



In the Matter of:

ROBERT STEVEN MAWHINNEY,

COMPLAINANT,

ARB CASE NO. 2019-0018

ALJ CASE NO. 2012-AIR-00014

v.

DATE: December 9, 2020

TRANSPORT WORKERS UNION,
LOCAL 591

RESPONDENT.

Appearances:

For the Complainant:

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

For the Respondent:

Nicholas Granath, Esq.; Seham, Seham, Meltz & Petersen, LLP; White Plains, New York

BEFORE: James D. McGinley, *Chief Administrative Appeals Judge*;
Thomas H. Burrell and Randel K. Johnson, *Administrative Appeals Judges*

DECISION AND ORDER

This case arises under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21).¹ Complainant Robert Steven Mawhinney filed a complaint alleging that Respondent

¹ 49 U.S.C. § 42121 (2000). AIR 21's implementing regulations are found at 29 C.F.R. Part 1979 (2018).

Transport Workers Union Local 591 (TWU) violated AIR 21 by colluding with American Airlines and several individuals to discharge him from employment.²

TWU seeks dismissal as a party pursuant to two motions. On September 30, 2016, it filed a “Motion for Summary Decision on All Claims Against Transport Workers Union, Local 591 & Memorandum of Law in Support of It Motion, Pursuant to Rule §18.72.” On November 16, 2018, TWU filed a “Motion for Dispositive Action & Memorandum of Law in Support of Its Motion, On All Claims Against Transport Workers Union, Local 591, Pursuant to Rule §18.70(c).” On December 27, 2018, an Administrative Law Judge (ALJ) issued an “Order Granting Respondent’s Motion for Dispositive Action and Order Granting Respondent’s Motion for Summary Decision” (Order), dismissing TWU.

The Administrative Review Board has jurisdiction to review the Order.³ The Board reviews an ALJ’s grant of a motion for dispositive action de novo. The regulation governing such motions states that “[a] party may move to dismiss part or all of the matter for reasons recognized under controlling law, such as lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, or untimeliness.”⁴ In considering a motion to dismiss for failure to state a claim, we accept the non-movant’s factual allegations as true and draw all reasonable inferences in his favor.⁵

The Board also reviews an ALJ’s grant of summary decision de novo.⁶ Under the regulation governing the entry of summary decision, judgment must be entered if the pleadings, affidavits, material obtained in discovery, or matters officially noticed show that there is no genuine issue as to any material fact and that a party

² Mawhinney’s retaliation claim proceeded as two consolidated cases before the Office of Administrative Law Judges. The ALJ severed the cases and considered TWU’s motions as ALJ Case No. 2012-AIR-00014.

³ Secretary’s Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary’s discretionary review of ARB decisions)), 85 Fed. Reg. 13186 (Mar. 6, 2020); 29 C.F.R. § 1979.110(a).

⁴ 29 C.F.R. § 18.70.

⁵ *Tyndall v. U.S. EPA*, ARB No. 1996-0195, ALJ Nos. 1993-CAA-00006, 1995-CAA-00005, slip op. at 2 (ARB June 14, 1996).

⁶ *Vinayagam v. Cronous Sols., Inc.*, ARB No. 2015-0045, ALJ No. 2013-LCA-00029, slip op. at 2 (ARB Feb. 14, 2017).

is entitled to summary decision.⁷ In reviewing such a motion, the evidence before the ALJ is viewed in the light most favorable to the non-moving party, and the ALJ may not weigh the evidence or determine the truth of the matter.⁸

Upon review of the Order and the parties' arguments, we conclude that the ALJ's decision is in accordance with the law and is well-reasoned. As a result, we **ADOPT** and **ATTACH** the Order and, accordingly, we **DISMISS** Mawhinney's case against TWU.

SO ORDERED.

⁷ 29 C.F.R. § 18.72.

⁸ See, e.g., *Vudhamari v. Advent Glob. Sols.*, ARB No. 2019-0061, ALJ No. 2018-LCA-00022, slip op. at 3 (ARB July 30, 2020).