



In the Matter of:

**GEORGE T. DAVIS, JR., and
DIANE DAVIS,**

COMPLAINANTS,

v.

UNITED AIRLINES, INC.,

RESPONDENT.

ARB CASE NO. 02-105

ALJ CASE NO. 01-AIR-5

TIM HAFFER,

COMPLAINANT,

v.

UNITED AIRLINES, INC.,

RESPONDENT.

ARB CASE NO. 02-088

ALJ CASE NO. 02-AIR-5

DAVID LAWSON,

COMPLAINANT,

v.

UNITED AIRLINES, INC.,

RESPONDENT.

ARB CASE NO. 03-037

ALJ CASE NO. 02-AIR-6

DATE: April 26, 2006

BEFORE THE ADMINISTRATIVE REVIEW BOARD:

Appearances:

For Complainants Davis:

Steven Silvern, Esq., *Denver, Colorado*

For Complainant Hafer:

Linda Rose Fessler, Esq., *Los Angeles, California*

For Complainant Lawson:

Steven Silvern, Esq., *Denver, Colorado*

For Respondent:

John C. Fish, Jr., Esq., Kevin F. Chung, Esq., Littler Mendelson PC, *San Francisco, California*; Jennifer Robinson, Esq., Robinson Employment Law, LLC, *Denver, Colorado*

FINAL DECISION AND ORDER OF DISMISSAL

These cases concern claims against United Airlines, Inc., based on the whistleblower protection provision of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C.A. § 42121 (West Supp. 2003). Tim Hafer appeals from a Labor Department Administrative Law Judge's (ALJ's) order dismissing his AIR 21 complaint. *Hafer v. United Air Lines*, ALJ No. 2002-AIR-00005 (June 11, 2002). George and Diane Davis also appeal from a Labor Department ALJ's order dismissing their AIR 21 complaint. *Davis v. United Airlines, Inc.*, ALJ No. 2001-AIR-5 (ALJ July 25, 2002). United appeals from a Labor Department ALJ's decision concluding that it violated AIR 21 when it terminated David Lawson's employment and ordering United to reinstate Lawson and to pay Lawson back pay, compensatory damages, and attorney fees. *Lawson v. United Airlines, Inc.*, ALJ No. 2002-AIR-00006 (ALJ Dec. 20, 2002).

While these appeals were pending before the Administrative Review Board, United filed for bankruptcy protection. As a result, the Board stayed further proceedings on these claims pursuant to the automatic stay provision of the Bankruptcy Code, 11 U.S.C.A. § 362(a)(1) (West 2003). *Davis v. United Airlines, Inc.*, ARB No. 02-088, ALJ No. 02-AIR-5 (ARB May 30, 2003).

On January 20, 2006, the Bankruptcy Court entered an order confirming United Airlines' Second Amended Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code ("the Confirmation order"). The Plan took effect February 1, 2006, and shortly thereafter United filed a Notice of Discharge in each of these cases. On February 24, Hafer moved to Lift the Bankruptcy Stay and to resume proceedings.

On March 16, 2006, the Board issued an Order to Show Cause why the Board should not lift its stay in each of these proceedings and dismiss the complaints. All parties have now responded to the Order to Show Cause.

United contends that the Bankruptcy Court's entry of the Confirmation Order discharges and releases United from the petitioners' AIR 21 claims. United relies on sections 524(a) and 1141(d)(1) of the Bankruptcy Code and the terms of the Confirmation Order.

Section 1141(d)(1) defines the effect of confirmation of a Chapter 11 reorganization plan as follows:

Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—

(A) discharges the debtor from any debt that arose before the date of such confirmation . . . whether or not—

(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;

(ii) such claim is allowed under section 502 of this title; or

(iii) the holder of such claim has accepted the plan;^[1]

Section 524(a) provides that a discharge “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover, or offset any debt” that is discharged under the plan. 11 U.S.C.A. § 524(a).

The Confirmation Order provides that “[e]xcept as otherwise specifically provided in the Plan . . . all Entities who have held, hold, or may hold Claims against or Interests in the Debtors or against the Released Parties and Exculpated Parties are permanently rejoined, from and after the Effective Date, from: (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claim against or Interest in the Reorganized Debtors, the Exculpated Parties, the Released Parties” *In re UAL Corp.*, Case No. 02-B-48191, Confirmation Order para. 4(e) (Bankr. N.D.Ill. Jan. 20, 2006).

¹ “Debt” means “liability on a claim.” 11 U.S.C.A. § 101(12). “Claim” means the right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” 11 U.S.C.A. § 101(5).

Davis and Lawson assert that we should lift our stay and decide the merits of their cases because, “Congress did not intend to subordinate the Air Act’s purpose (to protect lives) to the Bankruptcy Act.” However, neither Davis nor Lawson supports this assertion with argument or supporting authorities. Nor do they suggest any reason why the portions of the Bankruptcy Code and Confirmation Order which United cites should not be understood literally, as United proposes.

Separately, Lawson, the only petitioner to have secured a preliminary order for relief (injunctive relief, reinstatement, back pay, compensatory damages, and attorney fees), contends that his right to reinstatement is not a “debt” dischargeable in bankruptcy, and that his award of attorney fees is in the nature of a nondischargeable penalty rather than a debt. But again, Lawson points to nothing in the Bankruptcy Code, the Reorganization Plan, or the Confirmation Order to support his contentions.

Hafer’s request that we proceed to the merits is also bereft of tenable argument or supporting authorities. Like Davis and Lawson, Hafer ignores United’s argument that sections 524(a) and 1141(d), together with the Reorganization Plan and Confirmation Order, operate to extinguish his pre-petition AIR 21 claim. Hafer’s counsel quotes extensively from the Bankruptcy Code and from AIR 21, but omits any explanation of the quoted passages’ relevance to the question whether Hafer’s AIR 21 claim against United has been discharged. In a separate filing, which this Board did not authorize, Hafer personally submitted voluminous extra-record material in support of his allegation that United retaliated against him in violation of AIR 21 – material not relevant to the question of discharge under bankruptcy.

Conclusory and unsupported assertions are not a basis for relief on review. *See Hall v. United States Army*, ARB Nos. 02-108, 03-013, ALJ No. 97-SDW-5, slip op. at 6 (ARB Dec. 30, 2004) (failure to present argument or pertinent authority waives argument).

ACCORDINGLY, none of the petitioners having proffered any legally supported rationale for deviating from the relevant statutory text and bankruptcy court orders, we lift our stay of these proceedings and **DISMISS** the complaints with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge