**U.S. Department of Labor** Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

**IN THE MATTER OF:**

**DAVID E. WAID,**

**COMPLAINANT,**

**v.**

**ALASKA AIRLINES, INC.,**

**RESPONDENT.**

**ARB CASE NO. 2025-0082**

**ALJ CASE NO. 2025-AIR-00010**
**ALJ CHRISTOPHER LARSEN**

**DATE: October 26, 2026**

**Appearances:**

***For the Complainant:***
**Samuel A. Seham, Esq.; *Seham, Seham, Meltz & Petersen, LLP;* White Plains, New York**

***For the Respondent*:**
**Patrick D. Joyce, Esq.; *Seyfarth Shaw LLP*; Seattle, Washington**

**Before JOHNSON, Chief Administrative Appeals Judge, and KIKO, Administrative Appeals Judge**

## DECISION AND ORDER

This case arises from a complaint filed by Complainant David Waid against his employer, Alaska Airlines, Inc., alleging retaliation in violation of the whistleblower protections of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21).[1] Complainant appeals Administrative Law Judge (ALJ) Christopher Larsen's August 5, 2025 Order Granting Motion to Dismiss, which dismissed his complaint after finding it was not timely filed. We conclude that the ALJ erred as a matter of law in determining that, on July 29, 2024, Respondent communicated a final decision to terminate Complainant's employment.

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[1] 49 U.S.C. § 42121; 29 C.F.R. Part 1979 (2026).

We therefore remand this matter for further proceedings consistent with this opinion.

## BACKGROUND

On July 29, 2024, Respondent's Managing Director and System Chief Pilot sent Complainant a letter stating:

> Pursuant to Section 11.F of the collective bargaining agreement, the Company intends to terminate your employment for failure to progress in training as determined via unanimous recommendation of the Pilot Training Board. . . . I have reviewed all relevant information and considered the outcome here. My determination is to terminate your employment for failure to progress in training. Therefore, you are hereby notified that because of your failure to progress in training as described in this letter, it is my intent to terminate your employment. You may appeal this action by utilizing the procedures set forth in Sections 19 [Investigation and Discipline], 20 [Grievances] and 21 [System Board of Adjustment]. You have ten (10) days in which to request, in writing, an initial hearing if you so desire.[2]

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[2] Respondent Alaska Airlines, Inc.'s Motion to Dismiss (Resp. Mot. Dismiss), Exhibit (Ex.) A. Section 19(B)(1) of the Collective Bargaining Agreement between Respondent and the Air Line Pilots Association states that following an investigation, "the Company may issue a Letter of Intent to issue discipline. A pilot may not be disciplined or dismissed without a Letter of Intent having first issued. . . . The precise charge or charges against him must be set forth in the letter." Complainant's (Comp.) Opposition to Mot. Dismiss, Ex. A, at 19-1. Section 19(B)(2) states that "After receipt of the Letter of Intent, a Pilot may then make written request to the Chief Pilot for an initial hearing thereon. . . . Discipline or dismissal shall not be effectuated until such initial hearing (if requested) has been convened and a decision subsequently reached." *Id.* at 19-1–19-2. Section 19(C)(5): "[A]fter the close of such initial hearing, the Company shall render its decision in writing respecting any such discipline or dismissal . . . ." *Id.* at 19-3. Section 19(D): "A pilot shall have the right to appeal the Company's decision following the initial hearing to the Board as provided in Section 21 [System Board of Adjustment]." *Id.*

Complainant subsequently received a second letter, dated August 19, 2024, from Respondent's Vice President, Flight Operations, which stated:

> [A]fter reviewing all relevant information including the information shared by you at your initial hearing on August 15, 2024, you are hereby terminated from your employment with Alaska Airlines for failure to progress in training as determined via unanimous recommendation of the Pilot Training Board.[3]

