



Issue Date: 14 February 2005

Case No. 2004-AIR-13

In the Matter of

DAVY MERRITT,
Complainant,

v.

ALLEGHENY AIRLINES, INC.,
Respondent.

**ORDER GRANTING REQUEST FOR CLARIFICATION AND
AMENDING DECISION AND ORDER GRANTING RELIEF**

This matter is before me pursuant to section 519 The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“Act”), 49 U.S.C. 42121, and its implementing regulations at 29 C.F.R. Part 1979 (“Regulations”). On February 8, 2005, I issued a Decision and Order Granting Relief (“Decision”) upon my finding that Respondent had discriminated against Complainant in violation of the Act. Attached to my Decision was a notice to Respondent of its rights in appealing the Decision. On February 10, 2005, I received a faxed request from Respondent to clarify an issue of rights of appeal in light of *Welch v. Cardinal Bankshares Corp.*, ARB No. 04-054, ALJ No. 2003-SOX-15 (May 13, 2004).

In *Welch*, the Administrative Review Board (“Board”) noted its policy against “piecemeal” litigation that occurs when the Board accepts interlocutory appeals. *Welch* at 4–5, citing *Corrugated Container Antitrust Litig. Steering Comm. V. Mead Corp.*, 614 F.2d 958, 961 n.2 (5th Cir. 1977). Instead, the Board requires that an ALJ’s decision be final before it is eligible for appeal. *Welch* at 2. There is, however, an exception allowing interlocutory appeals for collateral matters independent of the merits of the case itself. *Welch* at 5, citing *Cohen v. Beneficial Indus. Loan Corp.*, 33 U.S. 541, 546 (1949). The United States Supreme Court clarified this exception, explaining that the order to be appealed must “conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment.” *Welch* at 5, quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463 (1978).

In this case, according to Respondent’s argument, my issuance of the Decision and its accompanying notice of appeal rights is contrary to *Welch* because I left the issue of the amount of attorney’s fees undecided. Upon reflection, I agree. The Decision is hereby AMENDED so as not to include the Notice of Appeal Rights. Parties shall comply with my Order directing the submission of documents regarding attorney’s fees. Alternatively, should the parties reach an

agreement regarding attorney's fees and/or other damages, then I am to be notified immediately as to the content of the agreement.

In addition, I note that my Orders regarding reinstatement issued April 14 and June 14, 2004 are still in effect. My final Order resolving the issue of attorney's fees will include a Notice of Appeal Rights, which will apply to all the issues before me in this claim.

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MICHAEL P. LESNIAK
Administrative Law Judge