, or orders to which exception is taken. Given Complainant’s failure to respond to, and comply with, the Board’s Order, we **DISMISS** Complainant’s appeal.

SO ORDERED.


SUSAN HARTHILL
 Chief Administrative Appeals Judge


THOMAS H. BURRELL
 Administrative Appeals Judge

⁹ *Id.*

¹⁰ *Id.* at 4 (citing 29 C.F.R. § 1979.110(a) (“The petition for review must specifically identify the findings, conclusions, or orders to which exception is taken.”)).

¹¹ *Id.* (emphasis original).

¹² *Govindarajan v. N2 Servs., Inc.*, ARB No. 2020-0032, ALJ No. 2020-LCA-00001, slip op. at 2 (ARB Mar. 17, 2021) (quotations and citation omitted); *Batton v. Ryan Int’l Airlines, Inc.*, ARB No. 2011-0085, ALJ No. 2009-AIR-00029, slip op. at 3 (ARB Mar. 2, 2012) (quoting *Link v. Wabash*, 370 U.S. 626, 630-31 (1962)).

¹³ *Govindarajan*, ARB No. 2020-0032, slip op. at 2 (quotations and citation omitted); *Batton*, ARB No. 2011-0085, slip op. at 3 (citations omitted).