



In the Matter of:

CARROLL SIEVERS,

ARB CASE NO. 05-109

COMPLAINANT,

ALJ CASE NO. 2004-AIR-028

v.

DATE: January 30, 2008

ALASKA AIRLINES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Thomas F. Spaulding, Esq., *Spaulding Cox & Schaeffer, LLP*, Portland, Oregon

For the Respondent:

**Kevin C. Baumgardner, Esq., *Corr Cronin Michelson Baumgardner & Preece LLP*,
Seattle, Washington**

FINAL DECISION AND ORDER

Carroll Sievers filed a complaint with the United States Department of Labor alleging that his former employer, Alaska Airways, Inc., retaliated against him in violation of the whistleblower protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21).¹ A Department of Labor Administrative Law Judge (ALJ) concluded that Alaska violated AIR 21 when it fired Sievers and she recommended that he be awarded back pay and compensatory damages. We reverse.

¹ 49 U.S.C.A. § 42121 (West Supp. 2005). 29 C.F.R. Part 1979 (2007) contains the regulations that implement AIR 21.

BACKGROUND

Sievers began working for Alaska Airlines in 1988 as an airplane mechanic and became a maintenance supervisor in 1989. He transferred to Alaska's Portland, Oregon maintenance station in 1995. Sievers's direct supervisor was Lloyd Golden, the Portland Maintenance manager. Golden reported to David Keith, the Director of Maintenance. Keith reported to Brian Hirshman, the Maintenance Vice President. Robert Kurlfink, Director of Maintenance Operations, also reported to Hirshman. Mickey Cohen was Alaska's Senior Vice President of Maintenance and Engineering, and George Bagley was Alaska's Executive Vice President of Operations.

Atmosphere at the Portland Terminal

In January 2000 Alaska Airlines Flight 261 crashed and 88 people were killed. As a result, Alaska evaluated and overhauled its maintenance department to improve safety. At the same time, senior management also wanted Alaska's flights to leave on time and therefore expected managers and supervisors to reduce the number of out-of-service airplanes by making repairs faster. Sievers testified that Hirshman, Kurlfink, Golden, Keith, and Cohen felt that the Portland mechanics were causing unnecessary delays because of unnecessary repairs.

For example, in 2001 a Portland maintenance crew took a plane out of service for repair because placards were missing on the bottoms of wings. Hirshman was upset and thought that maintenance could have deferred the repair until a later time instead of grounding the plane. On another occasion, in the fall of 2001, Portland mechanics took a plane out of service to repair a cracked plastic window cover. Grounding this plane for a structurally insignificant repair disturbed Hirshman. In addition, Kurlfink often expressed frustration in the fall of 2001 because the Portland mechanics were replacing planes' hydraulic reservoirs when they detected a certain sound. Kurlfink thought that other components were causing the problem, and sometimes he halted the reservoir replacements until technical services staff verified the need to do so. Moreover, according to Sievers, management criticized him because he was unnecessarily inspecting the level that wing slats drooped. Wing slats are the leading edge of an airplane's wing. During take off and landing, the slats are extended, and during flight, the slats are retracted.

Then, sometime between January and March 2003, a pilot reported that his plane's engine was vibrating. Portland mechanics were not able to detect the source of the problem and, under Sievers's supervision, continued to inspect the plane. After some time, the mechanics wanted to do even further troubleshooting and thus would not certify that the plane was airworthy. Sievers called maintenance control to take the plane out of service. Kurlfink became aware that the plane was delayed, and upon discovering that the mechanics did not find anything wrong but would not sign off on the plane, suggested to Golden that, instead of the mechanics certifying the plane, Sievers could do so. Golden passed this suggestion to Sievers. But Sievers refused. He testified that, "I told Lloyd [Golden] that that's wrong. I'm not going to even go there. The supervisor is here to give the mechanics every tool, every maintenance manual,

whatever they need to do their job, that's what we've hired them for, and this engine still needs more troubleshooting.”²

The Timecard Investigation

On June 5, 2003, an anonymous caller informed Golden, the Portland Maintenance Manager, that a union employee had arrived at his shift at almost midnight but his timecard indicated that he had arrived several hours earlier. In the course of investigating this matter, Golden discovered timecard discrepancies involving Sievers and two other maintenance supervisors, Chris James and Bill Shields. Golden determined that James and Shields had “padded” timecards. That is, to induce mechanics to work overtime and complete a job, James and Shields had signed off on the mechanics’ timecards for more overtime than they had actually worked. Golden discovered that Sievers had padded timecards and also “punched” one man’s timecards thirty minutes before the man arrived at work and also punched another man’s card after he left work. During Golden’s investigation Sievers admitted that he punched timecards.

Alaska policy forbade altering, punching, or making entries on another employee’s timecard. Golden, Keith, and Hirshman met often to discuss the timecard investigation and the appropriate discipline for those involved. Cohen and Bagley were also informed about the investigation. On July 9, 2003, Golden, Keith, and Hirshman met Sievers and told him that he was being terminated for timecard fraud. Fellow supervisors James and Shields were also terminated for the same reason.

Thereafter, Sievers filed a complaint with the Department of Labor alleging that Alaska had violated AIR 21 when it fired him. The Labor Department’s Occupational Safety and Health Administration investigated this complaint and found it to be without merit. Sievers objected and requested a hearing. After a three-day hearing in December 2004, the ALJ concluded that Alaska violated the Act and recommended that Sievers be awarded \$534,293 in back pay, plus interest, and \$50,000 in compensatory damages. Alaska appealed.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated her authority to decide this matter to the Administrative Review Board.³ In cases arising under AIR 21, we review the ALJ’s findings of fact under the substantial evidence standard.⁴ Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”⁵ We must

² Hearing Transcript (Tr.) 69-70. Sievers testified that he never complained to the FAA or to managers about being “pressured” into not making safety inspections or repairing aircraft that he thought needed repair. Tr. 158-159.

³ See Secretary’s Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1979.110.

⁴ 29 C.F.R. § 1979.110(b).

uphold an ALJ's finding of fact that is supported by substantial evidence even if there is also substantial evidence for the other party, and even if we "would justifiably have made a different choice" had the matter been before us de novo.⁶ The Board, however, reviews the ALJ's conclusions of law de novo.⁷

DISCUSSION

The AIR 21 Legal Standard

AIR 21's whistleblower protection section prohibits air carriers and their contractors and subcontractors from retaliating against employees for engaging in protected activity. Under AIR 21, an employee is protected if he:

(1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle [subtitle VII of title 49 of the United States Code] or any other law of the United States^{8]}

To prevail, Sievers must prove by a preponderance of the evidence that: (1) he engaged in protected activity; (2) Alaska knew that he engaged in the protected activity; (3) he suffered an unfavorable ("adverse") personnel action; and (4) the protected activity was a contributing factor in the unfavorable personnel action.⁹ A contributing factor is "any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision."¹⁰

Sievers can succeed either directly or indirectly. Direct evidence is "smoking gun" evidence that conclusively links the protected activity and the adverse action and does not rely

⁵ *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)).

⁶ *Id.* at 488.

⁷ *Rooks v. Planet Airways, Inc.*, ARB No. 04-092, ALJ No. 2003-AIR-035, slip op. at 4 (ARB June 29, 2006).

⁸ 49 U.S.C.A. § 42121(a).

⁹ See 49 U.S.C.A. §§ 42121(a), (b)(2)(B)(i); *Clark v. Pace Airlines, Inc.*, ARB No. 04-150, ALJ No. 2003-AIR-028, slip op. at 11 (ARB Nov. 30, 2006).

¹⁰ *Marano v. Dep't of Justice*, 2 F.3d 1137, 1140 (Fed. Cir. 1993).

upon inference.¹¹ Sievers did not produce direct evidence. Therefore, he must proceed indirectly, or inferentially, by proving, by a preponderance of the evidence, that the reason Alaska offered for terminating him is not the true reason for the termination, but instead is a pretext for retaliation.¹² If Sievers proves pretext, we may infer that his protected activity contributed to the termination, though we are not compelled to do so.¹³ If Sievers proves that his protected activity was a contributing factor in his termination, he is entitled to relief unless Alaska demonstrates by clear and convincing evidence that it would have taken the same unfavorable action in the absence of the protected activity.¹⁴

Sievers Engaged in Protected Activity

The ALJ concluded that Sievers engaged in protected activity. She found that Sievers's involvement in the engine vibration, wing slat droop, cracked window cover, defective hydraulic reservoir, and missing wing placards incidents constituted protected activity under AIR 21.¹⁵ She wrote that AIR 21 protects Sievers's "zealous," "competent," and "aggressive" pursuit of his safety duties.¹⁶ The ALJ summed up: "For a finding of protected activity, it is sufficient that Complainant carried out his required, safety-related duties: supervising the maintenance of Respondent's aircraft and reporting, repairing, or deferring the repair of any documented defects."¹⁷

