



**In the Matter of:**

**BRIAN M. TURGEAU,**

**ARB CASE NO. 04-005**

**COMPLAINANT,**

**ALJ CASE NO. 2003-AIR-00041**

**v.**

**DATE: March 19, 2007**

**THE NORDAM GROUP,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**ORDER OF REMAND**

On April 27, 2006, the United States Court of Appeals for the Tenth Circuit issued a decision<sup>1</sup> reversing the decision of the Administrative Review Board<sup>2</sup> in this case arising under Section 519 (the employee protection provision) of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21).<sup>3</sup> The Board, in its decision, accepted a Department of Labor Administrative Law Judge's recommendation to deny Brian Turgeau's whistleblower complaint on the grounds that he did not timely file it. In particular the Board held that Turgeau was not entitled to equitable tolling of the limitations period for filing his complaint because Turgeau did not file the precise statutory claim in state court.

The Court of Appeals reversed the Board's decision. It held that because the Board did not dispute the district court's holding that AIR 21 completely preempted Turgeau's state law claim, Tenth Circuit precedent "demand[ed] the conclusion that his state complaint did state the precise statutory claim as his later administrative complaint

---

<sup>1</sup> 446 F.3d 1052 (2006)

<sup>2</sup> *Turgeau v. The Nordham Group*, ARB No. 04-005, ALJ No. 2003-AIR-0041 (Nov. 22, 2004).

<sup>3</sup> 49 U.S.C.A. § 42121 (West 2003).

because his state claim was an AIR21 claim.”<sup>4</sup> The court further held that “[t]he agency has waived any argument that there is any further analysis of petitioner’s claim for equitable tolling to be done”<sup>5</sup> and remanded the case for the application of equitable tolling. Therefore, we remand this case to the Office of Administrative Law Judges for further adjudication in accordance with the court’s decision.

**FOR THE ADMINISTRATIVE REVIEW BOARD:**

**Janet R. Dunlop**  
**General Counsel**

---

<sup>4</sup> 446 F.3d at 1057-1058.

<sup>5</sup> *Id.* at 1061.