

U.S. Department of Labor

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



In the Matter of:

KARLENE PETITT,

ARB CASE NO. 2021-0014

COMPLAINANT,

ALJ CASE NO. 2018-AIR-00041

v.

DATE: September 21, 2022

DELTA AIRLINES, INC.,

RESPONDENT.

Appearances:

For the Complainant:

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

For the Respondent:

Ira G. Rosenstein, Esq. and Lincoln O. Bisbee, Esq.; *Morgan, Lewis & Bockius LLP*; New York, New York

Before BURRELL, GODEK and PUST, Administrative Appeal Judges

ORDER OF DISMISSAL

BURRELL, Administrative Appeals Judge:

This matter arises under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century¹ (AIR 21), and its implementing regulations.² In a complaint filed with the Department of Labor's Occupational Safety and Health Administration (OSHA), Karlene Petitt

¹ 49 U.S.C. § 42121.

² 29 C.F.R. Part 1979 (2021).

(Complainant) alleged that Delta Airlines, Inc. (Respondent) unlawfully discriminated against her under AIR 21's whistleblower protection provisions. An Administrative Law Judge (ALJ) issued a Decision and Order Granting Relief and awarded front pay damages, back pay damages, and compensatory and other damages. Respondent appealed the ALJ's decision. The Administrative Review Board (ARB or Board) affirmed the award of back pay damages but remanded the case for further proceedings after vacating the award of front pay as legal error and vacating the award of compensatory damages for lack of evidentiary support.

On April 21, 2022, counsel for Complainant submitted to the Board a Petition for Attorneys' Fees and Expenses and Request for Statutory Interest to be Applied to Sums Owed. The petition seeks a total of \$35,490.79 in expenses for work before the Board from Seham, Seham, Metlz & Petersen, LLP, a White Plains, New York based law firm.³ The petition also seeks statutory interest to be applied to the attorneys' fees award.

On May 2, 2022, Respondent responded to the petition for attorneys' fees, arguing that the requested attorneys' fees should be reduced to reflect that Complainant was awarded a fraction of the damages that she originally sought. Specifically, Respondent proposed a remedy to "reduce Ms. Petitt's requested fees by at least fifty percent to accurately reflect the results obtained on appeal" as the Board vacated the ALJ's award of front pay and compensatory damages.⁴ Respondent also contested the number of hours on work unrelated to the ARB proceeding and the request for statutory interest.

As a result of the Board's Order of Remand, this matter is currently before the ALJ for further consideration of damages. Thus, a question remains regarding how successful Complainant ultimately will be in her AIR-21 claim. The U. S. Supreme Court has explained that "the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees" and when "the plaintiff achieved only limited success, [the tribunal] should award only that amount of fees that is reasonable in relation to the results obtained."⁵ However, "[w]here a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court

³ The requested fees are based on the hours and rates represented in the Declaration of Lee Seham and Declaration of Reiko Kratzer submitted to the Board. Mr. Kratzer, office manager, described the credentials and requested rates of the attorneys and staff for which Complainant seeks attorneys' fees. Attached to Mr. Seham's Declaration is a Pre-bill Worksheet, which lists staff hours expended, and applicable rates.

⁴ Respondent's Response Brief (R. Br.) at 2.

⁵ *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983).

did not adopt each contention raised.”⁶ As such, Complainant’s attorney fee petition is not yet ripe for review because the ALJ has not issued a final ruling as to Complainant’s damages. Complainant may file a new petition before the Board once the ALJ has issued a final ruling as to damages and in consideration of any future appeal to the ARB.⁷

SO ORDERED.



THOMAS H. BURRELL
Administrative Appeals Judge



STEPHEN M. GODEK
Administrative Appeals Judge



TAMMY L. PUST
Administrative Appeals Judge

⁶ *Id.*

⁷ 49 U.S.C. § 42121(b)(6)(B) (“The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party *whenever the court determines* such award is appropriate.”) (emphasis added).