

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 14 January 2005

CASE NO.: 2004-AIR-11

IN THE MATTER OF

THOMAS E. CLEMMONS,
Complainant

v

AMERISTAR AIRWAYS, INC.,

and

AMERISTAR JET CHARTER, INC.,
Respondents

APPEARANCES:

Steven K. Hoffman, Esq.
James & Hoffman
For Complainant

Christopher E. Howe, Esq.
Kelly, Hart & Hallman, P.A.
For Respondents

Before: Clement J. Kennington
Administrative Law Judge

DECISION AND ORDER

This matter involves a dispute concerning alleged violations by the Respondents-Employers, Ameristar Airways, Inc. and Ameristar Jet Charter, Inc., of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121, *et seq.* ("AIR21" or "the Act") and the regulations promulgated hereunder at 29 C.F.R. Part 1979. This statutory provision, in part, prohibits an air carrier, or contractor or sub-contractor of an air carrier, from discharging or otherwise discriminating against any employee with respect to compensation, terms, conditions or privileges of employment because the employee provided to the employer or

the federal government information relating to any violation or alleged violation of any order, regulation or standard of the Federal Aviation Administration (FAA) or any other provision of federal law related to air carrier safety.

Complainant was employed by Ameristar Airways, Inc., (hereinafter "Airways" or "Respondent") from September 6, 2002, until his termination on January 20, 2003.¹ On April 14, 2003, Complainant filed a complaint with the Department of Labor alleging he was discriminated against for raising concerns to his supervisors and the Federal Aviation Administration (FAA) regarding violations of FAA Rules 121 and 125, inadequate maintenance of aircraft and issues related to the hours of duty for pilots. On January 20, 2004, following an investigation, the Regional Supervisor for the Occupational Safety and Health Administration (OSHA) found the complaint to have merit. (CX-67, 68, 78). Employer timely filed a request for a formal hearing pursuant to 49 U.S.C. § 42121 (B)(2)(a).

This matter was referred to the Office of Administrative Law Judges for a formal hearing. Hearings were held in Dallas, Texas, on July 27-30 and September 21-22, 2004. All parties were afforded a full opportunity to adduce testimony, offer documentary evidence and submit post-hearing briefs in support of their positions. Complainant testified, called Mr. Sprat, Mr. Barker, Ms. Rives and Mr. Wachendorfer and introduced seventy five (75) exhibits, which were admitted into evidence. Employer called Mr. Wachendorfer, Mr. Hulse, and Mr. Frazer, and introduced thirty-seven (37) exhibits which were admitted into evidence.

Post-hearing briefs were filed by the parties.² Based upon the stipulations of the parties, the evidence introduced my observation of the witness demeanor and the arguments presented, I make the following Findings of Fact, Conclusions of Law, and Order.

I. ISSUES

1. Whether Complainant engaged in protected activity as described in 49 U.S.C. § 42121;
2. If so, whether such activity was a contributing factor in Respondent's decision to discharge Complainant;
3. If so, whether Respondent has established by clear and convincing evidence that Respondent would have discharged Complainant absent his protected activity;

¹ Respondent disputes the claim that Airways and Jet Charter were joint employers. After reviewing the testimony of Rives and the entire record, and as is discussed *infra*, I find the Respondents were in fact joint employers and both are properly joined in this action.

² Complainant submitted a 30-page, double-spaced brief on November 10, 2004. Employer submitted a 28-page, double-spaced brief on November 10, 2004.

