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Issue Date: 03 March 2006

Case No.: 2006-AIR-4
2006-AIR-5

In the Matter of:

Coleen L. Powers,
Complainant

v.

Pinnacle Airlines,
Respondent.

RECOMMENDED DECISION AND ORDER
DENYING COMPLAINANT'S CLAIMS

On February 2, 2006, I issued an Order to show cause, directing the Complainant to show cause as to why her complaints should not be dismissed for her refusal to comply with the Court's orders regarding discovery. Subsequently, the parties have filed the following.

By the Complainant:

Complainants' Supplemental Objections to January 17, 2006 Order & Motion to Vacate, in Part, Amend and/or Alter January 17, 2006 Order; Supplemental Pleading & Renewed Motion for Entry of Order of Clarification & For Entry of Order of Restricted Access, Forthwith

Complainants' Rebuttal Replies to Named Person Pinnacle Airlines, Inc.,'s January 25th, 2006 Service Documents & Renewed Motion for Imposition of Sanctions Against Them

Complainants' Motion for Extension of Time to Respond to the ALJ's February 2, 2006 Order, Received February 7, 2006 by Former Crewmember Powers (With Attached Proposed Exhibit CX 658)

Former Crewmember Powers' Additional Supplemental Draft Confidential Responses Pursuant to January 17, 2006 Order & Notice of Filing Proposed Confidential/Restricted Access, Exhibit CX-659

Former Crewmember Powers' Additional Responses to January 17, 2006 Order and Fifth [5th] Supplemental Responses to Named Person Pinnacle's Abusive, Burdensome, Duplicative, Delayed Discovery Requests Propounded by Pinnacle On Or About July 20, 2005, Nov. 8th, 2005, and January 25, 2006

Former Crewmember Powers' Additional Detailed Responses to Her Feb. 09, 2006 Responses to The ALJ's February 2, 2006 Order "To Show Cause" Received February 7, 2006 by Former Crewmember Powers

Third Written Request for Signed and Embossed Subpoenas

Former Crewmember Powers' Rebuttal Replies to Named Person, Pinnacle Airlines Inc., February 24, 2006 Service Documents & Complainants' Renewed Motion for Imposition of Sanctions on Them

By the Respondent:

Response to Motion for ALJ to Deem All Complainants' June 16/18, 2005 Undisputed Facts as Admitted Based on Pinnacle's Insufficient Responses to Each Fact Asserted

Response to Complainants' Motion for Entry of Order of Clarification and Rebuttal Reply

Pinnacle's Reply to Powers' Responses to Show Cause Order

DISCUSSION

This Court's show cause Order was directed at the Complainant's continued refusal to provide the Respondent with information and documents requested in discovery. It is useful at this point to briefly review the history of this particular case.

Procedural History

This case is the fifth 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*").

August 31, 2005 Order

This matter was first set for hearing in July 2005. However, the hearing was continued after the parties filed motions in connection with outstanding discovery. On August 31, 2005, I issued an Order addressing those motions, as well as other outstanding matters. I dismissed the Complainant's claim under the Sarbanes Oxley Act, finding that she had not stated a cause of action under that statute. I also denied the Complainant's request for summary judgment, noting that "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." I also found that the Complainant was not entitled to judgment in her favor based on her award of state unemployment compensation, because that award that was not appealed, and thus not reviewed by a Tennessee state court, and under Tennessee law, such a determination cannot be used in subsequent proceedings. I found that the proper parties to this matter were the Complainant and Pinnacle Airlines, Inc., and directed the Complainant to style her pleadings accordingly. I also advised the Complainant that punitive damages were not

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

available as relief under the AIR 21 Act.

Complainant's Discovery Requests

With respect to the discovery disputes, I noted that the Complainant had 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 noted that the first 117 interrogatories were 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 related to the claims at issue in this matter. As I noted, the Complainant had been repeatedly advised that these interrogatories dealt with her allegations in 2004 AIR 6, 2003 AIR 12, and 2004 AIR 32. But they did not bear any relationship to the issues raised here, that is, whether the Complainant was terminated from employment because of her alleged protected activity.

