



WHISTLEBLOWER ALERT FOR EMPLOYERS COVERED BY AIR21

OSHA Awards Fired Pilot One Million Dollars, Reinstatement

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OSHA has issued a significant Order under AIR21 finding that AirTran Airways illegally fired one of its pilots. The OSHA Order requires AirTran to reinstate the pilot. In addition to reinstatement, the Order awards more than one million dollars in damages, mostly comprising backpay—compensating the pilot for lost wages going back to his discharge in 2007—but also including emotional distress damages.

According to OSHA, AirTran terminated the pilot because he submitted multiple pilot reports (PIREPs) identifying alleged mechanical malfunctions. A *Wall Street Journal* article reports that the pilot filed 10 reports in two days about an imbalanced wheel on one aircraft.

The five years that OSHA took to process this initial investigation under AIR21 is remarkably long, even considering OSHA's backlog of whistleblower complaints. Efforts by OSHA to settle the case likely contributed to some of the delay. AirTran's settlement posture, unfortunately, possibly made the case worse: according to OSHA reports, AirTran insisted on settlement terms that would force the pilot to "accept guilt for excessive reporting" and would limit the number of reports he could file in the future. (Conditioning settlement on an agreement not to engage in protected activity is itself a potential violation of AIR21, although OSHA did not cite AirTran for that type of retaliation.)

Although OSHA has not released its detailed findings in this matter, it is sometimes the case that management views excessive reporting as a type of unlawful job action by represented workers. At the time AirTran terminated the pilot, the company and the pilot's union were in the middle of what would become a six-year negotiation for a new labor contract. While the pilot may have considered his multiple PIREPs to be a form of protected activity, AirTran may have viewed them as unlawful job action and a strategy to enhance the union's bargaining position.

Another reason for the delay in OSHA's issuing the Order is that the reinstatement order required additional steps to assure AirTran's due

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process rights.

The Air Line Pilots Association was quick to praise OSHA's Order: "It should go without saying that the safety of our aircraft, our passengers and our fellow crewmembers is a pilot's highest priority," said Linden Hillman, chairman of the AirTran Master Executive Council.

AirTran, based in Orlando, was acquired by Southwest Airlines last year. AirTran and/or Southwest have the right to request a hearing in the case before a Department of Labor Administrative Law Judge. The reinstatement order, however, takes effect immediately and will not be stayed by any hearing request.

If you have questions concerning this matter, please contact us.

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