U.S. Department of Labor

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

In the Matter of:

SOMA PRIDDLE,	**ARB CASE NO. 2021-0064**
COMPLAINANT,	**ALJ CASE NO. 2020-AIR-00013**
v.	**DATE: January 26, 2022**
UNITED AIRLINES, INC.,	
RESPONDENT.	

Appearances:

For the Complainant:
Jordan A Finfer, Esq. and Erin A. Altman, Esq.; *Patzik, Frank & Samotny Ltd.*; Chicago, Illinois; Donald L. Hyatt, II, Esq.; *Donald L. Hyatt II, APLC*; Mandeville, Louisiana

For the Respondent:
Ada W. Dolph, Esq. and Matthew A. Sloan, Esq.; *Seyfarth Shaw LLP*; Chicago, Illinois

For the Air Line Pilots Association, International, Amicus Curiae:
John E. Wells, Esq.; *Air Line Pilots Association, International*; McLean, Virginia

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

DECISION AND ORDER DENYING INTERLOCUTORY APPEAL

PER CURIAM. This case arises under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21).[1] Complainant Captain Soma Priddle (Captain Priddle) alleges that Respondent United Airlines, Inc. (United) violated AIR 21 by taking adverse action against her in retaliation for raising complaints identifying critical safety and maintenance issues. On September 3, 2021, United filed a Petition for Review requesting the Administrative Review Board (ARB or the Board) reverse an Administrative Law Judge's (ALJ) order directing United to produce to Captain Priddle certain safety reports filed by other United employees. For the following reasons, we deny United's interlocutory appeal and deny its request for the issuance of a writ of mandamus.

BACKGROUND

Although the parties grappled extensively over several different discovery topics below,[2] this appeal concerns United's refusal to produce safety complaints filed by United employees under the Federal Aviation Administration's (FAA) Aviation Safety Action Program (ASAP). The ASAP is an FAA initiative that allows air carriers and their employees to report aviation-related hazards and safety concerns to management and the FAA for resolution.[3] To encourage voluntary reporting, the ASAP prohibits employers from taking disciplinary action against reporting employees.[4] Similarly, subject to certain exclusions, the FAA also agrees to forego enforcement actions for regulatory violations revealed by reports made in the program, focusing instead on corrective actions to ensure the same or similar

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[1] 49 U.S.C. § 42121 (2020), as implemented by the regulations at 29 C.F.R. Part 1979 (2021).

[2] The docket reflects several motions to compel, requests for sanctions, and requests for the ALJ's intervention, resulting in multiple continuances of the discovery deadline and the hearing before the ALJ. United also filed another discovery-related appeal with the ARB (ARB No. 2022-0006), which the Board will address in a later order.

[3] FAA Advisory Circular No. 120-66C, Aviation Safety Action Program (Mar. 31, 2020) at ¶¶ 1, 6, attached as Exhibit B to Respondent's July 9, 2021 Request for Reconsideration and for Leave to File Interlocutory Appeal (Req. for Recon.).

[4] *Id.* at ¶¶ 1, 16.4.

issues do not recur.[5] United's internal program implementing the ASAP for pilots, like Captain Priddle, is called the "Flight Safety Action Program" (FSAP).

Captain Priddle sought production of the reports she filed with United under the FSAP, as well as the reports filed by other United employees that were referenced to or linked in her reports. According to Captain Priddle, these other reports arose out of the same events or flights that were the subject of her reports. On June 29, 2021, the ALJ ordered United to produce "all ASAPs . . . and FSAPs as well as the documents incorporated in those reports."

In a letter submitted to the ALJ on July 9, 2021, United requested that the ALJ reconsider the order with respect to production of FSAP reports filed by United employees other than Captain Priddle. United argued that the ASAP promised that reports would remain confidential, and that producing the reports of personnel who were not parties to this action and who had not consented to release of their reports endangered the program. In the alternative to reconsideration, United requested that the ALJ certify the issue for interlocutory appeal to the ARB.[6] The ALJ rejected United's requests for reconsideration and for certification on August 5, 2021.[7]

Despite the ALJ's refusal to certify the issue for interlocutory appeal, United filed a Petition for Review with the Board on September 3, 2021. The Air Line Pilots Association, International (ALPA), Captain Priddle's union, filed an amicus curiae brief supporting United's appeal on September 14, 2021.

JURISDICTION AND STANDARD OF REVIEW

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[5] *Id.* at ¶¶ 1, 6, 9, 15, 16.4.

[6] Pursuant to 28 U.S.C. § 1292(b), which the Board has adopted for interlocutory appeals, an ALJ may certify an interlocutory appeal for the Board's review if he is "of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation . . . ."

[7] The ALJ's orders of June 29 and August 5, 2021, will be collectively referred to herein as the ALJ's "Order."

The Secretary of Labor has delegated authority to the ARB to review appeals of ALJ decisions under AIR 21.[8] This includes the discretion to consider interlocutory appeals "in exceptional circumstances."[9]

DISCUSSION

1. United's Collateral Order Appeal is Untimely

AIR 21's implementing regulations provide that:

> [a]ny party desiring to seek review, including judicial review, of a decision of the administrative law judge . . . must file a written petition for review with the Administrative Review Board . . . . To be effective, a petition must be filed within **ten business days** of the date of the decision of the Administrative Law Judge.[10]

United did not file its appeal within ten business days of the ALJ's Order.[11] Accordingly, the Board issued an Order to Show Cause on September 13, 2021, instructing United to explain why its appeal should not be dismissed as untimely.

United responded to the Board's Order to Show Cause on September 27, 2021. It argued that the language and context of AIR 21's implementing regulations demonstrate that the regulations, including the appeal deadline, only apply to and govern appeals of ALJ decisions that conclude the proceedings (in common parlance, "final" orders). United cited the regulations' frequent references to "the" decision and order of the ALJ and inclusion of remedies only appropriate for final relief, as

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[8] 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).

[9] *Id.*

[10] 29 C.F.R. § 1979.110(a) (emphasis added).

[11] The ALJ denied United's request for reconsideration on August 5, 2021. United filed its appeal on September 3, 2021, which was twenty-nine calendar days, or twenty-one business days, later.

well as the fact that the Board's time to decide an appeal is counted from the "conclusion of the hearing."[12] In the absence of a regulation governing the appeal of interlocutory or collateral orders, United argued the Board should adopt the thirty-day deadline applied by federal courts to collateral order appeals.

Even if United is correct that the regulations only explicitly dictate the filing deadline for appeals of final ALJ orders, we nevertheless hold that appeals of collateral orders under AIR 21 are also subject to the same ten-business-day appeal deadline.[13] Ordinarily, the ARB adheres to the federal courts' finality requirement provided at 28 U.S.C. § 1291, and will not entertain an appeal until the ALJ has issued a decision that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment."[14] Nevertheless, the Supreme Court has recognized a "small class [of decisions] which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated."[15] This collateral order doctrine provides a practical construction of the finality requirement, pursuant to which federal courts treat collateral orders, either literally or effectively, as final orders for appeal purposes.[16] Accordingly, when a litigant

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[12] *See* 29 C.F.R. §§ 1979.109-110.

[13] We note the distinction between interlocutory appeals that have been certified by an ALJ pursuant to 28 U.S.C. § 1292(b), and those like the one presented by United that are pursued under the collateral order doctrine instead. *See Turin v. AmTrust Fin. Servs., Inc.*, ARB No. 2017-0004, ALJ No. 2010-SOX-00018, slip op. at 3-4 (ARB Apr. 20, 2017) (Order Dismissing Interlocutory Appeal). While 28 U.S.C. § 1292(b) provides that certified interlocutory appeals must be filed within ten days, that statute does not provide the deadline to file appeals under the collateral order doctrine.

[14] *Johnson v. Siemens Bldg. Techs., Inc.*, ARB No. 2007-0010, ALJ No. 2005-SOX-00015, slip op. at 4 (ARB Jan. 19, 2007) (Order Denying Interlocutory Appeal) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

[15] *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949).

[16] *Id.*; *LaTele Television, C.A. v. Telemundo Commc'ns Grp., LLC*, 9 F.4th 1349, 1355 (11th Cir. 2021); *Jones v. Braxton*, 392 F.3d 683, 686 (4th Cir. 2004); *Kenyatta v. Moore*, 744 F.2d 1179, 1182-83, 1186 (5th Cir. 1984); *see also Johnson*, ARB No. 2007-0010, slip op. at 5.

appeals a collateral order in federal court, the federal courts apply the deadline for appeals of ordinary final orders under their rules—i.e., thirty days, pursuant to the Federal Rules of Appellate Procedure.[17]

Using the same rationale that collateral orders will be treated as final orders for appeal purposes requires the Board to apply the deadline for appeals of ordinary final orders under AIR 21 to United's collateral order appeal—i.e., ten business days, pursuant to 29 C.F.R. §1979.110(a).[18] United filed its appeal twenty-one business days after the ALJ issued the Order. Therefore, United's appeal is untimely.