Thus, even a cursory review of these recycled interrogatories made it clear that they had no relevance to the issues raised in this case. For example, questions having to do with the hiring of Respondent's counsel did not have any relevance to the issues raised in this case (interrogatories 4 and 5). Nor was 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 sought information that clearly related 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 posed numerous questions about Respondent's attorneys, including how the attorneys were compensated, and their hourly rate (interrogatory 56). Many of the interrogatories were 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?"

I also reviewed the new interrogatories that the Complainant added to the discovery requests she submitted in her previous claims, noting that, with only a few exceptions, they had no relevance to the issues raised in this case, nor were they reasonably calculated to lead to such evidence. Unfortunately, those few interrogatories that appeared to have some relationship to the issues raised in this case were impossible to answer, as they were compound, argumentative, or vague, and were premised on unproven assumptions. For example, in interrogatory 119 the Complainant asked:

> 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?

I noted that setting aside the compound and confusing nature of the question, it assumed that the Respondent denied the Complainant due process and violated the law, allegations that, even if relevant here, were unproven.

Many of the interrogatories asked questions about actions taken by PACE, the Union that represents Pinnacle employees. As I noted, not only was 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 did this Court have jurisdiction over the actions of PACE with respect to the Complainant's termination.

Several of the Complainant's interrogatories related to her claim for unemployment compensation after her termination. Although the Complainant argued (and continues to argue, despite my ruling to the contrary) 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.

I noted that while a few of the Complainant's interrogatories appeared to seek information arguably relevant to the issues raised in this particular claim, they were so confusing and argumentative that it was not possible to determine the precise question asked, or to answer accurately, and provided examples:

> 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]
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> 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?

After reviewing the new interrogatories, I determined that only one, interrogatory # 146, requested information arguably relevant to the issues raised in this claim, or reasonably calculated to lead to such information, and was worded in such a manner that it was capable of being answered. Thus, I directed the Respondent 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 was not 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?

I found that the document requests that the Complainant served on the Respondent in this case were 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, I found that these requests were overly broad and not calculated to lead to the discovery of relevant evidence. As with her recycled interrogatories, many of these requests sought documents that related solely to her previous claims which have been dismissed.

Document request 22 sought information specifically related to the Complainant's complaint in this case, and the Respondent did not lodge an objection to this request. Accordingly, with the exception of document request 22, the Respondent was not required to respond to the Complainant's document requests, and to that extent, the Respondent's motion for a protective order was granted.

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

I noted that requests 30-31, on their face, arguably dealt with issues that were relevant to the claim before me. However, setting aside the fact that they were compound, confusing, and argumentative, they essentially required 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).

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

I concluded that the remaining requests were confusing, compound, and argumentative; almost without exception, they concerned matters that were not the subject of this particular claim. Thus, I did not require the Respondent to provide answers to the Complainant's requests for admissions.

Respondent's Discovery Requests

The Complainant had requested a protective order, arguing that the Respondent's discovery requests were unauthorized, overly broad, already provided, readily available by FOIA requests from public agencies, infringed on the attorney client or work product privilege, were irrelevant and unduly repetitious, and were an undue burden and unnecessary expense. I noted that the Respondent had served the Complainant with eight requests for production of documents, and stated to the Court that the Complainant had not produced a single document as part of this case. After reviewing the Respondent's document requests, I found that they were narrowly tailored to the issues raised in the case, and called for the production of relevant documents. But it was also clear from the nature of these requests that the Respondent was already in possession of some of these documents, and that some of them were readily available to the public.

Thus, to the extent that the Complainant had already provided any of the requested documents to the Respondent, or they were publicly available, the Complainant was directed to specifically identify such documents, including a description of the documents, the date of the documents, the date that she provided them to the Respondent, and if applicable, their public location. The Complainant was not required to produce copies for the Respondent of documents she so identified; but she was to provide the Respondent with copies of any responsive documents that did not fall in these categories.

I also reviewed the Respondent's eight interrogatory requests, which the Complainant did not answer on the grounds that they were unduly repetitious, and that she had already answered them in her objections to the Respondent's document requests. Specifically at issue was Interrogatory 1, which asked for the identity of each person likely to have discoverable information relating to the facts of the claims raised by the Complainant. I stated:

> The Respondent is entitled to know the identity of the persons whom the Complainant believes to have discoverable information, without having to comb through voluminous documents and try to guess at these identities. The Complainant is directed to provide the Respondent with the identity of these persons, as well as the subject of the information he or she possesses.

