
SECRETARY OF LABOR,

Complainant,

v.

NORTHWEST AIRLINES, INC.,

Respondent,

INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE
WORKERS, AIR TRANSPORT
DISTRICT 143, AFL-CIO,

Authorized Employee
Representative.

OSHRC Docket No. 00-0954

DIRECTION FOR REVIEW AND REMAND ORDER

Before: ROGERS, Chairman; EISENBREY, Commissioner.

BY THE COMMISSION:

On August 3, 2001, the Administrative Law Judge issued an Order Granting Party Status and Requiring Reports directing the Authorized Employee Representative (Union) and the Secretary to report to him by August 31, 2001, concerning a Stipulation and Settlement Agreement entered into between the Secretary and the Respondent. The Union responded by letter dated August 30, 2001, and its counsel responded by letter dated October 19, 2001.

On November 7, 2001, the Judge issued an Order Approving Settlement which indicated that the Union “did not submit a timely report, but sent a letter to me dated October 19, 2001.” The Judge’s Order makes no mention of the Union’s reply of August 30, 2001. After the case was docketed by the Executive Secretary, the Union filed a letter with the Commission requesting that the Order Approving Settlement be modified to reflect the efforts the Union and its counsel made in responding to the Judge’s Order of August 3, 2001.

It appears the Union's letter of August 30, 2001, might not have been considered by the Judge, and that the Judge's order incorrectly states that the Union failed to submit a timely reply. Accordingly, we construe the union's letter as a Petition for Discretionary Review and direct the decision of the Administrative Law Judge for review pursuant to 29 U.S.C. § 661(j) and 29 C.F.R. § 2200.92(a). We remand this case to the judge for further proceedings to consider the receipt and effect, if any, of the Union's letter of August 30, 2001.

SO ORDERED.

Date: December 14, 2001

/s/
Thomasina V. Rogers
Chairman

/s/
Ross Eisenbrey
Commissioner

00-0954

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
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Washington, DC 20210

Benjamin T. Chinni, Associate Regional Solicitor
Patrick DePace, Esq.
Office of the Solicitor, U.S. DOL
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Cleveland, OH 44199

Katherine Shand Larkin, Esq.
Jackson & Kelly PLLC
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1099 18th Street
Denver, CO 80202

Dmitri Iglitzin, Esq.
Schwerin Campbell Barnard LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119-3971

Bob Bennek
Safety & Health Director
International Association of
Machinists and Aerospace Workers,
Air Transport District 143, AFL-CIO
2600 Eagan Woods Drive, Suite 220
St. Paul, MN 55121-1152

Stephen J. Simko
Administrative Law Judge
Occupational Safety and Health
Review Commission
100 Alabama Street, S.W.
Building 1924, Room 2R90
Atlanta, GA 30303-3104

Air Transport District 143

2600 Eagan Woods Drive, Suite 220
St Paul, Minnesota 55121-1152
651. 688.26710 fax 651 688 7229

International Association of Machinists and Aerospace Workers AFL-CIO

December 4, 2001

Mr. Ray H. Darling, Jr
Executive Secretary
Occupational Safety and Health Review Commission
1120 20th St., N.W., Suite 980
Washington, D.C. 20036-3419

Dear Mr. Darling:

This letter is to provide you follow up information to the Notice of Docketing Of Administrative Law Judge's Decision regarding the Occupational Safety and Health Review Commission Docket No. 00-0954, OSHA Inspection No. 121910947.

At this time, I am requesting that the Order Approving Settlement dated November 7, 2001 be modified to reflect the efforts made by this Union and Counsel for the Union, Dimitri Iglitzin. Specifically, in Judge Simko's order, his honor states that "the Union did not submit a timely report, but sent a letter to me dated October 19, 2001." This is simply not true. I faxed an explanation to Judge Simko on August 30, 2001 and sent a copy via registered mail the very same day The letter dated October 19, 2001 is a letter further explaining our position from counsel, Dimitri Iglitzin. I will enclose copies of both of these letters My letter explained our objections to the proposed settlement in detail.

The union's decision not to sign this proposed settlement is based on this letter, and without exhausting any further resources on this matter, we feel that our "timely objections" should be reflected in this decision. This was supposed to be the opportunity afforded to us in the order dated August 3, 2001.

If there are any questions regarding this leuer, I can be reached at (651) 365-3366.

Thank you for your consideration.

Sincerely,

/s/

Bob Bennek
Safety & Health Director

cc: Terry Quinn, IAMAW General Chair
Daniel J. Mick, Counsel for Regional Trial Litigation
Dimitri Iglitzin, Esq.
Katherine Shand Larkin
Patrick L. DePace, Esq.

Air Transport District 143

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International Association of Machinists and Aerospace Workers AFL-CIO

EMO48433867US

VIA FAX: (404) 562-1650

August 30, 2001

Judge Stephen J. Simko, Jr.
1924 Building, Suite 2R90
100 Alabama Street, SW
Atlanta, Georgia 30303-3104

Dear Honorable Judge Simko:

This letter is to provide the information you requested regarding the Occupational Safety and Health Review Commission Docket No. 00-0954.

As a representative of Air Transport District 143, International Association of Machinists and Aerospace Workers (Union), we feel the inspection and citations issued should stand as originally issued. The Union has made specific objections to the proposed settlement known to the Company and to Patrick DePace, Esquire. The Union, therefore, shall not sign the proposed settlement and requests that an additional follow-up inspection be completed. The Union also requests all documentation of this case and any relevant correspondence be sent to my attention to the address given above.

Specifically, the Union feels the most serious objections to the proposed settlement are: the withdrawal of the 29CFR 1910.147 - Lockout/tagout (Citation 1, Items 1-4), and the Company's failure to comply with application of this standard which puts the employees the Union represents in danger. Furthermore, the Union feels that withdrawal of the 29CFR 1910.178 - Powered Industrial Truck (Citation 1, Item 7) should not have occurred as the Union feels the application of the training and evaluation portion of this standard is inadequate. Lastly, the Union feels the reduction of type and penalty of the 29CFR 1910.1200 - Hazard Communication (Citation 1, Items 9(a)-9(b)) is unwarranted, due to the fact that the employees are still not trained and are using improperly labeled chemicals as of the writing of this letter, and the Company has not taken the steps to abate. These are the Union's major objections to the proposed settlement.

The Union, as demonstrated in past cases, is always willing to work with both OSHA and Company officials to satisfactorily abate all known hazards to the Union employees we represent, and stand ready to do so. We will await this opportunity.

Judge Stephen J. Simko, Jr.

Occupational Safety and Health Review Commission Docket No. 00-0954

August 30, 2001

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Should you have any questions regarding these issues, I can be reached at (651) 365-3366.

Thank you for your assistance in this matter.

Sincerely,

/s/

Bob Bennek

Safety & Health Director

arr/opeiu #12

cc: Terry Quinn, General Chair

Dimitri Iglitzin, Esquire-Schwerin, Campbell, Barnard

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Secretary of Labor, :

Complainant, :

v. :

OSHRC Docket No. **00-0954**

Northwest Airlines, Inc.,
Respondent, :

EZ

and

International Association of Machinists
and Aerospace Workers, Air Transport :
District 143, AFL-CIO, :
Authorized Employee :
Representative. :

Order Approving Settlement

On November 5, 2001, an executed stipulation and settlement agreement was received in the above-captioned case which resolves the issues pending before the Commission. Respondent withdraws its notice of contest and represents that the violations, as amended, will be abated and that it has conformed with the applicable posting and service requirements as fixed by the rules of the Commission. The International Association of Machinists and Aerospace Workers, Air Transport District 143, objected to the terms of the settlement agreement and, therefore, the Union representative did not sign the agreement.

By Order dated August 3, 2001, I directed the Secretary and the Union to report to me by August 31, 2001, as follows:

1. The Secretary shall advise whether and how the employee representative has been afforded an opportunity "to provide input on all matters pertaining to the settlement agreement." *See Boise Cascade Corp.*, 14 BNA OSHC 1993 (Nos. 89-3087 & 89-3088, 1991). The Secretary shall also state whether or not she continues to believe that she should proceed with the settlement.

2. Air Transport District 143, International Association of Machinists and Aerospace Workers, shall advise whether it has provided such input and whether it objects to the reasonableness of the terms of abatement. It shall further advise whether it will sign the proposed settlement agreement in this case.

The Secretary submitted her report on August 30, 2001. The union did not submit a timely report, but sent a letter to me dated October 19, 2001.

In her report, the Secretary stated that her counsel discussed the settlement agreement with the Union's attorney and its safety and health director. The Secretary afforded the Union an opportunity to provide input on all matters pertaining to the settlement agreement. The Secretary's counsel represents that the Union's concerns have been considered by the Secretary and communicated to respondent's counsel, who indicated that those concerns will be addressed by Northwest.

The Secretary further determined that the Union's concerns do not warrant revision of the proposed settlement agreement, and stated that she intends to proceed with the previously negotiated agreement.

In its belated letter of October 19, 2001, the Union stated that it believes the terms of abatement are unreasonable and requested a hearing.

After full consideration of the submissions of the parties, including all previous submissions, I conclude that there is no need for a hearing on the reasonableness of the terms of abatement. I further hold that the union was afforded an opportunity to provide input on all matters pertaining to the settlement agreement, that it provided such input to the Secretary, and that its objections to the reasonableness of the terms of abatement have been considered by the Secretary.

Therefore, it is ORDERED:

1. That the terms of the settlement are approved and incorporated herein as part of this order.
2. That the citations and proposed penalties are hereby vacated, modified and affirmed in accordance with the terms of settlement and a penalty of \$3,250 is assessed.

3. That respondent's notice of contest is hereby dismissed.

SO ORDERED.

Date: November 7, 2001

/s/

Judge Stephen J. Simko, Jr.

1924 Building, Suite 2R90

100 Alabama Street, S.W.

Atlanta, Georgia 30303-3104

Phone (404) 562-1640

Fax (404) 562-

1650

This order has been sent to:

For the Secretary of Labor:

Benjamin T. Chinni, Esquire
Associate Regional Solicitor
U. S. Department of Labor
881 Federal Office Building
1240 East Ninth Street
Cleveland, OH 44199
ATTN: Patrick Depace, Esquire

For the Employer:

Katherine Shand Larkin, Esquire
Jackson & Kelly, PLLC
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Denver, CO 80264

For the Union:

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