2. Even Setting Aside Timeliness, the Board Denies United's Collateral Order Appeal

Although we conclude that United's collateral order appeal is untimely, we recognize that the deadline for filing collateral order appeals was a novel issue that had not previously been squarely addressed by the ARB. Accordingly, we have elected to consider whether the ALJ's Order qualifies as a collateral order that the Board may or should, in its discretion, review at this stage of the proceedings.

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[17] FED. R. APP. P. 4(a)(1)(A); *Rubin v. The Islamic Republic of Iran*, 637 F.3d 783, 790-91 (7th Cir. 2011); *Kenyatta*, 744 F.2d at 1186 ("The procedure for taking an appeal from an interlocutory order that is appealable as of right is precisely the same as that for taking an appeal from a final judgment. The appeal must be taken in the time provided by Rule 4 of the Federal Rules of Appellate Procedure." (internal quotations and citation omitted)).

[18] The only argument United offers for why the Board should adopt the federal courts' thirty-day deadline is that the Board has adopted federal rules in certain circumstances. Respondent's Response to Order to Show Cause at 8. The Board has not adopted federal rules in all cases, including with respect to time limits. *See Henrich v. Ecolab, Inc.*, ARB No. 2005-0030, ALJ No. 2004-SOX-00051, slip op. at 8-9 (ARB May 30, 2007) (Order Denying Reconsideration). For the reasons set forth herein, adopting the thirty-day deadline in this circumstance would not be appropriate or consistent with the rationale of the federal courts.

Interlocutory appeals are generally disfavored.[19] As stated above, the Secretary of Labor's delegation of authority to the Board provides that interlocutory appeals should only be considered in "exceptional circumstances." The Board takes the Secretary's dictate seriously, and has held many times that "we must strictly construe the collateral order exception to avoid the serious 'hazard that piecemeal appeals will burden the efficacious administration of justice and unnecessarily protract litigation.'"[20] To fall within the narrow collateral order exception, the order appealed must "conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment."[21]

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[19] *Turin*, ARB No. 2017-0004, slip op. at 4.

[20] *Johnson*, ARB No. 2007-0010, slip op. at 5 (quoting *Corrugated Container Antitrust Litig. Steering Comm. v. Mead Corp.*, 614 F.2d 958, 960 n.2 (5th Cir. 1980)); *accord Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009) (stressing that the collateral order doctrine must "never be allowed to swallow the general rule that a party is entitled to a single appeal, to be deferred until final judgment has been entered." (internal quotation and citation omitted)); *Kenyatta*, 744 F.2d at 1182 (stating that the finality rule "is not arbitrary but functional. It helps to preserve the respect due trial judges by minimizing appellate-court inference. It reduces the ability of litigants to harass opponents and to clog the courts through a succession of costly and time-consuming appeals and it hence is crucial to the efficient administration of justice." (internal quotations and citation omitted)).

[21] *Johnson*, ARB No. 2007-0010, slip op. at 5 (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978)).

We conclude that the ALJ's Order is not "effectively unreviewable on appeal from a final judgment."[22] To be effectively unreviewable, the right sought to be protected by the interlocutory appeal must "'be, for all practical and legal purposes, destroyed if it were not vindicated prior to final judgment.'"[23] Courts of Appeals have explained that an order will generally not be considered unreviewable unless there would be significant and irreparable harm to the right at stake if immediate review is not taken.[24] The Board has repeatedly held that discovery orders are

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[22] To be clear, we have only considered the threshold issue of whether the ALJ's Order satisfies the collateral order exception test set forth in *Cohen v. Beneficial Industrial Loan Corporation*. *See also Watkins v. Healy*, 986 F.3d 648, 658-59 (6th Cir. 2021) (finding certain interlocutory orders did not satisfy *Cohen*'s collateral order exception test and refusing to consider merits of appeal); *Herx v. Diocese of Fort Wayne-South Bend, Inc.*, 772 F.3d 1085, 1088-89 (7th Cir. 2014) (same). As set forth herein, we conclude that United has not shown that the ALJ's Order is an immediately appealable collateral order under the *Cohen* standard. Therefore, we will not proceed to consider the merits of United's appeal (or ALPA's amicus brief in support thereof). This includes, but is not limited to, the issues of whether the ALJ abused his discretion in ordering the FSAP reports to be produced, whether the ALJ conducted the proper inquiry or applied the correct standard in ordering production of the FSAP reports, or whether production should have been ordered in this case considering the arguments raised by United and ALPA. This decision does not prejudice United's ability to raise its arguments with respect to the ALJ's Order again, if necessary, at the conclusion of the case.

