



In the Matter of:

SUSAN B. TRECHAK,

ARB CASE NO. 03-141

COMPLAINANT,

ALJ CASE NO. 2003-AIR-5

v.

DATE: March 19, 2004

AMERICAN AIRLINES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Susan B. Trechak, pro se, Santa Maria, California

For the Respondent:

Kenneth R. O'Brien, Esq., Littler Mendelson, Sacramento, California

**FINAL ORDER APPROVING SETTLEMENT AGREEMENT
AND DISMISSING COMPLAINT**

This case arises under the whistleblower protection provision of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21), 49 U.S.C.A. § 42121 (West 2004). On August 8, 2003, a Labor Department Administrative Law Judge (ALJ) issued a Recommended Decision and Order recommending that the Complaint be dismissed as untimely filed. *Trechak v. American Airlines, Inc.*, ALJ No. 2003-AIR-00005 (Aug. 8, 2003) (R. D. & O.).

The Complainant, Susan Trechak, petitioned for review of the R. D. & O. pursuant to 29 C.F.R. § 1979.110(a) (2003). On August 21, 2003, this Board issued a Notice of Appeal and Order Establishing Briefing Schedule.

On September 11, 2003, Trechak and American entered into a settlement agreement providing for dismissal of the instant Complaint. By letters dated September

19, and October 3, 2003, Trechak advised the Board that she did not wish to be bound by the agreement. According to Trechak, she was in the midst of a worker's compensation hearing when American's counsel approached her with the settlement offer. She had just stepped down from the witness stand in her own behalf, and American had four witnesses waiting to testify for American. American's counsel told her the offer would be withdrawn if American had to call its witnesses.

Trechak argues that she signed the agreement against her better judgment because she and her family were ill and desperately needed money. Trechak also states that she was acting without counsel at the worker's compensation hearing and American was unreasonable in denying her request for 24 hours to think about the offer and get advice.

Counsel for American states that the court's Information and Assistance Officer, whose job is to assist pro se complainants, conducted the settlement negotiations. "All discussions with Ms. Trechak concerning the resolution of her claims were conducted exclusively by the Information and Assistance Officer outside the presence of any representative from American. The Information & Assistance Officer then spoke privately with American's representative until an agreement was reached." Letter to ARB General Counsel, Sept. 18, 2003. Trechak does not dispute American's representations about the Information and Assistance Officer's role in the settlement process.

A settlement agreement is a contract and once entered into is binding and conclusive. Like any other contract, it can only be challenged upon a showing of fraud, duress, illegality, or mutual mistake. See *Beliveau v. Naval Undersea Warfare Ctr.*, ARB No. 99-070, ALJ No. 97-SDW-6 (ARB June 30, 1999); *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 391 (1994).

The Board has held that "an opposing party's improper conduct may render a settlement agreement voidable." *Beliveau*, slip op. at 2. The Board has not addressed the specific question whether economic stress and/or lack of counsel can be grounds for voiding a settlement agreement.

We now conclude that neither lack of counsel, nor financial stress, nor the combination of the two, can be grounds for voiding a settlement agreement. Were it otherwise, employers would have no reason to settle with employees in financial straits or employees acting pro se.

Nor do we agree with Trechak that American's refusal to give Trechak 24 hours to consider the offer was an unfair manipulation of circumstances. By Trechak's own account, American offered the settlement to avoid putting on its witnesses on the day of the offer. A 24-hour hiatus would have defeated the purpose of the offer. Moreover, Trechak has not challenged American's claim that she accepted the offer with the assistance of the court's Administrative Officer. We also note that Trechak does not indicate that she was misled by American as to the terms of the agreement, nor (though

under the pressure of financial difficulties and the need to make an immediate decision) that she lacked the capacity to sign it.

Therefore, we turn to American's request for approval of the agreement and dismissal of the complaint.

Review of the agreement reveals that it encompasses the settlement of matters under laws other than AIR21. See Settlement Agreement ¶ 1. The Secretary's authority over settlement agreements is limited to such statutes as are within the Secretary's jurisdiction and is defined by the applicable statute. *James v. Pritts-McEnany Roofing, Inc.*, ARB No. 96-184, ALJ No. 96-ERA-5 (ARB Feb. 11, 1997). Thus, we approve the instant settlement agreement only insofar as it pertains to matters within the Secretary's jurisdiction.

Review of the agreement reveals that it contains a waiver of causes of action. See Settlement Agreement ¶¶ 3, 4. For purposes of our approval, we construe these waivers as limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of the agreement and within our jurisdiction. *Diaz v. Robainas v. Florida Power & Light Co.*, ARB No. 97-013, ALJ No. 92-ERA-10 slip op. at 3 (ARB Nov. 4 1996).

Review of the agreement reveals that it contains a confidentiality provision. See ¶ 8. We note that the record in this case is subject to the applicable provisions of the Freedom of Information and Privacy Acts. *Id.* slip op. at 2.

Accordingly, we **DENY** the Complainant's request that the Agreement be voided. We find that the agreement, as construed above, is a fair, adequate and reasonable settlement of the complaint. Accordingly, we **APPROVE** the Agreement and **DISMISS THE COMPLAINT WITH PREJUDICE**. See ¶ 3.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge