
United States Court of Appeals
for the
Fifth Circuit

Case No. 19-60716

MARK ESTABROOK,

Petitioner,

v.

ADMINISTRATIVE REVIEW BOARD, UNITED STATES
DEPARTMENT OF LABOR,

Respondent.

FEDERAL EXPRESS CORPORATION,

Intervenor.

ON APPEAL FROM THE DEPARTMENT OF LABOR (EXCEPT OSHA)
IN CASE NO. 17-0047

APPENDIX
VOLUME I OF IV

LEE R. A. SEHAM
SEHAM SEHAM MELTZ
& PETERSEN, LLP
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White Plains, New York 10601
(914) 997-1346

TABLE OF CONTENTS

Volume I:

Certified List of Documents

Documents from Certified List (CL)

CL 1

CL 2

CL 3

CL 44

CL 70

Joint Hearing Exhibits (JX)

JX 1 (audio recordings)

JX 2

JX 3

JX 4

JX 5

JX 6

JX 7

Complainant's Hearing Exhibits (CX)

CX 6

CX 7

CX 8

CX 9

CX 10

CX 11

CX 12

CX 14

CX 15

CX 16

CX 17

CX 18

CX 19

CX 20

CX 21

CX 22

CX 23

CX 27

CX 29

CX 30

CX 31

CX 32

CX 44

Respondent's Hearing Exhibits (RX)

RX 1

RX 2

RX 4

RX 6

RX 7

RX 8

RX 9

RX 10

RX 12

RX 13

RX 14

RX 15

RX 16

RX 17

RX 18

RX 20

RX 21

RX 23

RX 24

RX 26

RX 27

RX 28

RX 33

Volume II:

Hearing Transcripts

Day 1, June 6, 2016

Volume III:

Day 2, June 7, 2016

Volume IV:

Day 3, June 8, 2016

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Mark Estabrook,)	
)	
Petitioner,)	
)	
v.)	
)	Case No. 19-60716
Administrative Review Board,)	
U.S. Department of Labor,)	
)	
Respondent.)	
_____)	

**CERTIFIED LIST OF DOCUMENTS FILED IN
THE ADMINISTRATIVE PROCEEDINGS BEFORE
THE UNITED STATES DEPARTMENT OF LABOR**

Pursuant to Rule 17(b)(1)(B) of the Federal Rules of Appellate Procedure,
Respondent United States Department of Labor hereby files the attached certified
list describing the documents that constitute the administrative record in the above-
captioned case.

Dated: November 4, 2019

Respectfully submitted,

KATE S. O'SCANNLAIN
Solicitor of Labor

JENNIFER S. BRAND
Associate Solicitor

SARAH K. MARCUS
Deputy Associate Solicitor

MEGAN E. GUENTHER
Counsel for Whistleblower Programs

s/ Shelley E. Trautman

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Shelley E. Trautman

SHELLEY E. TRAUTMAN

Attachment 1

Certified List of Documents Filed of
Record in the Administrative Proceedings
Before the United States Department of Labor

**CERTIFIED LIST OF DOCUMENTS FILED OF RECORD IN THE ADMINISTRATIVE
PROCEEDING BEFORE THE UNITED STATES DEPARTMENT OF LABOR**

Mark Estabrook v. Federal Express Corporation
ALJ Case No. 2014-AIR-00022
ARB Case No. 2017-0047

I HEREBY CERTIFY that the following documents were filed of record with the U.S. Department of Labor in the above-referenced administrative proceedings.

Proceedings before the Administrative Law Judge (“ALJ”)

Case No. 2014-AIR-00022

1. Dated October 3, 2013 Complaint of Mark Estabrook submitted to the Occupational Safety and Health Administration (OSHA), with Exhibits
2. Dated July 15, 2014 Secretary’s Findings
3. Dated August 12, 2014 Complainant’s Objections to Secretary’s Finding and request for a hearing, enclosing Exhibit A
4. Dated September 4, 2014 ALJ’s Preliminary Order and Notice of Assignment
5. Dated September 10, 2014 Complainant’s Request for Subpoenas to Produce Documents
6. Dated September 10, 2014 Counsel for Complainant’s request that the ALJ issue two subpoenas to Produce Documents be issued on Dr. Thomas N. Bettes and Dr. George S. Glass
7. Dated September 24, 2014 Letter with Attached Copies of Subpoenas for Dr. Thomas N. Bettes and Dr. George S. Glass
8. Dated October 2, 2014 ALJ’s Notice of Hearing and Prehearing Order
9. Date October 27, 2014 Copies of Subpoenas Served on Dr. Thomas N. Bettes and Dr. George S. Glass
10. Dated November 17, 2014 Complainant’s Notice of Motion, Motion, and Memorandum to Compel Requests for Admissions, Interrogatories, and Requests for Documents

11. Dated February 2, 2015 ALJ's Order Continuing Hearing
12. Dated February 18, 2015 Complainant's Amended Motion to Compel, with Exhibits
13. Dated March 10, 2015 Counsel for Complainant's letter requesting that his Amended Motion to Compel be granted on Default
14. Dated March 25, 2015 Complainant's Motion for a Partial Summary Decision including 1) Memorandum of Law; Declaration of Complainant and Declaration of Lee Seham, with Exhibits
15. Dated May 28, 2015 ALJ's Order Regarding Discovery and Scheduling
16. Dated June 12, 2015 Notice of Appearance of P. Daniel Riederer as Counsel for Respondent
17. Dated June 17, 2015 Letter from Stanley J. Silverstone re: the May 28th Order regarding discovery and scheduling concerning the hearing schedule
18. Dated June 12, 2015 Respondent's Memorandum in Support of In Camera Inspection of Privileged Documents and Documents Designated as Privileged and Submitted for *In Camera* Review with Tabs 1 through 44
19. Dated July 20, 2015 Order Following *In Camera* Review
20. Dated July 24, 2015 (Fax) Complainant's letter enclosing Notice of Amended Motion, Amended Motion, and Memorandum to Compel Requests for Admissions, Interrogatories and Request for Documents
21. Dated July 29, 2015 Respondent's Letter in regard to FedEx's Supplemental document production (letter only)
22. Dated August 12, 2015 ALJ's Notice of Hearing and Prehearing Order
23. Dated August 19, 2015 ALJ's Order to Produce Documents or Show Cause
24. Dated September 10, 2015 ALJ's Order Cancelling Hearing
25. Dated October 8, 2015 ALJ's Order Disallowing Informal Motions
26. Dated October 27, 2015 Complainant's Third Motion to Compel

27. Dated November 10, 2015 Respondent's Response to Complainant's Motion to Compel
28. December 23, 2015 Order Denying Complainant's Third Motion to Compel and Second Notice to Produce Documents for In Camera Review
29. Index of Joint Exhibits 1 through 7 enclosing Disc
30. Index of Complainant's Exhibits 1 through 47 enclosing Disc
31. Dated January 20, 2016 Respondent's Memorandum of Law, Privilege log and Designated Privileged Documents for In Camera Review with enclosed Tabs 1 through 21
32. Dated February 2, 2016 ALJ's Order Following Second In Camera Review
33. Dated February 2, 2016 Order of Reassignment
34. Dated February 8, 2016 ALJ's Notice Assignment and Conference Call
35. Dated February 12, 2016 Letter addressed to Ms. MacAarney from George Diamantopoulos providing firm's change of address
36. Dated February 16, 2016 Complainant's Position Statement in Response to Court's Order dated February 8, 2016
37. Dated February 18, 2016 Letter addressed to ALJ Morris re: Notice of Assignment and Conference Call Order issued February 8, 2016, Respondent provides the status update and statement of position on the issues identified in that Order.
38. Dated February 18, 2016 Letter from Daniel Riederer advising will be unavailable for the scheduled conference call on March 4, 2016 and requesting that the conference call be conducted during the week of March 7, 2016
39. Dated February 19, 2016 Email from Barbara Emmons re: Telephone conference call Tuesday, March 8, 2016 at 11:00 am
40. Dated March 8, 2016 Official Report of Conference Call, pages 1 through 20, enclosed disc
41. Dated March 10, 2016 ALJ's Notice of Hearing and Pre-Hearing Order
42. Dated April 20, 2016 Revised Declaration of Dr. Thomas Bettles