On November 15, 2024, Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA).[4] Complainant alleged that Respondent's stated reason for terminating his employment—failure to progress in flight training—was pretextual and that Respondent instead terminated him in retaliation for his raising concerns about a flight assignment and requesting an accommodation for a medical issue.[5] OSHA calculated the deadline for filing Complainant's AIR21 complaint from August 19, 2024, and deemed the complaint timely filed.[6] It found that Complainant did not engage in activity protected under AIR21 and dismissed the complaint on December 30, 2024.[7] Complainant objected to OSHA's determination and requested a hearing before an ALJ on January 7, 2025.[8]

Before the ALJ, Respondent filed a Motion to Dismiss, arguing that Complainant's November 15, 2024 complaint was untimely.[9] It asserted that the 90-day limitations period for AIR21 complaints began to accrue from July 29, 2024, when it sent Complainant the first letter communicating its intent to terminate Complainant's employment for failure to progress in flight training.[10] Respondent also argued that Complainant's November 15, 2024 OSHA complaint did not properly assert an AIR21 claim, and that Complainant first raised such a claim in

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3 Resp. Mot. Dismiss, Ex. B (emphasis added).

4 Online Complaint Summary at 1.

5 *See id.* at 2-3; Complaint Allegation.

6 December 30, 2024 OSHA Determination Letter at 1.

7 *Id.*

8 Comp. Objections to Secretary's Findings.

9 Resp. Mot. Dismiss at 2-5.

10 Resp. Memorandum of Law in Support of (Mem. Supp.) Mot. Dismiss at 7-9.

communications with OSHA on November 27, 2024, beyond the 90-day AIR21 filing deadline, even if the date of the adverse action was counted from August 19, 2024.[11]

Complainant opposed the motion and argued that he filed his complaint within the limitations period.[12] Complainant asserted that the July 29, 2024 letter "was neither final, definitive, nor unequivocal" because it referenced Section 19 of the collective bargaining agreement (CBA) between Respondent and the Air Line Pilots Association (ALPA), which provides a pilot with an opportunity to "dissuade the employer from its intended course" at an initial "*pre*-termination" hearing.[13] He argued that the limitations period accrued after Complainant was afforded the opportunity to participate in the Section 19 procedure and Respondent issued the August 19, 2024 letter informing him his employment was in fact terminated.[14] Complainant submitted Section 19 as an attachment to his opposition to Respondent's motion to dismiss.[15]

The ALJ treated Respondent's motion as a motion for summary decision under 20 C.F.R. § 18.72.[16] "[B]ased on the undisputed material facts," the ALJ concluded Complainant's AIR21 complaint was untimely.[17] The ALJ summed up the undisputed material facts as follows: Respondent notified Complainant by letter on July 29, 2024, of its intention to terminate his employment; Respondent formally terminated him by letter on August 19, 2024; and Complainant filed his OSHA complaint on November 15, 2024.[18] The ALJ did not discuss the contents of either the July 29, 2024 or the August 19, 2024 letter or address Complainant's submission of Section 19 of the CBA.[19] The ALJ did recognize, however, that the

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11 *Id*. at 9-11; Resp. Mot. Dismiss at 4-5.

12 Comp. Opp. to Mot. Dismiss at 6-9.

13 *Id*. at 7.

14 *Id*. at 6-9. Respondent attached both the July 29, 2024, and August 19, 2024 letters as exhibits to its motion. Resp. Mot. Dismiss, Exs. A, B.

15 Comp. Opp. to Mot. Dismiss, Ex. A. Complainant declared that "Exhibit A is a true and accurate copy of Section 19 of the collective bargaining agreement . . . ." Declaration of David E. Waid in Support of Comp. Mot. to Admit New Evidence at 1.

16 Order Granting Motion to Dismiss at 3.

17 *Id*. at 4.

18 *Id*. at 3.

19 *Id*.

