

**U.S. Department of Labor**

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**Issue Date: 15 December 2005**

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CASE NO.: 2004 AIR 30  
In the Matter of

**THOMAS B. JETER**  
Complainant

v.

**AVIOR TECHNOLOGIES OPERATIONS, INC., d/b/a  
FLIGHTWORKS**  
Respondent

Appearances: Ms. Loreen M. Robinson, Attorney  
For the Complainant

Mr. Ted M. Scartz, Attorney  
For the Respondent

Before: Richard T. Stansell-Gamm  
Administrative Law Judge

**DECISION AND ORDER –  
DISMISSAL OF COMPLAINT**

This case arises under the employee protection provisions of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106-181, 49 U.S.C. § 42121 (“AIR 21” or “the Act”), as implemented by 29 C.F.R. Part 1979. This statutory provision, in part, prohibits an air carrier, or contractor or subcontractor 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 participated in a proceeding relating to any violation or alleged violation of any order, regulations, or standard of the Federal Aviation Administration (“FAA”) or any other provision of Federal law relating to air carrier safety. 49 U.S.C. § 42121 (a) (2) and (4).

**PROCEDURAL BACKGROUND**

On August 8, 2003, Mr. Jeter filed a complaint with the Occupational Safety and Health Administration (“OHSa”), U.S. Department of Labor (“DOL”), alleging that Avior Technologies Operations, Inc., d/b/a FlightWorks (“FlightWorks”), had terminated his employment as a pilot on May 16, 2003 due to his participation in an FAA investigation of FlightWorks’ training program.

On May 29, 2004, after a lengthy investigation of Mr. Jeter's complaint, the Regional Administrator for OSHA notified the parties that he found no violation of the Act's employee protection provisions. Specifically, although Mr. Jeter had engaged in protected activity by responding to the FAA investigation, the Regional Administrator determined that his participation was not the reason for his discharge. On June 21, 2004, through counsel, Mr. Jeter objected to findings and requested an administrative hearing.

Pursuant to a Notice of Hearing, dated June 25, 2004, I initially set a hearing date of August 11, 2004 (ALJ I).<sup>1</sup> After several continuances for diverse reasons (ALJ II to ALJ VII), on March 2 and 3, 2005, under the provision of 49 U.S.C. § 42121 (b) (2) (A) and 29 C.F.R. § 1979.107 (b), I conducted a hearing in Marietta, Georgia with Mr. Jeter, Ms. Robinson, and Mr. Scartz. At the conclusion of the hearing, I left the record for 45 days to provide the parties an opportunity to attempt to obtain interrogatories from Mr. Belcher, an FAA investigator, who was deployed to Iraq (TR, pages 631 to 634). Neither party submitted any additional evidence during the 45 day period. Accordingly, my decision in this case is based on the testimony presented at the hearing and the following documents admitted into evidence: CX<sup>2</sup> 11 to CX 13, CX 18, CX 20 to CX 24, CX 28 to CX 30, CX 34, RX<sup>3</sup> 2 to RX 12.<sup>4</sup>

### **Complainant's Statement of the Case<sup>5</sup>**

Throughout his career as a professional pilot, Mr. Jeter has maintained a continuous interest in aviation safety and a respect for authority. At the same time, Mr. Jeter would not hesitate to challenge authority if appropriate to do so for safety reasons.

Within a couple of weeks of being hired as a pilot for C.T. (Cook and Toma) Aviation, Mr. Jeter was involuntarily made an employee of FlightWorks due to a business transaction between C.T. Aviation and FlightWorks. Over the course of the next several months, Mr. Jeter raised concerns to C.T. Aviation and FlightWorks about indoctrination/training, billing, and maintenance practices. Although Mr. Beale may have believed a 60 day probation period was initiated in a February 2003 meeting concerning billing practices, no record of that action was placed in Mr. Jeter's personnel record and Mr. Jeter was not aware that he was considered to be on probation. Notably, in regards to alleged disruptive behavior and purported failures to report to duty, no disciplinary actions were taken at the time of the alleged incidents.

About six months into his employment with FlightWorks, Mr. Jeter, along with other FlightWorks pilots, was required to provide information about FlightWorks' training and

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<sup>1</sup>The following notations appear in this decision to identify specific evidence: CX – Complainant exhibit; RX – Respondent exhibit; ALJ – Administrative Law Judge exhibit; and, TR – Transcript of hearing.

<sup>2</sup>The documents were previously labeled "Plaintiff's exhibit."

<sup>3</sup>The documents were previously labeled "Defendant's exhibit."

<sup>4</sup>CX 32 and CX 33 are marked, "Offered not admitted" and attached to the record.

<sup>5</sup>TR, pages 26 to 31, and closing brief, dated June 6, 2005.

testing practices to the FAA as part of their investigation of FlightWorks. Mr. Jeter informed the FAA that FlightWorks had failed to provide any type of oral or written examination of the topics covered in his July 2002 indoctrination. Mr. Jeter believes the pilot statements, including his own statement, were informally shared with FlightWorks. On May 13, 2003, due to a consent order with the FAA, FlightWorks was required to make significant personnel changes, change training practices, and pay a substantial fine. On the same day, FlightWorks requested that Mr. Jeter report to their offices on May 16, 2003. On May 16, 2003, FlightWorks terminated Mr. Jeter as a pilot for the company.

Subsequently, FlightWorks has indicated that Mr. Jeter was discharged for boisterous and disruptive activity, insubordination and disrespectful conduct, unauthorized absences, and unsatisfactory performance. Notably, no complaints of such conduct appear in Mr. Jeter's personnel record and FlightWorks never counseled him about that type of behavior. Consequently, the stated reasons for his termination are pretext. Clearly, FlightWorks terminated Mr. Jeter due to his cooperation with the FAA investigation.

Mr. Jeter seeks damages that include all compensation and benefits due to him for the period from May 16, 2003 to present, in the approximate amount of \$127,000. He also seeks the medical examination expense and training costs associated with his re-certification as a Hawker pilot, totaling nearly \$40,000. Finally, Mr. Jeter seeks to recoup his litigation expenses and attorney fees in the amount of \$14,961.

### **Respondent's Statement of the Case<sup>6</sup>**

Shortly after Mr. Jeter was hired by C.T. Aviation, a change in the management of the aircraft he was piloting caused him to become an employee of FlightWorks subject to the company's procedures and policies. Apparently, Mr. Jeter did not like his new employee status and had numerous conflicts with FlightWorks management. Even after a February 2003 meeting in which FlightWorks' expectations were explained to Mr. Jeter, he continued to demonstrate an unwillingness to comply with FlightWorks' policies and procedures, including the responsibilities associated with standby duty. Mr. Jeter certainly participated in an FAA investigation. However, the portion of his statement to the FAA that was known to FlightWorks did not indicate any violations. Though aware of Mr. Jeter's protected activity of participating in the FAA investigation, FlightWorks did not terminate Mr. Jeter for his involvement with the FAA. Likewise, his cooperation with the FAA was not a contributing factor to his employment termination.

As a FlightWorks employee, Mr. Jeter had been previously counseled and placed on 60 day probation for performance and behavior issues. When Mr. Jeter continued not to abide by its policies, as demonstrated by his failure to be available for assignment while on standby, FlightWorks ended his employment.

Based on his post-termination contacts with the company, FlightWorks believes Mr. Jeter only began to develop a retaliation claim after FlightWorks refused to grant him a severance package. His discrimination claim and subsequent prolonged pre-hearing litigation represent a

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<sup>6</sup>TR, pages 31 to 33, and closing brief, June 6, 2005.

“vexatious” attempt to cost FlightWorks significant time, expense, and attorney fees. Accordingly, under the provisions of AIR 21, FlightWorks seeks an award of \$1,000 in attorney fees from Mr. Jeter due to his frivolous and bad faith complaint.

## **ISSUES**

1. Whether Mr. Jeter engaged in a protected activity under the Act.
2. If Mr. Jeter engaged in a protected activity, whether that protected activity was a contributing factor in the FlightWorks’ decision to terminate his employment on May 16, 2003.
3. If Mr. Jeter’s protected activity was a contributing factor in the decision to terminate his employment, whether FlightWorks has established by clear and convincing evidence that it would have terminated Mr. Jeter’s employment on May 16, 2003 in the absence of the protected activity.
4. If Mr. Jeter’s protected activity was not a contributing factor in his employment termination, whether FlightWorks may obtain an attorney fee award of \$1,000 against Mr. Jeter.

## **SUMMARY OF TESTIMONY AND DOCUMENTARY EVIDENCE**

### **Sworn Testimony**

Mr. Scott A. Beale

(TR, pages 34 to 134 and 558 to 592)

[Direct examination by Ms. Robinson] Mr. Beale is the President and CEO of FlightWorks with an office in Kennesaw, Georgia. FlightWorks is an aircraft charter and management company. In May 2003, the company had about 50 employees, including 30 pilots. At that time, the company was operating twelve to thirteen aircraft that were either managed, leased or owned by FlightWorks. Most of the flying is accomplished under FlightWorks’ Part 135 air carrier certification. This certification permits commercial flying operations of aircraft with up to 19 seats. A Part 135 certificate assigns specific responsibilities to management, a director of maintenance and a director of operations.

Concerning the employment of pilots, Mr. Beale engaged in a cooperative effort with Mr. Randy Rakes, the director of operations, and Mr. Richard Young, the chief pilot. Both the director of operations and chief pilot reported directly to Mr. Beale. As the CEO, Mr. Beale received and reviewed for accuracy billing information from various sources, including flight logs, maintenance records, and charter invoices.

In 2001 and 2002, FlightWorks provided on-demand charter services for C.T. Aviation. C.T. Aviation would request a trip and FlightWorks would provide the aircraft services necessary for the trip. After about 18 months, Mr. Beale and C.T. Aviation representatives

began discussing the purchase of an aircraft by C.T. Aviation. The company became interested in an aircraft due to its high usage of charter services. Around May 2002, C.T. Aviation purchased a Hawker aircraft, an eight passenger, twin engine turbojet. At that time, one of FlightWorks' Hawker pilots, Mr. Parker, went to work for C.T. Aviation. In August 2002, he returned as a FlightWorks employee. In June 2002, FlightWorks and C.T. Aviation entered into an agreement whereby FlightWorks would fly C.T. Aviation's aircraft under its Part 135 certificate and the owners would operate the aircraft under Part 91, non-commercial use (CX 34). The contract ended at the end of 2003 when C.T. Aviation sold the plane. Under the terms of the agreement, the owners of the aircraft, C.T. Aviation, had first priority for the non-commercial use of the turbojet. Also, under the agreement, FlightWorks charged C.T. Aviation the exact pay amount a pilot received for operating the aircraft; there was no mark-up. FlightWorks actually paid the pilots' salaries and provided benefits and then billed its customers for the pilot's compensation.

As part of the C.T. Aviation and FlightWorks agreement, FlightWorks agreed to hire Mr. Parker and Mr. Jeter, who had been flying the Hawker for C.T. Aviation, as employees of FlightWorks. Since Mr. Parker had been a previous employee, FlightWorks knew him. FlightWorks was also familiar with Mr. Jeter through his resume. Mr. Parker and Mr. Jeter were assigned principally to the C.T. Aviation aircraft and their compensation remained essentially the same. CX 13 is Mr. Jeter's letter of employment with FlightWorks. The letter indicates that Mr. Rakes would supervise his flying schedule. Shortly after becoming a FlightWorks pilot in July 2002, Mr. Jeter went through an indoctrination session in which he was given an overview of the company and introduced to its policies and procedures. Either Mr. Rakes or Mr. Young would have provided the indoctrination training.

Under the terms of the agreement with C.T. Aviation, FlightWorks gave C.T. Aviation notice of the FAA investigation. Mr. Beale believes the notice was provided in early 2003. Mr. Beale became aware of the investigation in December 2002. Mr. Beale also provided to Ms. Charlene McNabb, a representative of C.T. Aviation, detailed maintenance bills and supplied other information at her request. CX 23 is a request from Ms. McNabb for billing information.

On February 24, 2003, Mr. Beale met with Ms. McNabb, Mr. Rakes, Mr. Parker, and Mr. Jeter to discuss billing practices and provide an update on the FAA investigation which Mr. Beale indicated did not involve losing the Part 135 certificate (*see* CX 28). At the meeting, Mr. Beale expressed his belief that Mr. Jeter, as a FlightWorks' employee, should have attempted to resolve his billing questions with FlightWorks rather than involving a client. Mr. Beale did not consider Mr. Jeter's questioning of FlightWorks' billing to be insubordination. However, his questioning was disruptive to the extent he went to C.T. Aviation first with the problem rather than FlightWorks. Mr. Beale explained the proper procedure to question FlightWorks' billing through the company's accounting department rather than the client. He also expressed his concern about the disruptive nature of Mr. Jeter's process. He informed both Mr. Parker and Mr. Jeter that the discussion represented a counseling session and that a 60 day probationary period due to their disruptive behavior was starting for both of them. Mr. Beale doesn't recall whether the probation period was entered into their personnel records.

Prior to this meeting, Ms. McNabb expressed her intention to Mr. Beale to terminate the services of Mr. Parker and Mr. Jeter. Mr. Beale indicated that while he would respect her views, any employment termination of Mr. Jeter had to come from FlightWorks.

Mr. Beale acknowledged that when FlightWorks entered into a similar agreement with another company, the pilots remained with the other company.

Mr. Beale was notified of the FAA investigation on December 18, 2002. The investigation started when the FAA was informed that a pilot-in-charge over flew his medical certificate. The company's policy makes a pilot responsible for his or her medical certificate. FlightWorks cooperated with the FAA and provided documents. Part of the information provided involved the company's Part 135 training and indoctrination. Many of the individual pilots were contacted by the FAA during its investigation. The FAA had also informed FlightWorks that some of its pilots would be receiving notices that they were under investigation individually. Many of those pilots called Mr. Beale asking for advice. He told them that the company would support them. He also indicated that they could seek independent counsel to defend their licenses. Mr. Parker was one of the pilots who contacted Mr. Beale.

Mr. Beale attended a meeting in February 2003 with the FlightWorks pilots to discuss the FAA investigation. Mr. Rakes, Mr. Young, Mr. Parker, and Mr. Jeter were present at the meeting. Mr. Beale told the pilots why the investigation was being conducted and that the company was going to support them. Mr. Beale does not recall whether there was a discussion about the pilots submitting statements. He may have asked them if they had submitted statements since the FAA was inquiring about whether the chief pilot had given the pilots a requisite and periodic oral examination about company policies and its operation manual. Mr. Beale did not encourage the pilots not to submit statements. He did not tell them that he had copies of their statements. He did not advise the pilots that they could change or amend their statements. He did not offer to help them change their statements. Likewise, he did not suggest that it would be a better idea if the pilots as FlightWorks employees allowed him to assist them in preparing the statements. He did not ask them for a copy of their statements. He does recall a second meeting was held with pilots attended by the company's attorney. However, he did not attend that meeting.

On May 27, 2003, after negotiations that ran from March to May, FlightWorks entered into an agreement and consent order with the FAA. As part of the corrective action, FlightWorks agreed to improve the separation between training and checking. Additionally, the chief pilot was removed from his position. Mr. Beale also received a copy of FAA's letter to the thirty pilots indicating that they had been exonerated. He doesn't recall if he received the letter on May 13, 2003.

With input from Ms. McNabb, Mr. Beale and Mr. Rakes decided to terminate Mr. Jeter's employment. The principal reason for Mr. Jeter's separation was his "uncooperative attitude problem." For example, he had accused FlightWorks of incorrect billing. On two occasions, when FlightWorks called Mr. Jeter to work, he didn't respond. The first time, he declined because he was planting trees. The second time, he didn't answer his phone. Mr. Beale did not personally counsel Mr. Jeter about these events.

Mr. Beale recalled receiving an April 18, 2003 e-mail from Mr. Jeter about his unavailability on May 8 and 9 due to participation in a deposition in Cleveland (CX 21). While he passed the e-mail on to the scheduler, Mr. Beale is not sure if the scheduler received it. The e-mail did not comply with company policy about asking for time off. In Mr. Beale's opinion, the e-mail was just a reflection of Mr. Jeter's plans; it did not represent a proper request for time off. During the period of May 6th to May 8th, Mr. Jeter was on stand-by status. Mr. Beale also emphasized that Mr. Jeter was non-responsive on May 6th and 7th, which were not mentioned in the e-mail. Again, Mr. Beale did not counsel Mr. Jeter about his absence.

On May 13, 2003, Mr. Jeter was told to come to a meeting at FlightWorks' headquarters on May 16, 2003. By the time Mr. Jeter was informed of the meeting, the company had "plans to terminate him unless we could be convinced otherwise." During that preceding week and "many times up to that week" he and Ms. McNabb had discussed the possible termination of Mr. Jeter. Mr. Beale advised her of his termination decision and she did not object.

The May 16, 2003 meeting with Mr. Jeter occurred in Mr. Rakes' office. Mr. Rakes reviewed the issues with Mr. Jeter, expressing their dissatisfaction with his attitude and performance related issues. Mr. Rakes then terminated Mr. Jeter's employment. Mr. Jeter's non-availability on May 6th and 7th was highlighted. Mr. Rakes also mentioned Mr. Jeter's attitude toward the department that arranged charters and other company personnel and his e-mail communications. In his e-mails, Mr. Jeter had made clear that he was not happy with the transition from C.T. Aviation to FlightWorks. He was also very accusatory to FlightWorks clients. In response, Mr. Jeter said a few words and then "stormed out of the office."

Mr. Beale recognized CX 18 and indicated that Mr. Blackwell, who provided the responses on the document, is the Human Resource Director for FlightWorks. He reviewed the document when Mr. Blackwell signed it. The referenced e-mail correspondence was received by Mr. Beale from Ms. McNabb. The unsatisfactory performance and unauthorized absence involves Mr. Jeter's non-availability on May 6th and 7th. His disrespectful and insubordinate behavior is contained in the e-mails between Mr. Jeter and Mr. Lance Warren. His boisterous and disruptive behavior relates to the FAA investigation pilot meeting in which Mr. Jeter was "continually disruptive and very accusatory," similar to his e-mails. Sometime after the meeting, Mr. Beale verbally counseled Mr. Jeter about his behavior. Mr. Beale also found Mr. Jeter's e-mail to Mr. Lance to be accusatory and disruptive.

[Direct examination by Mr. Scartz] Since FlightWorks is an aircraft management and charter business, the trust of its clients is a matter of "life and death."

In May 2002, C.T. Aviation purchased an aircraft and Mr. Parker resigned from FlightWorks to pilot the aircraft. At that time, Mr. Beale offered FlightWorks' management services to Ms. McNabb. However, since prior arrangements had been made, Ms. McNabb declined.

In late June 2002, Ms. McNabb contacted Mr. Beale about having FlightWorks provide aircraft management and charter services. As a result, Mr. Beale negotiated a contract with Ms. McNabb and Mr. Cook. As part of the agreement, FlightWorks was asked to accept Mr. Parker

and Mr. Jeter as pilots. However, the agreement did not contain any addendum guaranteeing the employment of Mr. Parker and Mr. Jeter. Due to the arrangement, FlightWorks gave a job offer letter to Mr. Jeter, hiring him as an at-will pilot.

FlightWorks has a form of progressive discipline. However, the company reserves its right to terminate an employee without following progressive discipline.

Mr. Beale first became aware of issues with Mr. Jeter in about January 2003 when Ms. McNabb asked Mr. Beale whether pilots were supposed to contact the aircraft owners. She had specific concerns about conversations between the two pilots and Mr. Cook. Mr. Beale told her that such contacts were not usual.

In a February 14, 2003 e-mail to Mr. Beale, RX 4, Ms. McNabb recommended that both Mr. Parker and Mr. Jeter be terminated as pilots. Mr. Jeter asked to have more time to work with Mr. Parker and Mr. Jeter. C.T. Aviation was paying for management services and Mr. Beale wanted to try and resolve the issues. At that time, he and Ms. McNabb arranged to meet on February 24th.

At the February 24, 2003 meeting, Mr. Beale agreed that some billing errors had been made. However, most of the issues arose due to the contract terms that Ms. McNabb negotiated. Ms. McNabb was “very clear . . . on how we were to bill . . . and what we were to charge.” Mr. Beale was concerned that a FlightWorks employee was now telling Ms. McNabb the billing practices were incorrect.

Mr. Beale had several reactions to Mr. Jeter’s February 18, 2003 e-mail, RX 5. He considered the communication accusatory of, and damaging to, FlightWorks. Mr. Beale also found the correspondence disrespectful. Specifically, as a FlightWorks employee, Mr. Jeter raised concerns about the company’s billing to C.T. Aviation without giving Mr. Beale an opportunity to explain the billing provisions which were a direct result of the contract he had negotiated with Ms. McNabb.

At the February 24th meeting with Mr. Cook, Ms. McNabb, Mr. Parker, and Mr. Jeter, in addition to discussing the billing issues, Mr. Beale specifically addressed Mr. Jeter’s attitude. Ms. McNabb spoke up, referenced the e-mails, and expressed concern about that anger. Mr. Beale stated the attitude was serious and he “wanted an opportunity to make right and show them and to educate.” He stated they should give the situation “60 days” and that “it had to be corrected within 60 days.” At that point, he hoped that Mr. Parker and Mr. Jeter would integrate into FlightWorks and a successful relationship would develop.

The incident about the April charter while Mr. Parker and Mr. Jeter were in Dallas raised a concern about Mr. Jeter’s attitude. Since FlightWorks is an on-demand flying service, the pilots must understand that changes have to be made that may not be convenient. Most of the pilots understand Part 135 flying is on-demand. Mr. Jeter’s e-mail, RX 6, attacked the person that was trying to arrange a flight, Mr. Warren,. In an effort to meet a trip request, and since Mr. Parker and Mr. Jeter were at the Dallas airport for simulator training, FlightWorks had identified an earlier return flight that would enable them to take the charter. Due to the exchanges between



the pilots and the scheduler, the returned flight was missed so the charter departure time had to be pushed back. There was no attempt to violate crew rest.

Mr. Beale had received Mr. Jeter's earlier e-mail about his trip on May 9th (CX 30). However, that correspondence did not automatically excuse Mr. Jeter from flying. Because Mr. Jeter couldn't be reached on May 6 and 7, 2003, and a disruption of charter operations was possible, the issue was brought to Mr. Beale's attention. He asked Mr. Warren to send him an e-mail chronicling FlightWorks' efforts to contact Mr. Jeter (RX 7). Although Mr. Parker and Mr. Jeter were the dedicated crew for the C.T. Aviation aircraft, they could be replaced by other pilots if necessary.

A few days prior to May 16, 2003, Mr. Beale decided to terminate Mr. Jeter. The decision was based on a culmination of his uncooperative attitude topped by the company's inability to reach him on May 6 and 7. The key issue in that incident was the inability of FlightWorks to contact Mr. Jeter and his failure to return their calls. As a result of his unavailability, FlightWorks couldn't staff a charter and lost revenue. This incident demonstrated that Mr. Jeter's attitude hadn't changed since February 24, 2003.

As part of the FAA investigation, during the final process and negotiations, FlightWorks attorney received pilots' forms and passed them on to Mr. Beale in one package sometime in March or April 2003. RX 12, is an example of one of the forms. Although damaging to Mr. Young, the statement did not adversely implicate FlightWorks. Mr. Beale doesn't recall meeting with his pilots with these statements in hand.

The FlightWorks attorney never told Mr. Beale that he had also received the FAA statement prepared by Mr. Jeter's attorney, CX 30. Mr. Beale never saw that statement until a couple of weeks before the present hearing. In other words, through May 16, 2003, Mr. Beale had not seen that statement.

The FAA investigation began in January 2003 and involved medical certificates. That investigation then led into an inquiry about pilot training at FlightWorks. At the conclusion of the investigation in April 2003, FlightWorks began negotiating a consent order with FAA which included the removal of two pilots from their positions at FlightWorks which affected the company's operations. The negotiations were being finalized by May 13, 2003. Mr. Young was removed as chief pilot in June 2003.

Mr. Beale believes every pilot who was exonerated received a letter to that effect by May 13, 2003.

Mr. Jeter's cooperation with the FAA investigation had nothing to do with his termination as a pilot with FlightWorks. Absent the investigation, Mr. Jeter would still have been terminated as a pilot.

[Cross examination by Ms. Robinson] FlightWorks' progressive disciplinary policy is set out in the employee handbook. That policy is not always followed in some situations when, for example, safety is involved.

A few days before May 16, 2003, Mr. Beale had a discussion with Mr. Rakes about Mr. Jeter's employment. That discussion and other comments about Mr. Jeter were not documented.

Between February 24 and May 7, 2003, Mr. Beale tried to bring Mr. Jeter closer to the FlightWorks organization by asking him to participate in the updates and revisions to the company's manuals.

Mr. Beale did not need the written approval of the C.T. Aviation owners to schedule Mr. Jeter for a standby flight. After the February 24, 2003 meeting, Mr. Beale had no further problems with Mr. Parker's attitude.

Mr. Beale believes the FAA gave FlightWorks' attorney copies of the pilots' statements as part of the consent order process to establish the basis for their findings.

Ms. Charlene McNabb  
(TR, pages 135 to 159)

[Direct examination by Mr. Scartz] Ms. McNabb is the CPA for the owner of C.T. Aviation. Mr. Tom Jeter was hired as a pilot for the aircraft owned by C.T. Aviation. C.T. Aviation leased the plane to FlightWorks, which managed it. CX 34 is the agreement between C.T. Aviation and FlightWorks.

Initially, C.T. Aviation planned to lease the aircraft to other parties and set up a management section to hire and manage pilots, including Mr. Jeter. However, after a few months, C.T. Aviation found the operation was too difficult and complex to accomplish on its own. So, the company leased the aircraft to FlightWorks, the management section dissolved and the C.T. Aviation pilots became employees of FlightWorks.

In February 2003, Mr. Jeter raised an issue concerning C.T. Aviation's billing. He had reviewed FlightWorks' billings and was concerned that C.T. Aviation was being over-charged. RX 5 is Mr. Jeter's communication about the problem. Ms. McNabb responded that she found no discrepancies in the billing. She was happy with the billing and financial arrangement and believed the aircraft was being properly managed by FlightWorks. She also attempted to stress to Mr. Jeter that when the plane transferred to FlightWorks for management purposes, he became their employee and was subject to their policies.

Despite her response, Mr. Jeter continued to find issues with FlightWorks involving fuel surcharges. Ms. McNabb again replied that she found the billing to be correct. She forwarded the correspondence to Mr. Beale and arranged for a meeting with Mr. Jeter and Mr. Beale. Ms. McNabb also expressed to Mr. Beale her concern about Mr. Parker and Mr. Jeter being very angry about the situation (RX 4). In her opinion if a resolution couldn't be found, she wanted them fired as pilots. She informed the owners of the aircraft and Mr. Beale of her position. Mr. Beale disagreed with the need to fire them because he thought he could resolve the problems. Although Mr. Parker and Mr. Jeter worked for FlightWorks, Ms. McNabb, as a representative of the owner of the aircraft, believed she should have a significant say in the matter.

Although she “knew the reasons why I thought he should be fired,” Ms. McNabb was surprised when Mr. Jeter was terminated in May 2003 because she didn’t know Mr. Beale was going to do it at that time.

[Cross examination by Ms. Robinson] In March 2003, Mr. Beale informed Ms. McNabb about the FAA investigation. Mr. Parker and Mr. Jeter also told her about the investigation. They were concerned and she agreed to provide an attorney (*see* CX 29). The attorney responded to the FAA on their behalf.

Both Mr. Parker and Mr. Jeter raised billing concerns to Ms. McNabb about FlightWorks’ billing and maintenance procedures. On February 24, 2003, Ms. McNabb attended a meeting with Mr. Beale, Mr. Parker, and Mr. Jeter. She believes they discussed the alleged billing inaccuracies but is not certain. She doesn’t recall any discussion about the FAA investigation.

She didn’t object to Mr. Parker and Mr. Jeter bringing their concerns to her. They were trying to do a good job. However, Mr. Beale satisfied any concerns she may have had about the billing practices. She did not believe an audit was necessary. The agreement between C.T. Aviation and FlightWorks ended in November 2003 when the aircraft was sold.

Ms. McNabb first met Mr. Jeter when Mr. Parker hired him as a pilot for C.T. Aviation. Mr. Parker told her that he was very qualified.

Ms. McNabb was surprised by Mr. Jeter’s termination because Mr. Beale didn’t tell her about it. She learned from the aircraft owner that Mr. Jeter was no longer a FlightWorks pilot. She thought Mr. Beale would have called her as a courtesy.

[Administrative law judge examination] In February 2003, Ms. McNabb expressed her concern to Mr. Beale about Mr. Parker and Mr. Jeter continuing to pilot the C.T. Aviation aircraft because they were disgruntled employees. Nevertheless, a month later, she agreed to pay their legal fees for the FAA investigation because “they were still flying the plane and just because we’re nice.”

Ms. McNabb believed Mr. Jeter needed to understand that he was an employee of FlightWorks. She acknowledged that having C.T. Aviation pay his legal fees might have confused him.

Mr. George R (Randy). Rakes  
(TR, pages 160 to 199)

[Direct examination by Ms. Robinson] Having been trained as a pilot in the military, Mr. Rakes started working for FlightWorks as a chief pilot in 1999 when he retired from the service. In July 2002, Mr. Rakes became the Director of Operations. He held that position through about June or July of 2003. At present, Mr. Rakes works for FlightWorks in marketing for government services. His job changed at FlightWorks due to a consent order with the FAA. The FAA had found problems with Mr. Rakes’ documentation of checking (tests).

When Mr. Jeter started working for FlightWorks in July 2002, Mr. Rakes was in charge of pilot basic indoctrination. For day-to-day activities, Mr. Jeter reported to the chief pilot. Mr. Rakes would get involved only if there were administrative actions or charter issues that needed to be resolved.

CX 24 is the document sent to the FAA when Mr. Jeter was hired by FlightWorks. Mr. Rakes found no problems with Mr. Jeter's qualifications.

Mr. Rakes does not recall any boisterous or disruptive behavior by Mr. Jeter. Likewise, Mr. Jeter was never insubordinate or disrespectful to Mr. Rakes. However, he does recall some issues the scheduler had with being able to contact Mr. Jeter. He is also aware of an incident when the company needed him for a trip while he was scheduled for stand-by but he said he wasn't going to be available. Although Mr. Rakes had no problems with Mr. Jeter's flying ability, he was aware of the continuing issue related to his change of employment from C.T. Aviation to FlightWorks. He became aware of the problem at a February 2003 meeting he attended with Mr. Beale, Mr. Parker, Mr. Jeter, and Ms. McNabb. At this meeting, either Mr. Jeter or Mr. Parker may have asked a question about the on-going FAA investigation. He also recalls that Mr. Beale was putting Mr. Parker and Mr. Jeter on 60 day probation. As to the purpose of the meeting, Mr. Rakes stated, "the nature of that conversation was to try and resolve continuing issues that kept popping up with C.T. Aviation. There were a lot of allegations back and forth." Some of those issues included billing practices, maintenance issues, and scheduling. In Mr. Rakes' opinion, although Mr. Parker and Mr. Jeter knew they worked for FlightWorks, "they felt their first loyalty lay with C.T. Aviation."

In junction with the FAA investigation, Mr. Beale met with the FlightWorks pilots and Mr. Rakes. At the time of the meeting, he had no information about pilot statements to the FAA. In response to a question, the pilots were informed they could retain separate counsel since their individual certificates were at stake. Mr. Rakes did not ask the pilots to see a copy of their statements and didn't indicate that he would assist them with their statements. Although he doesn't recall any specifics, some of the pilots may have discussed their statements with him. However, he doesn't think that he received a copy of any pilot statement. Mr. Rakes did express his belief that the FAA investigation would be resolved and the company would work through it. Mr. Rakes did not provide a statement to the FAA. He did not discuss any pilot statements with Mr. Belcher (an FAA representative).

A day or two before the May 16, 2003 meeting with Mr. Jeter, Mr. Rakes had a discussion with Mr. Beale about his continued employment. The conversation arose because Mr. Jeter had recently been unavailable to take a trip. According to Mr. Rakes, "It didn't seem that things were moving in the direction that we wanted them to move in when we had that meeting some time earlier. Initially, things had improved but they hadn't." There was no improvement in his attitude; he continued to cause unrest; and, it was becoming "an unsustainable situation to work with him on a day-to-day basis." Although Mr. Rakes didn't directly supervise Mr. Jeter, he was aware of the company's day-to-day operations. Since Mr. Jeter worked for him, "I was the one who decided to go ahead and make" the termination happen. He didn't discuss the termination decision with Ms. McNabb.

On May 16, 2005, Mr. Rakes met with Mr. Jeter, with Mr. Young present. He informed Mr. Jeter that their employment-relationship was not working and “I’d made the determination to let Mr. Jeter go.” When Mr. Jeter asked why he was being terminated, Mr. Rakes responded that Mr. Jeter knew why. Because Mr. Jeter was an “at will” employee, Mr. Rakes did not discuss any specific reasons for the termination. Afterwards, Mr. Rakes received a phone call from Mr. Parker. Mr. Parker asked why he let Mr. Jeter go.

[Cross examination by Mr. Scartz] RX 7 is an e-mail the pilot scheduler, Mr. Lance Warren, sent Mr. Rakes about his attempt on May 7th to arrange a trip for Mr. Jeter on May 8, 2003. Upon initial contact, Mr. Jeter explained that he would be leaving on an airline on Thursday.<sup>7</sup> When Mr. Warren tried to contact Mr. Jeter again in an attempt to work out a trip schedule, he was unable to reach him. At that time, Mr. Jeter was on call to be available for a flight on May 8th. This incident “was the culmination” that lead to the decision to terminate Mr. Jeter.

RX 12 is Mr. Jeter’s statement to the FAA indicating that he received an oral examination from Mr. Young but that it wasn’t documented. The first time Mr. Rakes saw that statement was just two weeks prior to the present hearing.

[Direct examination by administrative law judge] In the spring of 2003, Mr. Rakes supervised about 20 to 25 pilots. He doesn’t recall any other pilots being terminated due to his unavailability for a flight while on call. Mr. Jeter’s situation was different due to his “argumentative demeanor.” During another incident, when the company wanted to bring him back from training, he sent Mr. Warren a “very negative” response. RX 6 is the e-mail exchange between Mr. Jeter and Mr. Warren. When Mr. Warren tried to bring him back for a trip, Mr. Jeter’s response was “very argumentative and very disrespectful.”

Mr. Todd G. Blosser  
(TR, pages 200 to 225)

[Direct examination by Ms. Robinson] After being furloughed by Delta Airlines as a commercial pilot, Mr. Blosser went to fly for Spectrum Air Service (“Spectrum”) as a Hawker aircraft pilot in July 2002. The aircraft was owned by Spectrum and he was a Spectrum employee. However, the plane was flown under FlightWorks’ charter certificate.

In July 2002, along with six other Spectrum employees and Mr. Jeter, Mr. Blosser received indoctrination training from Mr. Rakes, the Director of Operations for FlightWorks. When Mr. Rakes completed the training after three days, some of the participants, including Mr. Jeter and Mr. Blosser, asked about the written examination. Mr. Rakes indicated that an examination was not necessary under the FlightWorks certificate. Based on prior experiences, the participants continued to ask about the absence of an examination. Mr. Rakes remained adamant and seemed “put off” by the inquiries.

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<sup>7</sup>I take judicial notice that May 8, 2003 was a Thursday.

In August 2002, Mr. Blosser also received hazardous material training from Mr. Young at FlightWorks which consisted of a videotape presentation. He does not recall any paperwork being completed regarding this training.

At the end of November 2002, Mr. Blosser flew a FlightWorks' charter with another pilot whose medical certificate expired during the period of the trip. This deviation led to an FAA investigation of FlightWorks. Around February or March 2003, Mr. Belcher from the FAA contacted Mr. Blosser and asked for a statement about the other pilot's medical certificate. Mr. Blosser cooperated with the FAA's investigation of Spectrum and submitted two letters and statements. On May 13, 2003, Mr. Blosser learned that the FAA's investigative focus had shifted from Spectrum to FlightWorks. On the same day, he called Mr. Jeter to let him know about the change. During their conversation, Mr. Jeter indicated that he had been directed to report to the FlightWorks office on May 16, 2003. Shortly after the FAA investigation began, FlightWorks terminated its business relationship with Spectrum.

[Cross examination] Although he occasionally flew as a contract pilot for FlightWorks, he was never its employee. Mr. Blosser believes that after the investigation started, FlightWorks considered him tainted and he was no longer offered work as a contract pilot.

[Administrative law judge examination] At the start of 2003, a "disgruntled employee of Spectrum" notified the FAA about the over-flight of the medical certificate.