43. Dated April 21, 2016 Respondent's Motion for Summary Judgment, Supporting Memorandum and Exhibits with attached Table of Contents – Index of Exhibits to Respondent's Memorandum of Points and Authorities in Support of its Motion for Summary Decision enclosing Exhibits A through O
44. Dated April 21, 2016 Letter enclosing 1) Complainant's brief in support of its Motion for Summary Judgment 2) Declaration of Mark Estabrook with Supporting exhibits A-K, 3) Declaration of Lee Seham with supporting exhibits A-N, 4) Declaration of Dr. Thomas Bettes, 5) Deposition of Robert Fisher, 6) Deposition of Mark Estabrook, 7) Deposition of Todd A. Ondra, 8) Deposition of William W. McDonald, 9) Deposition of Robert Tice, 10) Supporting Exhibits from Deposition, including USB
45. Dated April 29, 2016 Respondents' Response in Opposition to Complainant's Motion for Summary Judgment
46. Dated May 2, 2016 Complainant's Pre-Trial motion In Limine
47. Dated May 4, 2016 Letter to ALJ Morris from Respondent re: Evidentiary Exclusion
48. Dated May 5, 2016 ALJ's Order Addressing Complainant's Motions to Exclude Evidence and Directing Respondent to Submit an Expedited Response
49. Dated May 9, 2016 ALJ's Order Granting in Part and Denying in Part Complainant's Motion for Summary Decision and Denying Respondent's Motion for Summary Decision
50. Dated May 12, 2016 Respondent's Response to Complainant's Pre-Trial Motion in Limine
51. Dated May 13, 2016 ALJ's Order Denying Complainant's Motion in Limine
52. Dated May 17, 2016 Complainant's Letter re: Respondent's response to Complainant's Motion in Limine
53. Dated May 17, 2016 Letter from Lisa Block for Lee Seham, Esq., advising that the correct date of the teleconference was March 8, 2016
54. Dated May 17, 2016 (Fax) Respondent's Letter in response to Complainant's May 17, 2016 Letter

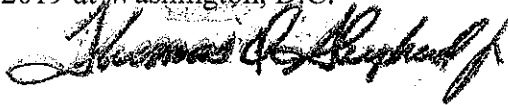
55. Dated May 19, 2016 Complainant's Pre-Hearing Statement, Index of Joint Exhibits and Index of Complainant's Exhibits enclosing Exhibits CX-48, CX-49, CX-50, CX-51,
56. Dated May 19, 2016 Respondent's Pre-Hearing Statement including Respondent's Exhibit List
57. Dated May 19, 2016 ALJ's Order Addressing Complainant's May 17, 2016 Letters
58. Dated May 19, 2016 ALJ's Notice of Hearing Location
59. Dated June 1, 2016 Official Report of Conference Call, pages 1-21, with enclosed disc
60. Dated June 6, 2016 Transcript of Hearing, pages 1 through 303, with enclosed disc
61. Dated June 7, 2016 Transcript of Hearing, pages 304 through 518
62. Dated June 8, 2016 Transcript of Hearing, pages 519 through 717
63. Dated June 9, 2016 Respondent's Trial Exhibits 1-7, RX 1-33, Exhibits 1-18, JX 1 – Audio Recordings
64. Dated August 5, 2016 Respondent's Motion for Extension of Time to file its post-hearing findings of fact and conclusions of law
65. Dated August 11, 2016 ALJ's Order Granting Respondent's Motion for Extension to File Post-Hearing Briefs
66. Dated September 2, 2016 Complainant's Post-Trial Brief, Attorney's Fees for Alan Armstrong and Attorney's Fees for Seham, Seham, Meltz & Petersen
67. Dated October 7, 2016 Respondent's Post-Hearing Brief
68. Dated October 20, 2016 Complainant's Post-Trial Reply Brief and updated documentation of attorneys' fees and expenses with attached USB
69. Dated May 16, 2017 ALJ's Decision and Order Denying Relief

Proceeding before the Administrative Review Board (“ARB”)

Case No. 2017-0047

- 70. Dated May 26, 2017 Complainant’s Petition for Review
- 71. Dated June 2, 2017 ARB’s Notice of Appeal and Order Establishing Briefing Schedule (Case No. 2017-0047)
- 72. Dated June 22, 2017 Complainant’s Brief Supporting the Petition for Review and Appendix
- 73. Dated July 24, 2017 Respondent’s Opposition to Complainant’s Petition for Review and Appendix
- 74. Dated July 31, 2017 Complainant’s Reply Brief Supporting the Petition for Review
- 75. Dated August 8, 2019 ARB’s Final Decision and Order

Signed this 4th day of November, 2019 at Washington, D.C.



Thomas O. Shepherd, Jr.
Clerk of the Appellate Board

“CL 1”

**BEFORE THE
UNITED STATES DEPARTMENT OF LABOR**

MARK ESTABROOK,)	
)	
Complainant)	
)	COMPLAINT
v.)	
)	
FEDERAL EXPRESS CORPORATION)	
)	
Respondent.)	
)	
)	

Complainant Captain Mark Estabrook, by his attorneys, Seham, Seham, Meltz & Petersen, LLP, as and for his Complaint states as follows:

NATURE OF THE CASE

1. Complainant Estabrook files this complaint against Federal Express Corporation (“FedEx”) pursuant to 49 U.S.C. § 42121, based on FedEx’s discriminatory treatment and retaliatory discipline in response to the complainant’s protected activity. Complainant Estabrook seeks affirmative action to abate the violation (including, but not limited to, the cessation of discriminatory conduct and the rescission of retaliatory discipline and directives related to his mental health); reinstatement to his former position, including restoration of his compensation and all other terms, conditions, and privileges associated with his employment; all compensatory damages to which he is entitled under the statute; and reimbursement of all costs and expenses, including attorney’s fees, related to this action.

PARTIES

2. Complainant Estabrook is a pilot currently employed by Respondent FedEx at his pilot domicile located in Memphis, Tennessee.

3. Respondent FedEx is an “air carrier” as that term is employed in 49 U.S.C. § 42121.

COMPLAINANT’S PROTECTED ACTIVITY

Protected Activity Under 49 U.S.C. § 42121(a)(1), (2) and (4) – Laredo Departure

4. On April 10, 2013, Captain Estabrook refused to depart on a FedEx flight because of a severe and solid line of thunderstorms between his departure airport Laredo (LRD) and scheduled arrival airport Memphis (MEM). The airport tower, in fact, refused to issue a takeoff clearance because Memphis Center directed a hold on all inbound.

5. In retaliation for his safety-based determination as Pilot-in-Command pursuant to 14 C.F.R. §§ 91.3(a), 91.13(a), and as further defined by the Company’s own Flight Operations Manual (FOM) and pertinent Federal Aviation Regulations (FARs) – Respondent FedEx commenced a disciplinary investigation of Captain Estabrook.

6. Respondent FedEx’s retaliatory disciplinary investigation caused Captain Estabrook to file AIR 21 complaint number 861872 with the United States Department of Labor on April 29, 2013. (Exhibit A).

7. When Respondent FedEx subsequently terminated its disciplinary proceedings, Captain withdrew his AIR 21 action on or about May 2, 2013. (Exhibit B).

8. Upon information and belief, Complainant Estabrook’s communication to Respondent FedEx of his determination to act in good faith compliance with applicable federal law relating to air carrier safety, and his subsequent complaint pursuant to 49

U.S.C. § 42121 in defense of such action, were contributing factors in the unfavorable personnel actions alleged in this complaint.

Protected Activity Under 49 U.S.C. § 42121(a)(1) – Safe Cargo Practices

9. On August 9, 2013, Captain Estabrook sought to bring to FedEx's attention that its policy of publishing live tracking information relating to packages and aircraft in transit violated its obligations under federal law relating to air carrier safety in that the Respondent's policy had the effect of facilitating and maximizing the criminal destruction of cargo, aircraft, and human lives, by granting terrorists the ability to carefully select the timing of detonation.

10. Captain Estabrook had previously communicated these concerns to Respondent FedEx in his capacity as Security Chairman for the FedEx MEC Air Line Pilots Association (ALPA), the certified pilots' labor union for FedEx pilots in 2002. Complainant Estabrook desisted from his efforts to challenge FedEx's unsafe practices when he received an unfavorable response from his employer.

11. On August 3 and 4, 2013, however, Complainant Estabrook obtained various media reports concerning how al-Qaeda in the Arabian Peninsula (AQAP) had developed a strategy of planting explosives in packages carried by US-flag cargo carriers. On October 29, 2010, such explosive devices were discovered on both FedEx and UPS planes. Officials in the United States and Great Britain determined that part of AQAP's strategy was to carefully time the detonation of the explosives in order to maximize damage. The New York Times reported that AQAP relied on the package tracking feature on the cargo carriers' website to plan for the detonation of these devices in a manner that

would create the greatest damage.

(http://www.nytimes.com/2010/11/02/world/02terror.html?_r=1&src=twrhp) In fact, terrorists in this incident shipped several “test” packages on UPS and FedEx prior to the shipment of the actual bombs in order to gain real-time tracking data for planning the optimum timing of detonation, just as Complainant Estabrook had predicted and reported to FedEx management in 2002.

12. On August 4, 2013, Captain Estabrook requested a meeting with Respondent FedEx for the purpose of discussing security issues that he previously had raised as the FedEx MEC ALPA Security Chairman. Respondent’s System Chief Pilot and Managing Director/Flight Operations Captain William McDonald agreed on August 7, 2013, to arrange a meeting between Complainant Estabrook and FedEx management representatives; however, he also immediately removed Estabrook from flight status.

13. On August 9, 2013, Complainant Estabrook met with FedEx management representatives – FedEx legal counsel Robert Tice, Manager A300/310 Fleet Operations Captain Rob Fisher, and FedEx Vice President of Security Todd Ondra – and communicated his concern that the Respondent’s policy of publishing live tracking information relating to packages and aircraft in transit violated its obligations under federal law relating to air carrier safety in that the Respondent’s policy had the effect of facilitating and maximizing the potential criminal destruction of cargo, aircraft, and human lives, by granting terrorists the ability to carefully select the timing of detonation.

14. In communicating his air carrier safety concerns, Captain Estabrook was acting in good faith to identify the Respondent’s violations of federal law relating to air carrier safety, including the Respondent’s duty to (a) “[p]rovide for the safety of persons and

property traveling on flights provided by the aircraft operator against acts of criminal violence and air piracy, and the introduction of explosives, incendiaries, or weapons aboard an aircraft,” 49 C.F.R. § 1544.103(a)(1); (b) use the procedures in its security program to control cargo that it accepts for transport on an aircraft in a manner that: “[p]revents the carriage of any unauthorized person, and any unauthorized explosive, incendiary, and other destructive substance or item in cargo onboard an aircraft,” 49 C.F.R. § 1544.205(c)(1); (c) “[p]reven[t] or dete[r] the carriage of any unauthorized persons, and any unauthorized explosives, incendiaries, and other destructive substances or items in cargo onboard an aircraft. 49 C.F.R. § 1544.205(a). In addition, under Respondent FedEx’s federal mandated security program, Captain Estabrook, as an in-flight security coordinator, is directed: if you see something, say something. 49 CFR §§ 1544.101, *et seq.*

**RESPONDENT’S RETALIATORY RESPONSE
TO COMPLAINANT’S PROTECTED ACTIVITY**

15. At the meeting on August 9, 2013, Respondent FedEx's representatives made no direct response to the safety-related concerns raised by Captain Estabrook. Instead, FedEx counsel Robert Tice asserted that Captain McDonald suspected Captain Estabrook of posting messages on an internet bulletin board under the name of “Mayday Mark,” whose postings indicated that “Mayday Mark” was a pilot who had suffered a Temporary Ischemic Attack (TIA) or stroke. Tice then explained to Complainant Estabrook that FedEx was obligated to investigate whether Estabrook was “Mayday Mark” in order to ensure that Estabrook was physically fit to fly.

16. FedEx representatives had in their possession numerous pages of highlighted postings originating from the individual who identified himself as “Mayday Mark” and

asked pressing questions concerning their contents. During the entire course of the August 9th meeting, FedEx's representatives raised no other basis for questioning Captain Estabrook's medical status other than their suspicion that Estabrook was "Mayday Mark."

17. At all times, Captain Estabrook denied that he was "Mayday Mark" and, after a lengthy discussion of the facts relating to the "Mayday Mark" postings, FedEx's representatives accepted Estabrook's denials.

18. Shortly after Estabrook's August 9th meeting with FedEx representatives, Captain Fisher advised Captain Estabrook that he would be immediately returned to flying status.

19. Nevertheless, on the evening of August 9, 2013, Captain Fisher telephoned Complainant Estabrook and advised him that FedEx Security Director Todd Ondra insisted that Estabrook's flying status remain suspended until he submitted to a psychiatric evaluation. When Estabrook asked Captain Fisher why FedEx Security was demanding a psychiatric evaluation despite FedEx's determination earlier in the day that he was being returned to flying status, Fisher responded "all they said was is that you know too much."

20. Captain Estabrook has at all times relevant to this proceeding been in possession of a First Class Medical Certificate. Throughout his entire flying career, he has never been denied the issuance of a First Class Medical Certificate. In fact, two aeromedical examiners issued medical opinions in opposition to FedEx's directive that Estabrook undergo psychiatric evaluation. (Exhibit C and D).

21. Respondent FedEx has persisted in its demand that Complainant Estabrook submit to psychiatric evaluation, but has never provided a reasonable basis for this

demand. Captain Estabrook has complied with FedEx's directive that he undergo a psychiatric examination with the understanding that he would be terminated for insubordination if he did not. Captain Estabrook underwent a psychiatric evaluation by Dr. George S. Glass on September 11, 2013. FedEx's aeromedical advisor Dr. Thomas Bettes is now directing Complainant Estabrook to obtain psychological treatment. A contributing factor for FedEx's directive ordering psychological treatment is the Complainant's protected activity as described in this Complaint.

22. In demanding that Complainant Estabrook submit to psychiatric evaluation, FedEx violated contractual protocols that require FedEx to (a) only seek a medical examinations of a pilot where it has a "reasonable basis" to do so; (b) where such a "reasonable basis" exists, to refer the matter to FedEx's aeromedical advisor for his determination regarding the necessity of a medical examination; and (c) where the pilot's own aeromedical advisor disputes the necessity of a medical examination, to resolve the dispute by referral of the matter to a third medical doctor who acts as a tie-breaker.

23. Complainant Estabrook's protected activity as described in this Complaint was at minimum a contributing factor, and, upon information and belief, the primary factor, in Respondent FedEx's demand for Soviet-style psychiatric analysis of Captain Estabrook, its ongoing directive that Captain Estabrook submit to psychological treatment, its continuing refusal to reinstate Captain Estabrook to flying status, and all other discriminatory personnel action described herein.