November 15, 2024 complaint would be timely if the limitations period accrued from August 19, 2024.[20]

## JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the ARB to hear appeals from ALJ decisions and to issue agency decisions in cases arising under AIR21.[21] The Board reviews de novo an ALJ's grant of summary decision, including prehearing dismissals of claims on timeliness grounds, and applies the same standard as the ALJ.[22] Summary decision is appropriate where the moving party demonstrates that "there is no genuine dispute as to any material fact and the movant is entitled to [a] decision as a matter of law."[23] When reviewing an ALJ's grant of summary decision, the Board views the evidence and makes all reasonable inferences in the light most favorable to the non-moving party.[24]

## DISCUSSION

The parties repeat their timeliness arguments before the Board.[25] Respondent also argues that, insofar as Complainant's timeliness argument turns on interpreting Section 19 of the CBA, the Railway Labor Act (RLA) reserves that issue for the contractual grievance and arbitration process.[26] It is undisputed, however, that Respondent's July 29, 2024 letter advised Complainant that he could request an initial hearing under Section 19 of the CBA and that Complainant participated in that initial hearing on August 15, 2024.[27]

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20 *Id*.

21 Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13186 (Mar. 6, 2020).

22 *Jahanbin v. Boeing Co.*, ARB No. 2024-0035, ALJ No. 2023-AIR-00023, slip op. at 3-4 (ARB Mar. 13, 2025) (citation omitted).

23 29 C.F.R. § 18.72(a).

24 *Jahanbin*, ARB No. 2024-0035, slip op. at 4 (citation omitted).

25 Comp. Opening Brief (Br.) at 7-10; Resp. Response Br. at 4-10.

26 Resp. Response Br. at 11-14.

27 "Under the collective bargaining agreement between Alaska and the Air Line Pilots Association ('ALPA'), Alaska pilots are afforded the opportunity to appeal a notification of an intent to terminate. Complainant did so, and on August 15, 2024, Alaska, Complainant, and ALPA representatives participated in an 'initial hearing'. . . ." Resp. Mem. Supp. Mot. Dismiss at 1-2.

A reasonable interpretation of the two letters together, particularly when viewed in the light most favorable to the non-moving party, indicates that the August 19, 2024 letter was the operative, unequivocal communication of Respondent's final decision to discharge Complainant. The August 19, 2024 letter states that "*after* reviewing all relevant information including the information shared by you at your initial hearing on August 15th, you are *hereby terminated* from your employment. . . . "[28] This language indicates that the review preceded the final termination decision.[29] Likewise, the use of the term "hereby" supports a reading that the act of termination was accomplished by the August 19, 2024 letter.[30]

To the extent there is any colorable argument that the July 29, 2024 letter communicated a final decision, that argument runs counter to the language of the August 19, 2024 letter.[31] The July 29, 2024 letter left open the possibility that Respondent's decision remained subject to review by describing a means through which Complainant could seek to influence that decision—namely, a Section 19 initial hearing.[32] Moreover, the August 19, 2024 letter did not use language such as "to reaffirm the termination decision communicated in our July 29, 2024 letter," nor did it otherwise confirm the alleged finality of the July 29, 2024 letter.[33] That omission undermines any claim that the July 29, 2024 letter was, in fact, the communication of a final termination decision. Thus, the ALJ erred in determining the July 29, 2024 letter gave Complainant final, definitive, and unequivocal notice of Respondent's intent to terminate him.[34]

While this conclusion is evident from a plain reading of the letters, it is also supported by the relevant case law. The Board has long held that the limitations

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28 Resp. Mot. Dismiss, Ex. B (emphasis added).

29 *See Intell. Ventures I LLC v. Ubiquiti, Inc.*, No. 1:23-cv-00865, 2025 WL 1640270, at *3 (D. Del. June 10, 2025) ("'After' is defined as 'following in time or place' or 'subsequently to the time when' or 'later in time.'") (citation omitted).

30 *See Stachowski v. Town of Cicero,* 425 F.3d 1075, 1078 (7th Cir. 2005) (identifying "hereby terminated" as an example of emphatic wording of a final decision to terminate).

31 Resp. Mot. Dismiss, Exs. A, B.

32 *Id*., Ex. A.

33 *Id*., Ex. B.