But this language misstates what constitutes AIR 21 protected activity. As noted earlier, to be protected, the statute requires that the employee provide information to the employer or Federal Government that relates "to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety"¹⁸ "Competently" and "aggressively" carrying out duties to ensure safety, though laudable, does not by itself constitute protected activity. This record contains no evidence that Sievers provided information to Alaska or to any Federal entity that the incidents concerning wing slat droop, the cracked window cover, the allegedly defective hydraulic

¹¹ *Coxen v. UPS*, ARB No. 04-093, ALJ No. 03-STA-013, slip op. at 5 (ARB Feb. 28, 2006).

¹² *See Jenkins v. U.S. E.P.A.*, ARB No. 98-146, ALJ No. 1988-SWD-002, slip op. at 16-17 (ARB Feb. 28, 2003).

¹³ *See St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 511 (1993).

¹⁴ *See* 49 U.S.C.A. §§ 42121(b)(3)(B), (b)(2)(B)(iv).

¹⁵ Recommended Decision and Order (R. D. & O.) 23.

¹⁶ *Id.* at 24.

¹⁷ *Id.*

¹⁸ 49 U.S.C.A. § 42121(a)(1).

reservoirs, or the missing wing placards violated any order, regulation, or standard of the FAA or other Federal law pertaining to airline safety.

On the other hand, substantial evidence does support the ALJ's finding that Sievers engaged in AIR 21 protected activity with respect to the engine vibration incident. As noted, when one of the Portland maintenance crews refused to take a plane out of service because he could not determine why an engine was vibrating, Golden, at Kurlfink's urging, suggested to Sievers that he override the crew's decision and sign off on the plane. Sievers refused. This refusal constitutes AIR 21 protected activity because Sievers informed Golden, an Alaska manager, that the plane was not airworthy and for him to sign off would be "wrong." It would have been "wrong" because to do so would have violated a Federal Aviation Regulation.¹⁹

Sievers Did Not Demonstrate that Protected Activity Contributed to the Termination

When Alaska terminated Sievers on July 9, 2003, he, of course, suffered an unfavorable personnel (adverse) action. The ALJ found "ample" circumstantial evidence that protected activity contributed to the termination. First, since Alaska fired Sievers in July 2003, only three to six months after the engine vibration incident, the ALJ inferred that protected activity contributed to the firing. She also found that Alaska was "antagonistic" toward "overzealous inspections." Furthermore, Alaska's reason for terminating Sievers - violating company rules about timecards, i.e. timecard fraud - was a pretext because she found that the company deviated from its disciplinary process, that several "suspicious circumstances" evidenced a retaliatory intent, and that Alaska treated Sievers differently than other employees who had violated its timecard rules. From these findings the ALJ concluded that Alaska violated the Act.²⁰ Our task here is to determine whether substantial evidence in the record as a whole supports these findings.

The Record Does Not Support Some of the ALJ's Findings

The ALJ found that Alaska did not warn Sievers that he would be terminated. She points out that in 1992 another employee was warned prior to receiving discipline for timecard padding. Moreover, she notes that Alaska's "philosophy of progressive discipline" required that Alaska warn Sievers. For the ALJ, therefore, not warning Sievers amounted to a "deviation from routine procedure," and thus is evidence of pretext.²¹ But the record shows that Golden warned all employees about timecard padding when he issued a memorandum to all maintenance employees in July 2002.²² Sievers saw this memo.²³ It warned that altering a timecard "for anyone else

¹⁹ See 14 C.F.R. § 135.443 (2007) (After maintenance, preventive maintenance, or alterations are performed, airplanes cannot be operated unless a mechanic certifies that "no known condition exists that would make the aircraft unairworthy.").

²⁰ R. D. & O. at 26-30.

²¹ *Id.* at 28.

²² Complainant's Exhibit (CX) 4 at 81, 87-92.

regardless of the reason could lead to disciplinary action up to and including discharge.”²⁴ Alaska’s System Regulations cautioned employees not to “alter, punch, or make entries on another employee’s timecard” and that falsifying records “will not be tolerated.”²⁵ Moreover, the System Regulations section on “Progressive Discipline” states that although progressive discipline “may be the corrective action taken to modify behavior for certain types of rule infractions (e.g. occasional absences, uniform/grooming violations, and performance deficiencies),” nevertheless, “more serious conduct may require more severe action such as suspension or immediate discharge without prior discipline or corrective action.”²⁶ Therefore, the record does not support the ALJ’s finding that Alaska did not warn Sievers about timecard padding or that the company deviated from its disciplinary process.

