



**Issue Date: 02 February 2006**

**Case No.: 2005-AIR-32**

**In the Matter of**

**Darryl Thompson,  
Complainant**

v.

**BAA Indianapolis LLC,  
Respondent**

**ORDER GRANTING RESPONDENT'S REQUEST  
FOR CERTIFICATION AND STAYING HEARING**

On December 13, 2005, I issued an Order denying the Respondent's request for summary decision on the grounds that it was not included in the definition of the entities covered by Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121 ("AIR 21"), and thus was not subject to the whistleblower protection provisions of AIR 21. On January 17, 2006, the Respondent filed a Motion to Certify Interlocutory Order for Appeal and to Stay Proceedings During Pendency of Appeal. On January 24, 2006, the Complainant filed his Response to Respondent's Motion to Certify Interlocutory Order for Appeal and to Stay Proceedings During Pendency of Appeal. On February 1, 2006, the Respondent filed its Reply to Complainant's Response to Motion to Certify Interlocutory Order for Appeal and to Stay Proceedings During Pendency of Appeal.

In its Motion, the Respondent argued, as it did in connection with its request for summary decision, that it was not an "air carrier" as defined by the statute and regulations. Rather, it was a management company under contract with the Indianapolis Airport Authority to maintain the required FAA Part 139 certification for the Indianapolis Airport Authority, and to manage the Indianapolis Airport Authority's five general aviation airports in the Indianapolis metropolitan area. As such, the Respondent argued that it was more appropriately considered as an "airport," an entity whose employees are not included in the whistleblower protections provided by Air 21. The Respondent argued that the Complainant's complaint should be dismissed for lack of subject matter jurisdiction.

As pointed out by the Respondent, this is an issue of first impression. The Respondent also argued that my Order subjects all commercial airports, which are charged with maintaining the safety and security of landing areas, to potential liability under the AIR 21 statute. The

Respondent argued that the question of subject matter jurisdiction is a controlling question of law, and is well-suited for interlocutory appeal. The Respondent also argued that the Court's holding will extend AIR 21 liability to all commercial airports, and their contractors and subcontractors, where none existed previously. In this regard, the Respondent submitted letters from the Airports Council International – North America, and the Aviation Association of Indiana, expressing their intent to seek status as amici curiae in the event that the Administrative Review Board accepts this interlocutory appeal. The Respondent argued that there is substantial ground for difference of opinion as to whether the Respondent is covered by AIR 21. Finally, the Respondent argued that an immediate appeal of the jurisdiction issue could advance the ultimate termination of the litigation, in that, if the Board determines that the Respondent is not covered by AIR 21, the litigation will end.

The Complainant objected to the Respondent's request, pointing to the Administrative Review Board strong policy disfavoring piecemeal appeals. The Complainant also argued that the issue presented by the Respondent for appeal would not be dispositive, because even if the Respondent prevailed, the issue of jurisdiction would not be resolved, because the Complainant alleges that the Respondent is a "contractor" or "subcontractor" to an air carrier, and is thus covered by AIR 21.

In its Reply, the Respondent argued that this Court considered and rejected the Complainant's argument that the Respondent is a "contractor" or "subcontractor" to an air carrier, and thus an interlocutory appeal would completely address all jurisdictional issues. The Respondent also argued that the "collateral order" test is not applicable at this stage of the proceedings, but is an issue to be considered by the ARB if the interlocutory appeal is not certified by the administrative law judge.

## DISCUSSION

The ARB has decided that administrative law judges have the authority to certify questions of law for appeal and that a party seeking review of an interlocutory order is to request certification by the ALJ for review of the order. *E.g., Puckett v. Tennessee Valley Authority*, 2002-ERA-15, at 2-3 (Sept. 26, 2002). The Board has stated that review of interlocutory orders should proceed in accordance with 28 U.S.C. § 1292(b), which governs certification of interlocutory appeals by federal district courts. *Id.* at 2, n.3. *See also Hasan v. J.A. Jones Mgmt. Serv.*, 2002-ERA-18, at 2 (July 16, 2002): "[W]here an ...ALJ has issued an order of which the party seeks interlocutory review, an appropriate action would be for the ALJ to follow the procedure established in 28 U.S.C. § 1292(b) for certifying interlocutory questions for appeal." (citing *Plumley v. Federal Bureau of Prisons*, 1986-CAA-6 (Sec'y, Apr. 29, 1987)).

As the Respondent correctly pointed out, the question of whether a management company that is under contract with an airport authority to maintain and manage airports falls within the definition of an "air carrier," as that term is used in the AIR 21 Act, is one of first impression. As shown by the letters of intent submitted by the Respondent, a finding that such a company is covered by the AIR 21 Act could have broad-reaching effects. Finally, the Respondent's request for interlocutory appeal involves a controlling issue of law, as resolution of

this jurisdictional issue, if decided in the Respondent's favor, would be dispositive, and would end the litigation.<sup>1</sup>

I find that the Respondent has presented a persuasive basis to assert interlocutory jurisdiction in this case because it has demonstrated that certification of this jurisdictional issue involves a controlling question of law as to which there is a substantial ground for difference of opinion and immediate appeal of the issue will materially advance the ultimate termination of the litigation, as required by 28 USC § 1292(b).<sup>2</sup>

### **ORDER**

Based on the foregoing, the Respondent's request for certification is granted, and IT IS HEREBY ORDERED that this matter be, and is hereby certified to the Administrative Review Board, to consider the Respondent's interlocutory appeal. IT IS FURTHER ORDERED that the proceedings at this level are stayed, pending the Administrative Review Board's ruling on the interlocutory appeal or refusal to accept the appeal for consideration. The hearing scheduled for April 11, 2006 in Indianapolis, Indiana, is hereby cancelled.

SO ORDERED.

**A**

LINDA S. CHAPMAN  
Administrative Law Judge

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<sup>1</sup> As the Respondent pointed out, in my Order denying its request for summary decision, I found that the Respondent was not a contractor or subcontractor to an air carrier, but rather, its contract was with the airport authority. Thus, contrary to the Complainant's claim, my Order addressed all jurisdictional issues, and thus a reversal by the ARB would be dispositive.

<sup>2</sup> Pursuant to 28 U.S.C. § 1292(b), the Respondent shall have ten days after the entry of this Order to make application for an appeal to the Administrative Review Board.