WHEREFORE, cause having been shown, Complainant Estabrook prays for an order against Respondent FedEx as follows:

- A. For an Order directing FedEx to rescind its directive for Captain Estabrook to undergo any further mental health evaluation or treatment;
- B. For an Order directing FedEx to suppress, remove and expunge all disciplinary proceedings, medical and psychiatric evaluations and treatment histories concerning Captain Estabrook from FedEx personnel files, including all contracted medical agents' records;
- C. For an Order directing the removal and expungement of all references to psychiatric evaluation and treatment in all government records, including but not limited to, the Federal Aviation Administration;
- D. For an Order directing FedEx to cease and desist from all discriminatory conduct toward Captain Estabrook;
- E. For an Order awarding Captain Estabrook the costs of this action, including payment of reasonable attorney's fees;
- F. For an Order granting such additional relief as the Secretary of Labor, or other decision maker in this process, deems proper and just; and
- G. For an Order granting full compensatory damages including compensation for pain, suffering and emotional distress due to this adverse action.

Dated: White Plains, New York
October 3, 2013

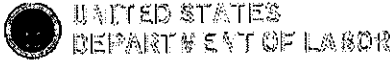
SEHAM, SEHAM, MELTZ & PETERSEN, LLP

By: 

Lee Seham, Esq.
445 Hamilton Avenue – Suite 1204
White Plains, NY 10601

Attorney for Complainant
Captain Mark Estabrook

EXHIBIT A



A to Z Index | En español | Contact Us | FAQs | About OSHA

OSHA

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Occupational Safety & Health Administration We Can Help

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- Data & Statistics
- Training
- Publications
- Newsroom



Thank You!

Your Safety and Health Hazard Notice has been forwarded to the OSHA Federal Area Office listed below.
 Your complaint may be forwarded to the State of Tennessee, which operates its own OSHA approved State Plan. [Click here](#) for more information on State Plans or if you would like to contact the state directly.
 If you identified yourself, you will be contacted by OSHA.
 Please call the OSHA Federal Area Office below if you are not contacted.

Complaint Number: 861872

Tennessee

Nashville Area Office
 51 Century Boulevard Suite 340,
 Nashville, TN 37214
 (615) 232-3803
 (615) 232-3827 FAX

Establishment Name: FedEx Express
 Site Street: 3131 Democrat Rd., Building C
 Site City: Memphis
 Site State: Tennessee
 Site Zip: 38118

Management Official: Captain Rob Fisher
 Telephone Number: 901.224.3435
 Type of Business: Express Shipping

Hazard Description:

On April 10, 2013, after coordinating a delay with GOC (Sherrie Hayslett) and speaking to the Fed Ex Duty Officer (Mark Crook) that there was a line of thunderstorms [described in an active SIGMET] between my departure airport Laredo, TX (KLRD) and Memphis, TN (KMEM), the Duty Officer directed me to depart and fly toward KMEM and through the line of thunderstorms. Asserting my pilot in command authority under 14 CFR Sec. 91.3(a) I related: "I am not going to depart until I can plan my arrival for storm passage through Memphis." He then told me he had consulted with our FedEx Weather Department and said they told him the thunderstorm would pass through Memphis in about 30 minutes. He directed me to takeoff and fly to Memphis. I declined. It would be 4-6 hours later before the storm would pass through Memphis. "You are the only one not taking off" he said, and directed me to go sit in the cockpit until we had our departure clearance. Laredo tower held us on the ground for over 2 additional hours due to a weather hold for all Memphis inbound flights as directed by Memphis Air Route Traffic Control. 14 CFR Sec. 91.3(a) provides: "The pilot in command is directly responsible for, and is the final authority as to, the operation of that aircraft." In addition to violating Sec. 91.3(a), such an operation would have violated 14 CFR Sec. 91.13(a) which provides: "No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another." These provisions in Part 91 of the Federal Aviation Regulations specifically apply to Part 121 operations such as those conducted by Federal Express.

Submission Complete

<https://www.osha.gov/pls/osha7/ecomplaintform.submit>

See 14 CFR Sec. 91.1(a) ["this part prescribes rules governing the operation of aircraft...within the United States."]. These directives are also in violation of FedEx Flight Operations Manual (FOM) procedures 8.17 TURBULENCE, which states, in part, that "Turbulence increases the difficulty of flight operations. In extreme cases it may cause damage to the aircraft. Areas of known severe/extreme turbulence should be avoided. If the Captain determines an area of turbulence to be unsafe, he will detour or delay the flight until conditions improve. All meteorological conditions (e.g., SIGMETS, PIREPS, ATC advisories, etc.) shall be considered prior to releasing a flight to or operating in areas of turbulence." My decision to exercise my pilot in command authority has led to a Section 19.D.1 disciplinary interview Capt. Rob Fisher has declared he intends to convene on May 1, 2013, in Memphis, TN. Despite my requests, I have not been provided with records or recordings of my conversations either with the Duty Officer or the Dispatcher. The GOC dispatcher lied about my consultation with her when she agreed I should stay at the hotel and wait out the storm. My first officer, Randy Bureson, can verify this. The audio tapes will also corroborate my account of events. My conversation with the Duty Officer was an act of intimidation in response to my reporting an FAR violation to my employer as is the receipt of the letter received from my supervisor Rob Fisher notifying me of an interview set for May 1, 2013, under the auspices of Section 19.D.1 of the Collective Bargaining Agreement (CBA) currently in force and effect at Federal Express. There are approximately 4,500 pilots at FedEx Express.

Hazard Location:

The hazardous location is airborne in nature. Every aircrew that may be intimidated by flight management to penetrate severe turbulence and thunderstorms is at risk all over the world.

This condition has previously been brought to the attention of:

* The following government agency: FAA

I am an employee.

My name may be revealed to the employer.

Complainant Name: MARK ESTABROOK

Complainant Telephone Number: 901-230-4933

Complainant Mailing Address:

PO BOX 1890
MANCHACA
Texas
78652

Complainant Email: cargopilot@gmail.com

[Freedom of Information Act](#) | [Privacy & Security Statement](#) | [Disclaimers](#) | [Important Web Site Notices](#) | [International](#) | [Contact Us](#)

U.S. Department of Labor | Occupational Safety & Health Administration | 200 Constitution Ave., NW, Washington, DC 20210
Telephone: 800-321-OSHA (6742) | TTY: 877-889-5627

www.OSHA.gov

EXHIBIT B

U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Federal Center
61 Forsyth Street, SW Room 6T50
Atlanta, Georgia 30303
(678) 237-0400
(678) 237-0447 FAX



May 2, 2013

Alan Armstrong
Attorney at Law
2900 Chamblee-Tucker Road
Building 5, Suite 350
Atlanta, GA 30341

Re: FedEx Express/Estabrook/Case No. 4-1760-13-080

Dear Mr. Armstrong:

The request to withdraw the complaint filed by Mark Estabrook (Complainant) in the above-captioned matter has been approved. With this withdrawal, the case in this matter is closed.

If, at any time in the future, you have any questions or require any information regarding employee rights and employer responsibilities under the whistleblower protection statutes administered by OSHA, please feel free to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Robinson", followed by a horizontal line.

Matthew E. Robinson
Regional Supervisory Investigator

EXHIBIT C

08/26/2013 17:11 5124488264

ARC SOUTH



South

August 23, 2013

To Whom it May Concern:

I serve as the Aviation Medical Examiner for Captain Mark Estabrook, who has requested I describe my observations and examination findings during his July 19, 2013 flight physical. During that encounter, I did not notice anything unusual or abnormal. Captain Estabrook was well groomed, pleasant, conversant, oriented, logical, and appeared cognitively intact. The FAA does not require, and I did not perform, detailed testing designed to identify subtle cognitive deficits or psychological disorders. Nevertheless, my interaction with Captain Estabrook was entirely unremarkable, similar to prior examinations, and I had no concerns regarding his fitness for pilot duty. His neurological examination was normal.

