



In the Matter of:

UNITED STATES DEPARTMENT  
OF LABOR, OFFICE OF FEDERAL  
CONTRACT COMPLIANCE PROGRAMS,

ARB CASE NO. 02-063

ALJ CASE NO. 88-OFC-17

PLAINTIFF,

DATE: September 18, 2002

v.

US. AIRWAYS, INC.,

DEFENDANT,

and

ASSOCIATION OF FLIGHT ATTENDANTS,

and

AIR LINE PILOTS' ASSOCIATION,

INTERVENERS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD<sup>1</sup>

Appearances:

*For the Plaintiff:*

Michelle Serrou, Esq., Beverly Dankowitz, Esq., Gary M. Buff, Esq., Eugene Scalia, Esq.,  
*U.S. Department of Labor, Washington, D.C.*

*For the Defendant:*

Tom Jerman, Esq., Evelyn L. Becker, Esq., *O'Melveny & Meyers, LLP, Washington, D.C.*

*For the Intervenors:*

Clay Warner, Esq., James K. Lobsenz, Esq., *Air Line Pilots' Association, International,  
Washington, D.C.*

## REMAND ORDER

---

<sup>1</sup> This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96.  
61 Fed. Reg. 19, 978 § 5 (May 3, 1996).

This case arises under Executive Order 11246, as amended, and its implementing regulations at 41 C.F.R. Parts 60-1 and 60-30. “The Executive Order is designed to ensure promotion and equal employment opportunities for all persons who are employed or are seeking employment with federal contractors without regard to race, color, religion, sex, or national origin. (41 C.F.R. § 60-1.1).” *OFCCP v. U.S. Airways, Inc.*, 1988-OFC-17 (ALJ Feb. 14, 2002).

On April 15, 1988, the Department of Labor’s Office of Federal Contract Compliance (“OFCCP”) filed a complaint against Piedmont Airlines, later U.S. Airways,<sup>2</sup> alleging that Piedmont discriminated against applicants for pilot and flight attendant positions on the basis of race and national origin. Order Recommending Denial of Supplemental Consent Decree (O. R. D.) at 2.<sup>3</sup> The Airline Pilots’ Association (“ALPA”) intervened. *Id.* OFCCP and U.S. Airways submitted a proposed consent decree to a Department of Labor Administrative Law Judge pursuant to 41 C.F.R. § 60-30.13. *Id.* ALPA objected to the proposed consent decree on the grounds that it provided for an “adjusted seniority date” to determine furlough. *Id.* Such adjusted dates, ALPA argued, were inconsistent with the collective bargaining agreement and would directly affect its members because in the event of a furlough, the Defendant would not furlough pilots according to the established seniority order. *Id.* The ALJ dismissed ALPA’s objections and issued a Recommended Order Approving Consent Decree (R. O.). *Id.* None of the parties filed exceptions to the R. O., and the Secretary of Labor adopted the ALJ’s recommendation and approved the consent decree. *OFCCP v. USAIR Inc.*, No. 88-OFC-17 (Sec’y June 30, 1992).<sup>4</sup>

Six years later, when U.S. Airways began hiring new pilots, subject to the terms of the consent decree, disagreements arose between OFCCP and U.S. Airways as to the proper application of the terms of the consent decree to the hiring process. O. R. D. at 2. Ultimately, these disagreements were resolved, as indicated in a Supplemental Consent Decree, which they presented to an ALJ for approval. *Id.* As previously, ALPA objected to the Supplemental Consent Decree. *Id.* The ALJ ultimately concluded that “the proposed Supplemental Consent Decree can not be approved because Paragraphs 39 and 40 thereof abridge the rights provide [sic] to ALPA by a collective bargaining agreement with U.S. Airways, ALPA has not consented to the abridgement, and there has not been a finding of discrimination and a finding that abridgement is necessary to remedy the discrimination.” *Id.* at 9.

---

<sup>2</sup> Piedmont later merged with USAir and the merged airline, U.S. Airways, became the successor defendant. Order Recommending Denial of Supplemental Consent Decree at 2.

<sup>3</sup> This decision is available at <http://www.oalj.dol.gov/public/ofccp/decsn/88ofc17d.htm>. Page number citations in our decision are to this electronic version.

<sup>4</sup> This decision is available at [http://www.oalj.dol.gov/public/ofccp/decsn/9206usa1\\_txt.htm](http://www.oalj.dol.gov/public/ofccp/decsn/9206usa1_txt.htm). Page number citations in our decision are to this electronic version.

As provided in 41 C.F.R. § 30.28, any party may submit exceptions to an ALJ's recommended decision with the Administrative Review Board ("Board") within 14 days after receiving the recommended decision. On February 25, 2002, OFCCP filed a Stipulated Motion for Extension of Time to File Exceptions with the Board. OFCCP filed two additional Motions for Extension of Time, and then on June 24, 2002, filed a Joint Motion for Remand. In the motion, OFCCP and U.S. Airways assert that intervening factual developments warrant remand of the case to an ALJ for the opportunity to seek entry of a revised Supplemental Consent Decree pursuant to 41 C.F.R. § 60-30.13. OFCCP and U.S. Airways also aver that ALPA "consents to this Motion for Remand, so long as the provisions upon which its objections were based are not given effect in the revised Supplemental Consent Decree." Joint Motion for Remand at 3-4.

Accordingly, for good cause shown, we **GRANT** the Joint Motion and **REMAND** the case to the ALJ.<sup>5</sup>

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

---

<sup>5</sup> We note that 41 C.F.R. § 60-30.13(d) provides that the ALJ's approval of a consent decree constitutes the "final administrative order." Thus, it appears that the ALJ's order approving the consent decree should not have been "recommended" and the Secretary of Labor did not have jurisdiction to issue the June 30, 1992 order approving the decree. *Accord OFCCP v. SKF USA, Inc.*, ARB No. 00-023, ALJ No. 97-OFC-17 (ARB Mar. 30, 2001); *OFCCP v. Cambridge Wire, Inc.*, No. 94-OFC-12 (ARB Nov. 26, 1996). However, in *OFCCP v. Carolina Freight Carriers Corp.*, No. 93-OFC-15, (Mar. 16, 1995), the Secretary reviewed and approved a "recommended" consent order to "ensure finality and eliminate ambiguity." Slip op. at 2. Nevertheless, the Secretary emphasized that, "an ALJ's decision approving such a consent decree constitutes the final administrative order in the proceeding and no further action by the Secretary is necessary to make the order final and effective." *Id.*