[23] *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prod. Liab. Litig.*, 418 F.3d 372, 377 (3d Cir. 2005) (internal quotation and citation omitted); *accord United States v. Ryan*, 402 U.S. 530, 533 (1971) (stating that to be considered unreviewable, denial of the immediate appeal must "render impossible any review whatsoever").

[24] *Herx*, 772 F.3d at 1091-92; *Cobra Natural Res., LLC v. Fed. Mine Safety & Health Review Comm'n*, 742 F.3d 82, 90-91 (4th Cir. 2014); *Lee-Barnes v. Puerto Ven Quarry Corp.*, 513 F.3d 20, 26 (1st Cir. 2008); *Kenyatta*, 744 F.2d at 1181; *cf. Mohawk Indus.*, 558 U.S. at 108 ("The crucial question, however, is not whether an interest is important in the abstract; it is whether deferring review until final judgment so imperils the interest as to justify the cost of allowing immediate appeal of the entire class of relevant orders.").

readily subject to review upon appeal of final ALJ decisions and generally will not qualify as immediately appealable collateral orders.[25]

United argues that the ALJ's Order is effectively unreviewable because the ASAP would suffer irreparable damage if United is required to produce the FSAP reports of individuals other than Captain Priddle. According to United, the ASAP encourages participation by guaranteeing confidentiality to those who file reports. United and ALPA, as amicus, warn of the demise of the program, arguing that disclosure could "meaningful[ly] and irreparabl[y] chill" safety reporting if employees know their reports may be shared with others.[26] While we recognize the importance of the ASAP, we do not agree that the limited disclosure at issue here would irreparably imperil or harm the program.

First, we emphasize the limited nature of the disclosure ordered by the ALJ. The ALJ entered an agreed upon protective order, pursuant to which confidential materials, like the FSAP reports: (1) must be held in confidence; (2) may not be disclosed to unauthorized individuals; (3) may only be used for purposes of this litigation; (4) must be "carefully maintained in secure facilities;" and 5) must be returned or destroyed at the end of the case.[27] Additionally, to the extent the parties intend to file confidential information with the ALJ, including the FSAP reports, they must seek to do so under seal.[28] Thus, this is not a case in which disclosure

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[25] *E.g., Heckman v. M3 Transp. LLC/SLT Expressway, Inc.*, ARB No. 2016-0083, ALJ No. 2012-STA-00059, slip op. at 3 (ARB Nov. 10, 2016) (Order Dismissing Interlocutory Appeal); *Puckett v. Tenn. Valley Auth.*, ARB No. 2002-0070, ALJ No. 2002-ERA-00015, slip op. at 4-5 (ARB Sept. 26, 2002) (Order Denying Interlocutory Appeal).

[26] Respondent's Petition for Review (Resp. Pet.) at 24; *accord id.* at 29-30; ALPA Amicus Curiae Brief at 22-25.

[27] Agreed Protective Order at ¶¶ 3, 9, 11.

[28] *Id.* at ¶ 10.

would cause or allow the reports to be disseminated to the public at large, to be used freely, or to be used for an improper purpose beyond the scope of this litigation.[29]

Second, the confidentiality promised by the ASAP is not as universal or stringent as United suggests. United correctly observes that the FAA has certain statutory and regulatory restrictions on its ability to voluntarily disclose reports and other materials supplied to it as part of the ASAP, and that the FAA promotes a policy against disclosing ASAP materials to the public.[30] However, the restrictions placed on the FAA do not extend to United's obligations to produce relevant ASAP materials in civil discovery.[31] Additionally, the FAA's regulations contain clear

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[29] *See In re Air Crash at Lexington, Ky., Aug. 27, 2006,* 545 F. Supp. 2d 618, 621-22 (E.D. Ky. 2008) (Dist. Ct. Opinion & Order) ("Providing reports to the Plaintiffs under the protection of a confidentiality order is not a release to the 'general public'" or the type of "unfettered disclosure" with which FAA regulations preserving confidentiality are concerned); *cf. Mohawk Indus.*, 558 U.S. at 112 ("[P]rotective orders are available to limit the spillover effects of disclosing sensitive information."). United asserts that redacting personal identifying information or marking the FSAP reports as subject to the protective order will not "reduce the negative impact on United's FSAP program" because "the identity of the pilots [filing reports] can be discerned from flight and aircraft information that is readily available." Resp. Pet. at 29-30. United did not elaborate or explain what specific information is available, where it is available, or how the identities of specific reporting individuals could be discerned therefrom. In any event, as the ALJ observed, it is likely that Captain Priddle already knows the identities of many of the individuals making the reports, and they may already be relevant fact witnesses, because their reports arise out of the same events or flights that are the subject of Captain Priddle's own reports. Moreover, United has not plausibly argued that the protective order and other measures available in this case are insufficient to prevent identities and other confidential information from becoming available to anyone other than Captain Priddle, let alone being disseminated to the public at large.

[30] 49 U.S.C. § 40123 (1996); 14 C.F.R. Part 193 (2021); FAA Order 8000.82, Designation of Aviation Safety Action Program (ASAP) Information as Protected from Public Disclosure Under 14 CFR Part 193 (Sept. 3, 2003), attached as Exhibit D to Req. for Recon.

[31] *See* 49 U.S.C. § 40123 (only barring the "Administrator of the Federal Aviation Administration" and "any agency receiving information from the Administrator" from disclosing ASAP information); *In re Air Crash at Lexington*, 545 F. Supp. 2d at 621.

exceptions that allow disclosure in some circumstances, including, as relevant here, when the FAA is "ordered [to produce ASAP materials] by a court of competent jurisdiction."[32] Thus, Congress and the FAA clearly contemplated and permitted disclosure of ASAP materials in litigation, and individuals making reports are on notice that their reports may be subject to discovery.[33]

Additionally, pilots and other air carrier employees still have incentives to report hazards and safety concerns in the program, even if they know or suspect their reports may be disclosed in discovery in a whistleblower action. These incentives include pilots' and other employees' inherent motivation to report hazards and other safety concerns to ensure the safety of themselves, their crews, and their passengers, as well as the promise of a safe-harbor that generally precludes the individuals making the reports from being subject to discipline or enforcement actions.[34] To be sure, the general policy promoting confidentiality in the ASAP provides an additional incentive to encourage voluntary reporting and participation in the program. However, if these other incentives were not sufficient to encourage participation, or if inviolable confidentiality was considered a lynchpin to participation in ASAP as United suggests, Congress and the FAA likely would

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[32] 14 C.F.R. § 193.7(f); *see also id.* § 193.9(a) (providing additional circumstances in which the FAA may disclose ASAP materials); *cf.* United Pilot Agreement Between United Airlines, Inc. and the Air Line Pilots in the Service of United Airlines, Inc., at ¶ 19-C-2, attached as Exhibit E to Req. for Recon. (recognizing that ASAP reports may be released "as required by law, regulation, court order, or legally binding directives of responsible government agencies").

[33] *See Raub v. US Airways, Inc.*, No. 16-1975, 2017 WL 5015525, *1 n.1 (E.D. Pa. July 6, 2017) (unpublished); *In re Air Crash Near Clarence Ctr, N.Y., on Feb. 12, 2009*, No. 09-md-2085, 2013 WL 5964480, *6 (W.D.N.Y. Nov. 8, 2013) (unpublished); *In re Air Crash at Lexington*, 545 F. Supp. 2d at 621-22 (Dist. Ct. Opinion & Order); *In re Air Crash at Lexington, Kentucky, Aug. 27, 2006*, No. 5:06-CV-316-KSF, 2008 WL 170528, *9 (E.D. Ky. Jan. 17, 2008) (Magistrate's (Mag.) Opinion & Order); *cf. Mohawk Indus.*, 558 U.S. at 110 (finding that an order to disclose attorney-client communications has a "lack of a discernible chill" because "clients and counsel must account for the possibility that they will later be required by law to disclose their communications for a variety of reasons . . . .").

[34] *In re Air Crash at Lexington* (Mag. Opinion & Order), 2008 WL 170528 at *9.

not have expressly contemplated and permitted disclosure of ASAP information pursuant simply to a court order.[35]

For these reasons, we conclude that United's concerns about the impact of the ALJ's Order on the ASAP program are speculative and overstated.[36] Accordingly, we conclude that this matter does not present the type of exceptional circumstances that call for the Board's discretionary interlocutory review or intervention.