Sincerely,

Mark A. Nugent, M.D.

Mark A. Nugent, M.D.
FAA Senior Aviation Medical Examiner
Board Certified in Family Medicine

08/23/13
001

for attn Alan Armstrong
770-451-0317

3828 S. First St.
Austin, Texas 78704
512-443-1311
www.AustinRegionalClinic.com

EXHIBIT D

STEPHEN D. LEONARD, M.D., F.A.C.S.
2900 CHAMBLEE-TUCKER ROAD, BLDG. 5-210
ATLANTA, GEORGIA 30341

AVIATION MEDICINE

Telephone: (404) 266-0010
Facsimile: (770) 855-4024
Email: sdldmd@comcast.net

August 24, 2013

Re: Mark Estabrook

To Whom It May Concern:


I had the opportunity yesterday for a lengthy conversation with FedEx pilot Mark Estabrook to evaluate his mental and emotional qualifications as an airline pilot. These have been called into question following what he describes as his attempt to alert his employer to possible security vulnerabilities in their operation.

I am a general and vascular surgeon by training, not a psychiatrist or neuropsychologist. However I have been an aviation medical examiner for 31 years, was a USAF flight surgeon for ten years, and have been a pilot for 44, so I am not unfamiliar with normal and abnormal patterns of thought and behavior among aviators.

Mr. Estabrook is clearly intelligent, with the broad-based fund of knowledge about aviation and general subjects that one expects in his position. His affect is entirely appropriate, his speech is fluent and on topic, he gives no evidence of any abnormal ideation. He denies any history of depression, suicidal or destructive thoughts, or thoughts of any overt antisocial acts. He is, like many of his contemporaries, more sure of his positions and more assertive than the average person, but he is quick to acknowledge that he has made mistakes.

The strong impression I draw from talking to him and from lengthy discussion of what is admittedly one side of his story as that there is no psychological issue that should be of any concern regarding Mr. Estabrook's medical qualification as a pilot. If he has been impolitic in his highlighting what he perceives as security vulnerabilities that would seem to be an administrative, not an aeromedical issue.

Sincerely,



Stephen D Leonard, MD

“CL 2”

U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Federal Center
61 Forsyth Street, SW Room 6T50
Atlanta, Georgia 30303
(678) 237-0400
(678) 237-0447 FAX



July 15, 2014

Mark Estabrook
c/o Lee Seham, Attorney
Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601

Re: FedEx Express / Estabrook / 4-1760-14-002

Dear Mr. Estabrook:

This is to advise you that we have completed our investigation of the above referenced complaint filed by Mr. Mark Estabrook (Complainant) against FedEx Express (Respondent) on October 9, 2013, with an amendment dated April 16, 2014, under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, (AIR21), 49 U.S.C. §42121. In brief, Complainant alleged that Respondent placed him in a Non-Qualified (NOQ) flight status in August 2013 and again in April 2014, for requesting a meeting with Respondent's Chief Executive Officer (CEO) to discuss safety related concerns.

Following an investigation by a duly authorized investigator, the Secretary of Labor, acting through his agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region IV, finds that there is no reasonable cause to believe that Respondent violated AIR21 and issues the following findings:

Secretary's Findings

Complainant was placed in NOQ flight status on August 5, 2013 and again in April 2014. On October 9, 2013, with amendment dated April 16, 2014, Complainant filed a complaint with the Secretary of Labor alleging that Respondent retaliated against him in violation of AIR21. As this complaint was filed within 90 days of the alleged adverse action(s), it is deemed timely.

Respondent is an air carrier within the meaning of 49 U.S.C. §42121 and 49 U.S.C. §40102(a)(2).

Complainant is an employee within the meaning of 49 U.S.C. §42121.

Complainant requested a meeting via an email sent to Respondent System Chief Pilot on August 4, 2013 "for the purpose of discussing security issues" with Respondent's CEO, "Fred," referring to Fred Smith, CEO of FedEx. More specifically, Complainant wanted to discuss "something related to 9/11." Although Respondent believed this request was an inappropriate method of arranging a meeting with the CEO of a global enterprise, Respondent's Chief Pilot nonetheless scheduled a meeting for August 9, 2013. Present at this meeting was Complainant's Fleet

Captain, Respondent Managing Director of Aviation and Regulatory Security (Security Director), and Complainant. Of note, prior to the meeting, Complainant was removed from the flight schedule, with pay, due to Respondent's apprehension based upon the nature of Complainant's email. According to Respondent, Complainant acknowledged understanding of the reason for his placement on NOQ status. During the meeting, Complainant explained his uneasiness with Respondent's practice of providing shipment tracking information on-line. Complainant opined that terrorist groups could use this information in carrying out attacks and thus suggested that the Department of Homeland Security be asked to instruct airlines to cease making tracking information readily available. Complainant also spoke about a former Respondent employee who is currently serving a prison term for attempted hijacking of an airplane. Specifically, Complainant reported hearing "rumors" that the former employee had converted to Islam and may secretly be communicating with terrorists and providing them with operational data. According to Respondent, the Fleet Pilot and Security Director, found Complainant's comments to be, "curious and quite disconcerting."

After the meeting concluded, and due to the nature of the conversation, Respondent felt it was necessary to ensure Complainant's ability to safely perform his necessary job functions. Therefore, Respondent directed Complainant to be evaluated by an aeromedical advisor. This instruction was made pursuant to the applicable Collective Bargaining Agreement (CBA), which allows for Respondent to "direct a pilot to contact or see the Company's aeromedical advisor if the Company has reasonable basis to question whether a pilot has developed or recovered from and impairment to his ability to perform duties as a pilot. A pilot in active status who is directed to contact or see the Company's aeromedical advisor, shall be removed from any conflicting scheduled activities with pay until the aeromedical advisor determines whether the pilot is fit for flight duty." *FedEx Express Pilot's Collective Bargaining Agreement, Section 15.D.1 & 2*. The available testimonial and documentary evidence demonstrates that Respondent had a subjectively reasonable basis for directing Complainant's evaluation and seemingly complied with all the administrative requirements of the CBA provision.

Complainant initially spoke with Respondent's aeromedical advisor on August 16, 2013. After the conversation, Respondent's aeromedical advisor found sufficient cause for recommending that Complainant undergo a full psychiatric evaluation. Complainant was thereafter referred to an independent psychiatrist. This secondary evaluation was completed on September 11, 2013 and found Complainant unfit for flying duties. Following the applicable CBA procedures, Complainant then submitted an evaluation previously performed by a doctor of Complainant's choosing as a "secondary evaluation" indicating he was in fact fit to fly. Because the medical evaluations were inconsistent a Medical Review Panel was convened and it was ultimately determined that Complainant was fit to return to duty. Complainant was therefore returned to active status and received all owed monetary compensation and leave.

In April 2014, Complainant suffered physical injuries while off-duty. Once medically cleared, he flew several flights without incident. However, Complainant was placed in NOQ status, with pay, once Respondent realized that an updated medical opinion, formally authorizing Complainant to return to service, had not been provided by Complainant. Complainant was immediately returned to qualified flight status upon Respondent's receipt of the necessary documentation.

Respondent's proffered non-retaliatory basis for the Complainant's NOQ status in August 2013, was predicated upon their subjective belief that Complainant may not have been medically qualified to perform his duties as a pilot. Respondent therefore adhered to the CBA requirements regarding evaluation by an Aviation Medical Examiner. In regards to the April 2014 NOQ status, the evidence once again demonstrates that the requirements imposed by Respondent were in accordance with the applicable rules, regulations and policies. It appears, in both situations, Respondent was justified in the actions taken with no evidence of retaliatory intent identified. The fact that Complainant was, without unnecessary delay, put back on active flight status when Respondent's concerns were eliminated, and steps taken to ensure no monetary or benefit lost, further counters Complainant's contentions.

Consequently, this complaint is dismissed.

Respondent and Complainant have 30 days from receipt of these Findings to file objections and to request a hearing before an Administrative Law Judge (ALJ). If no objections are filed, these Findings will become final and not subject to court review. Objections must be filed in writing with:

Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Department of Labor
800 K Street, NW, Suite 400
Washington, D.C. 2001-8002
(202) 693-7452 FAX (202) 693-7365

With copies to:

Federal Express Corporation
3620 Hacks Cross Rd., Bldg. B - 3d Fl.
Memphis, TN 38125

Kurt A. Petermeyer, Regional Administrator
Occupational Safety and Health Administration
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W., Room 6T50
Atlanta, GA 30303

In addition, please be advised that the U.S. Department of Labor generally does not represent any party in the hearing; rather, each party presents his or her own case. The hearing is an adversarial proceeding before an ALJ, in which the parties are allowed an opportunity to present their evidence *de novo* for the record. The ALJ who conducts the hearing will issue a decision based on the evidence, arguments, and testimony presented by the parties. Review of the ALJ's decision may be sought from the Administrative Review Board, to which the Secretary of Labor has delegated responsibility for issuing final agency decisions under AIR21. A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of the complaint. The

rules and procedures for the handling of AIR21 cases can be found in Title 29, Code of Federal Regulations Part 1979, a copy of which may be obtained at www.whistleblowers.gov.

Sincerely,



Lauren Fehlman
Regional Supervisory Investigator

cc: Chief Administrative Law Judge, USDOL
DWPP
Matthew Davison, Attorney for Respondent
FAA

“CL 3”

**BEFORE THE CHIEF ADMINISTRATIVE LAW JUDGE
OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES DEPARTMENT OF LABOR**

MARK ESTABROOK,)	
)	
Complainant)	
)	
v.)	
)	
FEDERAL EXPRESS CORPORATION)	
)	
Respondent.)	
)	

**OBJECTIONS TO
SECRETARY’S FINDINGS**

Case No. 4-1760-14-002

Complainant Captain Mark Estabrook, by his attorneys, Seham, Seham, Meltz & Petersen, LLP, submits the following objections to the Secretary’s Findings in this matter dated July 15, 2014:

OBJECTIONS

1. The Secretary’s mischaracterization of the original complaint, chronology of events and neglect of evidence begins in the lead paragraph of his July 15, 2014 letter of findings to Complainant:

“In brief, Complainant alleged that Respondent placed him in a Non-Qualified (NOQ) flight status in August 2013 and again in April 2014, for requesting a meeting with Respondent’s Chief Executive Officer (CEO) to discuss safety related concerns.”

The Secretary's Findings gave no consideration to, or evaluation of, Complainant Estabrook's protected activity related to his refusal of Respondent's directive to depart Laredo, Texas, into a line of known severe thunderstorms and turbulence in violation of the Company's Airbus A300/310 Pilot Handbook, Flight Operations Manual and government FAA safety regulations. Complainant's refusal to accept Respondent's reckless disregard for Air Traffic Control's denial of a flight clearance to Memphis, is exactly the kind of protected decision-making that the AIR21 legislation was designed to protect and encourage. This incident was clearly referenced in paragraphs 4-8 of the Complaint (Attachment A) occurring in the time frame of April 10 to May 2, 2013 (and previously recorded in a separate AIR21 OSHA Submission 861872), as the basis for Respondent's subsequent discriminatory retaliation.

2. The Secretary's Findings failed to apply the inference or presumption in favor of a finding of discrimination to the Respondent's conduct toward Complainant Estabrook subsequent to the Laredo Departure as required by well-established AIR21 precedent. *Clark v. Pace Airlines, Inc.*, ARB No. 04-150, ALJ No. 2003-AIR-28 (ARB Nov. 30, 2006), slip op. at 12-13.

3. The Secretary's Findings erroneously hold that the Respondent was "justified" in placing Estabrook on Non-Qualified (NOQ) flight status in August 2013 to the extent that it bases this justification on events that occurred at an August 9, 2013 meeting between Complainant Estabrook and Respondent's representatives. Respondent's placement of Complainant on NOQ flight status occurred on August 5, 2013, which *pre-dated* the August 9, 2013 meeting.

4. The Secretary's Findings err to the extent that it insinuates that Complainant's "acknowledged understanding of the reason for his placement on NOQ status" equated to his acceptance of the legitimacy of his placement on NOQ flight status. In fact, Complainant merely concluded the Respondent's Chief Pilot was retaliating against him for his refusal to fly into a line of thunderstorms several months prior and his subsequent filing of an AIR21 complaint in response to the initiation of disciplinary action against him in retaliation for his protected activity related to the Laredo departure. In further retaliation for Estabrook's protected activity, Respondent's Chief Pilot invented new allegations against Estabrook when he falsely alleged that Estabrook had suffered a mini-stroke. Captain William McDonald made this accusation to both FedEx legal counsel and flight management prior to the August 9, 2013 meeting with Complainant Estabrook.

5. The Secretary's Findings failed to recognize that the Respondent's placement of Captain Estabrook on NOQ flight status resulted in a loss of flight privileges and overtime opportunities, denigrated Complainant Estabrook's professional reputation and stature among his fellow pilots and had a stigmatizing and threatening effect designed to chill Complainant Estabrook and other FedEx pilots from engaging in protected activity.

6. The Secretary's Findings erroneously suggest that the Respondent provided Complainant Estabrook with a reason for his placement on NOQ flight status. Such is not the case. To date, Respondent's only timely explanation to Complainant for his grounding and directed medical evaluation was simply that "he knew too much." Only after this present AIR21 action commenced did the Respondent create its shifting rationale and defenses.

7. The Secretary's Findings erroneously determined that Complainant Estabrook's reference to the Respondent's CEO as "Fred" in an August 4, 2013 email seeking a phone call to discuss security concerns "justified" placing Complainant on NOQ flight status. The Secretary's Findings failed to give proper consideration of evidence demonstrating that the Respondent's CEO is and was frequently referred to as "Fred" throughout the history of the company," that he and the Respondent have claimed to maintain an open door policy for the carrier's pilots, and that Complainant's past service as Security Chairman for the FedEx Pilots Association (FPA) resulted in a legitimate expectation that he would be able to raise security issues directly with the CEO without suffering the retaliatory response of being placed on NOQ flight status and/or subject to mandatory psychiatric evaluation. Further, Complainant had previously briefed FedEx Express Executive Vice President and Chief Operating Officer William J. Logue in 2002 on his security concerns, and it is only logical that the next officer in the company's hierarchy would be CEO Fred Smith.

8. The Secretary's Findings mischaracterized the nature of Complainant Estabrook's protected activity on August 9, 2013, relating to Safe Cargo practices, which is detailed in the Complaint at paragraphs 9-14.

9. In general, the Secretary's Findings failed to make any effort to assess the relative credibility of the Respondent's representatives and Complainant, but rather improperly resolved all factual disputes in favor of the Respondent without providing any rationale.

10. In making its factual determinations, the Secretary's Findings failed to take into consideration the Respondent's resort to pretext and shifting rationales in evaluating the Respondent's credibility, including the Respondent's initial reliance on its supposition

and false allegation that Complainant Estabrook posted on an internet website as “Mayday Mark” (Complaint §§ 15-17), and attempts to pressure Complainant Estabrook to admit that he had suffered a Temporary Ischemic Attack (TIA). When Respondent’s legal and flight departments concluded at the August 9, 2013 meeting that Complainant had in fact not suffered a “mini-stroke” and had not posted such an admission on an internet bulletin board, they began looking for new excuses and strategies by which they could ground Complainant Estabrook. The Secretary completely ignores Respondent’s actions and misapplies the chronology of events.

