

2. At all relevant times, Respondent Airways has been an air carrier certificated by the FAA to operate under Part 125. Complainant's Exhibit 6 ("Exh. C6"). At all relevant times, Co-Respondent Ameristar Jet Charter, Inc. ("Jet Charter") has been an air carrier, certificated by the FAA to operate under 14 C.F.R. Part 135 ("Part 135"). Exh. C2.

3. Airways was formed to take advantage of the more liberal regulatory requirements of Part 125, which would enable Airways to operate more cheaply than Jet Charter and its 14 C.F.R. Part 121 ("Part 121") counterpart, Ameristar Air Cargo, Inc. ("Air Cargo"). Tr. 423-24, 822-25, 1194, 1356; Exh. C1.

JOINT EMPLOYMENT

4. During most of Clemmons' tenure at Airways, he was supervised by Lindon Frazer, who also served as Director of Maintenance for Jet Charter and Director of Safety for Air Cargo. Tr. 814, 819-20, 1135-36, 1265-66. Clemmons was also answerable to Thomas Wachendorfer, President and sole owner of the three Ameristar companies (Tr. 811, 959); "Lolly" Rives, Human Resources director for all three companies (Tr. 407, 958, 1119); Thomas Biondo, Director of Operations for Jet Charter (Tr. 814, 960-61); Pat Hulsey, Director of Operations for Air Cargo (Tr. 819); and Stacy Muth, Vice President for Dispatch and Crew Scheduling for all three companies (Tr. 484-85, 961, 1309, 1369). The three Ameristar companies also shared common financial, accounting and maintenance functions. Tr. 442, 444-45, 838-39, 959; Exh. C4 at Stamp C0055.

5. Although nominally hired by Airways, Clemmons actually applied for employment with Jet Charter, which also conducted his background check. Tr. 407, 965-66, 980. Jet Charter reported Clemmons as a new hire in its required government report on new hires. Tr.

967-68, 1137. His salary was authorized by a Jet Charter official and at all times paid by Jet Charter; his health and life insurance were provided by Jet Charter; he participated in Jet Charter's Section 125 tax savings plan and its 401(k) retirement program; he was provided with Jet Charter property to perform his job (including a Jet Charter corporate credit card); and was required to participate in Jet Charter's drug testing program. Tr. 970, 972, 974-79, 1134-35. All personnel records for Clemmons and for other employees at the three Ameristar companies were kept in a common location and were maintained by Ms. Rives. Tr. 187, 962-63.

CLEMMONS' JOB RESPONSIBILITIES AND PERFORMANCE

6. Although Clemmons was hired to direct the operations of Airways, he was given no authority over the actual operations of the carrier. Tr. 445, 462, 881-83. Clemmons was also excluded from the weekly meetings attended by the top managers of the three Ameristar companies. Tr. 424-25, 886-87, 962, 1276.

7. Although Clemmons was nominally charged with ensuring regulatory compliance by Airways, he was forbidden to issue compliance directives and was excluded from critical meetings with the FAA. See infra at Proposed Findings of Fact ("Facts") Nos. 21, 24, 29.

8. Although Clemmons handled certain portions of the ground school and flight training provided to new Airways pilots, Air Cargo's Hulseley taught cargo loading and unloading and the handling of hazardous materials. Tr. 58-59, 438, 1201-02, 1227.

9. Clemmons was not responsible for the development of Airways pilot manuals, Tr. 416-17, 533, 1025-26, 1104, 1117; Exh. C72, all of which were drafted or compiled by Air Cargo's Hulseley and Jet Charter's Biondo and updated by Hulseley. Tr. 320, 419, 874-77, 1015, 1112, 1189, 1224-27; Exh. C7 at 1-3. At no time did the FAA sanction Airways for the state of