34 *Id*., Exs. A, B.

period under AIR21 and similar whistleblower protection statutes begins to run from the time a complainant receives "final, definitive, and unequivocal notice of an adverse employment decision."[35] "'Final' and 'definitive' notice denotes communication that is decisive or conclusive, i.e., leaving no further chance for action, discussion, or change. 'Unequivocal' notice means communication that is not ambiguous, i.e., free of misleading possibilities."[36]

An employer's willingness to change a final decision following a meritorious grievance does not, in and of itself, render that decision tentative, and the pendency of a grievance or other collateral review does not toll the limitations period.[37] A grievance procedure is "a *remedy* for a prior decision, not an opportunity to *influence* that decision before it is made."[38]

The inquiry here, therefore, is whether the record, viewed in the light most favorable to Complainant, supports a reasonable inference that the procedure described in Respondent's July 29, 2024 letter afforded Complainant the

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[35] *Rollins v. Am. Airlines, Inc.*, ARB No. 2004-0140, ALJ No. 2004-AIR-00009, slip op. at 2-3 (ARB Apr. 3, 2007) (internal quotation marks omitted) (citing *Halpern v. XL Capital, Ltd.*, ARB No. 2004-0120, ALJ No. 2004-SOX-00054, slip op. at 3 (ARB Aug. 31, 2005)); *Mehrotra v. Gen. Elec. Co.*, ARB No. 2022-0060, ALJ No. 2022-SOX-00014, slip op. at 5 (ARB Sept. 21, 2023) (citing *Bauche v. Masimo Corp.*, ARB No. 2022-0035, ALJ No. 2022-SOX-00010, slip op. at 7 (ARB Sept. 27, 2022)); *see also Del. State Coll. v. Ricks,* 449 U.S. 250, 258 (1980) ("[T]he filing limitations periods therefore commenced—at the time the [adverse action] decision was made and communicated").

[36] *Rollins*, ARB No. 2004-0140, slip op. at 3 (citation omitted); *see also McManus v. Tetra Tech Constr. Inc.*, ARB No. 2016-0063, ALJ No. 2016-SOX-00012, slip op. at 3 (ARB Dec. 19, 2017) ("Unequivocal means unambiguous."). The claim accrues when the employer communicates its final decision to take an adverse employment action, "rather than the date the consequences of the decision are felt." *Mehrotra,* ARB No. 2022-0060, slip op. at 5 (citing *Chardon v. Fernandez,* 454 U.S. 6, 8 (1981)) (other citations omitted); *see also Peters v. Am. Eagle Airlines, Inc.*, ARB No. 2008-0126, ALJ No. 2007-AIR-00014, slip op. at 5 (ARB Sept. 28, 2010) ("The time for filing a complaint begins when the employee knew or should have known of the adverse action, regardless of the effective date. The focus is on the time of the alleged discriminatory act, not on the point at which 'the *consequences* of the act become painful.'") (quoting *Ricks*, 449 U.S. at 258).

[37] *See Ricks,* 449 U.S. at 261.

[38] *Id.*

opportunity to influence the termination decision before it became final, rather than merely to seek collateral review of a final decision.[39]

In *Snyder v. Wyeth Pharmaceuticals,* the employer's initial letter stated that it had decided to terminate the employee's employment.[40] The letter identified the employer's stated reason for termination but also invited the employee to submit written evidence addressing his alleged misconduct and information explaining why termination was not justified.[41] The employer offered to review that information and stated it would move ahead with termination if the employee did not respond.[42]

The Board held that the initial letter in *Snyder* did not provide final, definitive, and unequivocal notice sufficient to begin the limitations period.[43] It reasoned that the initial letter's invitation left open the possibility that the employee could persuade the employer not to proceed with termination, introducing ambiguity and an opportunity for further action, discussion, or change.[44] The Board distinguished that opportunity from a formal collateral procedure for obtaining relief from an already final decision.[45] The limitations period began only when the complainant received the subsequent letter stating that the employer's investigation had not substantiated his allegations of retaliation and harassment and confirming that the termination decision would stand.[46] It therefore rejected the ALJ's recommendation to grant summary judgment and remanded for further proceedings.[47]

The circumstances here are similar to those in *Snyder*: Respondent's July 29, 2024 letter announced Respondent's determination to terminate Complainant's

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39 *See id.*; *Snyder v. Wyeth Pharms.*, ARB No. 2009-0008, ALJ No. 2008-SOX-00055, slip op. at 8-9 (ARB Apr. 30, 2009).