Respondent's Interrogatory 2 asked the Complainant to provide a computation for each category of damages she sought. As I noted, the Complainant had responded to this interrogatory as part of her response to the requests for documents, setting out a number of categories of alleged "damages." However, I advised the Complainant that I had no jurisdiction to consider her request for compensation of "union dues" for flight attendants, or "retro pay on mandatory Annual Recurrent Training" for flight attendants. Nor was the Complainant, who is pro se, entitled to attorney fees, and as I had repeatedly advised the Complainant, there is no provision in the AIR 21 Act for the recovery of punitive damages. The Complainant had estimated her compensatory damages for lost wages, etc. at $10,000,000, but had not provided the basis for this calculation. Thus, I directed the Complainant to provide the Respondent with a detailed and precise basis for her claim of $10,000,000 in compensatory damages. The Complainant was also directed to provide the Respondent with the documents that supported her damages claim.

As the Complainant stated that she had retained no expert witnesses, I considered her response to that interrogatory (number 5) to be adequate. The Complainant was directed to respond to interrogatories asking her to identify all communications with any government agency, or anyone else other than Respondent's management, regarding her claims, with the caveat that if she had already provided the Respondent with any of this information, she was to identify the document containing the information, as well as the date she provided it to the Respondent. With respect to the Respondent's interrogatory asking the Complainant to identify each and every fact upon which she based her claim that she was discharged in retaliation for having engaged in protected conduct, I agreed with the Complainant that she had provided the facts on which she based her claim in her voluminous pleadings with the Court, and I granted the Complainant's motion for a protective order with respect to this interrogatory.[2]

Consolidation of Amended Complaint

Finally, the Complainant had filed an amendment to her complaint that was the basis of this proceeding, alleging that she had been subjected to continued retaliation for her protected activity that was the subject of this proceeding. I directed that this new claim (2005 SOX 96) be consolidated with the instant case. The hearing was rescheduled for September 7 and 8, 2005.[3]

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[2] Throughout her recent pleadings, the Complainant cites to a protective order granted by the Court. For example, in her February 6, 2006 pleading, she states: "The truth is, this tribunal agreed with Ms. Powers that Pinnacle's July 20, 2005 discovery requests were duplicative, burdensome, and unnecessary as evidenced by this tribunal's August 31, 2005 Order that GRANTED Powers' July 24, 2005 Motion for a Protective Order." In fact, as described above, the protective order was much more limited than the Complainant appears to believe.

[3] After I dismissed the Complainant's claims under the Sarbanes Oxley Act, these cases were re-docketed as 2006 AIR 4 and 2006 AIR 5.

Prehearing Conference

Subsequently, a prehearing conference was scheduled and held in Memphis, Tennessee on October 27, 2005. At that prehearing conference, there was much discussion of two of the Respondent's discovery requests, and I described in detail precisely what the Complainant needed to do to comply with the requests. At the hearing, the Complainant was able to identify a list of persons in response to the Respondent's interrogatory request to identify persons with knowledge of the facts surrounding her claim. I directed counsel for the Respondent to review the records in their possession, and essentially attempt to answer the interrogatory from those records. If there were still persons whose connection to the claims they still could not discern, Respondent was directed to provide a list of those persons to the Complainant.[4] The Respondent subsequently provided the Complainant with a list of names.

Complainant's Response

On November 14, 2005, the Complainant filed her "Complainants' Responses & Objections to Pinnacle's November 8, 2005 Supplemental Discovery Requests." Although she had agreed at the pretrial hearing that she would comply with the Court's directive, and provide the Respondent with a description of the information possessed by these persons, she objected to this requirement, and as she had in the past, and referred the Respondent to various categories of documents that it could "research" to determine what these persons knew about her current claim.

Continuation of Hearing

At the prehearing conference, the parties had agreed to schedule the hearing for January 24, 2006. On January 17, 2006, I issued an Order of continuance, postponing the scheduled hearing. Although both the Complainant and Respondent had requested such a continuance, I specifically based my Order on the Respondent's statement that the Complainant had not provided the information as required by the Court in the prehearing conference. Thus, the Respondent advised the Court that although the Complainant had identified a number of persons with information about the facts surrounding her claim, she had not provided a description of the information possessed by these persons. As I noted, the purpose of this interrogatory is to allow the Respondent to interview prospective witnesses, take depositions, and determine what witnesses it wishes to call at the hearing, and as I had repeatedly advised the Complainant, it was entitled to this information in discovery. The Respondent argued that it was not able to meaningfully prepare its witness and exhibit lists without this information. The Complainant did not address this issue in her pleadings.

Thus, I continued the hearing so that the Respondent would have the opportunity to meaningfully prepare. The Complainant was again directed to provide the Respondent with "a description of the subject of the information possessed by the persons she has identified in response to the Respondent's discovery." Again, I reminded the Complainant that her failure to do so could result in sanctions, including dismissal of her claims.

[4] Given the voluminous nature of the documents the Complainant has filed in this case, the Respondent is correct that this was an unusual request. It was made in the interests of saving time, and moving this matter to hearing.

Although I specifically stated that I was granting the continuance at the Respondent's request, I also addressed numerous issues raised by the Complainant in various pleadings, noting that none of her arguments justified continuing the hearing, but were mostly demands that I reconsider "erred" rulings that I had made and repeatedly affirmed.

As part of this discussion I stated:

> To the extent that the Complainant is requesting reconsideration of my previous rulings on this issue, her request for a protective order is denied, and the Complainant is again directed to provide the Respondent with the basis for her calculation of her claim for damages, as well as the documents that support her claim. If she does not do so, the Complainant will not be allowed to introduce at the hearing any documents or testimony based on calculations that were not provided to the Respondent.

I noted that in a December 7, 2005 pleading, the Complainant requested "clarification" of my November 30, 2005 Status Order, in which I directed that she provide the Respondent with the basis for her calculation of damages. As I noted, this issue had been discussed extensively at the prehearing conference, and the Complainant had been repeatedly directed to describe how she calculated her damages, and to provide the documentation that supports her claim for damages to the Respondent.[5] As I stated:

> The Complainant has placed her alleged damages in issue, and the Respondent is entitled to know the nature and calculation of those damages, and to production of the evidence that supports her claim. Although the Complainant alleges that this information is "privileged and confidential communications that contain her federal privacy information," she has not indicated precisely what privileges she thinks apply, or the nature of the "confidential communications" she is worried about.
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> The hearing was rescheduled for March 14 through 16, 2006, in Memphis, Tennessee.

Motion to Dismiss

In response to a motion by the Complainant for "Entry of Order of Clarification and Rebuttal Reply," on January 26, 2006, the Respondent filed a pleading arguing that dismissal of the Complainant's claims was warranted, on the grounds that she had not complied with the Court's orders regarding discovery. Specifically, the Respondent stated that the Complainant had not complied with the Court's order to provide it with a description of the knowledge possessed by persons who were aware of the facts of her claim. Respondent noted that, as requested by the Court at the prehearing conference, Respondent's counsel had reviewed the list of names provided by Complainant at the prehearing conference, and provided the Complainant with a list of persons for whom they could not determine what information or knowledge they possessed. Despite the Court's specific instruction that it was not sufficient to refer the Respondent to categories of documents, or require the Respondent to comb through materials to

[5] As the Complainant correctly pointed out, I mistakenly stated that she sought $12 million in damages, when she actually seeks only $10 million.

try to discern what information these persons might possess, the Complainant filed a response on November 14, 2005, stating that the knowledge of the persons on this list could be ascertained by the Respondent by reviewing its own documents. Nor did the Complainant provide any calculations of her damages, or any documents supporting those damages.

Complainant's Response

Identification of Individuals with Knowledge of Claim

In her February 20, 2006 pleading, in response to my show cause Order, the Complainant provided "additional supplemental responses" that contained "information already possessed" by Respondent's counsel, which were "pasted" from her November 14, 2005 response to my directives on discovery. In that November 14, 2005 pleading, the Complainant stated that "Pinnacle has not set forth any legal grounds on why he needs to know the personal information possessed by these individuals." Of course, this ignores the fact that this Court has repeatedly ordered the Complainant to provide this information.