11. The Secretary’s Findings failed to address evidence undermining the credibility of Respondent’s denial of retaliatory motive including the admission by the Manager of A300/310 Fleet Operations, Captain Rob Fisher, that the reason for compelling Complainant Estabrook to submit to psychiatric evaluation was that “you know too much.” (Complaint § 19). Complainant clearly and explicitly asked Respondent to preserve relevant recorded telephone calls as evidence and provided the Secretary the dates, phone numbers, times and duration of all relevant calls, but there is no mention of the Secretary’s Investigator listening to any of the telephone calls in his findings or making any attempt to obtain this evidence from the Respondent on a voluntary basis.

12. The Secretary’s Findings erroneously concludes that the “available testimonial and documentary evidence demonstrates that the Respondent had a subjectively reasonable basis for directing Complainant’s [psychiatric evaluation]....” The Secretary’s Investigator failed to properly investigate this matter, including, but not limited to: (a) properly analyzing the shifting rationales provided by the Respondent for demanding the psychiatric evaluation, (b) misapplying sections of the collective

bargaining agreement (CBA) without consideration for actual violations that preceded the order to submit to psychiatric evaluation, (c) failing to interview the medical professionals involved in the evaluation process, which ultimately confirmed Complainant Estabrook's fitness for flight, (d) failing to consider the defects and inconsistencies in Dr. Glass' psychiatric evaluation and improperly concluding that Dr. Glass acted as an "independent psychiatrist," or (e) failing to obtain or evaluate evidence identified by the Complainant, including audiotapes of conversations between Respondent representatives and the Complainant, which Complainant repeatedly asked the Investigator to request from the Respondent.

13. The Secretary's Findings erroneously concluded that the Respondent complied with the applicable CBA provisions in order to require Complainant Estabrook to submit to a psychiatric evaluation and made no effort to address or resolve the factual and legal arguments by the Complainant that the Respondent violated the applicable provisions of the CBA related to psychiatric evaluations of its pilots. (Complaint § 22 as supplemented by Complainant's submission dated January 27, 2014).

14. The Secretary's Findings erroneously concluded that Complainant was "immediately" returned to qualified flight status upon completion of his mental health evaluations and that he received "all owed monetary compensation and leave" when reinstated to flight duty upon completion of these evaluations. The Complainant did not receive full reimbursement for his costs or attorney's fees. In addition, the Complainant suffered additional adverse impact from the Respondent's discriminatory treatment for which he has not been made whole, including the cost and emotional stress of having his

job and license placed in jeopardy with false medical accusations while being subjected to intense simulator evaluations and additional flights with a Line Check Airman.

15. The Secretary's Findings tacitly accept the protected nature of the Complainant's protected activity under AIR21 detailed in paragraphs 4 through 14 of the Complaint, including the Complainant's good faith belief that the live tracking of cargo aircraft facilitated the use of such aircraft for terrorist purposes in a manner that failed to conform with 49 C.F.R. § 1544.103(a)(1); 49 C.F.R. § 1544.205(c)(1); 49 C.F.R. § 1544.205(a). Respondent's emulation of Soviet-style psychiatric evaluation and treatment to quiet the Complainant's protected activity is very disturbing for not only labor in the United States, but for the future security and safety of our national aviation system.

16. The Secretary's Findings erroneously concluded that Respondent was justified in the actions taken and that there was no evidence of retaliatory intent identified.

17. The Secretary's Findings erred in failing to conclude that Complainant Estabrook's protected activity as described in his Complaint was at minimum a contributing factor, if not the primary factor, in Respondent FedEx's demand for psychiatric analysis of Captain Estabrook, its ongoing directive that Captain Estabrook submit to psychological treatment, and its repeated removal of Captain Estabrook from flying status, and all other discriminatory personnel action described therein.

18. Complainant reserves the right to amend his complaint and objections to the Secretary's Findings upon review of evidence and testimony obtained through future discovery.

19. Complainant preserves his right to discovery and will immediately initiate all such processes, methods and rights afforded by this action and as permitted by law.

WHEREFORE, cause having been shown, Complainant Estabrook prays for an order against Respondent FedEx as follows:

- A. For an Order directing FedEx to rescind its directive for Captain Estabrook to undergo any further mental health evaluation or treatment;
- B. For an Order directing FedEx to suppress, remove and expunge all disciplinary proceedings, medical and psychiatric evaluations and treatment histories concerning Captain Estabrook from FedEx personnel files, including all contracted medical agents' records;
- C. For an Order directing the removal and expungement of all references to psychiatric evaluation and treatment in all government records, including but not limited to, the Federal Aviation Administration;
- D. For an Order directing FedEx to cease and desist from all discriminatory conduct toward Captain Estabrook;
- E. For an Order awarding Captain Estabrook the costs of this action, including payment of reasonable attorney's fees;
- F. For an Order granting such additional relief as the Secretary of Labor, or other decision maker in this process, deems proper and just; and
- G. For an Order granting full compensatory damages including compensation for pain, suffering and emotional distress due to this adverse action in an amount that will deter Respondent from contemplating retaliatory actions against its employees in the future.

Dated: White Plains, New York
August 12, 2014

SEHAM, SEHAM, MELTZ & PETERSEN, LLP

By: Lee Seham /ss

Lee Seham, Esq.
445 Hamilton Avenue – Suite 1204
White Plains, NY 10601
Tel. (914) 997-1346

Attorney for Complainant
Captain Mark Estabrook

TO: Chief of Administrative Law Judge
Office of Administrative Law Judges -
U.S. Department of Labor
800 K Street, NW, Suite 400
Washington, DC 20001-8002
Tel: (202) 693-7452
Fax: (202) 693-7365

cc: Federal Express Corporation
3620 Hacks Cross Road, Bldg. B – 3d Floor
Memphis, TN 38125

Kurt A. Petermeyer, Regional Administrator
Occupational Safety and Health Administration
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W., Room 6T50
Atlanta, GA 30303

“CL 44”

UNITED STATES DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
OFFICE OF ADMINISTRATIVE LAW JUDGES

_____)	
MARK ESTABROOK,)	
)	
Complainant,)	
)	CASE NO. 2014-AIR-00022
v.)	
)	ADMINISTRATIVE LAW JUDGE
)	SCOTT R. MORRIS
FEDERAL EXPRESS CORPORATION,)	
)	
Respondent.)	
_____)	

DECLARATION OF DR. THOMAS BETTES

I, Thomas Bettes, declare as follows:

1. I am a licensed physician currently working in the state of Texas.
2. In the fall of 2013, I was working as paid contractor/consultant with Harvey Watt & Co., during which time I also served FedEx as an aeromedical advisor. I left Harvey Watt in 2015 and have not had further interactions with either FedEx or Captain Estabrook.
3. Among my duties as aeromedical advisor for FedEx was the scheduling of medical evaluations for FedEx pilots who were required by their employer to undergo fitness-for-duty assessments. All medical and psychological evaluations and/or examinations were completed by other contracted physicians or neuropsychologists with some knowledge or expertise in aviation medicine.
4. At no time did I conduct a physical or psychological evaluation or in-person examination of Mr. Estabrook. Rather, I scheduled him for a psychiatric assessment of his mental health at the request of FedEx.

5. The initial recommendation made by me to his employer, based on the report of psychiatrist Dr. George Glass, was that he remain on a temporary Sick Leave-of-Absence while completing some psychological counseling. As you are aware, FedEx pilots are allowed by their labor agreement to pursue a second medical opinion as part of the process; because there were conflicting opinions rendered, Estabrook was eventually sent for a third medical Fitness-for-Duty determination by a mutually agreed-upon examiner. Upon receiving and reviewing the results of this third physician's evaluation I advised FedEx officials of his ability to resume flying activities and exercise the privileges of his FAA medical certificate.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on March __, 2016.