40 *Snyder*, ARB No. 2009-0008, slip op. at 2-3.

41 *Id.* at 3.

42 *Id.*

43 *Id.* at 9 ("[W]e hold that Lingen's letter was not a final, definitive, and unequivocal notice of an adverse employment decision sufficient to commence the running of the 90-day limitations period for filing his whistleblower complaint.").

44 *Id.* at 8.

45 *Id.*

46 *Id.* at 10.

47 *Id.* at 11.

employment, but also afforded Complainant an opportunity to respond.[48] The letter advised that Complainant could request an "initial hearing" and utilize "procedures set forth in Sections 19 [Investigation and Discipline], 20 [Grievances] and 21 [System Board of Adjustment]."[49] Complainant requested and participated in that hearing on August 15, 2024.[50] Respondent's August 19, 2024 letter then stated that, after reviewing all relevant information, including the information Complainant provided at the August 15, 2024 initial hearing, Respondent "hereby terminated" his employment.[51]

As noted above, when viewed together and in the light most favorable to Complainant, these communications support a reasonable inference that the August 15, 2024 initial hearing afforded Complainant an opportunity to influence whether Respondent would proceed with termination, rather than merely challenge a final decision.[52] The August 19, 2024 letter's reference to Respondent's consideration of the information Complainant supplied at that hearing further reinforces that inference.[53] Thus, like the initial letter in *Snyder*, the July 29, 2024 letter did not finally, definitively, and unequivocally communicate Respondent's termination decision; the August 19, 2024 letter did.[54]

Respondent contends that *Snyder* is distinguishable because it involved the employer's own continued review and that this case is instead analogous to *Rollins*.[55] Respondent points to ALPA's involvement in the hearing as evidence that the termination decision had progressed beyond any possibility Complainant could avoid termination.[56] We are not persuaded. Respondent cites no evidence showing that the initial hearing did not allow for its own further consideration before a final termination decision was reached. To the contrary, Respondent's August 19, 2024 letter states that it considered Complainant's hearing submissions prior to "hereby

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48 Resp. Mot. Dismiss, Ex. A.

49 *Id*.

50 *Id*.; Resp. Mem. Supp. Mot. Dismiss at 1-2.

51 Resp. Mot. Dismiss, Ex. B.

52 *Id*., Exs. A, B.

53 *Id*., Ex. B.

54 *Id*., Ex. A.

55 Resp. Response Br. at 6-8.

56 *Id*. at 8.

terminat[ing]" his employment.[57] Nor does Respondent cite authority establishing that an employer's review under an appeal or disciplinary procedure described in a CBA and distinct from a grievance procedure, such as the Section 19 process here, is necessarily collateral, rather than potentially part of the employer's decision-making process.[58]

Further, *Rollins* is factually distinguishable. There, the employer's first letter presented three choices–conditional reassignment to another division, voluntary resignation with a waiver of grievance rights, or termination with grievance rights–but none afforded continued employment in his existing unit.[59] The Board held that the alternatives offered did not negate the letter's final and unequivocal notice of termination.[60] By contrast, here, the July 29, 2024 letter expressed an intent to terminate and advised Complainant of his right to request an initial hearing, while the August 19, 2024 letter terminated him after Respondent considered his hearing submissions.[61] Those communications support the conclusion that the hearing was part of the decision-making process and that termination was not finally, definitively, and unequivocally decided and communicated until August 19, 2024.[62]

The other cases cited by Respondent, *English v. Whitfield* and *Wagerle v. Hosp. of the Univ. of Pa.*, are likewise distinguishable.[63] In *English,* the court concluded that the notice of the challenged employment decision was final and unequivocal, observing that "[t]here was no intimation in it that the decision was subject to further appeal, review, or revocation, either in whole or in part."[64]

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57 Resp. Mot. Dismiss, Ex. B.

58 Resp. Response Br. at 8.

59 *Rollins*, ARB No. 2004-0140, slip op. at 3.

60 *Id.* at 4.