One of the “suspicious circumstances” that led the ALJ to find that firing Sievers for timecard fraud was a pretext was the fact that after Golden received the anonymous call that a mechanic had arrived at work hours after his timecard indicated that he had reported, Golden did not ask the Portland supervisors to help him investigate timecard irregularities.²⁷ Golden acknowledged that he would normally seek out supervisors when investigating a mechanic.²⁸ The ALJ characterizes this situation as “suspicious,” but does not tell us why. She does not explain how this “anomaly” evidences pretext. In fact, Golden explained that right after he received the call and began to investigate, none of the supervisors was on duty.²⁹ And during the week that followed, he wanted to be sure that a problem actually existed before taking supervisors away from their work getting planes ready to fly.³⁰ In light of Golden’s explanation for not calling in other supervisors and the ALJ’s failure to point to any evidence or otherwise explain how this unusual circumstance constitutes relevant circumstantial evidence that Sievers’s protected activity contributed to his termination, we cannot agree that it amounts to substantial evidence of retaliation.

²³ Tr. 115.

²⁴ CX 21 at 6.

²⁵ CX 12 at 1, 2.

²⁶ *Id.* at 3.

²⁷ R. D. & O. at 29.

²⁸ CX 4 at 30-32.

²⁹ Tr. 344.

³⁰ Tr. 349; CX 4 at 30. In fact, shortly after he began to investigate the anonymous caller’s allegation, Golden began to investigate whether supervisors were involved in altering timecards. By June 21, he had interviewed three of the four Portland supervisors, including Sievers who admitted “punching” timecards. Respondent’s Exhibit (RX) 22 at 1.

The ALJ also suspected that two other situations pertaining to the timecard investigation evidenced pretext. First, Golden’s investigation report did not explain how two of the timecard fraud incidents occurred, and he did not recommend that they be investigated further. Second, the ALJ found it “hard to believe” that the record did not contain notes or other documents pertaining to a meeting some managers held on June 25, 2003. She also deemed it “highly unusual” that the record did not contain emails or other written communication between Keith and Hirshman regarding the timecard investigation.³¹ But, again, since neither the ALJ nor Sievers explains or points to evidence of how these “suspicious” circumstances in any way relate to Sievers’s protected activity and termination, these findings amount to speculation, not circumstantial evidence of retaliation.

The ALJ notes that Sievers may be able to prove that Alaska fired him for his protected activity, not timecard fraud, if he can show that the company treated him differently than other similarly situated employees.³² She found that since Alaska had never terminated a supervisor for timecard fraud, it treated Sievers, a supervisor who was fired, differently. But somehow the ALJ ignores the plain fact that when Alaska fired Sievers, it also fired James and Shields, who, like Sievers, were maintenance supervisors who committed timecard fraud. Thus, it can hardly be said, and substantial evidence does not support a finding, that Alaska treated Sievers differently.

As another example of disparate treatment, and therefore evidence of unlawful retaliation, the ALJ cited Alaska’s investigation of timecard fraud at its Los Angeles maintenance facility. Shortly after the Portland supervisors had been terminated, Ron Moore, a mechanic in Los Angeles, called Keith, Alaska’s Director of Maintenance, and told him about some timecard irregularities in Los Angeles. Moore gave Keith names of persons who could verify his allegations.³³ Though Keith did not entirely believe Moore, he immediately began to investigate.³⁴ Unlike Golden’s investigation in Portland, Keith did not ask the airport authority to provide him with evidence as to when Alaska employees swiped their badges upon entering or exiting parking lots to help him determine timecard fraud. Keith explained that he was reluctant to do this because, generally, the airport authority would “balk” unless it had evidence of wrongdoing.³⁵ But he did spend considerable time in the payroll records section examining timecards and overtime records.³⁶ He interviewed some of the persons Moore had named and

³¹ R. D. & O. at 29, 30.

³² *Id.* at 30.

³³ CX 20 at 1.

³⁴ CX 20 at 1, CX 7 at 56; Tr. 562.

³⁵ Tr. 561.

³⁶ Tr. 532-534, 561-562; CX 7 at 56.

others.³⁷ A week after Moore's call, Keith concluded that Moore's allegations about some Los Angeles employees did not amount to timecard fraud.³⁸ Unlike Portland, the Los Angeles timecards showed that "the guys were being paid overtime and they were in fact there, and they did punch in and punch out."³⁹

The ALJ found that Keith did not conduct "the type of thorough and time consuming investigation that occurred in Portland."⁴⁰ But the record indicates that Keith did thoroughly investigate the situation in Los Angeles. The Los Angeles investigation was different than the one in Portland in that Keith was initially given names of persons who could confirm the allegations and thus did not have to work from scratch like Golden. Keith immediately set out to determine if timecard abuse had occurred and quickly found that it had not, whereas Golden needed to spend considerable time and energy just to determine whom to interview. Therefore, since the underlying circumstances were different, Alaska's Los Angeles investigation was necessarily different from the one in Portland and does not amount to circumstantial evidence of retaliation.

The Record Supports the ALJ's Other Findings

The ALJ correctly points out that temporal proximity between protected activity and the adverse action is circumstantial evidence that the protected activity contributed, in whole or in part, to the adverse action.⁴¹ Since the engine vibration incident occurred sometime between January and March 2003 and the termination occurred in July 2003, the record supports the ALJ's finding of temporal proximity. Likewise, substantial evidence supports the ALJ's finding that Alaska managers were antagonistic "toward the manner in which [Sievers] and others conducted the maintenance of [Alaska's] aircraft."⁴² The record shows that Hirshman and Kurlfink were upset about what they perceived as unnecessary delays and unnecessary repairs resulting in planes being out-of-service.⁴³ Hirshman, Kurlfink, and Keith often questioned maintenance personnel about inspections. Reducing flight delays was a performance goal at Alaska, and Kurlfink asked tough questions and expected supervisors to address his performance

³⁷ CX 20 at 1.

³⁸ CX 20 at 3.

³⁹ Tr. 534.

⁴⁰ R. D. & O. at 30.

⁴¹ R. D. & O. at 27. *See Peck v. Safe Air Int'l, Inc.*, ARB 02-028, ALJ No. 2001-AIR-003, slip op. at 16 (ARB Jan. 30, 2004).

⁴² R. D. & O. at 27.

⁴³ R. D. & O. at 27; Tr. 517-519, 536-40, 595-597, 623-25.

concerns.⁴⁴ And Keith testified that he felt that the mechanics were overdoing their inspections. If something was unsafe, maintenance should repair it, but “[i]f an individual is repetitively going into areas he’s not supposed to be going during that phase of the Maintenance Program, I would look at that as more definition of a problem child.”⁴⁵

The record also supports two of the ALJ’s “suspicions.” After he was fired, Sievers (and James and Shields) requested that Alaska conduct an Employee Complaint Review whereby a senior manager not connected with the terminations would review their cases. George Bagley, Alaska’s Executive Vice President of Operations, reviewed the three cases. He interviewed Golden, Keith, and Hirshman as well as the three supervisors.⁴⁶ Bagley then upheld all three terminations, but shortly thereafter he asked the Employee Services Department to waive the usual rule for terminated employees and make James eligible for rehire.⁴⁷ The ALJ was “puzzled” by the fact that James, who, unlike the others, had been previously disciplined for a timecard violation (in July 2002), was treated differently than Sievers.⁴⁸ The record supports a finding that Bagley treated James differently than Sievers and Shields when he intervened at Employee Services on behalf of James.

Another “suspicious” circumstance arose after the three supervisors were terminated. Dozens of Portland mechanics signed or wrote letters to Bagley alleging that Golden had known about and condoned timecard abuses.⁴⁹ The ALJ was troubled that Alaska did not investigate these allegations involving a manager when it had just terminated three supervisors for timecard fraud. The record supports a finding that Alaska did not investigate Golden. Keith and Hirshman did not discuss investigating Golden because, other than the letter from the mechanics, no evidence existed to implicate Golden. Keith suspected that the mechanics sent the letter only because they were upset that Golden had investigated the supervisors and recommended termination.⁵⁰

⁴⁴ Tr. 595-597, 645-647.

⁴⁵ Tr. 539, 548.

⁴⁶ Tr. 662-668.

⁴⁷ CX 16, 17, 18; Tr. 670.

⁴⁸ R. D. & O. at 29. The ALJ also wrote that Bagley testified that “Mr. James merited a lesser penalty because there were fewer documented instances of violations on his part” This “perplexed” the ALJ in light of James’s previous discipline. But Bagley did not testify that James deserved less discipline. He said only that James’s case was different from the others because James had “padded,” not “punched,” timecards like Sievers and Shields had done. Tr. 666, 670.

