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Issue Date: 19 July 2005

Case No.: 2005-SOX-65

In the Matter of:

Coleen L. Powers,
Complainant

v.

Pinnacle Airlines,
Respondent.

STATUS ORDER AND
ORDER DISMISSING SOX COMPLAINT

This matter arises from the Complainant's appeal of an adverse finding by OSHA on her complaint filed on December 27, 2004 against Pinnacle Airlines, Inc., as well as several other entities and individuals. The Complainant alleged that these parties retaliated against her by terminating her employment with Pinnacle in retaliation for reporting safety concerns, in violation of the AIR 21 and Sarbanes-Oxley Acts. OSHA investigated the complaint, and on April 21, 2005 mailed the Complainant an unsigned copy of its determination dismissing her complaints. Subsequently, on May 3, 2005, OSHA mailed the Complainant a signed copy of its findings. The Complainant timely appealed this finding.

The hearing in this matter was scheduled for July 19 and 20, 2005, in Memphis, Tennessee. By an Order issued on June 30, 2005, I cancelled the hearing until after resolution of outstanding motions filed by the parties. Since that Order, I have received the following pleadings:

From the Complainant

Complainants' Objections to the Material Mischaracterizations Made by Named Person Pinnacle Airlines, Inc., in its Untimely July 16, 2005 "Response" to Complainants' June 16/18, 2005 Motion to Amend the Erroneous June 9, 2005 "Status" Order of the ALJ.

Complainants' Response & Opposition to Named Person Pinnacle's Bad Faith July 5th, 2005 "Motion to Reschedule Hearing" & Complainants' Motion for Default Against All Named Persons' for Failure to Timely Respond to Complainants' June 16, 2005 Motion for Summary Decision on All AIR 21 Claims.

Complainants' Timely Response & Opposition to Named Person Pinnacle's June 21, 2005, "Motion for Partial Dismissal."

Complainants' Response & Opposition to ALJ Prejudicial, Improper, & Inaccurate June 30 2005 Order; Objections to Named Person Pinnacle's Appearances of Undisclosed Exparte Communications with US DOL/ALJ/Staff; Motion to Court to Vacate & Amend June 30 2005 Improper Order to Eliminate Irreparable Harm to Complainants; Motion for Recusal.

Complainants' Response & Opposition to Named Person Pinnacle's Bad Faith June 27th, 2005 "Motion to Stay Discovery, for Entry of a Protective Order, and for Imposition of Sanctions" & Complainants' Motion to Compel Pinnacle to Comply with Discovery Requests; *In Alternative* Motion for Default.

Complainants' Motion for Summary Decision on *All AIR21 Claims* & for Entry of Judgment on the Liabilities of All Named Persons, & Pinnacle's Illegal Employment Discrimination & Adverse Personnel Actions Against Complainant Powers' for Her "AIR 21" Activities.

Complainants' Rule 56 Statement of Specific Undisputed Material Facts and Memorandum of Law in Support of Their June 16, 2005 Motion for Summary Decision on *All AIR 21* Claims & For Entry of Judgment on the Liabilities of All Named Persons, and on Named Person Pinnacle's Illegal Employment Discrimination & Adverse Personnel Actions Against Complainant Powers' for her Protected Activities.

Complainants' Concerns & Objections to ALJ Erroneous June 9, 2005 "Status" Order & Complainants' Motion to Amend "Status Order" Forthwith.

Complainants' Response to ALJ & Repeated Notice of Intent Filed & Served May 20, 2005 to File Consolidated Complaint in Federal District Court Pursuant to 29 CFR Part 1980.114 (a) and (b).

Notice of Intent to File Consolidated Complaint in Federal District Court Pursuant to 29 CFR Part 1980.114 (a) and (b).

From the Respondent:

Respondent Pinnacle Airlines' Response to Complainant's Rule 56 Statement of Undisputed Material Facts and Memorandum of Law in Support of Their June 16, 2005 Motion for Summary Decision on all AIR 21 Claims and for Entry of Judgment on the Liabilities of all Named Persons, and on Named Person Pinnacle's Illegal Employment Discrimination & Adverse Personnel Actions Against Complainant Powers' for her Protected Activities

Respondent Pinnacle Airlines' Response to Complainants' Concerns and Objections to

ALJ Erroneous June 9, 2005 "Status" Order and Complainants' Motion to Amend "Status Order" Forthwith.

Respondent's Motion for Extension of Time to Respond to Complainant's Rule 56 Statement of Undisputed Material Facts and Memorandum of Law.

Respondent Pinnacle Airlines' Motion to Reschedule Hearing.

