

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted June 15, 2023*

Decided June 16, 2023

BeforeDIANE S. SYKES, *Chief Judge*THOMAS L. KIRSCH II, *Circuit Judge*JOHN Z. LEE, *Circuit Judge***CERTIFIED COPY**

A True Copy

Teste:

Deputy Clerk
of the United States
Court of Appeals for the
Seventh Circuit

No. 22-1235

ROGER REED,
*Petitioner,**v.*Petition for Review of an Order from the
United States Department of Labor.

No. 2021-0044

UNITED STATES DEPARTMENT OF
LABOR, ADMINISTRATIVE REVIEW
BOARD,*Respondent,**and*AMERICAN AIRLINES, INC.,
Intervening Respondent.

* We have agreed to decide the case without oral argument because the appeal is frivolous. FED. R. APP. P. 34(a)(2)(A).

No. 22-1235

Page 2

ORDER

American Airlines suspended Roger Reed, an airplane mechanic, while investigating allegations that he had attempted to sabotage an airplane. Reed filed a complaint with the Department of Labor, alleging that the airline suspended him in retaliation for reporting safety concerns other mechanics were ignoring. An administrative law judge at the Department rejected that claim, and the Administrative Review Board upheld that determination. Because substantial evidence supported this conclusion, we deny the petition for review.

Reed's claim arises out of an aircraft inspection at Chicago O'Hare International Airport in April 2018. Three of American's airplane mechanics were assigned to inspect an aircraft and found no issues. A different employee told Reed about an issue with a pressurized door on that plane, and Reed went to the plane to warn the mechanics.

There are conflicting accounts about what happened next. Reed says he walked under the plane and inspected the door. He insists he did not touch the plane while he was underneath it. He says he then approached the mechanics to report the issue, and they responded that they were there only for overtime and refused to fix anything. The mechanics, meanwhile, say they saw Reed walk underneath the plane, touch part of it, and then tell them something was broken. After Reed left, they reinspected the part of the plane touched by Reed and found no safety issues.

Both Reed and the mechanics filed reports about the incident. Reed filed a confidential report against the mechanics for failing to address the issue with the door. The mechanics later signed a joint statement to American's management accusing Reed of attempting to delay the flight by "sabotag[ing]" the plane.

Given its safety implications, the mechanics' report immediately sparked concern among American's management. Management concluded that it needed to investigate, and a senior manager suspended Reed with pay during the investigation. Suspension with pay is common practice at American (occurring in about 80% of investigations), and management deemed it warranted here because of the seriousness of the allegation and possibility that Reed could interfere with the investigation. American finished its investigation after about a month, finding the evidence insufficient to substantiate the sabotage claim against Reed. He returned to work and was never disciplined.

Reed filed an administrative complaint with the Secretary of Labor under 49 U.S.C. § 42121. The statute prohibits airlines from retaliating against an employee

No. 22-1235

Page 3

who reports violations of federal aviation-safety laws. *See* § 42121(a)(1). Reed asserted that American suspended him in retaliation for reporting his safety concern to the three mechanics. American responded that the mechanics' allegation of sabotage against Reed—attempting to make the plane unsafe for air travel to cause a flight delay—was so severe that the company would have suspended Reed regardless of his report. (The argument that an employer would have taken an adverse action regardless of the protected activity is a complete affirmative defense. *See* § 42121(b)(2)(B)(iii)–(iv); *see also Harp v. Charter Commc'ns, Inc.*, 558 F.3d 722, 723 (7th Cir. 2009).)

An administrative law judge held a hearing and concluded that Reed had met his prima facie case of retaliation: He engaged in protected activity by reporting to the mechanics that there was an issue with the door; suspension with pay was an adverse action; and causation could be inferred because management knew of this report from the mechanics' letter and because the letter was close in time to the suspension. The ALJ then determined that American would have suspended Reed regardless because it reasonably proceeded with "extreme caution" when confronted with a serious allegation of sabotage. For largely the same reasons, the Administrative Review Board affirmed. (Its decision is the one technically under review before us. *See* 29 C.F.R. §§ 1979.110, 1979.112.) Reed petitioned for review in this court, and our review is governed by the Administrative Procedure Act. *See* § 42121(b)(4)(A).

Reed has filed a rambling appellate brief, over 100 pages long, that makes factual assertions without context and is devoid of references to the record and citations to legal authority. *See* FED. R. APP. P. 28(a); *see also* FED. R. APP. P. 20 (Rule 28 applies to petitioner seeking review of agency order). Even though he fails to clearly identify why the Board's order should be disturbed, we understand him to argue that certain facts in the record are disputed. We will uphold the Board's decision if it is supported by substantial evidence, *Brousil v. U.S. Dep't of Lab., Admin. Rev. Bd.*, 43 F.4th 808, 813 (7th Cir. 2022), that is, if there is "such relevant evidence as a reasonable mind might accept as adequate to support [the Board's] conclusion." *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019).

Reed's disputed facts are immaterial because substantial evidence supports the Board's decision that the sabotage allegation—not Reed's report—caused American to suspend him with pay. Management consistently testified that air-travel safety is the company's top priority, and allegations about sabotage implicate safety. Management likewise testified consistently that its response to these allegations (suspension with pay) was motivated by the seriousness of the accusation and the need to prevent Reed's

No. 22-1235

Page 4

possible interference with the investigation. Indeed, a senior manager said that suspensions with pay occur in 80% of American's investigations. Cumulatively, this testimony is substantial evidence that American would have suspended Reed with pay regardless of his report of the three mechanics' safety failures.

Reed also seems to argue that the Board overlooked evidence supposedly proving that witnesses committed perjury and that he was subject to additional retaliatory actions after he returned to work (e.g., prevented from receiving overtime assignments). But he does not develop any arguments to warrant further discussion regarding these issues.

Therefore, we DENY the petition.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

June 16, 2023

CERTIFIED COPY

Before
DIANE S. SYKES, Chief Judge
THOMAS L. KIRSCH II, Circuit Judge
JOHN Z. LEE, Circuit Judge

A True Copy

Teste:

Deputy Clerk
of the United States
Court of Appeals for the
Seventh Circuit



Table with 2 columns: Case No. (22-1235) and Case Parties (ROGER REED, Petitioner vs. UNITED STATES DEPARTMENT OF LABOR and ADMINISTRATIVE REVIEW BOARD, Respondents and AMERICAN AIRLINES, INC., Intervenor - Respondent). Includes Originating Case Information: Agency Case No: 2021-0044, Department of Labor (except OSHA).

We DENY the petition, with costs, in accordance with the decision of this court entered on this date.

Handwritten signature of Christopher Conway

Clerk of Court

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

CERTIFIED COPY

NOTICE OF AGENCY CASE CLOSING

August 8, 2023

To: Department of Labor (except OSHA)

Form containing case details: No. 22-1235, ROGER REED, Petitioner, v. UNITED STATES DEPARTMENT OF LABOR and ADMINISTRATIVE REVIEW BOARD, Respondents, and AMERICAN AIRLINES, INC., Intervenor - Respondent. Includes Originating Case Information: Agency Case No: 2021-0044, Department of Labor (except OSHA).

A True Copy
Teste:



Herewith is the final order of this court in this matter, along with the Bill of Costs, if any. This court's order is final and this case is closed in this court.

RECORD ON APPEAL STATUS:

No record to be returned.