⁴⁹ CX 19.

⁵⁰ CX 7 at 67-70.

Thus, the record contains circumstantial evidence that tends to prove that Alaska's reason for firing Sievers - timecard fraud - was not its true reason, and therefore we could infer, like the ALJ, that Sievers's refusal to certify the plane with the engine vibration contributed to Alaska's action. But Sievers's burden is to prove by a preponderance of the evidence that his protected activity contributed to the termination. Sievers fails because the record demonstrates that Alaska terminated him because of timecard fraud.

First, Alaska clearly had a legitimate reason to discipline Sievers. Company rules specifically prohibited altering, punching or making entries on another employee's timecard, and Sievers admitted he had "padded" and "punched" timecards.⁵¹ Moreover, Sievers (and all other employees) had been warned that altering timecards could result in termination.

Second, the evidence shows that Golden's timecard investigation and the subsequent disciplinary action against Sievers were not contrived. Almost every layer of senior management participated in the investigatory and disciplinary process. When Golden received the anonymous call and began an investigation into timecard irregularities at Portland, he informed Keith, Director of Line Maintenance, that he was ordering the badge swipes from the airport authority.⁵² And upon verifying the substance of the telephone call involving the union employee, Golden informed Lori Manning of Alaska's Labor Relations department.⁵³ Golden then began interviewing mechanics based on the irregularities identified with the badge swipes and discovered that the problem also involved supervisors. He expanded his investigation and interviewed supervisors. Based on those interviews and the conduct of some of the supervisors, and with the prospect of possible disciplinary conduct against a supervisor, Golden contacted Leah Hanson of Employee Relations and Hirshman, Staff Vice President of Maintenance, who would be the ultimate decisionmaker on any disciplinary action taken.⁵⁴ Hirshman, Keith, and Golden had nine or ten meetings about terminating the supervisors.⁵⁵ During the investigation, Hirshman also consulted Cohen, Senior Vice President of Maintenance and Engineering, who gave Hirshman his support in whatever Hirshman, Golden, and Keith decided.⁵⁶ Cohen, in turn, informed Bagley, Executive Vice President, about the timecard irregularities.⁵⁷ And, as discussed above, Bagley conducted a thorough post-termination investigation of his own, reviewing the documentation and interviewing the managers and the three accused supervisors.

⁵¹ Tr. 88; RX 13, at 2.

⁵² CX 4 at 16-18.

⁵³ Tr. 360.

⁵⁴ Tr. 350-52, 361.

⁵⁵ CX 7 at 32.

⁵⁶ CX 2 at 37.

⁵⁷ *Id.* at 38.

Third, the record also demonstrates that the managers harbored no animus toward Sievers when he insisted on safety. Though the managers were impatient and pressured supervisors and mechanics to get the airplanes ready to fly, their displeasure about delays did not linger for long.⁵⁸ For instance, after Sievers refused to certify the airplane with the engine vibration, Golden accepted Sievers's judgment and informed Kurlfink. The issue never came up again.⁵⁹ Sievers testified that the incidents involving the placards, hydraulic reservoirs, and wing slat droop passed without further conflict.⁶⁰ Far from resenting Sievers, Golden considered Sievers to be the best supervisor at Portland and told him so.⁶¹ More importantly, Sievers liked Golden and had a good working relationship with him.⁶² Sievers received a merit pay increase while serving under Golden, and in April, 2003, just after refusing to certify the plane with the faulty engine, Golden gave Sievers another "overwhelmingly positive performance review."⁶³

CONCLUSION

The record supports only some of the ALJ's findings. And those findings - that Sievers's protected activity and the termination occurred closely in time, that the managers were upset when delays occurred, that Bagley recommended that James, but not Sievers, be eligible for rehire, and that Alaska did not investigate the allegations that Golden knew about and condoned timecard fraud - do not constitute a preponderance of the evidence that Sievers's protected activity contributed to his firing. Rather, the weight of the evidence demonstrates that Alaska terminated Sievers because of timecard fraud. Therefore, we **DENY** Sievers's complaint.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

DAVID G. DYE
Administrative Appeals Judge

⁵⁸ Tr. 157.

⁵⁹ Tr. 154.

⁶⁰ Tr. 153-154.

⁶¹ CX 4 at 108.

⁶² Tr. 157.

⁶³ Tr. 105-106, 157.