PROCEDURAL HISTORY

This case is the fifth one involving the Complainant and Respondent to come before this Court. The Complainant filed a complaint against the Respondent on June 17, 2002 under the AIR21 Act, which was dismissed by OSHA. The Complainant appealed, and the case was assigned to me, as 2003 AIR 12 ("*Powers I*"). On March 5, 2003, I issued an Order dismissing the Complainant's claims alleging violations of the whistleblower protections of the Sarbanes-Oxley Act, and the environmental whistleblower statutes. On December 12, 2003, I issued an Order dismissing the remainder of the Complainant's claims.

On March 28, 2003, while Powers I was pending before me, the Complainant filed a complaint with OSHA arguing that a motion to compel her to respond to its discovery requests filed by Respondent in Powers I was in retaliation for her protected activity. The Complainant subsequently amended her complaint to include allegations that she had been denied promotion opportunities and a pay increase, in retaliation for her protected activity, under AIR 21, SOX, and the environmental whistleblower statutes. OSHA dismissed the Complainant's claims, and the Complainant appealed. Again, the case was assigned to me, as 2004 AIR 6 ("*Powers II*"). On December 16, 2003, I issued an Order dismissing all claims and parties other than the AIR21 complaint against the Respondent, and on April 29, 2004, I issued an Order denying the remainder of the claims based on the Complainant's failure to cooperate in discovery.

On February 27, 2004, the Complainant filed a complaint with OSHA regarding the failure of PACE International Union, which represents the Respondent's flight attendants, to process her grievance, under AIR21, SOX, and the environmental whistleblower statutes. OSHA dismissed her complaint, and the Complainant appealed. The claim was assigned to me, as 2004 AIR 19 ("*Powers III*"). On May 7, 2004, I dismissed the complaint for failure to state a claim.

On June 16, 2004, the Complainant filed a complaint with OSHA, alleging that she had been denied consideration for other positions in retaliation for protected activity. OSHA dismissed the complaint, and the Complainant appealed. The matter came before me, as 2004 AIR 32 ("*Powers IV*"). On November 16, 2004, I issued an Order dismissing the complaint for the Complainant's failure to cooperate in discovery or to comply with my Orders directing her to cooperate in discovery.

On December 27, 2004, the Complainant filed a complaint with OSHA, alleging that she was discharged from employment by the Respondent in retaliation for protected activity, in violation of AIR 21 and the whistleblower provisions of SOX. OSHA investigated the

complaint, and on April 21, 2005 mailed the Complainant an unsigned copy of its determination dismissing her complaints. Subsequently, on May 3, 2005, OSHA mailed the Complainant a signed copy of its findings. The Complainant appealed, and the matter came before me as 2005 SOX 65 ("*Powers V*").

DISCUSSION

Respondent's Request for Dismissal of Sarbanes-Oxley Claim

The Respondent has requested that the Complainant's SOX claim be dismissed for failure to state a claim. The Respondent argues that the Complainant's complaint does not contain any allegation that adverse action was taken against her because she provided information or assisted in an investigation regarding conduct which she reasonably believed constituted a violation of 18 U.S.C. SS 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

Title 29 C.F.R. Section 18.29 deals with the authority of the administrative law judge. It provides, among other things, that an Administrative Law Judge may "take any appropriate action authorized by the Rules of Civil Procedure for the United States District Courts . . ."

Federal Rules of Civil Procedure 12(b)(6) provides that a party may move for dismissal on the grounds that a complaint does not state a claim upon which relief can be granted. Although the Rule refers to such dismissal on the motion of a party, it has been uniformly held that a Court may dismiss a claim for failure to state a claim upon which relief can be granted when it is patently obvious that the claimant could not prevail on the facts as alleged in the complaint. Courts have the inherent power to take such action, or to find that a complaint is frivolous on its face. *See, Koch v. Mirza,* 869 F.Supp. 1031 (W.D.N.Y. 1994); *Washington Petroleum and Supply Co. v. Girard Bank,* 629 F.Supp. 1224 (M.D.Pa. 1983); *Johnson v. Baskerville,* 568 F.Supp. 853 (E.D.Va. 1983); *Cook v. Bates,* 92 F.R.D. 119 (S.D.N.Y. 1981).

Such a conclusion is not a determination on the merits, but involves an inquiry as to whether, even assuming that all of the Complainant's allegations are true, she has stated a cause of action upon which relief can be granted by this Court. In making this inquiry, I have liberally construed the allegations in the Complainant's complaint, and have not held her to the same standard as would be required of an attorney. Nevertheless, I find that the Complainant has failed to allege any facts that would entitle her to relief under the Sarbanes-Oxley Act.

The Sarbanes-Oxley Act states in pertinent part:

> No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee - -

> (1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of sections 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by - -
>
> (A) a Federal regulatory or law enforcement agency;
>
> (B) any Member of Congress or any committee of Congress; or
>
> (C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct)

18 U.S.C. § 1514A (a)(1); see also 29 C.F.R. § 1980.102(a), (b)(1).

Here, the Complainant has not alleged that she provided information or assisted in an investigation regarding conduct that she reasonably believed constituted a violation of Federal mail, wire, bank, or securities fraud statutes, or any SEC rule or regulation relating to fraud against shareholders.