Mr.<sup>8</sup> Francis R. (Roy) Parker  
(TR, pages 227 to 276)

[Direct examination by Ms. Robinson] Mr. Parker started flying for FlightWorks part-time in August 2001 and became a full-time pilot in November of the same year. In June 2002, Mr. Parker was employed by Mr. Cook of C.T. Aviation. Initially, Mr. Cook was looking for a pilot to fly Part 91 (company personnel) flights. Mr. Parker preferred flights under Part 91 rather than Part 135 because the company flights were more personal. About two weeks later, after Mr. Parker met Mr. Jeter and reviewed his resume, C.T. Aviation hired him as Mr. Parker's assistant.

Shortly thereafter, about two weeks later, Mr. Parker attended a meeting with Ms. McNabb, Mr. Cook and Mr. Beale. At that time, Mr. Cook announced that C.T. Aviation would be managed by FlightWorks. As a result, Mr. Parker became an employee of FlightWorks and moved from Part 91 flights back to Part 135 flights. Mr. Parker then informed Mr. Jeter of the change. Mr. Parker and Mr. Jeter were shocked by the change.

Since Mr. Parker had only just recently been a FlightWorks pilot, he was not required to attend the July 2002 indoctrination training.

About November 2002, Mr. Cook and Ms. McNabb asked Mr. Parker and Mr. Jeter to look over some paperwork regarding the two companies regarding some billing discrepancies.

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<sup>8</sup>Several of the witnesses who were pilots that held principal pilot positions were referred to as "Captain," such as "Captain" Parker. However, since a pilot's status as a captain is situational based on his (or her) current assignment and responsibilities in an aircraft, and not out of a lack of respect, I have reverted to standard title of "Mr."

The request seemed confusing because he had become a FlightWorks' employee but Mr. Cook would ask him how things were going. Additionally, at times, he struggled to accept that he was back to flying Part 135 charters. Mr. Parker is still a pilot with FlightWorks.

Mr. Parker and Mr. Jeter reported the results of their paperwork review to Mr. Cook. After a second meeting concerning the discrepancies, they agreed that a meeting should be conducted with Mr. Beale. That meeting occurred in February or early March 2003. Mr. Parker, Mr. Jeter Ms. McNabb, Mr. Beale and Mr. Rakes attended the meeting. The meeting focused on billing practices rather than safety. Mr. Parker didn't discuss any issues relating to the FAA investigation. He believes there was some discussion about a regulation. At the conclusion of the meeting, Mr. Parker believed the billing issues had been sufficiently raised to the management level of Ms. McNabb and Mr. Beale. As a result, Mr. Parker no longer had to address the issues. Mr. Parker did not construe the meeting to be a counseling session. He does not recall either Mr. Jeter or himself being advised that the meeting was a counseling session. At the same time, having gone forward with the billing review on behalf of C.T. Aviation, Mr. Parker felt that he had jeopardized himself. Mr. Beale didn't threaten him and just stated that he would take care of the billing issues. Later, on one occasion, Mr. Rakes challenged Mr. Parker on his role in the matter and indicated that he may have been out of line. He emphasized the importance of Mr. Parker understanding the distinction in billing between Part 91 and Part 135 flights. In response, Mr. Parker indicated that he was just trying to resolve issues presented to him by the owners of the aircraft. Mr. Parker also asked whether the rules had changed.

Mr. Parker became aware of the FAA investigation when he received his letter of notice. Mr. Beale called a meeting of the available pilots and told them not to panic that a mistake had been made. Mr. Rakes and Mr. Jeter were also present. Mr. Beale told them it wasn't urgent to get attorneys or submit statements. Neither Mr. Beale nor any representative of FlightWorks offered to help Mr. Parker prepare a statement. Mr. Parker believes he may have called Ms. McNabb about the FAA investigation notice. After the meeting, Mr. Parker worked with a lawyer who also represented Mr. Jeter. C.T. Aviation paid his legal expenses. Although Mr. Parker has heard that the company had copies of pilot statements from the FAA, he does not remember whether his recollection is based on hearsay or whether it was stated at the meeting he attended.

Later, another meeting occurred with FlightWorks' attorney present. However, Mr. Parker doesn't remember whether he attended that meeting.

For a while after FlightWorks began managing C.T. Aviation, he continued to fly fairly exclusively on C.T. Aviation Part 91 trips. However, by February 2003, the Part 135 charter work "really started very heavy." Sometimes scheduling conflicts arose. The scheduler at that time was Mr. Lance Warren. He kept in touch with Mr. Warren through either his home phone or cell phone.

Since Mr. Parker had originally hired Mr. Jeter, his status as Mr. Jeter's supervisor moved into a "grey" area after FlightWorks took over management. After that transition, if the principals from C.T. Aviation were involved, Mr. Parker considered himself to be Mr. Jeter's

supervisor. However, if FlightWorks was involved, Mr. Parker didn't feel like he had any supervisory abilities concerning Mr. Jeter.

Mr. Parker recalls one "exchange of words" between Mr. Rakes and Mr. Jeter at a pilot meeting. After the meeting, Mr. Parker observed Mr. Rakes apologize to Mr. Jeter, "referencing" Mr. Jeter's "firm commitment on the discussion." Mr. Parker never observed disrespectful conduct by Mr. Jeter. Likewise, he never noted any unsatisfactory performance by Mr. Jeter of his pilot duties.

The FAA exonerated Mr. Parker after its investigation.

Prior to his meeting with FlightWorks on May 16, 2003, Mr. Jeter chuckled and commented to Mr. Parker that the company was probably going to fire him.

In late April 2003, Mr. Parker and Mr. Jeter went to Houston for simulator flight training. FlightWorks scheduled and paid for the trip and training.

On another recurrent simulator training trip to Dallas, Texas, they were scheduled for a very early morning simulator flight, training till around 1:30 p.m., and a return trip at about 5 to 7 p.m. They received a phone call from FlightWorks dispatch to see if they could catch an earlier flight back to Atlanta so they could then take a charter flight early the next morning with a "show" time of 5:00 a.m. However, they would not have had the requisite rest time of 10 hours. After they informed FlightWorks of the rest time issue, the charter was moved from a 6:30 a.m. departure to 8:30 a.m. and they got the required rest.

When Mr. Jeter told him about being terminated on May 16th, Mr. Parker was shocked. He attempted to call people at C.T. Aviation but no one was available; so, he left telephone messages. Later that day, Mr. Rakes called him and told him about the termination. When Mr. Parker asked why, Mr. Rakes offered to explain the reasons in his office. Mr. Parker did not follow-up on that offer. The following Monday, Mr. Parker met with Mr. Cook and Ms. McNabb and described the situation. Then, he left the matter in their hands.

[Cross examination by Mr. Scartz] Mr. Parker provided a statement to the FAA regarding the oral check procedures. FlightWorks did not retaliate against him for that participation. Mr. Parker has never failed to contact FlightWorks if called to fly a charter.

Mr. Parker can understand FlightWorks' concern that its employee-pilots expressed a higher loyalty to a customer rather than FlightWorks.

Mr. Cook's request for a review of paperwork only involved billing discrepancies. He did not ask about any safety issues.

Upon recollection, Mr. Parker believes that after the "raised voice conversation" between Mr. Rakes and Mr. Jeter, during which they expressed their strong beliefs in their positions, they apologized to each other. Their was a mutual apology came at the end of the meeting.



During a conversation, Mr. Parker advised Mr. Jeter that his assertiveness was probably stronger than it needed to be. Mr. Parker believed his strong language might jeopardize his job.

When Mr. Jeter indicated on May 13th that he might be fired, he did not mention his participation in the FAA investigation.

FlightWorks absolutely did not pressure Mr. Parker to avoid cooperating with the FAA investigation. Mr. Parker considers it “very improbable” that FlightWorks pressured any pilots.

[Re-direct examination by Ms. Robinson] Mr. Parker is still flying for FlightWorks. He has transitioned to a Gulfstream 4 jet. FlightWorks paid for the transition training. Mr. Parker receives a higher salary for flying the jet. A change in the pilot staff led to his re-assignment to the Gulfstream in October 2004.

Mr. Jeter had “strong convictions in certain areas of his day-to-day operations” which were more assertive than Mr. Parker’s views.

Mr. Richard (Rick) M. Young  
(TR, pages 282 to 312)

[Direct examination by Ms. Robinson] Mr. Young is currently employed by FlightWorks directing government contracts and exploring other government opportunities. He joined FlightWorks in the summer of 1996. A short time later, he became the company’s chief pilot. In 1999, Mr. Young moved to another company. However, he returned to FlightWorks in the first part of 2000. Part of his chief pilot duties included ensuring the complete and adequate training of FlightWorks’ pilots. He reported to the Director of Operations, Mr. Rakes. Around July/August 2003, Mr. Young left his chief pilot position and started working on government contracts for FlightWorks.

He first met Mr. Jeter when the company took over C.T. Aviation’s Hawker. At that time, Mr. Young worked principally with Gulfstream and Citation crews. However, all the pilots reported to him. In the July 2002 time frame, Mr. Young reviewed the pilots’ post-training records.

On approximately December 18, 2002, the FAA started an investigation of medical certifications. Mr. Young received a notification letter. Mr. Young elected not to talk to the FAA. FlightWorks paid for his attorney, who also represented Mr. Rakes before the FAA.

Mr. Young believes all the FlightWorks pilots received letters from the FAA. Mr. Young did not discuss the investigation with Mr. Jeter. A couple months later, at one pilots’ meeting about the investigation, Mr. Young, Mr. Jeter, Mr. Rakes and Mr. Beale were present. There was no discussion about pilot statements and whether FlightWorks would help the pilots with their statements. Mr. Young doesn’t recall the specifics of the discussion. However, he believes Mr. Beale assured the pilots that FlightWorks was cooperating with the FAA. Many pilots, including Mr. Jeter, asked questions. Mr. Jeter was “the loudest.” He was boisterous and was the only pilot not speaking in a normal tone.

Mr. Young may have attended another pilots' meeting which was also attended by the company's lawyer. However, he doesn't recall the specifics of that meeting.

Concerning FlightWorks' business, Mr. Young explained that charter flights are a way aircraft owners can defer some of the costs of ownership. He also first met Mr. Parker when the C.T. Aviation aircraft came to FlightWorks. He was aware that Mr. Parker and Mr. Jeter were flying together because he usually greeted FlightWorks' flights upon arrival at the airport. Through Mr. Lance Warren, Mr. Young became aware of instances when the crews didn't respond or answer phone calls. However, his concentration was on the Gulfstream and Citation crews. Mr. Rakes and Mr. Warren dealt with the Hawker crews.

Mr. Young was not involved in the decision to terminate Mr. Jeter. Mr. Rakes told him about the decision. Although he was involved in hiring most of the pilots, Mr. Young did not participate in the separation of Mr. Jeter because he was unavailable. Mr. Jeter's termination was the only pilot separation in which Mr. Young did not participate.

In his exchanges with Mr. Jeter, Mr. Young did not observe boisterous, disruptive or disrespectful behavior. He is aware that Mr. Jeter couldn't be found for a charter flight in May 2003.

[Cross examination] Mr. Young never discouraged any pilot from speaking with the FAA. At the time of the investigation, he did not see Mr. Jeter's statement to the FAA. Likewise, he did not see any other pilot statement. After the investigation, Mr. Jeter was treated no differently than the other FlightWorks' pilots.

[Administrative law judge examination] Mr. Young told the pilots that if they elected to make a statement, they should tell the truth.

Mr. Thomas B. Jeter  
(TR, pages 313 to 557)

After a series of commercial pilot positions, Mr. Jeter was hired as a pilot for C.T. Aviation by Mr. Parker in late May 2002. At that time, he also met Mr. Cook and Ms. McNabb. Mr. Parker and Mr. Jeter were the only pilots for the C.T. Aviation aircraft and they flew several flights in May and June 2002.

About two and a half weeks later, Mr. Parker told Mr. Jeter that the arrangement he had with C.T. Aviation had been undone by Mr. Beale. Mr. Parker had arranged with C.T. Aviation to be the chief pilot and manager of the airplane. He told Mr. Jeter that he was happy to be away from FlightWorks and able to fly Part 91 flights for C.T. Aviation. However, under the new arrangement with C.T. Aviation and FlightWorks, Mr. Parker and Mr. Jeter would become FlightWorks pilots. Mr. Parker believed that four-fifths of their flights would be with C.T. Aviation under Part 91. The remaining trips would be Part 135 charter flights for FlightWorks.

Mr. Jeter had no problem with becoming a FlightWorks employee on July 1, 2002. He completed their paperwork, reviewed the company handbook and received a FlightWorks ID badge.

From July 1 through July 3, 2002, Mr. Jeter received FlightWorks indoctrination training from Mr. Rakes with six pilots from Spectrum. The training session covered, with the exception of hazardous material, all the subjects required under Part 135, including operating limitations, company procedures, and crew coordination. However, no oral or written examination was administered. Mr. Rakes indicated no examination was required. Since Mr. Jeter had gone through other Part 135 indoctrinations, he suggested Mr. Rakes review the regulations because he believed a test was required. Mr. Rakes seems slightly irritated to be challenged but indicated that the FAA had visited FlightWorks on several occasions and had no problems with their training program. Later, in October 2002, Mr. Young gave Mr. Parker and Mr. Jeter the required training on hazardous material and administered an oral examination.

Around October or November 2002, Mr. Parker and Mr. Jeter became concerned about the maintenance record-keeping on the Hawker aircraft. They noticed that the pre-flight maintenance annotations in the aircraft maintenance log were out of chronological order. For example, after an entry indicating the completion of the maintenance preflight on March 3d, the next entry in the log showed completion of preflight maintenance on February 28th. These entries mean that maintenance was performed on the aircraft some time before February 28th but not recorded in the maintenance log until several days later. This discrepancy raised a safety concern in Mr. Jeter's mind. A pilot flying the aircraft between February 28 and March 3 would not be aware that maintenance had been performed. Absent that knowledge, the pilot would not accomplish a safety check of the aircraft area affected by the maintenance to ensure everything was in order and secure prior to flight.

On another occasion, Mr. Parker and Mr. Jeter noticed two entries in the log book for maintenance conducted at the FlightWorks' facility when the aircraft was actually out of town. In Mr. Jeter's opinion, these entries indicated that FlightWorks was being billed for maintenance that had not actually been accomplished.

When Mr. Parker and Mr. Jeter tried to address their concerns with maintenance personnel, they became angry. Consequently, they had a meeting with Ms. McNabb and the owners of the C.T. Aviation aircraft, including Mr. Cook, in January 2003. As the senior pilot, Mr. Parker did most of the talking, expressing their maintenance and billing concerns. In response, and based on the expertise of Mr. Parker and Mr. Jeter as pilots, the owners told Ms. McNabb to give them copies of all of FlightWorks' billing from August through October to double check the appropriateness and accuracy of the statements. Up to then, Ms. McNabb had been responsible for reviewing the bills. Ms. McNabb did not ask Mr. Jeter and Mr. Parker to review the documents.

Over the course of several trips, Mr. Parker and Mr. Jeter reviewed the billing documents. Since they did not receive the bills through December 2002 until late January 2003, their review was not complete until early February 2003. At that time, they compiled a report and had an initial meeting with Ms. McNabb and presented their conclusions. According to Mr. Parker and

Mr. Jeter, the C.T. Aviation Hawker had been “misbilled in terms of hours flown.’ Additionally, the plane had been charged for fuel it didn’t use and the insurance surcharge had been increased 5%. Eventually, in response, Ms. McNabb asked Mr. Parker and Mr. Jeter to propose who else might be able to provide a Part 135 certificate for the aircraft. In the meantime, Ms. McNabb indicated that she would deal with FlightWorks. When after the meeting Ms. McNabb did not appear to be taking any action, Mr. Jeter sent her a long e-mail about the billing issues, CX 22. Mr. Parker and Mr. Jeter also presented their concerns to the two owners of the plane.

At another meeting with Ms. McNabb, she expressed concerned that Mr. Parker and Mr. Jeter were disgruntled employees. Mr. Jeter assured her that to the contrary they were trying to be loyal employees to the owners of the C.T. Aviation aircraft. At the meeting, Mr. Parker and Mr. Jeter presented further documentation which seemed to convince Ms. McNabb that a billing problem existed. Ms. McNabb stated that she had informed Mr. Beale that they were looking at the bills. She indicated Mr. Beale was upset that Mr. Parker and Mr. Jeter had gone behind his back to look at FlightWorks’ billing practices. Mr. Jeter wasn’t too concerned about Mr. Beale’s reaction since the addendum to the agreement between C.T. Aviation and FlightWorks indicated that the two pilots to fly the C.T. Aviation aircraft would be Mr. Parker and Mr. Jeter. Removal of either pilot had to be at the written direction of the aircraft owners.

On February 24, 2003, Mr. Jeter attended a meeting with Ms. McNabb, Mr. Beale, Mr. Rakes, and Mr. Parker. They discussed the billing and maintenance issues and the “the fact that we should not have gone behind Scott’s back to look at those issues.” Mr. Beale was receptive, constructive and apologized for some of the obvious billing errors, such as charges for the wrong type of hydraulic fluid. Mr. Beale stated his intention to address the issues and make sure corrections were made. At the same time, he was very disappointed with Mr. Parker for going behind his back since Mr. Parker had previously flown for FlightWorks and known Mr. Beale for over a year. Since Mr. Jeter was new to the organization, Mr. Beale commented that he was still learning about Mr. Jeter; nevertheless, he was also disappointed to find out from Ms. McNabb what he had been doing. Mr. Beale indicated that he would have appreciated it if they had come to him first. He felt as though he was being labeled as a crook.

Mr. Rakes also expressed his concern to Mr. Parker that they hadn’t immediately brought their concerns to the attention of FlightWorks. He indicated that billing mistakes happen and they should get over it. In response, Mr. Jeter indicated that he wanted to document the problems first to ensure he was correct. Additionally, the process began when they mentioned their concerns to the C.T. Aviation owners who in turn directed them to more fully review the billing statements.

The meeting lasted several hours. At the end, Mr. Beale said that several things needed to be corrected and that they would get back to Mr. Parker and Mr. Jeter in 60 days to either answer their concerns or indicate what changes had been made. However, he never mentioned anything about being placed on probation. At the conclusion of the meeting, Mr. Jeter had no reason to be concerned about his continued employment with FlightWorks. Though he had previously told Ms. McNabb that Mr. Beale might be unhappy with him, Mr. Beale said he was glad to have two very qualified and interested pilots in his organization and he invited them to participate in re-writing a manual.