61 Resp. Mot. Dismiss, Exs. A, B.

62 *Id.*

63 Resp. Response Br. at 7.

64 *English v. Whitfield*, 858 F.2d 957, 962 (4th Cir. 1988). The Board's observation in *Snyder* that the employee's opportunity to respond carried "none of the indicia of a formal collateral procedure to remedy a final decision" does not establish that an opportunity to respond constitutes collateral review merely because that opportunity follows formal procedures. *Snyder*, ARB No. 2009-0008, slip op. at 8. Considered with its reliance on *English, Snyder* distinguishes an invitation to respond that rendered the initial notice of termination ambiguous from a procedure offering relief from a decision already made and unequivocally communicated as final. *See id.* at 8-9; *English,* 858 F.2d at 961-62; *Ricks*, 449 U.S. at 261.

Similarly, in *Wagerle*, the termination notice was deemed final and unequivocal partly because "[a]s in *English*, Wagerle's notice did not intimate that the termination of his position was subject to further review or appeal."[65]

Similarly, the cases cited by the ALJ in the Order Granting Motion to Dismiss are distinguishable. In *Barrett v. Shuttle Am./Republic Airways*, the complainant did not dispute that her complaint was untimely and sought equitable tolling based on her belated receipt of the written disciplinary notice and the union's delay in pursuing her grievance.[66] The Board found that the complainant had already received definitive and unequivocal notice of the adverse action before pursuing the grievance, and rejected the complainant's argument that her grievance tolled the limitations period, citing *Ricks*.[67] In *Woods*, the complainant conceded that he had been informed of his termination more than 90 days before filing his AIR21 complaint.[68] The Board then considered whether equitable modification excused the late filing, and concluded that the complainant's pursuit of internal EEO and ethics procedures did not warrant tolling the limitations period.[69] In *Lempa*, the employer's agreement to place the complainant in inactive status—without flight assignments or salary—while he sought other work did not show ambivalence about its termination decision; the later formal termination merely effectuated an adverse decision already communicated to the complainant.[70]

The issue here is when the limitations period accrued, not whether Complainant's participation in the initial hearing tolled an already-running period. Nor is this a case of delayed implementation of a final decision already communicated to Complainant. The July 29, 2024 letter expressed an intent to

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65 *Wagerle v. Hosp. of the Univ. of Pa.*, ALJ No. 1993-ERA-00001, slip op. at 3 (Sec'y Mar. 17, 1995).

66 *Barrett v. Shuttle Am./Republic Airways*, ARB No. 2012-0075, ALJ No. 2012-AIR-00010, slip op. at 3-5 (ARB Feb. 28, 2014).

67 *Id*. at 5-6.

68 *Woods v. Boeing-S.C.*, ARB No. 2011-0067, ALJ No. 2011-AIR-00009, slip op. at 7, 10 (ARB Dec. 10, 2012).

69 *Id.* at 8-9.

70 *Lempa v. Hawthorne Glob. Aviation,* ALJ No. 2017-AIR-00008, slip op. at 48-50 (ALJ May 1, 2018), *aff'd and adopted*, ARB No. 2018-0046, slip op. at 2 (ARB July 23, 2019) (per curiam).

terminate and advised Complainant of his right to request an initial hearing.[71] The August 19, 2024 letter then terminated his employment after Respondent considered the information Complainant presented at the August 15, 2024 hearing.[72] Read together, the letters reasonably indicate that the information Complainant shared with Respondent during the initial hearing formed part of the initial decision-making process and that Respondent finalized its termination decision after considering Complainant's response.[73] We therefore conclude that the ALJ erred as a matter of law in determining that Complainant's AIR21 complaint was untimely filed. Given the undisputed content of the July 29, 2024 and August 19, 2024 letters, we conclude that the July 29, 2024 letter did not communicate *to Complainant* a final, definitive, and unequivocal decision to terminate Complainant's employment. That decision was, however, clearly communicated in the August 19, 2024 letter.[74]

Moreover, we reject Respondent's argument that Complainant's AIR21 complaint cannot be deemed filed until November 27, 2024, when he emailed the OSHA investigator a discussion of AIR21 case law on aircraft safety and a pilot's