Thus, in reviewing the Complainant's complaint filed with OSHA, as well as her subsequent pleadings, it is clear that the "protected activity" that is the basis for her complaint involves complaints and reports regarding airline safety. There is no factual allegation that even suggests that the Complainant reported or assisted in the investigation of any kind of fraud. Even construing the Complainant's complaint in the light most favorable to her, and making all reasonable inferences, it is simply not possible to knit such an allegation from her complaint.

In her response, the Complainant attacks opposing counsel, calling for sanctions for frivolous and bad faith motions. She disputes the authority of this Court to make a ruling on the Respondent's motion, claiming that she has "removed" this matter to Federal Court, and thus I no longer have jurisdiction over her claim. But she does not address the substance of the Respondent's motions.

The Complainant has apparently decided to interpret the Respondent's motion as a motion for more definite statement under the Federal Rules of Civil Procedure, and as an "unethical" request for summary judgment. However, the Complainant has confused the nature of the inquiry before me. In making a ruling on the Respondent's motion, as set out above, I determine whether, even assuming that all of the Complainant's factual allegations are true, she has stated a cause of action upon which I can grant relief. Put another way, a motion to dismiss for failure to state a claim upon which relief can be granted is a test of the sufficiency of the

complaint; it is not a test of its merits. In contrast, in order to make a determination on a motion for summary judgment, there must be no material facts in dispute; the Court rules only on questions of law.

In order to prevail on her SOX claim, the Complainant must allege and establish that she engaged in protected activity or conduct, that the Respondent knew or suspected, actually or constructively, that she engaged in the protected activity, that she suffered an unfavorable personnel action, and that the circumstances were sufficient to raise an inference that her protected activity was a contributing factor in the unfavorable action Title 29 C.F.R. § 1980.104(b)(1).

A careful review of the Complainant's complaint reflects her claim that her employment was terminated in retaliation for filing an FAA Flight Safety Report in October 2004, for her participation in and preparation to testify in administrative and or enforcement proceedings against Respondent on November 17 and 18, 2004 in 2004 AIR 32, and for filing her brief on October 24, 2004 before the Administrative Review Board in Cases 4-0102 and 04-066. But again, nowhere in her complaint or subsequent pleadings is there even an allegation, factual or otherwise, that she suffered retaliation for reporting or assisting in an investigation of fraud against shareholders.

Thus, as the Complainant's complaint does not state a cause of action, and, even if she were to prove all of the facts contained therein, she could not prevail on her SOX claim, that claim must be dismissed.

Complainant's Motion for Summary Judgment

The Claimant has requested summary judgment on her claim under the AIR21 statute. She argues that she is entitled to summary judgment as a matter of law, and to immediate reinstatement, back pay, and damages. Attached to her Motion was the following:

> Complainants' Rule 56 Statement of Specific Undisputed Material Facts and Memorandum of Law in Support of Their June 16, 2005 Motion for Summary Decision on *All AIR21* Claims & For Entry of Judgment on the Liabilities of All Named Persons, and on Named Person Pinnacle's Illegal Employment Discrimination & Adverse Personnel Actions Against Complainant Powers' For Her Protected Activities.

The Rules of Practice and Procedure for administrative hearings before the Office of Administrative Law Judges, found at Title 29 C.F.R. Part 18, provide that an administrative law judge may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery, or other materials show that there is no genuine issue of material fact. Title 29 C.F.R. Section 18.40; Federal Rule of Civil Procedure 56(c). Summary judgment is appropriate when the record "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). No genuine issue of material fact exists when the "record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986). The party moving for summary judgment has the burden of establishing the

"absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986). In reviewing a request for summary judgment, I must view all of the evidence in the light most favorable to the nonmoving party. *Darrah v. City of Oak Park,* 255 F.3d 301, 305 (6th Cir. 2001).

Even a cursory review of the Complainant's statement of "undisputed material facts" shows that this statement does not set out "facts," much less undisputed facts.[1] Rather, it appears to set out, at length, the Complainant's arguments, legal or otherwise, regarding the merits of her various claims. For example, it is not an "undisputed fact" that "On November 17, 2004, Pinnacle illegally "immediately" terminated Crewmember Powers' employment of nearly 8 cumulative exceptional years. This prohibited act is in direct gross violation of constitutional due process at US Constitution 5th Amendment and 14th Amendments . . . ."

Similarly, not only is it not an "undisputed fact," it is not material to this case that "These reasonable deductions and factual allegations are further based upon Crewmember Powers' personal knowledge of the illegal termination of PCI Tennessee employee, Mr. Carl Johnson, on February 28, 2003, which was being simultaneously conducted while Crewmember Powers, Mr. Katz, Mr. Mark Grai, and PCI President, Mr. John M. Newell were all physically present for oral argument in Shelby County Circuit Court, docket CT 004490-02 on February 28, 2003 (33)."

Nor is the Complainant's perception of "politics" germane, as in paragraph 45, where she states that "The politics in these cases is clear. The US DOL Secretary of Labor, Ms. Elaine Chao, as late as August 2003, was a Board Member and Director at NWA. This is public knowledge. It is also public knowledge that the legal spouse of the Secretary of Labor is Kentucky US Senator, Mr. Mitch O'Connell., and the state of Kentucky is in the jurisdiction of the US Court of Appeals, 6th Circuit."

In short, the Complainant's request for summary judgment is deficient, in that she has not established that there are no material facts in dispute, and that a judgment on her AIR 21 claim may be made solely on questions of law.

In her "Legal Argument," the Complainant argues that because the Respondent did not appeal the decision of the Tennessee Department of Labor, Department of Employment Security to award her unemployment compensation, and waived its right to present any argument in opposition to her request for unemployment compensation, she is entitled to judgment on her AIR21 claim. The Complainant's argument is misplaced. Contrary to the Complainant's belief, the doctrines of collateral estoppel and res judicata do not apply in this case.

In 1986, in *University of Tennessee v. Elliott,* 478 U.S. 788 (1986), the United States Supreme Court considered a claim by an employee of the University of Tennessee who had been fired for inadequate work performance and misconduct. The employee requested an administrative hearing, which resulted in a ruling that his discharge was not racially motivated. The employee did not seek state court review. While his administrative proceeding was pending, the employee also filed a claim under Title VII and the Reconstruction civil rights acts. After the

[1] Indeed, the Respondent's response makes it clear that the Respondent disputes material facts dispositive to this claim.

administrative proceeding was concluded, the District Court granted summary judgment for the University, finding that the administrative law judge's ruling was entitled to preclusive effect. The Court of Appeals reversed, holding that while final state court judgments are entitled to full faith and credit in Title VII actions, unreviewed determinations by state agencies do not preclude trial de novo in federal court on Title VII claims. With respect to the employee's claims under the other civil rights statutes, the Court held that Title 28 U.S.C. § 1738, which accords a state court judgment the same full faith and credit in federal courts as it would have in the state's courts, does not require that federal courts be bound by the unreviewed findings of state administrative agencies.

The Supreme Court held, *inter alia*, that

> [W]hen a state agency acting in a judicial capacity resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, federal courts in actions under the Reconstruction civil rights statutes must give the agency's factfinding *the same preclusive effect to which it would be entitled in the State's courts.* . . . Giving preclusive effect in federal courts to the factfindings of state administrative bodies acting in a judicial capacity serves both the value of enforcing repose, which underlies general principles of collateral estoppel, and the value of federalism. (emphasis added)

Id. at 789.[2] Subsequently, courts have concluded that the Supreme Court's decision bars an offensive use of collateral estoppel in a Title VII action by an employee who previously filed a successful claim for unemployment compensation benefits. *See, e.g., Roth v. Koppers Industries, Inc., supra; Gallo v. John Powell Chevrolet, Inc.,* 765 F.Supp. 198 (M.D.Pa. 1991); *Johnson v. Halls Merchandising, Inc.,* 1989 WL 23201 (W.D.Mo. 1989); *Caras v. Family First Credit Union,* 688 F.Supp. 586 (D.Utah 1988).

As the Respondent has pointed out, the Tennessee unemployment compensation statute specifically provides that no finding of fact or law may be conclusive in any action or proceeding in another forum, even if the previous action was between the same or related parties. Thus, T.C.A. § 50-7-304(k) states:

> No finding of fact or law, judgment, conclusion or final order made with respect to a claim for unemployment compensation under this chapter may be conclusive in any separate or subsequent action or proceeding in another forum, except proceedings under this chapter, regardless of whether the prior action was between the same or related parties.

Thus, under Tennessee law, the determination that the Complainant was entitled to

[2] Several circuits that have considered this issue have concluded that unreviewed administrative agency findings, as opposed to state court determinations, cannot be accorded issue preclusive effect in Title VII proceedings. *See, e.g., Roth v. Koppers Industries, Inc.,* 993 F.2d 1058 (3rd Cir. 1993); *McInnes v. California,* 943 F.2d 1088 (9th Cir. 1991); *DeCintio v. Westchester County Med. Ctr.,* 821 F.2d 111 (2nd Cir.), *cert. denied,* 484 U.S. 965 (1987); *Duggan v. Board of Educ.,* 818 F.2d 1291 (7th Cir. 1987); *Abramson v. Council Bluffs Community School Dist.,* 808 F.2d 1307 (8th Cir. 1987).

unemployment compensation benefits would not be conclusive in a proceeding in any other forum. Although the decision of the Supreme Court in *Elliott, supra*, concerned a subsequent discrimination action under Title VII, the same reasoning applies here. Indeed, the Sixth Circuit Court of Appeals, the jurisdiction in which this claim arises, has recognized that when state law precludes the use of unemployment compensation determinations for collateral estoppel or res judicata effect in subsequent proceedings, an agency decision will have no bearing on a federal case. *See, Murray v. Kaiser Permanente,* 2002 WL 31805454 (6th Cir. Dec. 10, 2002).

Accordingly, I find that the Complainant is not entitled to judgment in her favor based on her award of unemployment compensation, an award that was not appealed, and thus not reviewed by a Tennessee state court, and a determination that, under Tennessee law, cannot be used in subsequent proceedings.

Parties

The Complainant has styled her complaint as "Coleen L. Powers, et al," indicating that the Complainants are herself and unnamed "crewmembers." No person other than Ms. Powers is identified as a "complainant," nor have any additional persons sought to join in Ms. Powers' claim. There is no authorization in the AIR21 statute for the Complainant to bring suit on behalf of another, whether named or unnamed. The Complainant relies on Title 29 C.F.R. §1980.103(a), which provides that an employee who believes that she or he has been discriminated against may file, or have filed on his or her behalf, a complaint under the SOX Act. The purpose of this language is to allow a representative to file a complaint on behalf of an employee who alleges discrimination. Here, there is no suggestion that any other Pinnacle employee has requested that the Complainant file a complaint on his or her behalf, and the alleged discrimination that is the subject of the Complainant's complaint relates to her and no one else. Nor is there any authorization in either statute for any type of class action. It is the Complainant, not Respondent's counsel, who has "literally misstated the federal regulations." Ms. Powers is the only Complainant in this matter, and she is hereby instructed to caption her pleadings accordingly.

Nor are there any "respondents" in this matter other than Pinnacle Airlines, Inc. In her complaint filed with OSHA on December 27, 2004, the Complainant identified as "Respondents" a host of entities and individuals, in addition to her employer, Pinnacle Airlines, Inc. The allegations in her complaint that properly fall under the jurisdiction of the AIR 21 statute are her charges that she was dismissed from employment in retaliation for voicing concerns about safety regulations, and for filing previous complaints. The AIR21 Act prohibits discrimination against an employee with respect to compensation, terms, conditions, or privileges of employment in reprisal for engaging in protected activity. The "adverse action" alleged by the Complainant is her dismissal by her employer, Pinnacle Airlines, Inc.

With respect to the Complainant's allegations under the AIR 21 Act, she has properly named her employer, Pinnacle Airlines, Inc., as a respondent, by alleging that it discriminated against her in retaliation for protected activity. However, the Complainant has not alleged that she was ever employed by NWA, Inc., NWAC, NWA Inc., Piper Rudnick, Gray Cary LLP, The Winchester Law Firm, Weinburg Richmond LLP, PACE International Union, Pollution Control

Industries (PCI) of Tennessee, LLC, or PCI, Inc. These entities are not properly named as respondents under AIR 21, which prohibits air carriers and contractors or subcontractors from discriminating against their employees.

The individuals named as "respondents" by the Complainant, Phil Reed, Phil Trenary, Theodore Davies, Alice Pennington, Doug Hall, Teresa Brents, James N. Hendricks, John M. Newell, Lawrence Karlin, and Mark Grai, are employees or officers of the entities listed by the Complainant. There is no allegation that the Complainant was employed by these persons in their individual capacity, nor do her allegations of denial of promotional opportunities even implicate these persons, or any party other than Pinnacle Airlines, Inc., her former employer. Thus, the Claimant cannot state a claim against any party other than Pinnacle Airlines, Inc. under the AIR 21 statute.[3]

With respect to the Complainant's claim under the Sarbanes-Oxley Act, it is not necessary to address the issue of the proper parties, as I have dismissed that claim. Accordingly, the Complainant is directed to style her pleadings to reflect only Pinnacle Airlines, Inc. as the Respondent.

Request for Punitive Damages

In her list of remedies and relief requested, the Complainant asks for punitive damages and penalties. The Respondent is correct, in that the AIR 21 Act does not provide for the imposition of punitive damages or "penalties." Thus, in the event that she prevails, the Complainant will not be entitled to such relief.

Respondent's Request for a Protective Order/Complainant's Motion to Compel Respondent to Comply with Discovery Requests

The Complainant has served the same discovery requests that she served on Respondents in *Powers II and Powers IV*. In *Powers II* and *IV*, I granted a request by the Respondent for a Protective Order, finding that very few of the interrogatories related to claims at issue, and that the Respondent was required to respond to only a limited number of those interrogatories. I also concluded that the Complainant's document requests were overly broad and not calculated to lead to the discovery of relevant evidence, and that the Respondent was not required to provide the requested documents. Similarly, I required the Respondent to reply to a limited number of the Complainant's requests for admissions.

I have reviewed the Complainant's discovery requests. The first 117 interrogatories are almost identical to the discovery requests that she served on the Respondent in *Powers II* and *IV*, in which I granted the Respondent's request for a protective order. Not surprisingly, none of them relate to the claims at issue in this matter. Thus, the Complainant has served the Respondent with the same 117 numbered interrogatories, with subparts, as she did in her previous complaints. Time has not improved these interrogatories, or made them relevant to this proceeding.

[3] Accordingly, the Complainant's motion for default judgment for failure to timely respond to her motion for summary determination with respect to these entities and persons is moot.

The Complainant has been repeatedly advised that these interrogatories deal with her allegations in 2004 AIR 6, 2003 AIR 12, and 2004 AIR 32. But they do not bear any relationship to the issues raised here, that is, whether the Complainant was terminated from employment because of her alleged protected activity.

Moreover, a review of these recycled interrogatories makes it clear that they have no relevance to the issues raised in this case. For example, questions having to do with the hiring of Respondent's counsel do not have any relevance to the issues raised in this case (interrogatories 4 and 5). Nor is it even conceivably relevant, or reasonably calculated to lead to relevant evidence, to know about quarterly team bonuses awarded to flight crew and crewmembers (interrogatories 16 through 19), how many Express Airlines I flight attendants were furloughed as a result of the NWA pilot strike in September 1998 (interrogatory 25), or how many Pinnacle flight attendants were furloughed as a result of the terrorist attacks of September 11, 2001 (interrogatory 26). Many of the interrogatories seek information that clearly relates to the Complainant's allegations in 2003 AIR 12, such as interrogatory 37, which asks "What legal grounds does Pinnacle management think they have to threaten crewmembers with immediate loss of employment if a crewmember questions the legality of a duty assignment?" The Complainant also poses numerous questions about Respondent's attorneys, including how the attorneys are compensated, and their hourly rate (interrogatory 56). Many of the interrogatories are argumentative, such as interrogatory 100, which asks "Does Pinnacle teach any of it's [sic] crew Schedulers how to actively listen?" and interrogatory 50, which asks "Are flight attendants nothing more than 'snack waitresses' in the sky?"

In sum, all of the recycled interrogatories seek information that can have no possible relevance to the issues raised in this claim.

I have carefully reviewed the new interrogatories that the Complainant has added to the discovery requests she submitted in her previous claims. With only a few exceptions, these interrogatories have no relevance to the issues raised in this case, nor are they reasonably calculated to lead to such evidence. Unfortunately, those few interrogatories that appear to have some relationship to the issues raised in this case are impossible to answer, as they are compound, argumentative, or vague, and are premised on unproven assumptions.

For example, in interrogatory 119 the Complainant asks:

> Why did Pinnacle refuse to provide Ms. Powers due process prior to Pinnacle's hostile personal delivery and issuance of their vague Nov. 17, 2004 Termination letter? On what legal grounds did Pinnacle call Memphis Police to have Ms. Powers' escorted off the Pinnacle Memphis "property"? Why did Pinnacle violate State law at TCA 50-1-303 and in doing so Pinnacle engaged in attempted malicious prosecution and made material misrepresentations to the Memphis Police Dept., which wasted taxpayers monies and time?

Setting aside the compound and confusing nature of the question, it assumes that the Respondent has denied the Complainant due process and violated the law, allegations that, even

if relevant here, are unproven.

Many of the interrogatories ask questions about actions taken by PACE, the Union that represents Pinnacle employees. Not only is PACE not a party to this action, (although it was the Respondent in *Powers III*), but the facts surrounding the processing of the Complainant's grievances by PACE, which was the subject of *Powers III*, have nothing to do with the issues raised in this claim. Nor does this Court have jurisdiction over the actions of PACE with respect to the Complainant's termination.

Questions regarding the relationship between the Respondent and its counsel do not have anything to do with the issues raised in this matter, and moreover, call for the production of privileged information (e.g., interrogatory 121).

Questions about the dating or personal relationship between a Respondent employee and a PACE representative (interrogatory 123) or the reason for "separation of employment" of a Respondent employee (interrogatory 124) have no possible bearing on the issues raised in this claim. Nor does the ruling of the NTSB on the cause of an October 14, 2004 accident that killed two Pinnacle flight crew members (interrogatory 159).

A number of the Complainant's interrogatories concern the relationship between PACE (and its counsel) and employees of PCI (interrogatories 132-135). The answers to these questions cannot possibly be relevant here.

Several of the Complainant's interrogatories relate to her claim for unemployment compensation after her termination. Although the Complainant argues that the Respondent's failure to oppose her request for unemployment compensation conclusively establishes its liability in this proceeding, in fact, the Respondent's decision not to oppose her request for unemployment has nothing to do with the issues raised here.

Again, while a few of the Complainant's interrogatories appear to seek information arguably relevant to the issues raised in this particular claim, they are so confusing and argumentative that it is not possible to determine the precise question asked, or to answer accurately. The following provide an example.

> Interrogatory # 137: Why did Pinnacle refuse to provide the Oct9th, 2004 MEM CRJ Captain Dwight Brown Crew Comm., [authored at the request of Pinnacle Flt Ops, Mgr., Kay Humphreys], until October 25th, 2004? Why did Pinnacle management deny crewmember # 11140 the opportunity to fully respond to it as evidenced by Pinnacle's malicious and retaliatory conduct and violation of Crewmember # 11140 right to Due process as shown in the Nov. 17, 2004 transcript, [supported by the simultaneously tape recorded cassettes of the hostile Pinnacle "termination"? of Crewmember # 11140's employment]
>
> Interrogatory # 147: The Nov. 17, 2004 illegal termination letter to Ms. Powers is signed by NWA Airlink Inflight Service s Director Ted Davies and states that an "investigation was completed on October 25th, 2004". Thus, since nothing after October 25th, 2004 was

ever presented to Ms. Powers until Nov. 17, 2004 at the illegal, management-hostile, and abrupt termination meeting, Pinnacle again grossly violated Ms. Powers' civil rights, especially the US 14th Amendment right to due process to her property rights and her PACE contractual rights to employment, agreed?

Of the newly crafted interrogatories, only one, interrogatory # 146, requests information that is arguably relevant to the issues raised in this claim, or reasonably calculated to lead to such information, and is worded in such a manner that it is capable of being answered. Thus, the Respondent will be required to answer the following portions of that interrogatory.

What specific details support the Nov. 17th, 2004 Pinnacle termination letter that alleged Ms. Powers was "disruptive" in the workplace?

What specific details support the accusation that Ms. Powers was somehow "insubordinate" and allegedly "disrespectful"?

What definition of "insubordinate" does Pinnacle rely upon?

But the Respondent will not be required to answer the following portions of that interrogatory.

How could Ms. Powers', a rank and file, non management employee, ever possibly create a "hostile workplace"?

Why was Ms. Powers' illegally DENIED the opportunity to address all these false accusations prior to Pinnacle's termination of her property rights, all in violation Ms. Powers' civil rights, especially those of the US 14th Amendment?

Similarly, the document requests that the Complainant has served on the Respondent in this case are an almost verbatim reproduction of the document requests she served on Respondent in *Powers II* and *IV*. With the exception of parts of request number 22, these requests are overly broad and not calculated to lead to the discovery of relevant evidence. As with her recycled interrogatories, many of these requests seek documents that relate solely to her previous claims which have been dismissed. Thus, request number 2 seeks copies of Pinnacle crew scheduling flight attendant "reserve" lists. The availability of reserve crew was an issue raised by the Complainant in 2003 AIR 12, but it has no relevance to the issues in this case.

Request number 3 seeks personnel records, employment history, background, bonus awards, and reasons for separation for 35 employees of Pinnacle. This request is overly broad, and the Complainant has not articulated how the answers could possibly be relevant, or lead to relevant evidence, in this proceeding.

In requests 4 through 12, the Complainant requests training syllabi for various positions at Pinnacle, the names of trainers, and their qualifications. This request has no relevance to the issues raised in this proceeding. Nor does the Complainant's request for a copy of the emergency evacuation plan (13), or information about corporate travel passes (14).

That the Complainant seeks information relating to her dismissed claims is confirmed by requests 15 through 17, which seek flight dispatch releases for August 10 and 11, 2002 (15), PUSH paperwork for August 10 and 11, 2002 (16), and statements provided to OSHA in the investigation of the Complainant's June 17, 2002 safety complaint (17).

Document request 18 asks for a copy of an October 28, 2002 FAA letter, and document request asks for copies of scheduling and dispatch tapes for December 2003, none of which could contain any information relevant to the issues raised in this case. Nor has the Complainant explained why a copy of the December 31, 2003 AML for NWA owned aircraft CRJ # 8672A is relevant to this case. Even assuming that it exists, an email that predates December 31, 2003, referred to by "Mario" is not relevant to the issues raised in this case (21).

Document request 22 seeks information specifically related to the Complainant's complaint in this case, and the Respondent has not lodged an objection to this request.