In early January 2003, Mr. Jeter attended a FlightWorks safety meeting with over sixteen pilots. At that time, Mr. Beale indicated that the FAA was conducting an investigation into a pilot flying on an expired medical certificate. According to Mr. Beale, FlightWorks was actively engaged with the FAA. He believed the investigation was a non-issue and the pilots shouldn't be concerned. Mr. Rakes then explained a new procedure which required the pilot-in-command to certify on a form the crew's currency. Mr. Jeter raised questions about the new procedure and form. Since he wouldn't have access to all the pilots' records at the time he was required to make the certification, Mr. Jeter couldn't take responsibility for other pilots' currencies. Because the company had all the records, Mr. Jeter believed FlightWorks should be responsible for ensuring flight and medical certificate currency. Initially, Mr. Rakes responded in a raised voice that currency was the responsibility of the pilot-in-command. Mr. Jeter disagreed and continued to emphasize his lack of access to records documenting currency. After three other pilots agreed with Mr. Jeter's concerns, Mr. Rakes acknowledged they raised a good point and he would review the appropriate regulation. Upon completion of the meeting, because he was "a nice guy," Mr. Rakes apologized. Mr. Jeter indicated that he hadn't taken any offense.

During a January 31, 2003 check ride, an FAA evaluator indicated that the early January 2003 investigation had brought to light more serious areas of inquiries. He also asked Mr. Jeter and Mr. Parker whether Mr. Young had given them an oral examination upon completion of their training.

In late February 2003, Mr. Jeter received notice from the FAA indicating the agency was investigating his Part 135 training, CX 11. The FAA gave Mr. Jeter 10 days to respond. He discussed the situation with Mr. Parker because C.T. Aviation had promised to protect them concerning safety issues and irregularities. Consequently, he expected Mr. Parker to go to C.T. Aviation and ask for legal assistance. Mr. Jeter obtained an attorney and C.T. Aviation paid his fee. The attorney submitted a statement to the FAA on his behalf. The lawyer also represented Mr. Parker at C.T. Aviation's expense. He saw the attorney in the afternoon of March 11th, a few hours before a scheduled FlightWorks pilot meeting. The attorney advised Mr. Jeter not to attend the meeting so he didn't go. Mr. Parker had received the same advice but decided to attend the meeting to see what was going on.

With the attorney, Mr. Jeter wrote out all he knew about his training with FlightWorks. Because the notice referenced the section on Part 135 training, Mr. Jeter recalled his indoctrination training and the absence of a test. He wanted the FAA to know that he had raised a question during the course about the absence of a test and that the Director of Operations had told them it was an approved course. In other words, since his pilot's license might be in jeopardy, he wanted the FAA to know that he had been informed the training was in accordance with the regulations. Mr. Jeter's attorney prepared a letter based on Mr. Jeter's recollection and sent it to the FAA. Mr. Parker was present during his meeting with the attorney and they exchanged and read each other's statement.

After Mr. Parker attended the March 11, 2003 pilot meeting, he called Mr. Jeter and described what happened. According to Mr. Parker, Mr. Beale ran the meeting, with additional comments from Mr. Rakes. The company pilots were angry. However, Mr. Beale indicated the pilots shouldn't worry because the issues were blown out of proportion. They also said the pilots

didn't need to get lawyers and that the individual who provided statements could view them and check them for accuracy. Mr. Beale had the statements in his hand.

A day or two later, Mr. Jeter also received a call from Mr. Scott Ross about the meeting. Based on Mr. Ross' description of the meeting, Mr. Jeter became concerned that FlightWorks would see his statement to the FAA. When Mr. Jeter called his lawyer about his concern, the attorney stated FlightWorks would not get his FAA statement. Mr. Jeter believes someone at FlightWorks eventually saw his statement because:

According to Scott Ross, FlightWorks had been able to obtain other statements. . . I don't have factual information as to why they retained those statements . . . I don't have anything I can prove . . . I believe FlightWorks was able to obtain pilot statements through Belcher, the POI who was friends with Randy Rakes and I believe instrumental in being able to get Randy Rakes into that position.

In late March or early April, 2003, Mr. Jeter attended another pilot meeting. Mr. Parker, Mr. Rakes, and Mr. Young were also both present for the short meeting. An attorney for FlightWorks made a presentation about FAA administrative actions. The pilots were angry that they had become involved in an investigation and yet FlightWorks told them not to worry. The attorney indicated that the investigation should be completed in a few weeks and would not be a problem. He did not make any reference to pilot statements.

In late April, through his attorney, Mr. Jeter was contacted by an FAA official and asked to sign his statement, CX 30.

An FAA letter, dated May 13, 2003, informed Mr. Jeter that the investigation initiated on February 26, 2003 was complete and he was not guilty of any violation, CX 12. He actually received the letter just before he left his house for the FlightWorks' office for his May 16, 2003 meeting. He had heard from Mr. Parker the day before that the investigation was completed because Mr. Parker received his FAA letter on May 15th.

Between July and December 2002, Mr. Jeter flew only one charter flight for FlightWorks. However, beginning in February 2003, the charter assignments increased. Mr. Parker usually informed Mr. Jeter about the charters.

In April 2003, while Mr. Parker and Mr. Jeter were having a simulator training and check ride in Dallas, Texas, Mr. Parker received a call from FlightWorks about their leaving early from Dallas in order to take an early charter flight the next day. Mr. Jeter was concerned that they would not have the requisite ten hours of crew rest, so he called the scheduler, Mr. Warren. Mr. Warren indicated that the flight was legal because they were already in crew rest. Mr. Jeter disagreed and maintained that the simulator training was not considered crew rest. Mr. Warren remained firm, asking Mr. Jeter if he was refusing the flight. In response, Mr. Jeter asked to talk to the chief pilot. Later, Mr. Rakes called and stated his belief that the training was crew rest. Mr. Jeter again disagreed. Eventually, FlightWorks moved the flight's departure time to a later time. As a result, Mr. Parker and Mr. Jeter had sufficient crew rest and flew the charter. A day

or two later, Mr. Jeter received an e-mail, CX 20, thanking him for his teamwork. Mr. Jeter objected to the characterization of the incident as teamwork.

In April 2003, Mr. Jeter asked Mr. Parker how to inform people about his unavailability. Based on Mr. Parker's guidance, Mr. Jeter sent an e-mail to Ms. McNabb and Mr. Beale indicating that he could not take a scheduled C.T. Aviation flight because the flight would not return in time for him to travel to Cleveland. Mr. Jeter had to depart for Cleveland on May 8th to be in place on May 9th. Mr. Beale indicated they would get someone else for the flight. Just before his trip, Mr. Jeter received a phone call from the FlightWorks scheduler, Mr. Warren, checking on his availability for a flight. Mr. Jeter said he was available that day but was going to be out of town on May 8th. After that call, Mr. Jeter departed for Virginia because his mother had just been admitted to the emergency room. He left his cell phone at his house. Mr. Jeter did not have an obligation to inform FlightWorks of his departure because the C.T. Aviation plane was in San Francisco, he wasn't on standby, and they already knew he was going out of town. Mr. Jeter never received a schedule showing him on standby and he never received a standby pager. Based on the agreement between the two companies, Mr. Jeter was only a standby pilot for the C.T. Aviation aircraft.

After he returned home from Cleveland, Mr. Jeter discovered three messages from FlightWorks on his answering machine. In the messages, Mr. Warren and another FlightWorks member were trying to reach him. Mr. Jeter called Mr. Parker about the messages. Mr. Parker stated that no one had talked to him about it and confirmed they were only on standby for C.T. Aviation. He did not contact Mr. Warren. Mr. Jeter believed that if FlightWorks had a problem they would have contacted Mr. Parker. Mr. Jeter considered Mr. Parker his supervisor.

While on a trip in Kansas City, Mr. Jeter received a telephone call from Mr. Rakes' assistant, asking him to meet with Mr. Rakes in his office on May 16, 2003. The assistant didn't know what the subject of the meeting. About the same time, Mr. Jeter heard from Mr. Blosser that the FAA investigation was completed. With the exception of Mr. Rakes and Mr. Young, most of the pilots had been cleared. Mr. Blosser believed Mr. Beale's Part 135 certificate might still be under investigation. Mr. Jeter told Mr. Blosser about his May 16th appointment and stated that he believed he would be fired.

He reached this conclusion for several reasons. First, Mr. Jeter had provided an adverse statement to the FAA about the testing at FlightWorks. Second, based on Mr. Ross' comments about the pilots' meeting, Mr. Jeter believed FlightWorks had been able to get copies of the pilots' statements. Third, Mr. Rakes calls Mr. Jeter for an appointment on the day the FAA investigation results are released. Fourth, Mr. Jeter had never been counseled about poor performance or received adverse personnel documentation.

On the same day, May 13th, Mr. Jeter shared his concerns about his continued employment with Mr. Parker. Mr. Parker told him not to worry because FlightWorks wasn't going to fire him. Additionally, based on the contract addendum, FlightWorks did not have authority to fire him.

On May 16, 2003, Mr. Rakes greeted Mr. Jeter and brought him into the office. Mr. Beale followed them and attended the meeting. Mr. Rakes stated that they had experienced a rocky relationship. Mr. Jeter did not fit in well with FlightWorks and it was time for him to leave. He gave Mr. Jeter the options of resignation or termination. When Mr. Jeter asked for more detail, Mr. Rakes indicated that he did not have to give specifics since Mr. Jeter was an “at will” employee. The three to four minute meeting ended when Mr. Jeter left and stated they would hear from his lawyer. In the parking lot, Mr. Jeter called Mr. Parker. Shocked, Mr. Parker indicated that he would talk to Ms. McNabb and the C.T. Aviation owners.

When Mr. Jeter applied for unemployment, FlightWorks denied the benefit. However, after an investigation, he received unemployment benefits.

[Cross examination by Mr. Scartz] Mr. Jeter was not privy to the contract negotiations between C.T. Aviation and FlightWorks. His employment agreement with FlightWorks, CX 13, and a portion of the FlightWorks employee handbook, RX 3, indicated that employment is “at will” and may be terminated at anytime, with or without notice, and with or without cause. Mr. Jeter signed a receipt and acknowledgement for both documents. Mr. Jeter did not add the three page addendum about his employment in the leasing agreement to his FlightWorks agreement.

Mr. Jeter no longer has a copy of the three page addendum to the leasing agreement regarding his employment. It may have been thrown out when he was fired. While at the time of his termination, Mr. Jeter indicated his intention to get a lawyer, he didn’t keep the addendum and the employee handbook because he didn’t think they were “relevant” at the time. Mr. Jeter is also aware that Mr. Parker wasn’t aware of any special provision in the leasing agreement concerning their employment with FlightWorks.

Since he had no personal experience with FlightWorks, Mr. Jeter had no opinions about working with the company. In his e-mails to Ms. McNabb, CX 22, Mr. Jeter referenced himself as a “loyal” employee of C.T. Aviation and used the phrase, “our organization” because he felt an obligation to the owners who had a originally hired him. Essentially, he had suddenly become an employee of FlightWorks without filing a job application or going through a job interview. As a result, Mr. Jeter still felt he had a dual responsibility. Over the course of his employment, Mr. Jeter believed FlightWorks was changing the nature of his work. His job was changing from the work for which he interviewed.

When Mr. Rakes failed to administer a test after the indoctrination training, Mr. Jeter did not file a written complaint or contact the FAA about the omission at that time.

Mr. Jeter agreed that the leasing agreement did not give either Mr. Parker or Mr. Jeter any responsibility for the billing relationship between C.T. Aviation and FlightWorks. However, when Mr. Parker noted a discrepancy, he brought it to C.T. Aviation’s attention. After Mr. Parker and Mr. Jeter brought their billing concerns to Ms. McNabb’s attention, she nevertheless remained satisfied with FlightWorks’ billing. She also mentioned her view that Mr. Jeter appeared to be a disgruntled employee. Mr. Jeter didn’t understand her acceptance since FlightWorks’ bills were inflated and the C.T. Aviation owners asked Mr. Parker and Mr. Jeter to review all the billing documents. Eventually, after an extensive review, Ms. McNabb became



sufficiently convinced to meet with Mr. Beale about the billing. He understood that raising his concerns about FlightWorks' billing practices could get him fired by FlightWorks.

In his e-mail to Ms. McNabb, Mr. Jeter also expressed his concern about FlightWorks' scheduling, which he believed was eroding the best job he had had in the past ten years by adversely affecting his quality of life. He thought Ms. McNabb and the owner would want to know because he was "also an employee of C.T. Aviation."

During the course of the three week review of the billing records, Mr. Parker and Mr. Jeter did not inform anyone at FlightWorks. Mr. Jeter believes people at FlightWorks became angry at what they found rather than how they conducted the review. He didn't consider his actions as insubordinate.

At the February 24, 2003 meeting with Mr. Beale and Mr. Rakes about the billing, they stated that Mr. Parker and Mr. Jeter should not have gone their backs in doing the billing review. Mr. Beale was unhappy with their actions. In a e-mail to Mr. Beale after the meeting, CX 28, Mr. Jeter indicated that meeting in 60 days to discuss the relationship was a good technique. Mr. Jeter believes Mr. Beale meant that FlightWorks would attempt in the next 60 days to resolve the identified billing issues. Mr. Jeter did not believe the 60 day period related to his employment status.

In December 2002, Mr. Jeter learned from Mr. Blosser that the FAA had initiated an investigation of FlightWorks about pilot medical certificates.

RX 12 documents his exchange with Mr. Rogers of the FAA on January 31, 2003. At that time, Mr. Jeter confirmed that he had received an oral examination from Mr. Young during a refresher training course. He didn't consider this particular inquiry to be an investigation.

Concerning the document Mr. Rakes proposed at the meeting about pilot-in-charge certification of medical qualification, Mr. Jeter was aware that the FAA would have to approve the document before it would become formal.

Mr. Jeter first became aware of the FAA investigation into FlightWorks' training when he received his notification letter in February 2003. In his response, he simply provided information about training he had received during his indoctrination training with FlightWorks. At the time he made his statement, Mr. Jeter only knew that FAA was interested in training. Mr. Jeter did not advise anyone at FlightWorks that he was seeking assistance from an attorney.

Mr. Jeter first became concerned about FlightWorks seeing his statement after he heard from Mr. Parker and Mr. Ross about the pilot meeting. Mr. Ross verified that he had seen his own statement to the FAA at the pilot meeting.

Concerning his e-mails with Mr. Warren after the scheduling incident in Dallas, RX 6, Mr. Jeter objected to Mr. Warren's characterization of the Dallas conversations as inaccurate. Although FlightWorks moved the departure time back to give them sufficient crew rest, Mr. Jeter was still angry because it caused him to miss a dinner with his wife.

Mr. Jeter does not recall ever declining to accept a flight from FlightWorks because he was tired from planting trees. He has never planted trees at his house.

Based on Mr. Beale's response to his April 2003 e-mail about having to testify in a deposition May 8th and 9th, Mr. Jeter believed he had the two days off. Mr. Jeter did not keep a copy of Mr. Beale's reply.

RX 7 indicates that Mr. Warren called Mr. Jeter on May 6th. He spoke to Mr. Warren around noon rather than 3:00 p.m. Mr. Warren indicated there was a possibility for a charter. However, the aircraft was coming back on the day when Mr. Jeter was going to be out of town. Mr. Jeter told him about the conflict and stated he wouldn't be able to take the flight. Mr. Warren's statement that Mr. Jeter planned on leaving early Thursday morning is incorrect. Mr. Jeter planned to depart on the first flight Wednesday. Mr. Jeter never agreed to take the charter. Mr. Warren was calling to confirm his availability for Thursday, May 8th. Mr. Jeter had already arranged his schedule to be in Cleveland on May 8th and Mr. Beale had given him permission to do so. No one told him that he was on standby. The court date was May 9th but Mr. Jeter had to be in Cleveland the day before. Consequently, Mr. Jeter was going to leave Atlanta before the proposed charter was scheduled to return on May 8th. After Mr. Jeter explained his situation, Mr. Warren indicated that he would look in the situation.

The May 13, 2003 letter from the FAA, CX 12, only indicated that Mr. Jeter had not committed any violation. He obtained information about other people at FlightWorks being held in violation from Mr. Blosser. Mr. Blosser had heard that information from Mr. Lofton. His information proved correct.

At the May 16th meeting, after Mr. Jeter indicated that he did not intend to resign, he was fired. At the time, he was upset and didn't think about the FAA investigation connection. Besides, while he absolutely believed that FlightWorks had seen a copy of his statement, he couldn't prove it. Since FlightWorks had been able to get a copy of Mr. Ross' statement, Mr. Jeter believed they were also able to get his statement. Mr. Jeter agreed that FlightWorks did not have his statement at the time of the March 11, 2003 pilot meeting. However, due to Mr. Ross' observation, he believed FlightWorks eventually obtained his FAA statement.

RX 8 is Mr. Jeter's letter to Mr. Beale asking for documentation that led to his termination. He sent copies to the principals at C.T. Aviation. Mr. Jeter did not mention the FAA investigation because he was going to pursue legal action and didn't want to give FlightWorks an opportunity to fabricate documents.

In response to his letter, Mrs. Beale sent him a copy of the conduct rules in the employee handbook and the portion dealing with at will employment, RX 9. In answer, Mr. Jeter sent an e-mail asking whether FlightWorks would consider severance pay, RX 10. Mr. Beale declined to provide severance pay, RX 11.

Neither Mr. Rakes, Mr. Young, nor Mr. Beale told Mr. Jeter that they had a copy of his statement to the FAA.

Mr. Jeter acknowledged that the statements Mr. Beale was purported to have had in his possession at the March 11th pilot meeting would already have been received by the FAA. However, he believes Mr. Beale referenced the statement to “scare the pilots” by indicating he was aware of the contents of the statements and that he was giving them an opportunity to change their statements.

[Administrative law judge examination] Mr. Jeter did not know what the statements mentioned at the March 11, 2003 pilot meeting were. All Mr. Parker recalled was that Mr. Beale had a stack of papers and referenced them as pilot statements and that they didn’t have to provide statements. Mr. Jeter also doesn’t know where Mr. Beale obtained the statements. Also, since Mr. Jeter’s attorney prepared his statement on the same day as the pilot meeting, the referenced pilot statements could not have included his statement too. At the same time, Mr. Scott Ross told him that he had gone up to look at his statement that Mr. Beale had. Mr. Ross reviewed the statement and did not make any changes. Mr. Ross, through an attorney, had sent his statement to the FAA.

Of the 35 to 45 pilots at FlightWorks during the FAA investigation, Mr. Jeter only saw Mr. Parker’s and Mr. Blosser’s statements.

In the addendum, as part of the leasing agreement, the owners of C.T. Aviation guaranteed his employment because he couldn’t be replaced as a pilot for their aircraft without written consent. When he was terminated, Mr. Jeter attempted to contact the C.T. Aviation owners by phone and e-mail. He received no response. On the other hand, although owners did not respond to his termination, Mr. Jeter believed “they were not happy about the situation and they went ahead and just got rid of the aircraft.”