The Complainant also objected to providing the requested information on the grounds that the Respondent "could reasonably be anticipated" to tamper with potential witness testimony. She referred the Respondent to its "internal emails and internal company memos from July 2002 through the present," as well as information in her personnel file. But she provided absolutely no information as to how the specific individuals in question were connected to her claims that are the subject of this proceeding, as opposed to other activities involving the Complainant.

With respect to the specific list of persons, the Complainant argued that the Respondent was demanding that she read the minds of these individuals, and again invoked "laches" as an "affirmative defense."[6] She also invoked a "trial preparation" privilege, without explaining how such a privilege applied to this information. Nor did she explain why she was entitled to withhold such information as "impeachment."

Damages

On February 12, 2006, the Complainant filed what purported to be her calculation of damages in the instant claims. It includes a calculation of lost wages and back pay, based on the collective bargaining agreement, and estimates of COLA and longevity increases. The Complainant also included estimates for training that she claims she needs to return to work as a flight attendant. While the Respondent may not agree that these calculations are correct, they are reasonably detailed and specific.

However, the Complainant has not provided any such specific or detailed breakdown for the remainder of her $10 million claim for damages. Thus, there is no indication as to how she

[6] Although it is not at all clear what the Complainant means by her claim of "laches," it appears that she is still claiming that the failure of the Respondent to defend against her claim for unemployment compensation precludes it from contesting its liability in this claim. As I have previously and repeatedly ruled, the determination of the Tennessee agency has no effect in this proceeding.

calculated her claim for $100,000 a year for 23 years for "damage to professional reputation." Setting aside the fact that the alleged retaliation that is the basis of the Complainant's claim occurred in November 2004, when she was fired, there is no explanation of how she computed her "loss wages/potential income due to illegal discrimination and denial of internal promotional opportunities in 2003, 2004, 2005," for a total of $150,000. Many of the broad categories of damages set out in her pleading include costs dating back to 2001, and clearly are related to other proceedings before this Court, the Administrative Review Board, the Federal Courts, internal union grievance proceedings, and her suit against the Tennessee Department of Environmental Control. For example, the Complainant has listed $2,000 for legal advice in March 2002; $2,000 for expenses in connection with a grievance filed, and an unemployment hearing in 2001; $15,000 for a laundry list of costs in connection with a suit against TDEC in 2002; $15,000 for various expenses allegedly incurred in connection with suits against TDEC and previous matters in this Court in 2003; $20,000 for various expenses incurred in different matters in 2004; and $20,000 for a list of expenses incurred "to pursue appeal rights" in the Sixth Circuit and the Tennessee courts, as well as OSHA in 2005. For the year 2006 to date, the Complainant has estimated $3000 in various expenses.

The Complainant also set out an estimated total of $31,500 in expenses she has incurred due to "loss employment privileges," including Fed Ex Shipping fees, parking fees, loss of travel privileges, medical and dental expenses, and counseling. She has also estimated a total of $97,500 for credit card debt incurred to sustain basic living expenses. For her "damages to livelihood, loss of happiness, emotional/occupational duress, blacklisting, harassment, hostile workplace," the Complainant has calculated $300,000 for the years 2001 through 2006.

Although these cases have nothing to do with this matter, the Complainant has estimated $106,000 in "expenses incurred to generate reportable income" in the Tennessee trial and appellate court system, the U.S. District Court for the Western District of Tennessee, and the Sixth Circuit Court of Appeals.

The Complainant has included a list of estimated "damages/expenses incurred to mitigate damages," including car insurance premiums, and various testing and training costs, as well as yearly amounts for the years 2001 through 2006 for "costs incurred in preparation for interviews," and "damages as result of illegal blacklisting for protected activities."

I agree with the Respondent that the Complainant's calculation is not only untimely, it is meaningless. As the Respondent correctly points out, I have repeatedly advised the Complainant that if she prevails, she may only recover damages in connection with her claims before this Court. Yet she has included costs and damages allegedly incurred in a myriad of other matters she has pursued, including the Tennessee state courts and the Federal Courts. It is not possible to separate out those items of alleged damages that relate solely to the claims before this Court. Even if it were, the "estimates" are so vague and conclusory that it is not possible to determine the basis for the Complainant's claims, or to adequately prepare to defend against them. Many of the categories appear to overlap – for example, the Complainant has set out estimated expenditures for legal advice for specific months in 2004 and 2005, yet listed "expenses for legal advice" as included in her estimate for yearly "discretionary costs." Nor is it clear whether the amounts borrowed from friends, taken out of retirement accounts, or put on credit cards include

costs listed elsewhere.