Accordingly, with the exception of document request 22, the Respondent will not be required to respond to the Complainant's document requests, and to that extent, the Respondent's motion for a protective order is granted.

Similarly, the Complainant's requests for admissions numbers 1 through 27 are an almost verbatim reproduction of the requests for admissions that she served on the Respondent in *Powers II* and *IV*. They seek information relating to the Complainant's dismissed claims, which have no relevance to the issues raised by this claim. Questions about when Respondent's counsel was retained (2) are certainly not relevant, and infringe on the attorney client relationship.

Whether the In-flight director and manager were forced to resign or be terminated, as the Complainant asks in request 1, cannot possibly have any relevance to this case. Nor does the calculation of city team bonus awards, as requested in number 8. Whether the Respondent "resents" whistleblowers and refuses to inform crewmembers of their right to report safety concerns, even if true, is not relevant to the issues raised in this case (24).

Again, actions taken by PACE (26, 27, 28) have no bearing on this matter, nor are Respondents required to admit or deny that they have a history of retaliating against union organizers (25).

Requests 30-31, on their face, arguably deal with issues that are relevant to the claim before me. However, setting aside the fact that they are compound, confusing, and argumentative, they essentially require the Respondent to admit or deny that they in bad faith "grossly violated" the Complainant's rights to present witnesses and defend herself in her termination grievance hearing, as another example of their violations of crewmembers' civil rights (30), and that they did not comply with the request by PACE to produce a copy of her personnel file, showing their bad faith and discriminatory motives toward the Complainant (31).

Again, requests 31 and 32 deal with the Complainant's complaints that were the subject

of *Powers IV*, but they have no relevance to this particular case.

Request number 34, which is three pages long, is completely unintelligible, and appears essentially to argue that the Respondent manufactured the circumstances that it relied on in terminating the Complainant. To the extent that this is in fact the Complainant's request, it is not a proper subject for a request for admissions.

The remaining requests are confusing, compound, and argumentative; almost without exception, they concern matters that are not the subject of this particular claim. Therefore, the Respondent will not be required to provide answers to the Complainant's requests for admissions.

Miscellaneous

The Complainant's pleadings contain numerous references to other causes of action that she apparently believes are before this Court. These include complaints against PACE for various violations of their duty to represent her, against the Respondent for violation of the collective bargaining agreement and "tortitious" interference with her employment contract, and against the Respondent for violations of the federal wage and hour laws. None of these claims are before me, and indeed I do not have jurisdiction to rule on them. The only matter properly before me is the Complainant's claim of discrimination under the AIR21 Act.

Motion for Recusal

The Complainant requests that I recuse myself, stating:

> The Recusal motion must be granted as a matter of law so that Complainants do not continue to suffer from the personal prejudices and unfavorable biases of this ALJ. Currently, there is pending active litigation in the US Court of Appeals, 6th Circuit against this very same ALJ for her past prejudicial conduct to Complainant/Crewmember Powers.

Clearly, the Complainant is not satisfied with my rulings in this claim, and indeed, it appears that she does not accept the authority of the Court to make determinations in this matter. Thus, despite the fact that I have repeatedly advised the Complainant that this Court retains jurisdiction of her claim under the Sarbanes Oxley Act, she persists in her claim that this Court does not have in fact have such jurisdiction. The Complainant has taken issue with virtually every ruling to date in this matter, including procedural rulings. But the fact that the Complainant is not satisfied with the Court's rulings is not grounds for recusal.

The Complainant's charge that this Court engaged in *ex parte* verbal contacts with counsel for the Respondent is based on sheer speculation, and does not deserve further discussion. Although the Complainant alleges that this Court is a party to a matter pending in the Sixth Circuit Court of Appeals in connection with past prejudicial conduct towards the Complainant, this Court is unaware of any such matter.

In short, the Complainant has not alleged any facts that would support a finding of impartiality, either judicial or personal. Accordingly, the Complainant's motion for recusal is denied.

CONCLUSION

Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

1. The Complainant's claims under the Sarbanes Oxley Act are dismissed.

2. The proper parties in this claim are the Complainant, Coleen L. Powers, and the Respondent, Pinnacle Airlines, Inc.

3. The Respondent's motion for a protective order is granted, and with the exception of document request 22, the Respondent is not required to respond to the Complainant's interrogatories, document requests, or requests for admission.

4. Correspondingly, with the exception of designated parts of interrogatory 146 and document request 22, to which the Respondent is directed to respond, the Complainant's motion for an order to compel the Respondent to comply with discovery is denied.

5. The Complainant's motion for recusal is denied.

6. The hearing on the Complainant's claims under the AIR 21 Act will take place on September 7 and 8, commencing at 9:00 a.m., in Memphis, Tennessee, at a location to be announced.

SO ORDERED.

A

LINDA S. CHAPMAN