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[71] Resp. Mot. Dismiss, Ex. A. We recognize that the limitations period begins when an employer communicates its final, definitive, and unequivocal intent to implement an adverse employment decision, "rather than on the date on which the employee experiences the consequences of that decision." *Rollins*, ARB No. 2004-0140, slip op. at 3. Here, however, considering Respondent's communications as a whole, we conclude that the July 29, 2024 letter did not communicate intent to implement a termination decision which was final, definitive, and unequivocal. It is important to note that the focus of our inquiry here is not the message Respondent may have meant to convey in the July 29, 2024 letter, but rather whether the letter was unequivocal in *what* it did say and whether Complainant (not Respondent) could have reasonably believed it did not mean Respondent had reached a final decision to terminate him.

[72] *Id*., Ex. B.

[73] *Id*., Exs. A, B.

[74] As our determination of the issue of timeliness centers on Respondent's communications, and not on any disputed CBA terms, the RLA does not bar our conclusion. *See Alaska Airlines Inc. v. Schurke*, 898 F.3d 904, 921-22 (9th Cir. 2018) (en banc) (distinguishing resolution of disputed contractual meaning from reference to or application of the CBA's plain or undisputed terms); *id*. at 927 ("But reliance on and reference to CBA-established or CBA-defined terms of employment do not make for a CBA dispute if there is no disagreement about the meaning or application of any relevant CBA-covered terms of employment."); *Petitt v. Delta Airlines, Inc*., ARB No. 2021-0014, ALJ No. 2018-AIR-00041, slip op. at 11 (ARB Mar. 29, 2022) (finding that the RLA did not preclude the Board's jurisdiction as there was no need to resolve a disputed interpretation of the collective bargaining agreement).

fitness for duty.[75] The OSHA investigator certified that Complainant filed his complaint with her on November 15, 2024.[76] The "Complaint Allegation" prepared that day stated Complainant requested to avoid an early-morning flight assignment after completing a trip at 2:00 a.m. the previous day, that he had a medical condition, and was concerned that abrupt changes in sleep and caffeine consumption would adversely affect his health.[77] Although framed in part as a request for medical accommodation,[78] Complainant's allegation that he raised concerns about undertaking an early-morning flight assignment[79] can reasonably be read as asserting a fitness-to-fly concern that may constitute protected activity under AIR21.[80]

Further, "[n]o particular form of complaint is required" and the regulations allow the complaint to be supplemented through interviews during OSHA's initial review.[81] Whistleblower complaints are informal and may be developed or supplemented as the case proceeds.[82] Accordingly, the AIR21 complaint was filed on November 15, 2024, within 90 days of the August 19, 2024 letter informing Complainant of Respondent's final, definitive, and unequivocal decision to terminate his employment and was therefore timely.

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75 Resp. Response Br. at 9-10.

76 Complaint Allegation.

77 *Id*.

78 *See* Online Complaint Summary at 3.

79 Complaint Allegation.

80 *See, e.g.*, *Furland v. Am. Airlines, Inc.*, ARB Nos. 2009-0102, 2010-0130, ALJ No. 2008-AIR-00011, slip op. at 7-8 (ARB July 27, 2011) (finding that a pilot engaged in AIR21-protected activity when he called in sick and reasonably exercised his authority under the Federal Aviation Regulations in deeming himself unfit for flight based on his medical condition).

81 29 C.F.R. §§ 1979.103(b), 1979.104(b)(1)-(2).

82 *See Saliba v. Am. Airlines, Inc.*, ARB No. 2025-0094, ALJ No. 2025-AIR-00046, slip op. at 8 & nn.34-35 (ARB Dec. 30, 2025).

For the foregoing reasons, we **REVERSE** the ALJ's dismissal of the complaint and **REMAND** for proceedings consistent with this opinion.

**SO ORDERED.**

**RANDEL K. JOHNSON**
**Chief Administrative Appeals Judge**

**PHILIP G. KIKO**
**Administrative Appeals Judge**