In short, the Complainant's response is not only untimely, it is completely useless in attempting to divine the nature and basis of the Complainant's request for damages. Equally important, she has not provided the Respondent with the documents that support her claim for damages, despite repeated direction from this Court to do so, and extensive discussion of that request at the prehearing conference.

Thus, at the prehearing conference, the Complainant referred to two spiral binders containing documents associated with her efforts to mitigate damages, depletion of savings and retirement funds, denial of job promotions or interviews, medical services, and loss of happiness. The Complainant expressed her concerns about personal privacy information including her credit card numbers. She offered to meet with Respondent's counsel, so that he could review and copy these documents, with her redacting sensitive information if necessary. Indeed, the parties settled on November 11, 2005, as the date for the Complainant to provide these documents. However, the Complainant did not do so, and to date, has continued to resist providing any such documents to the Respondent.

Instead, the Complainant filed a request for a "protective order," based on her concerns of confidential and personal privacy information and identity theft. This request has been repeatedly denied. The Complainant has not described with any particularity the "confidential communications" she is worried about, or why it is not sufficient to redact sensitive identifying information such as account numbers and social security numbers. It is the Complainant who has placed her alleged damages in issue; the Respondent is entitled to know the basis for those damages, and the evidence that supports them, in preparation for hearing.

Apparently, relying on the Federal Rules of Civil Procedure, the Complainant believes that because she has again asked for a protective order, she is entitled to withhold these documents until her request has been resolved. Of course, this ignores the fact that her request HAS been resolved, albeit not to the Complainant's liking. She cannot, without consequences, avoid complying with the Court's orders simply by renewing her request.

CONCLUSION

This Court has gone to great lengths in an attempt to provide the Complainant with the opportunity to present her claims at a hearing, especially in light of her *pro se* status. But all parties, *pro se* or otherwise, are required to follow the rules that apply to hearings before this Court. The Court has repeatedly explained these rules to the Complainant, and described what she must do to be in compliance. Yet the Complainant has stubbornly refused to comply, and instead has peppered the Court and opposing counsel with accusations of bias, incompetence, mental and physical infirmity, political influence, and corruption.

Indeed, the Complainant has made it very clear that she does not accept the authority of this Court with respect to virtually every determination that has been made in this case, by repeatedly asking for "clarification" or reconsideration or amendment of rulings with which she

disagrees.[7]

The Complainant is not new to this process. She is fully aware of the consequences of failure to comply with the Court's orders, and has been repeatedly advised of the potential consequences of her failure to cooperate in discovery, and her failure to comply with the Court's orders regarding discovery. She has been given more than ample opportunity to comply with the Court's explicit Orders, but she has obdurately refused to do so.

Accordingly, as provided by 29 C.F.R. Section 18.6(2)(v), based on the Complainant's failure to cooperate in discovery, and her failure to comply with my Orders directing her to do so, her complaint for relief under AIR 21 is denied.

Accordingly, for the reasons discussed above, IT IS HEREBY ORDERED that the Complainant's claim for relief under AIR 21 in these matters is DENIED.

SO ORDERED.

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LINDA S. CHAPMAN
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This decision shall become the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110, unless a petition for review is timely filed with the Administrative Review Board ("Board"), US Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, and within 30 days of the filing of the petition, the ARB issues an order notifying the parties that the case has been accepted for review. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate

[7] As a recent example of the Complainant's blatant disregard for the Court's directives, she submitted eight subpoenas for the Court's signature. The Complainant has been repeatedly advised that the Court will not sign blank subpoenas, and that any subpoenas submitted for signature must be completely filled out. Although the subpoenas submitted by the Complainant contained the case name and number, and the date and place of the hearing, six of them did not contain the name of a recipient. One was not for the attendance of a witness at the hearing, but was addressed to the President of Pinnacle, and required him to appear on March 6 and 7, and produce the same documents that I have already ruled the Complainant is not entitled to in discovery.

Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b), as found OSHA, Procedures for the Handling of Discrimination Complaints Under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; Final Rule, 68 Fed. Reg. 14099 (Mar. 21, 2003).