

WHISTLEBLOWER ALERT

FOR EMPLOYERS COVERED BY AIR21

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AIR21 Protects Pilot's Equipment Operability Concern Even though Maintenance Was Deferrable Per MEL

In a recent decision by the DOL's Administrative Review Board (ARB), the central issue was whether a Comair pilot's refusal to fly an aircraft because a system was inoperable was protected—even though maintenance on the system could properly be deferred per the Minimum Equipment List (MEL). The pilot in the case, Sitts, refused to fly his aircraft because the system used to close the cabin door automatically was inoperable. The inoperability accordingly required manual manipulation of the door. Per the MEL, the automatic system may be inoperative if the door remains manually operative.

Sitts filed an AIR21 complaint after Comair terminated his employment. OSHA rejected the complaint, finding that because "the malfunctioning power door assist system is a MEL deferrable item approved by the FAA," it was "not related to aviation safety or the airworthiness of the [air]craft." After a trial, an administrative law judge disagreed and held that Sitts' refusal to fly was a protected activity. Comair petitioned the ARB for review.

The ARB held that Sitts engaged in protected activity, was improperly fired, and had to be reinstated. The ARB essentially held that FARs on the authority of a pilot to assess safety trump the MEL scheme: the MEL only "permits" aircraft operation with specific inoperative equipment, and a pilot is not required to fly the aircraft if he believes the aircraft is not safe despite the MEL. One fact that made the case troubling for Comair was that Sitts submitted an ASAP concerning the aircraft door operation, and the ASAP manager responded that Sitts had raised a significant safety issue and Comair would attempt to get the MEL changed.

This decision further evidences the deference the ARB and administrative law judges afford the judgment of pilots in AIR21 cases—and further curtails the ability of management to hold pilots accountable for their actions.

For more information about the case, please contact us.

Donn Meindersma
Attorney at Law

CONNER & WINTERS, LLP
Attorneys & Counselors at Law
1627 I Street N.W., Suite 900
Washington, DC 20006
P 202.887.0465
F 202.887.6999
DMeindersma@cwlaw.com
www.cwlaw.com

Melinda L. Kirk
Attorney at Law

CONNER & WINTERS, LLP
Attorneys & Counselors at Law
4000 One Williams Center
Tulsa, OK 74172-0148
P 918.586.8557
F 918.586.8657
mkirk@cwlaw.com
www.cwlaw.com

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