[Re-direct examination by Ms. Robinson] Ms. McNabb is an accountant who does not know the aviation business. Ms. McNabb did not review the FlightWorks billing documents because she trusted Mr. Beale based on the long business relationship. Nevertheless, the C.T. Aviation owners directed Mr. Parker and Mr. Jeter to review the bills.

Because he was interviewed and hired by C.T. Aviation, Mr. Jeter developed a loyalty to the company. He had an obligation to do the best job he could for C.T. Aviation.

In his response to Mr. Warren about departing Atlanta, Mr. Jeter indicated that he wanted to leave on the first available flight to Cleveland in the morning. Mr. Jeter picked up the phone messages from FlightWorks while he was in Norfolk, Virginia, due to his mother’s admission to the emergency room.

At the time of his termination, Mr. Jeter’s annual compensation and benefits was \$65,000. As a result, for the subsequent 22 months, Mr. Jeter seeks \$119,166 in lost wages. Mr. Jeter received about \$2,000 in unemployment compensation. He also flew contract work for three months in Nebraska at an annual salary of \$62,500. This temporary work required him to obtain an apartment for \$950 a month, plus the loss of a \$500 deposit. For a short period of time, Mr. Jeter waited tables and earned a maximum of \$600. In November 2003, Mr. Jeter lost his certification in the Hawker jet. Re-qualification training in that aircraft will cost \$40,000. Mr.

Jeter's flying career is over unless he can get money for re-training. Mr. Jeter is not seeking reinstatement with FlightWorks.

[Administrative law judge examination] Mr. Jeter is a college graduate with a BA. Since the expiration of his certification in November 2003, he has been attempting to enter law school. After trying restaurant work, Mr. Jeter is no longer interested in working for minimum wage.

Mr. Miller C. (Clay) Smith, III  
(TR, pages 593 to 600)

[Direct examination by Mr. Scartz] Mr. Smith is presently the assistant chief pilot for the company. He participated in the FAA investigation about training. In response to the inquiry, Mr. Smith stated that he had not received an oral examination from Mr. Young. His statement didn't help FlightWorks' interests. FlightWorks did not discourage him from talking to the FAA and they did not retaliate. At the time of the investigation, Mr. Smith was a co-pilot; since then he has been promoted to captain.

[Cross examination by Ms. Robinson] Mr. Smith retained an attorney to represent during the investigation. His attorney presented the statement to the FAA.

Mr. Smith joined FlightWorks in November 2002. Upon completion of simulator training in Dallas, Mr. Smith received an oral examination. At the time, he was under the impression that this examination had covered all pertinent and required Part 135 areas.

Mr. Smith did not notify FlightWorks when he received the FAA inquiry. The FAA investigator was Mr. Bigelow, not Mr. Belcher. A couple of months later, he received an exoneration letter from the FAA.

Before obtaining a lawyer, Mr. Smith attended two pilot meetings about the investigation. He doesn't recall whether Mr. Beale said he had copies of the pilots' statements. At one meeting concerning medical certificates, Mr. Smith heard a boisterous exchange between Mr. Rakes and Mr. Jeter.

Mr. Gregory B. Franklin  
(TR, pages 600 to 608)

[Direct examination by Mr. Scartz] Mr. Franklin is a pilot and aircraft captain for FlightWorks. He was interviewed by an FAA investigator, Mr. Bigelow, who asked him about receiving an oral examination. Mr. Franklin, through counsel, provided a statement indicating that he did not receive an oral examination. His statement was against FlightWorks' interests. FlightWorks did not discourage him from participating in the investigation and the company did not retaliate against him. At the time of the investigation, Mr. Smith was a co-pilot. Since February 2003, Mr. Franklin has been promoted to captain.

[Cross examination by Ms. Robinson] A couple of months after receiving his exoneration letter from the FAA, Mr. Franklin submitted an expense claim to FlightWorks for his attorney fees. FlightWorks reimbursed his legal fees.

Mr. Smith prepared his FAA statement with his lawyer.

Mr. Smith started flying with FlightWorks in November 2002.

He attended an “enrichment” meeting where someone from the University of Auburn discussed FAA legal issues in generalized terms.

Mr. Lance D. Warren  
(TR, pages 608 to 631)

[Direct examination by Mr. Scartz] Mr. Warren is the Operations Manager at FlightWorks. During April 2003, Mr. Warren was the FlightWorks dispatcher. As a dispatcher, Mr. Warren scheduled crews for flights and arranged the associated logistics.

In April 2003, a charter came up for the day after Mr. Parker and Mr. Jeter were in Dallas for training. To accommodate the charter’s requested departure time, while still preserving crew rest, Mr. Warren attempted to get Mr. Parker and Mr. Jeter on an earlier return flight. Eventually, Mr. Parker and Mr. Jeter returned to Atlanta, had their requisite crew rest, and flew the charter an hour later than originally requested. In an effort to show his appreciation, Mr. Warren sent them an email (RX 6). Mr. Warren was surprised by the tone of Mr. Jeter’s response and did not think it was warranted. He forwarded the response to Mr. Beale.

On another occasion, Mr. Warren briefed Mr. Jeter in the early afternoon about a charter the next day. Mr. Jeter indicated that he had been planting in his yard and would not be physically fit for the flight. Mr. Warren was not pleased with the response.

On another occasion, Mr. Jeter had informed the company that he had personal business that required him to be out of town. However, the flying schedule indicated that he was on standby during that period. Nevertheless, Mr. Warren intended to accommodate Mr. Jeter’s need to be in court on May 9th. RX 7 documents his efforts. Although he had a “hard” day off on May 9th, Mr. Jeter was scheduled for standby from May 6th through May 8th. On May 6, 2003, Mr. Warren talked to Mr. Jeter about the possibility of taking a charter on May 8th. Mr. Jeter indicated that he intended to leave town on the first flight on May 8th.

When a charter actually came in for May 8th, Mr. Warren attempted to contact Mr. Jeter again to see if changes could be made to his plans so that he could take the charter and still be in court on May 9th. But, Mr. Warren could not get in touch with Mr. Jeter and the charter didn’t go. Mr. Warren was aware of Mr. Jeter’s personal commitment for May 9th, but he was trying to see if he could accommodate both Mr. Jeter’s needs and the company’s business.

Additionally, since Mr. Warren could not get in touch with Mr. Jeter, another charter for May 7th, which would not have interfered with Mr. Jeter’s plans, was lost.

[Cross examination by Ms. Robinson] Mr. Warren became an employee of FlightWorks in June 2002.

Although he is not aware of whether Mr. Parker and Mr. Jeter were assigned exclusively to the C.T. Aviation plane, Mr. Warren believes they flew the majority, if not all, of its flights. When a C.T. Aviation representative let him know when aircraft was needed, Mr. Warren would place it on the schedule.

FlightWorks tried to have crews dedicated to the aircraft so the owners would become familiar with the crews. The arrangement also helped logistics and operations.

Mr. Warren forwarded Mr. Jeter's e-mail response to Mr. Beale because it appeared to be business-related. When he was attempting to change the pilots' return from Dallas, Mr. Warren spoke principally with Mr. Parker about the return logistics. Mr. Parker expressed a concern that if the next day flight was scheduled as requested, the 10 hour crew rest period would be violated. Mr. Warren was aware of the 10 hour crew rest requirement and indicated that the departure would be bumped if necessary. He didn't intend to violate it. The client was informed that crew rest required the departure to be moved back.

When he called Mr. Jeter to give him a heads up about an earlier departure the next day, Mr. Jeter told him that he had been planting trees.

Mr. Warren believes the reference to first flight out in RX 7 refers to Mr. Jeter leaving on the first commercial flight of the day. Mr. Jeter was on standby for May 6, 7, and 8, 2003. Although Mr. Warren was aware of Mr. Jeter's plans to leave early on May 8th, he was still on standby for that day. Mr. Warren doesn't recall whether Mr. Beale sent him Mr. Jeter's e-mail about having the days off. He probably received it. Even though a pilot requests days off, FlightWorks determines whether the pilot gets the days he requested.

Once Mr. Warren developed the monthly schedule, he sent an e-mail copy to all the pilots.

### **Documentary Evidence**

#### FAA Letter (CX 11)

In a letter, dated February 26, 2003, an FAA representative advised Mr. Jeter that the FAA was investigating an alleged violation of Part 135. Specifically, the FAA intend to determine whether Mr. Jeter operated an aircraft while employed by FlightWorks when he had not met the training requirements of Part 135.

FAA Letter  
(CX 12)

In a letter, dated May 13, 2003, the FAA advised Mr. Jeter that the investigation had not disclosed the alleged violation and the matter was closed.

Employment Agreement  
(CX 13)

On July 1, 2002, Mr. Jeter signed an employment agreement with FlightWorks. His annual salary was \$65,000. C.T. Aviation would pay the full costs of FlightWorks' health plan coverage. Following a 90 day probation period, Mr. Jeter would be able to participate in the company's 401 (k) savings plan. Mr. Jeter's employment was at will and could be terminated by either Mr. Jeter or FlightWorks with or without cause and with or without notice. Under the agreement, Mr. Jeter would participate in Part 91 and Part 135 flying. Under Part 91, he would fly C.T. Aviation's aircraft. In the future, the C.T. Aviation aircraft might also be used for charter flights under Part 135. Mr. Jeter was required to follow FlightWorks' rules, regulations, and manuals. Under the direction of Mr. Randy Rakes, "flying and duty schedules will be coordinated by FlightWorks to fulfill the needs and requirements of" C.T. Aviation and "charter schedules."

Employer Information on Discharge Form  
(CX 18)

On June 6, 2003, the director of human resources for FlightWorks completed a form providing employer information about Mr. Jeter's discharge. According to FlightWorks, Mr. Rakes and Mr. Beale terminated Mr. Jeter's employment due to a culmination of events and issues, including breaking company privacy and disclosure rules, unavailability while on call, and repeated violations of employee conduct and work rules. Concerning the impact of Mr. Jeter's behavior, FlightWorks lost charter revenue when Mr. Jeter did not return a page or calls. A client became dissatisfied with his attitude and no longer wanted him flying its charter. Mr. Jeter also attempted to discredit FlightWorks by "badmouthing" FlightWorks. Mr. Jeter's conduct specifically violated company policies on disclosure, on call procedures, disruptive behavior in the work place, and unsatisfactory and disrespectful conduct. The associated documents and incidents included a February 14, 2003 client letter, a May 6th failure to return company calls, and various e-mails. Mr. Beale met with Mr. Jeter on February 24, 2003 and advised him that improvement in his conduct was imperative. Mr. Beale wanted another meeting in 60 days to re-evaluate their work relationship. FlightWorks did not immediately terminate Mr. Jeter because the company wanted to see if the situation would improve. It did not.

E-mail Correspondence  
(CX 20 and RX 6)

In an e-mail to Mr. Jeter, Mr. Lance Warren expressed his thanks for the assistance he received in the early return of Mr. Jeter and Mr. Parker from Dallas. Mr. Warren appreciated the teamwork involved.

In an April 22, 2003 response to Mr. Warren, with “cc” to Mr. Toma, Mr. Cook, Ms. McNabb, Mr. Parker, and Mr. Beale, Mr. Jeter indicated that teamwork was hardly involved. Due to FlightWorks’ poorly coordinated effort, his flight plans were changed three times. Mr. Jeter wondered whether the hundreds of dollars of costs associated with the changes would be passed onto C.T. Aviation. He noted that the charter had initially been illegally scheduled since the departure time would not have permitted the required 10 hours of crew rest. Mr. Jeter also observed that the changes had an adverse effect on pilot morale. Specifically, Mr. Jeter had planned a surprise anniversary party for his wife on April 24th, when he was scheduled to have a “soft” day off. The recent changes required him to cancel the party. Mr. Jeter did not appreciate the detrimental effect the changes had on his personal life. Finally, Mr. Jeter stated that he would soon submit his requested days off for May 2003.

E-mail Correspondence  
(CX 21)

In an April 18, 2003 e-mail to Mr. Beale, Mr. Jeter wanted to confirm his plans to be out of town on May 8 and 9, 2003 for a deposition in Cleveland. He understood that another pilot would take his place on the C.T. Aviation aircraft. Mr. Jeter asked that Mr. Beale note his plan on the FlightWorks long term schedule for May 2003.

E-mail Correspondence  
(CX 22 and RX 5)

In February 2003, Ms. McNabb initiated a string of e-mail exchanges with Mr. Jeter when she asked him about an expense claim for a \$400 pilot fee (apparently presented to FlightWorks).

On February 14, 2003, Mr. Jeter responded that when flying Part 135 charter trips “for FlightWorks (or any operation which is outside our main employment, C.T. Aviation) to charge a captain rate of \$400 a day was the industry standard rate.” Mr. Jeter noted that some pilot charge \$500 a day. He recalled a meeting with the owners about FlightWorks’ billing of clients, including C.T. Aviation, \$600 a day. According to Mr. Jeter, the owners saw no problem with his billing FlightWorks when they helped Mr. Beale on a Part 135 charter. Otherwise, Mr. Beale “ends up pocketing the billed ‘pilots expenses’ for himself while Roy (Mr. Parker) and I perform the work, incur all the responsibility for the charter, yet have nothing to show for our efforts.” Mr. Jeter questioned why Mr. Beale should collect pilot fees from FlightWorks when “not a single dime of Flt. Wks. money goes into our salaries, benefits, etc.” Mr. Jeter also expressed his concern about what he had observed in the billing records and invoices from FlightWorks. Finally, “as a loyal and dedicated employee of C.T. Aviation,” Mr. Jeter was “becoming increasingly concerned about my job description as it relates to responsibilities to Flt. Wks. scheduling and dispatching.” He hoped to “continue in my current capacity. . . [and] re-establish my place and responsibilities to the Company and people that I care so much about,” C.T. Aviation. Recent dealings with FlightWorks had “made it difficult to function in the job description which was outlined to me in my original employment.”



Mr. McNabb responded indicating that FlightWorks received a \$3,000 management fee, plus 5% of C.T. Aviation revenue and 15% of any charter revenue. Any revenues FlightWorks receives and expenses they pay “just flow through.” Each month, if revenue exceeds the bills, C.T. Aviation receives a check from FlightWorks; if not, C.T. Aviation sends FlightWorks the difference. As part of the arrangement, FlightWorks bills C.T. Aviation a flat per day charge for direct operating expenses, including pilot costs. Ms. McNabb explained that Mr. Jeter was paid a salary to fly the C.T. Aviation aircraft and any charters she agreed to. The \$400 charge he sought would come from C.T. Aviation and not FlightWorks. If Mr. Jeter wanted additional money to fly the C.T. Aviation plane for FlightWorks’ charters, he needed to discuss the situation with Ms. McNabb. She added that FlightWorks was paid to manage the aircraft and Mr. Jeter was an employee of FlightWorks subject to their policies. Eventually, Ms. McNabb intended to meet with Mr. Jeter, Mr. Parker and Mr. Beale to discuss the situation. She offered to meet Mr. Jeter with Mr. Parker the next Monday.

On February 14, 2003, Mr. Jeter replied, thanking Ms. McNabb for her explanation. While understanding the billing arrangement, Mr. Jeter asserted that there were “huge discrepancies in revenues reported and revenues collected.” Further, charges not authorized by the leasing agreement were being added. As a result, C.T. Aviation was being billed “tens of thousands of dollars over what our organization should be billed.” On a yearly basis, Mr. Jeter believed “these ‘extras’ may surpass \$100,000 beyond what the aircraft should cost to operate.” He believed FlightWorks’ practices represented operational mis-management and were an “absolute outrage.” Regardless of the possible effect on his employment, Mr. Jeter felt compelled to bring the issue to the attention of C.T. Aviation. Mr. Jeter also explained that the purpose of the \$400 pilot charge was to prevent Mr. Beale from profiting from charging for pilot services Mr. Jeter provided. Under the present arrangement, Mr. Beale would be motivated to “fly the wings off” the C.T. Aviation aircraft, which in turn would monopolize all of Mr. Jeter’s time which was a work environment he had been promised would not materialized. If the practice continued, Mr. Jeter opined that he would be immediately dispatched on charter flights by FlightWorks upon completion of a flight for C.T. Aviation. He added,

Or worse yet, expected to sit by the phone on my ‘off days’ as standby, accomplishing nothing of a personal nature for myself, family, too fearful to stray too far from the house just in case Scott (Mr. Beale) finds something for me to do or some place to fly. This is not the job I interviewed for. . . I can’t last long under such a schedule.

Mr. Jeter continued indicating that recently, after a three day trip for C.T. Aviation, he had to fly another full day for FlightWorks, with little or no notice. Mr. Jeter was concerned that due to FlightWorks’ expanding role, such trips would become the norm rather than the “rare exception that I was instructed to expect when I excepted [sic] the job.” According to Mr. Jeter, he had gone from flying one FlightWorks charter flight in seven months to flying three of their charters in one week. As result of this change, Mr. Jeter’s “ability to operate safely and professionally, as well as quality of life issues, will eventually erode the greatest, most satisfying job” he had experienced in ten years of commercial flying. As a final concern, Mr. Jeter observed according to an FAA flight inspector, FlightWorks was being investigated. Such an investigation raised serious questions about “ethical decision-making and administrative

oversight” at FlightWorks that could lead to serious FAA action in response to “numerous violations and offenses.” FlightWorks was becoming “an unacceptable work environment to any professional pilot interested in flying legally and safely.”

On February 17, 2005, Ms. McNabb replied to Mr. Jeter. According to Ms. McNabb a business decision had been made in the “past few weeks” to charter the C.T. Aviation aircraft when it was not being used by the owners. Mr. Beale would check with Ms. McNabb whenever FlightWorks had the opportunity to charter the plane. In turn, Ms. McNabb checked with the owners for approval of the charter. Ms. McNabb had discussed with Mr. Beale the industry standard for pilot usage and she would not ask Mr. Jeter to fly “excessively.” While Ms. McNabb appreciated Mr. Jeter’s loyalty to C.T. Aviation, she believed most of his concerns about FlightWorks’ billings were “confused.” Ms. McNabb was concerned about the deteriorating attitudes of Mr. Parker and Mr. Jeter towards FlightWorks. She reminded Mr. Jeter that he was subject to FlightWorks’ pilot rules. Since Mr. Jeter and Mr. Parker had failed to present a viable alternative using FlightWorks’ Part 135 certificate, they were going to have to reconcile their differences with FlightWorks. Ms. McNabb wanted to meet first with Mr. Jeter to go over “every aspect of the contract,” and then later meet with Mr. Jeter and FlightWorks to “reconcile with them.” She wanted a resolution within a week.