3. The Board Denies United's Request for a Writ of Mandamus

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[35] *See In re Air Crash at Lexington*, 545 F. Supp. 2d at 622 (Dist. Ct. Opinion & Order). In fact, the regulations do not even hamper the tribunal's discretion by imposing conditions or listing factors the tribunal must consider before ordering disclosure of ASAP materials.

[36] Indeed, it appears that the ASAP has continued to operate with no obvious deleterious effects even though courts have been ordering airlines to disclose reports like those sought here for litigation purposes for at least fourteen years. *See Hill v. JetBlue Airways Corp.*, Nos. 2:17-cv-1604 WBS DB, 2:18-cv-0081 WBS DB, 2021 WL 2439659, *2 (E.D. Cal. June 14, 2021) (ordering ASAP reports to be produced in 2021); *Raub*, 2017 WL 5015525 at *1 (ordering ASAP reports to be produced in 2017); *In re Air Crash Near Clarence Ctr.*, 2013 WL 5964480 at *8 (ordering ASAP reports to be produced in 2013); *In re Air Crash at Lexington*, 545 F. Supp. 2d at 624 (Dist. Ct. Opinion & Order) (ordering ASAP reports to be produced in 2008); Resp. Pet. at 9 ("[T]he U.S. safety record has become the envy of the world."). Some of these cases featured arguments nearly identical to those raised by United and ALPA here regarding the harm disclosure would cause to the ASAP. *In re Air Crash Near Clarence Ctr.*, 2013 WL 5964480 at *6 (rejecting airline's argument that "ASAP reports should be protected from disclosure [through imposition of a discovery privilege] to protect the confidentiality of the program and encourage voluntary reporting"); *In re Air Crash at Lexington*, 545 F. Supp. 2d at 620-21 (Dist. Ct. Opinion & Order) (rejecting argument that "ASAP will whither [sic] and die if this Court does not offer protection" to ASAP reports).

As an alternative to its collateral order appeal, United also requests that the Board issue a writ of mandamus reversing the ALJ's Order.[37] The Board may only act to the extent it is has been delegated authority by the Secretary of Labor. Although the Secretary has given the Board the authority to review final ALJ decisions and, in "exceptional cases," interlocutory appeals, the Board has observed on multiple occasions that the Secretary has not expressly provided mandamus authority to the Board.[38] Accordingly, it has been the Board's practice not to issue writs of mandamus.[39] We find no reason to deviate from that practice in this case.

CONCLUSION

For the foregoing reasons, we **DENY** United's Petition for Review.

SO ORDERED.

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[37] As United notes, federal courts do not have a prescribed filing deadline for a request for a writ of mandamus. *See Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 378 (2004). Therefore, United's request for the Board to issue the writ of mandamus does not suffer from the same timeliness issue as United's collateral order appeal.

[38] *Office of Fed. Contract Compliance Programs, U.S. Dep't of Labor v. JPMorgan Chase & Co.*, ARB No. 2017-0063, ALJ No. 2017-OFC-00007, slip op. at 2-3 (ARB Oct. 5, 2017) (Order Denying Petition for Interlocutory Review); *Lewis v. Metro Transp. Auth.*, ARB No. 2011-0070, ALJ No. 2010-NTS-00003, slip op. at 2 (ARB Aug. 8, 2011) (Order Denying Motion for Writ of Mandamus); *Somerson v. Eagle Express Lines Inc.*, ARB No. 2004-0046, ALJ No. 2004-STA-00012, slip op. at 2 (ARB May 28, 2004) (Order Dismissing Petition for Review). United cites the All Writs Act, 28 U.S.C. § 1651, for the Board's authority to issue a mandamus order. That statute provides that "**all courts established by Act of Congress** may issue all writs necessary or appropriate in aid of their respective jurisdictions . . . ." 28 U.S.C. § 1651(a) (emphasis added). The Board is not a court established by Act of Congress. *Henrich*, ARB No. 2005-0030, slip op. at 7 ("The Board, which is responsible for making final decisions for DOL, is an agency rather than a federal court.").

[39] *JPMorgan Chase*, ARB No. 2017-0063, slip op. at 2-3, 7-8; *Lewis*, ARB No. 2011-0070, slip op. at 2-3; *Somerson*, ARB No. 2004-0046, slip op. at 2.