On February 18, 2003, Ms. McNabb forwarded the above string of e-mail exchanges to Mr. Beale and requested a meeting with him and the two pilots.

E-mail Correspondence  
(CX 23)

On January 3, 2003, Ms. McNabb asked Mr. Beale to provide detailed maintenance bills for a meeting scheduled the following week with Mr. Toma, Mr. Cook, Mr. Parker and Mr. Jeter.

Flight Records Request  
(CX 24)

On July 4, 2002, FlightWorks requested, and Mr. Jeter consented to release, the records the FAA had in its possession concerning Mr. Jeter.

E-mail Correspondence  
(CX 28)

In a February 25, 2003 e-mail, Mr. Jeter expressed his thanks to Mr. Beale for spending an afternoon meeting with him. Mr. Jeter appreciated Mr. Beale’s willingness to listen to the concerns of Mr. Jeter and Parker. He thanked Mr. Beale for “the chance to listen and learn about your perspective on our interaction . . . as well as our expanding role in flying charter operations.” The meeting helped alleviate mis-perceptions and “hopefully explained any concerns you previously had about my attitude or commitment to the job.” In Mr. Jeter’s opinion, Mr. Beale’s “idea to meet again in approximately 60 days to re-evaluate our relationship was a well thought-out technique to further improve our ability in providing the expectations your organization requires while communicating any areas we feel need addressing as pilots.”

Jokingly, Mr. Jeter offered to hang pictures in Mr. Beale's office, provided he received "special privileges for such shallow actions."

In response, Mr. Beale thanked Mr. Jeter for his "constructive criticism." He appreciated Mr. Jeter's openness and desire to see the operations become successful. According to Mr. Beale, "we all have a better understanding now and can successfully move forward." Mr. Beale suggested that Mr. Jeter and Mr. Parker become more involved in the FlightWorks operations by providing inputs to the company's manual revision.

Mr. Jeter agreed to help with the revision of the company's operations manuals.

Correspondence by Mr. Alan Armstrong  
(CX 29 and CX 30)

In a March 11, 2003 letter to Ms. McNabb, Mr. Armstrong agreed to represent Mr. Parker and Mr. Jeter concerning an FAA investigation. He intended to bill the C.T. Investments account.

On March 11, 2003, Mr. Armstrong sent a letter to the FAA on behalf of Mr. Jeter in response to a February 26, 2003 inquiry. Mr. Jeter received FlightWorks indoctrination training on July 2 and 3, 2002 from Mr. Randy Rakes. Mr. Jeter believed the training covered all required areas. No test was administered because Mr. Rakes indicated testing was not required by the FAA. On October 11, 2002, Mr. Jeter also received hazardous material training from Mr. Rick Young. Based on the questions asked by Mr. Young throughout the course, Mr. Jeter believed that he had received an oral examination on the training. In Mr. Jeter's opinion, he received all the FAA-required training for a pilot under Part 91 and Part 135.

Lease Agreement<sup>9</sup>  
(CX 34)

On June 27, 2002, C.T. Aviation agreed to lease its aircraft to FlightWorks for the purpose of providing charter flights under Part 91 and Part 135. C.T. Aviation also contracted with FlightWorks management services at the rate of \$3,000 a month. In addition, C.T. Aviation agreed to pay all fixed and variable aircraft expenses on a budgeted monthly basis with reconciliation with actual expenses to be conducted every three months. In scheduling flights, FlightWorks agreed that the C.T. Aviation principals/owners would have first priority. Additionally, FlightWorks had to obtain C.T. Aviation's permission to charter the aircraft to third parties.

FlightWorks' Personnel Policies Manual  
(RX 2 and RX 3)

Excerpts from FlightWorks' Personnel Policies Manual indicate that the work relationship is employment-at-will. The manual encourages employees to bring their concerns about employment conditions openly and directly to their supervisors. The employee conduct

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<sup>9</sup>The agreement lists several exhibits, which were not submitted when CX 34 was admitted into evidence.

rules lists as unacceptable behavior boisterous or disruptive workplace behavior, insubordination and disrespect, and unauthorized disclosure of business confidential information.

On July 8, 2002, Mr. Jeter signed an acknowledgment of receipt and understanding of FlightWorks personnel manual and policies. He understood that the employment relationship had no specific length and could be terminated with or without cause provided there was no violation of applicable federal or state law.

E-mail Correspondence  
(RX 4)

On February 14, 2003, Ms. McNabb informed Mr. Beale that she had just received a phone message from Mr. Parker and an e-mail from Mr. Jeter. Ms. McNabb was concerned because their “anger continues to grow.” In her opinion, there was no resolution to the problem because “they want to manage the plane themselves and that is not going to happen.” She had always told Mr. Parker and Mr. Jeter that they worked for FlightWorks. In an e-mail to the aircraft owners, Ms. McNabb told them she wanted “to let Roy and Tom go immediately.” Ms. McNabb did not want them flying the C.T. Aviation plane because their anger, much of it directed at Mr. Beale, scared her. Ms. McNabb intended to meet with Mr. Cook on Sunday and “ask him if I can fire them Monday morning.” If Mr. Cook agreed, Ms. McNabb wanted the replacement pilots to be employed the same way as other FlightWorks pilots, without “special unrealistic connections” to C.T. Aviation and its owners. Ms. McNabb apologized to Mr. Beale for the “unpleasantness” and did not fault him. Ms. McNabb believed the pilots’ employment relationship “was doomed from the beginning with Roy’s attitude. He (Mr. Parker) wanted to duplicate the job he had at Wolfe Camera.”

E-mail Correspondence  
(RX 7)

In a May 7, 2005 e-mail to Mr. Beale, Mr. Rakes, and Mr. Young, Mr. Warren described his experience with Mr. Jeter the day before, May 6th. On May 6, 2003, around 3:00 p.m., Mr. Warren called Mr. Jeter to confirm his availability for a possible charter on May 8th. Mr. Jeter responded that he was leaving on the first available airline flight on May 8th. About 45 minutes later, after the charter seemed more confirmed, Mr. Warren tried to call Mr. Jeter again to see “if we could make this thing work.” However, Mr. Warren was unable to reach Mr. Jeter by home phone, cell phone or pager. Mr. Warren also left a message on Mr. Jeter’s answering machine. Throughout the rest of the day, Mr. Warren and another FlightWorks representative continued to try to contact Mr. Jeter. They were unsuccessful. Through 1:00 p.m. on May 7, Mr. Warren still had not heard from Mr. Jeter. “In the meantime, another trip opportunity arose in which we turned down because of the communication trouble with Mr. Jeter.”

Mr. Warren was aware that Mr. Jeter had a court date on May 9, 2003 and that FlightWorks had replaced him as a pilot on a C.T. Aviation trip that would not return until late on May 8, 2003. However, Mr. Jeter was on standby from May 6 to 8, 2003 with “no time given day off or PTO (paid time off)” for those three days.

E-Mail Correspondence  
(RX 8 to RX 11)

In a May 20, 2003 e-mail, with courtesy copies to C.T. Aviation owners, and Ms. McNabb, Mr. Jeter informed Mr. Beale that he had not yet received the official written notice of his termination. Since he was filing for unemployment benefits, Mr. Jeter requested a timely response.

On May 21, 2003, Ms. Jennifer Beale replied that the termination letter had been mailed. Ms. Beale reminded Mr. Jeter that his employment with FlightWorks was at-will. Pasting a copy of the FlightWorks code of employee conduct, Ms. Beale stated, “the reasons highlighted below are what prompted your final termination from FlightWorks.”<sup>10</sup>

On May 21, 2003, Mr. Beale indicated that he had received the termination letter. Mr. Jeter noted that no specific reason had been stated. However, he recognized that under state law FlightWorks had the right to “fire me for no just cause.” Mr. Jeter asked for the opportunity to have an exit interview with Mr. Beale to discuss his ability to obtain severance pay.

On May 21, 2003, Mr. Scott Beale responded and stated, “There was not one single specific reason, yet an overall accumulation of issues.” Mr. Beale recalled that Mr. Jeter had been given an opportunity to discuss his termination but “declined when abruptly dismissing yourself from our meeting.” FlightWorks would not provide severance pay. Mr. Beale also indicated that his response should be considered official notification that Mr. Jeter was to discontinue contact with all FlightWorks clients and their principals and personnel.

Conference Summary Form  
(RX 12)

On a conference summary form, dated January 31, 2003, an flight safety inspector inquired into the validity Mr. Jeter’s flight record concerning a proficiency check oral examination. Mr. Jeter stated that he had received an oral examination from Mr. Young on Part 135.293 (a) (1 – 8).

A February 7, 2003 comment at the bottom of the form indicates the subject examination was not recorded or signed off on the associated training form.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Credibility and Probative Weight**

While most of the witnesses were generally believable and provided credible testimony, some conflicts in testimony and inconsistencies may require that I occasionally discuss in detail any assessments of such testimonial conflict. Such comments will be placed within double brackets (|| ||) in the following specific findings.

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<sup>10</sup>None of the conduct provisions in the copy of the e-mail admitted as RX 9 are highlighted.

## Stipulations of Fact

At the hearing, the parties stipulated to the following facts: a) Avior Technology Operations, Inc. (d/b/a FlightWorks) is an air carrier within the meaning of AIR 21; b) from July 2, 2002 through May 16, 2003, an employer-employee relationship existed between the Respondent and the Complainant; and, c) at the time Mr. Jeter became employed by FlightWorks, he was a competently trained Hawker pilot (TR, pages 25, 26, and 313).

## Specific Findings

2001 - 2002 FlightWorks, an on-demand aircraft charter and management company, provides charter flight services, including aircraft and pilots, for the principals and owners of C.T. Aviation.

The company offers at-will employment. Although it has a policy regarding progressive discipline, FlightWorks reserves the right to terminate an employment relationship with or without cause, with or without notice, subject to state and federal law.

May 2002 Due to its high usage of charter flights, the principals and owners of C.T. Aviation purchase a Hawker passenger turbojet. Mr. Roy Parker resigns his pilot position at FlightWorks and is hired by C.T. Aviation to become the captain/pilot for the company's aircraft. Due to prior arrangements, Ms. McNabb declines Mr. Beale's offer to provide aircraft management services through FlightWorks. Mr. Parker hires Mr. Thomas Jeter to be the second pilot for the plane. The aircraft is operated under Part 91 for the non-commercial use of C.T. Aviation and its principals.

June 27, 2002 After C.T. Aviation found that managing its aircraft was too complex, Ms. McNabb contacted Mr. Beale about management services. FlightWorks and C.T. Aviation enter into a written agreement whereby FlightWorks will manage, maintain, and fly the C.T. Aviation plane under Part 91, for non-commercial use, and Part 135, for commercial use or charter flights. The owners and principals of C.T. Aviation have first priority for Part 91 use of the aircraft. FlightWorks receives a flat monthly management fee and a percentage of the revenue generated by the aircraft's flights. Additionally, FlightWorks has to obtain C.T. Aviation's permission to charter the aircraft to third parties. As part of the agreement, Mr. Parker and Mr. Jeter become FlightWorks pilots, subject to its procedures, scheduling, and policies, while remaining the dedicated crew for the C.T. Aviation aircraft.

[[According to Mr. Jeter, the lease agreement included an addendum which restricted Mr. Jeter's pilot duties solely to the C.T. Aviation aircraft. However, he was not able to produce a copy of the addendum, and none was attached to the agreement offered into evidence, CX 34. Additionally, a signatory to the lease agreement, Mr. Beale, specifically denies any addendum guaranteeing the employment of Mr. Parker and Mr. Jeter. To establish the content of the addendum, Mr. Jeter reports that Mr. Parker told him about it. However, at the hearing, Mr. Parker indicated that he was not aware of any special provision in the lease agreement about their employment with FlightWorks. Finally, as Mr. Jeter acknowledged, his employment contract with FlightWorks did not contain any reference to an employment addendum in the lease

agreement. Consequently, the evidentiary record is insufficient to establish the existence of an addendum to the lease agreement providing additional guarantees and restrictions in relation to FlightWorks' employment of Mr. Parker and Mr. Jeter.]]

July 1, 2002 Mr. Jeter formally signs an employment agreement with FlightWorks. According to the agreement, Mr. Jeter will participate in Part 91 and Part 135 flights in the C.T. Aviation aircraft. He is required to follow FlightWorks' rules, regulations, and manuals. His duty schedule will be coordinated by FlightWorks to meet the needs of both C.T. Aviation and charter schedules. Mr. Jeter acknowledges his understanding of FlightWorks' employee conduct rules and his at-will employment.

July 2 and 3, 2002 Along with six other pilots flying under FlightWorks' Part 135 certificate, Mr. Jeter receives indoctrination training from Mr. Randy Rakes, the Director of Operations. When several pilots, including Mr. Jeter, ask about testing on the course material, Mr. Rakes indicates that the FAA does not require testing of the material under FlightWorks' certificate.

July 2002 through January 2003 The flights for C.T. Aviation piloted by Mr. Parker and Mr. Jeter are almost exclusively operated under Part 91. Periodically, Mr. Beale provides C.T. Aviation's accountant, Ms. Charlene McNabb, maintenance bills, flight invoices, and other billing information at her request.

October 2002 Mr. Richard Young, FlightWorks' chief pilot, provides hazardous material training to Mr. Parker and Mr. Jeter and conducts oral questioning throughout the training.

Sometime between November 2002 and January 2003 Mr. Parker and Mr. Jeter notice some irregularities in the maintenance log for the C.T. Aviation plane. When they present some of their concerns to Mr. Cook, a co-owner of C.T. Aviation, he asks Mr. Parker and Mr. Jeter to look into the billing coming from FlightWorks and directs Ms. McNabb to provide copies of the bills to Mr. Parker and Mr. Jeter. Ms. McNabb asks Mr. Beale to provide detailed maintenance bills.

December 18, 2002 The FAA informs Mr. Beale that it has begun an investigation into an incident involving a pilot operating under FlightWorks' Part 135 certificate who flew with an expired medical certificate. In response, FlightWorks provides documents to the FAA, which include records on indoctrination training. Many FlightWorks pilots receive inquiries from the FAA during the investigation.

Sometime between December 18, 2002 and the end of February 2003 The FAA investigation into medical certificates shifts to an inquiry about FlightWorks' training and testing procedures and policies. About 30 pilots operating under the Part 135 certificate held by FlightWorks are formally notified by the FAA that their training and documentation are under investigation. One focus of the inquiry is whether the pilots had received the requisite oral examination about FlightWorks' policies and operation manual.

Sometime in January 2003 Ms. McNabb expresses her concern to Mr. Beale about the conversations between Mr. Parker and Mr. Jeter and Mr. Cook, a C.T. Aviation owner. Mr. Beale does not consider such contact unusual.

Mr. Jeter attends a FlightWorks' pilot meeting where Mr. Beal announces an FAA investigation into a problem regarding a pilot's medical certificate. When Mr. Rakes presents a proposed procedure as corrective action, Mr. Jeter challenges the plan. They exchange loud remarks and then later apologize to each other.

January 31, 2003 In an interview with an FAA representative, Mr. Jeter confirms that he received an oral examination from Mr. Young on Part 135.

February 2003 At about the beginning of the month, Mr. Parker and Mr. Jeter complete their review of FlightWorks' billing of C.T. Aviation through December 2002. When Mr. Parker and Mr. Jeter present their report to Ms. McNabb, she asks them if they have an alternative plan for obtaining a Part 135 certificate under which to operate.

Also around the beginning of the month, the owners of C.T. Aviation make a business decision to start making their aircraft available for Part 135 charter flights when they are not using it. As a result, Mr. Parker and Mr. Jeter start flying many more Part 135 charters in C.T. Aviation's aircraft.

Through counsel, Mr. Parker provides a statement to the FAA regarding FlightWorks' training oral examinations.

February 14 to 18, 2003 Ms. McNabb asks Mr. Jeter about an expense claim of \$400 for pilot services that he filed with FlightWorks.

In response, Mr. Jeter indicates that he is charging for his pilot services when operating a charter for FlightWorks' benefit. He also expresses concern as a dedicated C.T. Aviation employee that his dealings with FlightWorks make it difficult for him to function in the job as described to him when he joined C.T. Aviation.

Ms. McNabb responds with a brief explanation of the billing specifics and expresses her satisfaction with the arrangement. Although C.T. Aviation is paying pilot costs through a flat direct operating charge, Ms. McNabb states that Mr. Jeter is an employee of FlightWorks subject to their policies.

On February 14, 2003, Mr. Jeter thanks Ms. McNabb for her billing explanation. However, he asserts that due to billing discrepancies FlightWorks is overcharging C.T. Aviation by tens of thousands of dollars. He charges FlightWorks with operational mismanagement and characterizes its practice as an outrage. He also expresses a concern that the billing arrangement will motivate Mr. Beale to fly the C.T. Aviation plane as much as possible thereby monopolizing all of Mr. Jeter's time contrary to the promised work environment. Mr. Jeter reports that Mr. Beale scheduled Mr. Jeter to fly a charter trip right after completing a C.T. Aviation flight. After having flown only one charter for FlightWorks in the previous seven months, Mr. Jeter had



been scheduled for three charters in one week. Based on that experience, Mr. Jeter is concerned that Mr. Beale will expect him to sit by the phone on his days off as standby which will preclude his ability to accomplish personal business. Since that was not the job he interviewed for, Mr. Jeter was not sure how long he could last under such a schedule in which such charter trips become the norm rather than the rare exception. Due to the change in operations, Mr. Jeter questions his ability to fly safely and professionally and believes the adverse quality of life issues will erode the best flying job that he has held in the last ten years. Finally, Mr. Jeter mentions that he has heard the FAA is investigating FlightWorks which raises serious questions about the company's oversight and raised the potential that FlightWorks could become an unacceptable work environment for any professional pilot interested in flying safely and legally.

At this time, Ms. McNabb contacts Mr. Beale and expresses her concern about Mr. Jeter's growing anger towards Mr. Beale and FlightWorks. Ms. McNabb had stressed to Mr. Parker and Mr. Jeter that they were C.T. Aviation employees. However, in her opinion, Mr. Parker and Mr. Jeter appear to want to manage the C.T. Aviation aircraft themselves. As a result, she does not see any resolution. Due to this situation and their growing anger, Ms. McNabb no longer wants Mr. Parker and Mr. Jeter to fly the company's aircraft. She had previously expressed to the owners her desire to let Mr. Parker and Mr. Jeter go as pilots.

Mr. Beale disagrees with Ms. McNabb about Mr. Parker and Mr. Jeter because he hopes to resolve the pilots' issues. He also indicates that any employment termination must come from FlightWorks.

In response to Mr. Jeter's latest e-mail, Ms. McNabb explains that C.T. Aviation has recently decided to make its aircraft available for charters by FlightWorks when not being utilized by C.T. Aviation. Such charter use requires prior permission of the C.T. Aviation owners. Appreciating Mr. Jeter's loyalty to C.T. Aviation, Ms. McNabb believes his billing concerns are confused. Nevertheless, she asks to meet again with Mr. Jeter and Mr. Parker about the billing issues and then meet with Mr. Beale. Ms. McNabb also expresses her concern about Mr. Jeter's deteriorating attitude towards FlightWorks and reminds him that he is a FlightWorks employee.

A few days later, Ms. McNabb sends Mr. Beale a copy of the e-mail correspondence between her and Mr. Jeter. Mr. Beale considers Mr. Jeter's correspondence to C.T. Aviation, a FlightWorks' client, accusatory, disrespectful, and damaging to FlightWorks' reputation. He is concerned that Mr. Jeter, a FlightWorks employee, took his concerns to the owners of C.T. Aviation without giving Mr. Beale an opportunity to explain the billing provisions that C.T. Aviation's accountant had negotiated.

February 24, 2003 Mr. Beale, Mr. Rakes, Mr. Jeter, Mr. Parker, and Ms McNabb attend a long meeting.

[[With the exception of Ms. McNabb who did not recall the specifics of the meeting, the participants had unique, and diverse, recollections of the meeting's contents. In attempting to resolve the seemingly conflicting versions, I conclude that the varying descriptions are due to

each individual's perspective and personal interpretative filter rather than credibility or memory issues. Thus, my findings relating to the meeting blend their versions together.

Specifically, having noted and documented several billing irregularities, Mr. Parker and Mr. Jeter principally focused on the portion of the meeting that involved Mr. Beale's acknowledgment of the billing problems and promise to correct the errors and prevent further mistakes. Although Mr. Jeter recalled Mr. Beale's expressed concern and unhappiness about the manner in which they obtained the billing information, he and Mr. Parker viewed the mentioned 60 day period as nothing more than an opportunity for Mr. Beale and FlightWorks to rectify the billing irregularities as promised.<sup>11</sup>

On the other hand, Mr. Rakes and Mr. Beale considered the discussion about the behavior of Mr. Parker and Mr. Jeter in relation to their employment by FlightWorks to also be an important aspect of the meeting. While acknowledging the substance of the billing complaints, Mr. Rakes and Mr. Beale were additionally concerned about the process Mr. Parker and Mr. Jeter used in obtaining the billing information. In their opinion, Mr. Parker and Mr. Jeter, as FlightWorks' employees, should have first raised their billing concerns with FlightWorks rather than going to one of its clients with the problem. Consequently, when Mr. Beale mentioned rectifying the situation in 60 days, Mr. Rakes and Mr. Beale believed that period addressed both the billing issues and a change in the pilots' attitude concerning their new status as FlightWorks employees. Notably, consistent with his intention to improve their work relationship following the meeting, Mr. Beale subsequently asked Mr. Jeter to become more involved with FlightWorks by helping to revise and update its manuals.

Thus, when corrective action over the course of 60 days is discussed, Mr. Parker and Mr. Jeter hear Mr. Beale speaking in terms of billing issues; whereas, from their perspective, Mr. Rakes and Mr. Beale are also including the pilot's attitude toward their employment with FlightWorks.]]

Addressing the billing problems identified by Mr. Parker and Mr. Jeter, Mr. Beale acknowledges that some errors were made. He is receptive to the criticisms, apologizes for the identified billing errors and expresses an intention to address the problems and make corrections. Mr. Beale also indicates that he is disappointed with the approach Mr. Parker and Mr. Jeter used to conduct the inquiry. Both Mr. Beale and Mr. Rakes indicate that since Mr. Parker and Mr. Jeter were FlightWorks employees, they would have appreciated if Mr. Parker and Mr. Jeter had come to FlightWorks first to try to resolve their billing concerns and not gone behind their backs. Mr. Beale indicates that they will get back together in 60 days to see if their concerns have been addressed and corrected.

February 25, 2003 In an e-mail, Mr. Jeter thanks Mr. Beale for the afternoon meeting the previous day. He appreciates Mr. Beale's willingness to listen to the concerns of Mr. Jeter and

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<sup>11</sup>Although not a critical consideration for my determination about the meeting, I note that Mr. Jeter's hearing presentation to the effect that the 60 day period related solely to billing issues seems inconsistent with his e-mail to Mr. Beale on February 25, 2003, expressing thanks for Mr. Beale's willingness "to meet in approximately 60 days to re-evaluate our relationship. . . to further improve our ability in providing the expectations your organization requires. . ." (CX 28).

Mr. Parker and the opportunity to hear his views about their interaction. Mr. Jeter hopes the meeting helped explain his commitment to his job. He thinks the idea to meet again in 60 days to re-evaluate their relationship is a well-thought out technique to improve his ability to meet the expectations of FlightWorks while at the same time permitting the pilots to communicate their concerns.

In turn, Mr. Beale thanks Mr. Jeter for his constructive criticism and noted Mr. Jeter's desire for successful operations. He suggests Mr. Parker and Mr. Jeter become more involved in FlightWorks by providing inputs to a manual revision.

Mr. Jeter accepts the offer to assist with the manual.

February 26, 2003 In a letter, dated February 23, 2003, the FAA informs Mr. Jeter that he is being investigated as to whether he has met the Part 135 training requirements.

February to May 2003 Mr. Miller Smith receives notice from the FAA that he is under investigation. In response, through counsel, Mr. Smith provides a statement indicating that Mr. Young had not administered an oral examination to him. Subsequently, Mr. Smith receives an exoneration year letter from the FAA.

Mr. Gregory Franklin receives notice from the FAA that he is under investigation. In response, through counsel, Mr. Franklin provides a statement indicating that he did not receive an oral examination.

March 11, 2003 After Mr. Parker and Mr. Jeter tell Ms. McNabb about the FAA investigation, she arranges to have C.T. Aviation provide an attorney for their responses. They meet with an attorney who prepares a letter response to the FAA. Mr. Jeter informs the FAA that he received indoctrination training from Mr. Rakes in July 2002. Although all training areas were covered, Mr. Rakes did not administer an examination. Upon questioning, Mr. Rakes indicated testing was not required by the FAA. Mr. Jeter also noted that he received hazardous materials training from Mr. Young in October 2002. Since Mr. Young asked questions throughout the course, he believed the oral examination requirement had been met. Accordingly, Mr. Jeter believed that he had properly received all the requisite training under Part 91 and Part 135.

[[Mr. Jeter asserts that in the evening of March 11, 2003 FlightWorks conducted a pilot meeting during which Mr. Beale referred to documents in his possession which were the statements the pilots had made to the FAA. Since he did not attend the pilot meeting, Mr. Jeter bases this assertion on a statement from Mr. Parker indicating that Mr. Beale had a stack of pilot statements in his hand at the meeting and a report from Mr. Scott Ross that Mr. Beale had a copy of Mr. Ross' statement at the meeting.

While I have considered this assertion, I find the evidence insufficient to establish that Mr. Beale referenced the pilot statements to the FAA at the meeting. Notably, at the hearing before me, Mr. Parker stated that while he had heard FlightWorks had copies of the pilots' statements, he didn't remember whether that knowledge came from hearsay or his own

recollection of the meeting. Also significantly, Mr. Scott Ross was not called as a witness. The absence of Mr. Ross precluded an examination into the accuracy of Mr. Jeter's recollection of their conversation about the meeting. The lack of specificity from Mr. Parker concerning the source of his report about the meeting and the absence of Mr. Ross at the hearing are significant because other participants in the meeting indicated pilot statements were not mentioned. Specifically, Mr. Young and Mr. Rakes testified they attended an FAA-related FlightWorks' pilots meeting with Mr. Beale and no reference to pilot's statements was made. Finally, although Mr. Beale received a package of pilot statements to the FAA from FlightWorks' attorney sometime in March or April 2003, which did not include Mr. Jeter's March 11, 2003 statement, he likewise does not recall meeting with the pilots and referencing the statements. Finally, Mr. Smith, who also attended FAA-related pilot meetings, does not recall whether Mr. Beale referenced any pilot statements.]]

March to May 13, 2003 The FAA negotiates a consent agreement with FlightWorks. Mr. Beale receives notice from the FAA that about 30 pilots have been exonerated. As part of the consent order, FlightWorks agrees to improve the separation between training and testing. Eventually, the chief pilot, Mr. Young, was removed from his position. Mr. Rakes also loses his position as Director of Operations due to problems with pilot training and testing. During the process, Mr. Beale receives a packet of pilot interview statements, including Mr. Jeter's January 2003 interview about Mr. Young's oral examination of Mr. Jeter.

April 18, 2003 In an e-mail to Mr. Beale, Mr. Jeter wants to confirm that he will be unavailable on May 8 and 9, 2003 for a C.T. Aviation flight to the west coast due to a court deposition in Cleveland. He asks Mr. Beale to note his plans on the flying schedule for May.

Mr. Beale forwards the request to scheduling but does not consider the e-mail to be a request for formal days off.

April 22, 2003 As scheduled, in Dallas, Texas, Mr. Parker and Mr. Jeter fly an early morning simulator ride, followed by training in the early afternoon. Their return flight to Atlanta is scheduled for the early evening. In an effort to accommodate a requested charter departure of 6:30 a.m. the next morning, Mr. Warren contacts the pilots and attempts to have the pilots return on an earlier flight. In response, the pilots raise a concern about achieving the appropriate crew rest prior to the scheduled charter departure. Eventually, Mr. Parker and Mr. Jeter's charter departure time is moved back two hours to 8:30 a.m. to ensure proper crew rest.

Subsequently, Mr. Warren sends Mr. Jeter an e-mail expressing his gratitude for the teamwork associated in the pilots' return to take the charter Flight.

In response, Mr. Jeter informs Mr. Warren, Mr. Parker, Mr. Beale, Ms. McNabb, and the C.T. Aviation owners that teamwork was not really involved. To the contrary, Mr. Jeter indicates that FlightWorks' poor coordination effort is probably costing C.T. Aviation money and adversely affecting pilot moral. Since Mr. Jeter had been scheduled for a "soft" day off, he had arranged for a surprise anniversary party for his wife. The schedule change and charter assignment caused him to cancel the party. He did not appreciate that detrimental impact on his personal life.

May 6, 2003 [[According to Mr. Warren, on one occasion prior to May 6, 2003, Mr. Jeter stated that he was unavailable for a charter because he had been planting trees in his yard. While not recalling being unable able to fly because he was sore from planting trees, Mr. Jeter adamantly denied ever planting trees in his yard. Since both Mr. Warren and Mr. Jeter appeared equally credible, I am unable to ascertain whether the exchange occurred as Mr. Warren recalled. Although Mr. Beale mentioned this alleged incident in discussing Mr. Jeter's termination, my inability to resolve this particular testimonial conflict has little effect since I believe the principal events associated with Mr. Jeter's termination were his February e-mails, the subsequent meeting with Mr. Beale, his April 2003 e-mail response, and the events of May 6th.]]

In the early afternoon, Mr. Warren, the FlightWorks scheduler, believing Mr. Jeter is on standby, contacts Mr. Jeter about the possibility of assigning him to a charter flight on May 8th. While indicating that he is available on May 6th, Mr. Jeter reminds Mr. Warren that he has a court date on May 9th and pre-arranged plans to depart Atlanta for Cleveland early on May 8th. Due to this conflict, he is not available to fly the charter on May 8th. He indicates no one had told him about being on standby. Mr. Warren said he would look into the situation.

After Mr. Warren's phone call, Mr. Jeter departs for Norfolk, Virginia to visit his mother who had just been admitted to the emergency room. Mr. Jeter leaves his cell phone at his home.

About 45 minutes later, once the charter for the May 8th becomes firm, Mr. Warren calls Mr. Jeter again to see if changes could be made that would enable Mr. Jeter to fly the charter and still meet his obligation on May 9th. When Mr. Jeter does not answer his phone, Mr. Warren tries his cell phone and then leaves a message on Mr. Jeter's answering machine. Since Mr. Warren could not reach Mr. Jeter, FlightWorks is not able accept the charter for May 8th. Additionally, when another potential charter arises for May 7th, the inability of FlightWorks to contact Mr. Jeter through the afternoon of May 7th causes the company to lose the May 7th charter too.

Sometime from May 6 through May 8, 2003 [[In his direct testimony, Mr. Jeter stated that he received the phone messages from FlightWorks upon his return from Cleveland. However, upon re-direct examination, Mr. Jeter specifically recalled that he picked up the FlightWorks messages while he was in Norfolk, Virginia due to his mother's admission. Based on this later testimony, I conclude Mr. Jeter became aware of FlightWorks' attempts to contact him sometime between May 6th and May 8th, rather than after his return from the May 9th deposition]]

After departing his home and while in Norfolk, Virginia seeing his hospitalized mother, Mr. Jeter retrieves from his answering machine the telephone messages from Mr. Warren and another representative from FlightWorks attempting to contact him. Mr. Jeter does not call Mr. Warren or the FlightWorks representative. Instead, at some point, Mr. Jeter calls Mr. Parker who indicates that he has not heard anything from FlightWorks about the phone calls. Mr. Jeter takes no other action in response to the FlightWorks phone messages.

Between May 8 and May 13, 2003 In a conversation, Mr. Rakes and Mr. Beale decide to terminate Mr. Jeter. Mr. Rakes arranges to have Mr. Jeter report to his office on May 16, 2003.

May 13, 2003 Mr. Jeter receives a phone call from a FlightWorks representative indicating that he is to report to Mr. Rakes on May 16, 2003. Later, Mr. Blosser tells Mr. Jeter that the FAA has concluded the investigation of the pilots and only Mr. Rakes and Mr. Young had not been cleared. Mr. Jeter tells Mr. Blosser about his scheduled meeting and states his belief that he will be fired.

May 16, 2003 Just prior to departing his house for his scheduled meeting with Mr. Rakes, Mr. Jeter receives a letter from the FAA, dated May 13, 2003, indicating the investigation had determined he was not guilty of any violation.

[[The three people who were present during Mr. Jeter's termination have differing views as to the extent of explanation provided to Mr. Jeter. According to the Mr. Jeter, the meeting was fairly terse and no specific reasons for his termination were provided. In contrast, Mr. Beale testified that Mr. Rakes indicated the termination was due to their dissatisfaction with Mr. Jeter's attitude and performance related issues, including his e-mails and accusations to clients. Mr. Rakes' recollection falls in between. While no specifics were discussed, Mr. Rakes recalls discussing their trouble employment relationship and Mr. Jeter's inability to fit in. In sorting through these accounts, I first note that Mr. Jeter understandably was upset by the action (as demonstrated by his litigation threat) which may have affected the accuracy of his perception of the meeting. Next, a nearly contemporaneous e-mail by Mr. Beale suggests less rather than more detail was provided to Mr. Jeter at the meeting. Specifically, in his May 21, 2003 e-mail response to Mr. Jeter, Mr. Beale reminds Mr. Jeter that his abrupt departure from the meeting precluded a discussion about the termination. Based on these considerations, I conclude that Mr. Rakes' recollection is more likely to be the most accurate.]]

When Mr. Jeter arrives in Mr. Rakes' office, Mr. Beale is also present. Mr. Rakes advises Mr. Jeter that he is being terminated. He references their rocky employment relationship, concluding Mr. Jeter does not fit in, and indicating no Mr. Jeter's employment was "at will." As he leaves the meeting, Mr. Jeter states they would hear from his lawyer.

At the time of his termination, Mr. Jeter's annual compensation and benefits equaled \$65,000.

May 20 and 21, 2003 Mr. Jeter requests documentation regarding his termination and asks whether he can discuss severance pay. FlightWorks sends him a formal termination letter and a copy of the employee conduct rules. Mr. Beale later advises Mr. Jeter that his termination was the result of an accumulation of issues; he indicates FlightWorks will not pay severance pay.

May 16, 2003 through March 3, 2005 (the hearing date) Mr. Rakes is removed from his position as the Director of Operations for FlightWorks. Mr. Young is removed from his position as the Chief Pilot for FlightWorks. The two removals affect FlightWorks' operations.

Mr. Jeter receives about \$2,000 in unemployment compensation. He flies contract work for three months at an annual rate of \$62,500, with additional monthly living expenses of \$950 and the loss of a \$500 deposit. As a waiter, Mr. Jeter earns a total of \$600.

In November 2003, Mr. Jeter loses his certification as a Hawker pilot. Re-qualification training and associated expenses will cost \$40,000.

Mr. Parker, Mr. Smith, and Mr. Franklin continue to fly with FlightWorks and eventually receive promotions/upgrades in either position or aircraft.

### **Case in Chief**

Under 42 U.S.C. § 42121 (b) and 29 C.F.R. § 1979.109, to establish that a respondent has committed a violation of the employee protection provisions of AIR 21, a complainant must prove by a preponderance of the evidence that an activity protected under AIR 21 was a contributing factor in the unfavorable personnel action alleged in the complaint. Accordingly, to establish a violation of AIR 21, a complainant must prove three elements: a) protected activity; b) unfavorable personnel action; and, c) contributing factor.

#### Issue No. 1 - Protected Activity

The first requisite element to establish illegal discrimination against a whistleblower is the existence of a protected activity. One type of specific activity protected by the Act is a complainant's participation in a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the FAA. 49 U.S.C. § 42121 (a) (2) and (4).

Between the end of January and May 13, 2003, Mr. Jeter participated through an interview and a written statement in the FAA's investigation of both FlightWorks' training and documentation and his own qualifications. The specific area of inquiry related to Part 135 of the FAA's regulations which provides certification for a company to conduct commercial charter flight service. In a January 31, 2003 interview, Mr. Jeter informed the FAA that Mr. Rick Young, FlightWorks' chief pilot, had conducted an oral examination under Part 135. In a March 11, 2003 written statement, Mr. Jeter also informed the FAA that while Mr. Randy Rakes, FlightWorks' Director of Operations, had provided the requisite indoctrination training in July 2002, he did not administer an examination.

Since I believe the FAA investigation reasonably falls within the statute's meaning of "proceeding" and considering the nature of the investigation and the contents of Mr. Jeter's replies, I find that Mr. Jeter engaged in protected activities in January and March 2003 when he responded to the FAA's inquiries.

#### Unfavorable Personnel Action

Having engaged in a protected activity, Mr. Jeter must next prove that he suffered an unfavorable personnel action. This element is obviously uncontested. On May 16, 2003, Mr. Jeter experienced the requisite unfavorable personnel action when Mr. Rakes terminated his employment as a pilot with FlightWorks.

## Issue No. 2 – Contributing Factor

Having engaged in a protected activity and suffered an unfavorable personnel action, to establish discrimination under AIR 21, Mr. Jeter must also prove by a preponderance of the evidence a connection between his protected activity and the unfavorable personnel action. That is, Mr. Jeter must prove that his participation in the FAA's investigation was a contributing factor in his employment termination by FlightWorks. The Courts have defined "contributing factor" as "any factor which, alone or in connection with other factors, tends to affect in any way" the decision concerning the adverse personnel action, *Marano v. U. S. Dept. of Justice*, 2 F.3d 1137 (Fed. Cir. 1993). Based on this definition, the determination of contributing factor has two components: knowledge and causation. In other words, the respondent must have been aware of the protected activity (knowledge) and then taken the unfavorable personnel action in part due to that knowledge (causation).

### *Knowledge*

FlightWorks does not really contest its knowledge that Mr. Jeter responded to an FAA inquiry in January 2003. Through the negotiation process, FlightWorks and Mr. Beale received a copy of Mr. Jeter's January 2003 interview. Concerning the continued FAA investigation in March 2003, FlightWorks, Mr. Beale and Mr. Rakes were aware that all the FlightWorks pilots, including Mr. Jeter, were notified of the additional investigation. Consequently, I find Mr. Beale and Mr. Rakes were aware of Mr. Jeter's protected activity of participating in the FAA investigation in January and March 2003.

### *Causation*

Finally, I reach the principal issue in this case, whether Mr. Jeter's participation in the FAA proceeding contributed to his termination from FlightWorks. Resolving this issue requires analysis and evaluation of conflicting circumstantial and direct evidence to determine FlightWorks' motive, or motives, behind the decision to terminate Mr. Jeter.

Absent direct evidence of the requisite causation component, Mr. Jeter relies on not insignificant circumstantial evidence as the basis for his AIR 21 discrimination complaint that FlightWorks fired him due to the statement he provided to the FAA in March 2003. His circumstantial case consists of three components.

First, in his March 11, 2003 statement to the FAA, Mr. Jeter stated that FlightWorks' Director of Operations, Mr. Randy Rakes, despite inquiries from pilot-attendees, failed to administer an examination upon completion of indoctrination training in July 2002. To the extent such an examination was required under Part 135, Mr. Jeter's statement provided evidence of a violation of an FAA regulation by Mr. Rakes and derivatively the holder of the Part 135 certificate, FlightWorks.

Second, as an ultimate result of the FAA investigation, Mr. Rakes was removed as the Director of Operations. This action adversely affected Mr. Rakes' position within Flightworks.



The removal of its Director of Operations would also understandably was disruptive to some extent of FlightWorks' flight operations.

Third, the date of the FAA notification letter about the close of the investigation, May 13, 2003, was the same day a FlightWorks representative informed Mr. Jeter that he had to meet Mr. Rakes on May 16th. And, on the day he actually he received the FAA letter, May 16, 2003, Mr. Jeter was terminated by Mr. Rakes.

While Mr. Jeter's circumstantial case is not without merit, it rests principally upon the timing of his termination at the conclusion of the FAA investigation to support a finding of illegal discrimination under AIR 21. Upon consideration of other evidence in the record, Mr. Jeter's circumstantial case of purported illegal discrimination based on the timing of events starts to unravel.

Significantly, an implicit assumption in Mr. Jeter's circumstantial case is that despite their sworn testimony to the contrary, Mr. Beale and Mr. Rakes were actually aware of the contents of his March 11, 2003 statement to the FAA prior to the termination decision and thus motivated by its adverse contents to discharge him. In Mr. Jeter's mind, because Mr. Ross saw his own FAA statement at the March 11, 2003 pilot meeting in Mr. Beale's possession, Mr. Beale must have also eventually obtained Mr. Jeter's letter which was not submitted to the FAA until sometime after March 11, 2003. However, as set out in my specific findings, I have determined insufficient evidence exists to establish that Mr. Beale referenced FAA pilot statements at the crucial March 11, 2003 pilot meeting. Additionally, even if Mr. Beale had such pilots statements in his possession at that time, little probative evidence exists that he later also obtained Mr. Jeter's FAA letter, dated March 11, 2003.

Though the evidence fails to establish that Mr. Beale and Mr. Rakes had actual possession of Mr. Jeter's March 11, 2003 statement, some circumstantial evidence exists to indicate they nevertheless may have had knowledge of its adverse contents. Notably, as the FlightWorks instructor who failed to administer a test after completion of the indoctrination training to Mr. Jeter, Mr. Rakes was well aware that Mr. Jeter possessed adverse information about Part 135 testing on indoctrination training which he could disclose to the FAA. However, a critical flaw also exists in this circumstantial line of reasoning. As the testimony by Mr. Rakes and Mr. Young established, an individual who has received notification of an FAA investigation does not have to provide a response or statement to the FAA. Thus, while FlightWorks was aware that Mr. Jeter, as one of its pilots flying under Part 135, had received notice of an investigation the company, Mr. Beale and Mr. Rakes would not know whether Mr. Jeter actually responded to the FAA inquiry. Additionally, since the FAA investigation drew in dozens of pilots, and not just Mr. Jeter, the FAA's adverse finding concerning the lack of testing on indoctrination training would not necessarily identify Mr. Jeter as the source of the basis for that determination.

To further bolster his circumstantial case of illegal discrimination, Mr. Jeter asserts his adverse statement must have been the motivating factor since the purported personnel issues presented as the basis of his discharge were not real. The preponderance of the probative evidence demonstrates the contrary and also provides another, more viable explanation for the

timing of Mr. Jeter's discharge. For the reasons discussed below, I find FlightWorks had a legitimate reason to terminate its employment relationship with Mr. Jeter on May 16, 2003 based on Mr. Jeter's continued incompatible attitude towards the Part 135 flying that FlightWorks required.

The foundation for Mr. Jeter's incompatible attitude toward his work as a FlightWorks' pilot was laid in June 2002 when Mr. Parker hired him to fly for C.T. Aviation. At that time, both Mr. Parker and Mr. Jeter were happy with their jobs which essentially involved flying the owners/principals of C.T. Aviation in the Hawker jet under Part 91. These flights permitted close interaction with the passengers and apparently did not place strains on the pilots' personal lives. When the formal employment relationship changed a few weeks later due to C.T. Aviation's decision to have its aircraft managed by FlightWorks, the arrangement had little practical effect on the nature of Mr. Jeter's work. For the next several months, while technically a FlightWorks' pilot, Mr. Jeter continued to pilot almost exclusively Part 91 flights for C.T. Aviation. In that capacity, he understandably developed loyalty to his regular passengers, the C.T. Aviation principals and owners.

Tension between his organizational role as a FlightWorks pilot and day-to-day work as a C.T. Aviation pilot emerged in the later part of 2002 and early part of 2003 due to three developments.

First, in late fall of 2002, Mr. Jeter and Mr. Parker observed some irregularities in FlightWorks' billing and maintenance entries. Apparently, based on their initial employment history and close contact with C.T. Aviation, Mr. Jeter and Mr. Parker took the matter to the owners of C.T. Aviation rather than FlightWorks. After auditing the billing documents, and despite an explanation by Ms. McNabb, an accountant for C.T. Aviation who arranged the billing with FlightWorks, in a February 14, 2003 e-mail, Mr. Jeter shared his impressions about Flightworks' billing practices with Ms. McNabb. According to Mr. Jeter, FlightWorks had engaged in operational mismanagement; their billing practices were an outrage; and the company had overcharged C.T. Aviation tens of thousands of dollars. By time of his February 24, 2003 meeting with Mr. Jeter, Mr. Beale had received a copy of this e-mail.

Second, in January 2003, FlightWorks came under investigation by the FAA which caused Mr. Jeter some concern about the effectiveness of FlightWorks' operations. In the same February 14, 2003 e-mail, he suggested to Ms. McNabb that the investigation showed FlightWorks could be an unacceptable work environment for a pilot interested in flying safely.

Third, and most significant, also around January 2003, due to a decision by C.T. Aviation to make their aircraft more available for charter flights, FlightWorks began to schedule Mr. Jeter for Part 135 charter flights at a drastically increased rate. Mr. Jeter reacted to this significant operational change by precipitously filing an expense charge with FlightWorks for his charter pilot services in the C.T. Aviation aircraft. Additionally, in the February 14, 2003 e-mail, Mr. Jeter objected to Ms. McNabb about the adverse impact associated with the increased use by FlightWorks of the C.T. Aviation plane. Prophetically, he was concerned that the change would require him to sit by his phone on his days off on standby, precluding his ability to take care of personal business. The FlightWorks' charter assignments were not only eroding the best job he

had in the last ten years and adversely affecting his personal life, Mr. Jeter stated the change in operations may adversely impact his ability to fly safely. Again, Mr. Beale had been provided these comments prior to his meeting with Mr. Jeter and Mr. Parker on February 24, 2003.

As Mr. Jeter's e-mail correspondence demonstrates, by the time of the February 24, 2003 meeting, Mr. Beale not only had to deal with the identified billing issues, he had to address Mr. Jeter's employment relationship with, and attitude toward, FlightWorks, especially considering that Ms. McNabb wanted Mr. Jeter fired at that time. Further, being the CEO of FlightWorks, Mr. Beale understandably considered Mr. Jeter's e-mail comments to be accusatory, disrespectful, and insubordinate. Although Mr. Jeter did not view the meeting as a counseling session, Mr. Beale explained his disappointment with Mr. Jeter's approach to the billing problem. Further, as Ms. McNabb had emphasized before, Mr. Beale reminded Mr. Jeter that he was a FlightWorks employee and indicated the concerns raised during the meeting, both Mr. Jeter's billing issues and Mr. Beale's observations about their employment relationship, would be revisited in 60 days.

Prior to the expiration of that 60 day period, near the end of April 2003, Mr. Jeter once again expressed his dissatisfaction with FlightWorks and his position as a one of its pilots. In an e-mail sent to Mr. Warren, Mr. Beale, Ms. McNabb and the C.T. Aviation owners, Mr. Jeter accused FlightWorks of poor coordination, and suggested their inefficiency was costing the Hawker aircraft owners money. He also stated that the recent schedule change and charter assignment adversely affected his morale since it caused him to change a previously scheduled personal event. Mr. Beale reasonably viewed this correspondence as disruptive and an inappropriate response to Mr. Warren's efforts to arrange a charter. Since FlightWorks was an on-demand Part 135 charter service, its pilots had to expect and understand that their schedules were subject to changes that might be personally inconvenient. Mr. Jeter's e-mail was a vivid indication that his attitude towards flying with FlightWorks in that capacity had changed little since their February 24, 2003 meeting.

Finally, on May 6, 2003, Mr. Jeter not only felt his displeasure with FlightWorks adverse impact on his personal life, he acted on it. As he predicted a few months earlier, FlightWorks called him on a day off when he already had personal plans. Whether or not he had firm or "hard" days off on May 8 and 9, having sent Mr. Beale an earlier note about his unavailability, Mr. Jeter had a reasonable basis for declining the possible charter on May 8th. However, Mr. Jeter did more than decline Mr. Warren's proposed charter for May 8th, he also made himself unavailable for May 6 and May 7 by departing his house after Mr. Warren's call, leaving his cell phone behind, and most significantly not returning Mr. Warren's phone calls as soon as he received the messages.

I have considered that Mr. Jeter left Atlanta on May 6th due to his mother's illness. However, interestingly, though Mr. Jeter left right after Mr. Warren's phone call, he did not tell Mr. Warren about his ill mother or return Mr. Warren's call and tell him about his additional unavailability for the rest of May 6th and May 7th. While it's possible Mr. Jeter's failure to tell Mr. Warren about his mother during their phone conversation may have been a simple omission, his subsequent failure to return FlightWorks' phone messages was a volitional act which placed him out of FlightWorks' reach.

Mr. Jeter's stated response that he called Mr. Parker when he got FlightWorks' phone messages does not provide a valid excuse. Once Mr. Parker told Mr. Jeter he did not know anything about FlightWorks' efforts to contact him, Mr. Jeter's next step as a FlightWorks pilot was to return FlightWorks' phone messages. Even though Mr. Jeter may have considered Mr. Parker to be his supervisor, his flight scheduler was clearly Mr. Warren. Likewise, Mr. Jeter's assertion that he had no obligation to return the call because he was only standby on the C.T. Aviation aircraft which was already out on the west coast has little persuasive value. Notably, when Mr. Warren spoke to Mr. Jeter on May 6th, trying to arrange a possible charter in another aircraft, Mr. Jeter did not object to the assignment on the basis that he only flew standby on the C.T. Aviation jet.

Shortly after May 6th, Mr. Beale and Mr. Rakes became aware of Mr. Jeter's failure to return FlightWorks' phone calls since the company lost potential revenue from a charter that would have flown on May 7th. Mr. Jeter's inaction regarding the FlightWorks phone messages and corresponding unavailability caused Mr. Beale and Mr. Rakes to discuss his continued employment.<sup>12</sup> They rationally decided to terminate Mr. Jeter due to his incompatible attitude with FlightWorks' operations, with his failure to return the flight scheduler's phone calls as the culminating event. Thus, the timing of that termination decision was not driven by the closure of the FAA investigation. Instead, Mr. Jeter initiated the adverse employment action when he failed to return the calls of his employer's flight scheduler.

As a final point, I have considered the possibility that somehow Mr. Beale and Mr. Rakes may have become aware of the adverse contents of Mr. Jeter's March 11, 2003 statement to the FAA such that dual motives, incompatible attitude and an adverse FAA statement, may have been behind his employment termination. However, the record contains significant evidence to further discount the likelihood that an illegal motive representing discrimination under AIR 21 was present in Mr. Jeter's case. Based on the testimony by three other FlightWorks pilot-employees,<sup>13</sup> substantial evidence indicates that FlightWorks did not react to the adverse contents of its pilots' FAA statements by terminating their employment. Mr. Smith, Mr. Franklin, and Mr. Parker participated in the FAA investigation, provided information adverse to the interests of FlightWorks which led to some of the personnel changes the company had to make, and yet remained pilots with FlightWorks. In other words, three nearly similarly placed pilots as Mr. Jeter engaged in the same protected activity but were not terminated by FlightWorks.

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<sup>12</sup>According to Mr. Beale, he also informed Ms. McNabb that Mr. Jeter would be terminated. Ms. McNabb testified that she was surprised by Mr. Jeter's discharge and first heard about the termination from a C.T. Aviation owner. Since I found these two witnesses' demeanor and testimony to be credible, this testimonial conflict does not necessarily impeach Mr. Beale's testimony regarding the termination decision. Additionally, the conflict does not adversely impact Mr. Rakes' credibility.

<sup>13</sup>Mr. Blosser, another pilot who cooperated with the initial portion of the FAA investigation, expressed his belief that he had become tainted due to the investigation such that FlightWorks no longer sought him out as contract pilot. However, he also acknowledged that he was never a FlightWorks employee. Instead, he was employed by Spectrum and flew under FlightWorks' Part 135 certificate. Shortly after the start of the investigation, FlightWorks terminated its relationship with Spectrum.

In particular, Mr. Parker's continued employment with FlightWorks provides a unique contrast with Mr. Jeter's situation and further diminishes the probative value of Mr. Jeter's circumstantial case of illegal discrimination. Based on his initial arrangement with C.T. Aviation in the summer of 2002, Mr. Parker had even more reason than Mr. Jeter to be disappointed by the arrival of FlightWorks as the manager for the aircraft and the eventual significant increase in Part 135 charter flights. He also expressed his displeasure to Ms. McNabb about the nature and tempo of the FlightWorks operations to the extent that she also wanted him to be fired. However, after the February 24, 2003 meeting, although he did not consider the session to be formal counseling, Mr. Parker apparently came to understand his employment relationship with FlightWorks. After their February 24, 2003 meeting, Mr. Beale had no further problems with Mr. Parker's attitude. Thus, when Mr. Parker as well as Mr. Jeter were brought back early from Dallas in April 2003 to take a charter the next day, Mr. Parker did not send an e-mail to Mr. Beale, Ms. McNabb, and the C.T. Aviation owners expressing his feelings of frustration with FlightWorks and the schedule change.<sup>14</sup> Also, according to Mr. Parker, he always returned FlightWorks' phone messages.

#### **Issue No. 4 - Respondent's Attorney Fee<sup>15</sup>**

Under 49 U.S.C. § 42121 (b) (3) (C), if an AIR 21 complaint is frivolous or brought in bad faith, an award of a reasonable attorney fee may be made to the prevailing employer not to exceed \$1,000. FlightWorks seeks relief under this provision asserting both Mr. Jeter's complaint and the subsequent protracted litigation were frivolous and vexatious.

Although I have determined that the preponderance of the evidence indicates that Mr. Jeter's protected activity was not a contributing factor in his employment termination, I also find he presented sufficient circumstantial evidence to conclude that his complaint was neither frivolous nor brought in bad faith. Additionally, since the statute only provides relief concerning the nature of the complaint, the assertion of bad faith protracted litigation does not provide a basis for an attorney fee award.

#### **CONCLUSION**

The preponderance of the more probative evidence establishes that Mr. Jeter's participation in an FAA investigation in March 2003 did not contribute to his employment termination. Instead, due to a demonstrated continued incompatible attitude towards his employment with FlightWorks and failure to return a FlightWorks' scheduler phone calls in the beginning of May 2003, Mr. Beale and Mr. Rakes terminated his employment on May 16, 2003. Accordingly, Mr. Jeter has failed to carry his evidentiary burden of proof and his AIR 21 discrimination complaint must be dismissed.

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<sup>14</sup>According to Mr. Parker, he advised Mr. Jeter that his strong language might jeopardize his job.

<sup>15</sup>Since Mr. Jeter has failed to establish that his protected activity was a contributing factor to his employment termination, I need not address the third issue of FlightWorks' affirmative defense.

## ORDER

The discrimination complaint of MR. THOMAS B. JETER against AVIOR TECHNOLOGIES, INC. d/b/a FLIGHTWORKS brought under the employee protection provisions of AIR 21 is **DISMISSED**.

**SO ORDERED:**

**A**  
RICHARD T. STANSELL-GAMM  
Administrative Law Judge

Date Signed: December 8, 2005  
Washington, D.C.

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review (“Petition”) with the Administrative Review Board (“Board”) within ten (10) business days of the date of issuance of the administrative law judge’s decision. The Board’s address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. See 29 C.F.R. § 1979.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. See 29 C.F.R. § 1979.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. See 29 C.F.R. § 1979.110(a).

If no Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110. Even if a Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. See 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b).