Dr. Thomas Bettes

“CL 70”

response to the Respondent's disciplinary investigation of the Laredo departure; however, the ALJ erroneously determined that, the Complainant had not engaged in protected activity on August 9, 2013, when he communicated to the Respondent that its practice of disseminating, and/or permitting the dissemination of, aircraft and package tracking information had the effect of incentivizing terrorists to introduce explosives, incendiary devices and other destructive substances into the Respondent's aircraft in contravention of Respondent's federal regulatory obligation to "prevent" and/or "deter" the introduction of such explosives, incendiary devices and destructive substances, despite the ALJ's acknowledgment that the Complainant "raised the issue about how to improve the safety of Respondent's aircraft and personnel." 49 C.F.R. § 1544.103(a)(1); 49 C.F.R. § 1544.205(c)(1); (c); 49 C.F.R. § 1544.205(a); (Decision at 49). This erroneous legal conclusion is of particular importance in view of the direct evidence that the Respondent based its adverse action on the Complainant's communications related to this safety issue and the ALJ's finding that: "Here, Respondent's treatment of Complainant resembles ... an over-reaction in response to Complainant's demonstrated knowledge of security issues" (Decision at 57, 61).

2. The ALJ improperly made no effort to directly interpret the plain language of regulatory law pertaining to the Complainant's third incident of protected activity (49 C.F.R. § 1544.103(a)(1); 49 C.F.R. § 1544.205(c)(1); (c); 49 C.F.R. § 1544.205(a)), but, instead improperly founded his interpretation of law relating to whether the Complainant had engaged in protected activity on the testimony of the Respondent's witnesses concerning their understanding of Federal Aviation Regulations (FARs) and the Federal Aviation Administration's (FAA) apparent acquiescence to the Respondent's practice of allowing

terrorist organizations to have access to valuable intelligence that would incentivize these organizations to view FedEx as an effective means of delivering explosive devices.

Thus, the ALJ abdicated the judicial obligation to interpret the law. *Perez v. Mortg. Bankers Ass'n*, 135 S. Ct. 1199, 1221 (2015) (“In each case, the Judiciary is called upon to exercise its independent judgment and apply the law.”).

3. The ALJ permitted trial testimony of Respondent’s Labor Relations Counsel Robb Tice concerning his discussions with Vice President of Flight Operations James Bowman relating to Respondent’s motive of grounding the Complainant pursuant to a Not Operationally Qualified (NOQ) designation on August 5, 2013; however, the ALJ erroneously declined to order the disclosure of the email communications underlying Tice’s testimony on the grounds of attorney-client privilege. *Hernandez v. Tanninen*, 604 F.3d 1095, 1100 (9th Cir. 2010) (“voluntary disclosure of the content of a privileged attorney communication results in waiver as to all other communications on the same subject.”); *United States v. Nobles*, 422 U.S. 225, 239-40 (1975) (“Respondent can no more advance the work-product doctrine to sustain a unilateral testimonial use of work-product materials than he could elect to testify in his own behalf and thereafter assert his Fifth Amendment privilege to resist cross-examination on matters reasonably related to those brought out in direct examination.”).
4. The ALJ failed to properly consider and apply AIR 21 regulatory law providing that temporal proximity between a protected activity and an adverse personnel action will “normally” satisfy a complainant’s burden of making a *prima facie* showing of knowledge and causation. 29 C.F.R. § 1979.104(b)(2).

5. The ALJ identified three adverse actions taken against the Complainant (the August 5 NOQ grounding, the August 9 NOQ grounding, and the order to submit to psychiatric examination on pain of termination for non-compliance); however, the ALJ failed to analyze the motives underlying these determinations for each of the participants in these three adverse actions.
6. The ALJ failed to properly consider and apply AIR 21 precedent providing that a Respondent's repeated refusal to provide a rationale for its adverse actions supports a finding that a subsequently provided rationale may be deemed pretextual.
7. The ALJ failed to properly consider and apply AIR 21 precedent providing that a Respondent's proffer of shifting rationales for its adverse actions supports a finding of a causal link between the Complainant's protected activity and the Respondent's adverse actions taken against him, particularly in light of the ALJ's findings that there was "no credible evidence" supporting key factual allegations upon which the Respondent's adverse actions were taken and that the Respondent had attempted to "cloak its decision" to require the Respondent to undergo a psychiatric analysis and had taken a "disingenuous approach," and that "Respondent treads on thin ice by offering such a flimsy justification for referring Complainant to a mental evaluation in this case." (Decision at 56-57).
8. The ALJ failed to properly consider AIR 21 precedent that singling out a complainant, who has engaged in protected activity, for investigation of an unrelated incident (in this matter, the internet postings of an individual identified as Mayday Mark), supports a finding of a causal link between the protected activity and a subsequent adverse action.

9. The ALJ misapplied the “contributing factor” standard in his analysis of whether there is a causal link existed between the Complainant’s protected activity and the Respondent’s adverse actions taken against him.
10. The ALJ erroneously failed to apply the “clear and convincing evidence” standard to the Respondent’s proffered rationales for the adverse actions taken against the Complainant.
11. The ALJ ‘s determination that the Respondent’s August 5 NOQ designation was “solely” for the purpose of “facilitat[ing] a meeting with management” on August 9, 2013, constituted legal error insofar as it disregarded the law of the case embodied in the ALJ’s partial summary judgment decision dated May 9, 2016, in which the ALJ held:

There is no genuine dispute that while Complainant was on NOQ status involuntarily, he was removed from service as a pilot and he was ineligible to use jumpseat privileges. When viewing the facts in the light most favorable to either party, there is no genuine dispute that NOQ status affected the terms, conditions or privileges of Complainant’s employment such that it constituted adverse action under the Act.

* * *

When viewing all facts and reasonable inferences in the light most favorable to both parties for purposes of their respective Motions, Complainant is entitled to judgment as a matter of law that he was subjected to adverse actions when originally placed on NOQ status, when NOQ status was reinstated after the August 9, 2013 meeting, and when he was compelled to submit to a 15D evaluation.

(Order Granting in Part and Denying in Part Complainant’s Motion for Summary Decision and Denying Respondents’s Motion for Summary Decision, May 9, 2016, at 22).

12. ALJ erroneously treated the question of the Respondent’s ability to control the publication of its flight tracking data as a question of fact and erroneously disregarded

federal law that authorized the Respondent to prevent the dissemination of its flight tracking data for safety or other purposes. (Decision at 49).

Erroneous Factual Determinations Under the Substantial Evidence Standard

13. The ALJ erroneously determined that Respondent's first NOQ grounding of the Complainant on August 5, 2013, which the ALJ held to be an adverse action under AIR 21, was "solely" for the purpose of "facilitat[ing] a meeting with management" on August 9, 2013, concerning security issues raised by the Complainant; that there was "no evidence" that Respondent's use of the NOQ on August 5 represented an attempt to punish or harass Complainant; and that there was "little, if any, evidence that the adverse actions ... relate to Complainant's" Laredo-related protected activity; however, the ALJ failed to accord proper weight to evidence that the Respondent's representations of a mere scheduling motive for the August 5 NOQ designation were false and that its actual motive was retaliatory in nature, including, *inter alia*, (a) System Chief Pilot William McDonald's discovery of anonymous internet postings related to the Laredo departure immediately prior to the August 5 NOQ grounding, his prior expression of frustration that he had not been able to discipline the Complainant for his Laredo-related protected activity, and his ignorance of the fact that the Complainant was not the anonymous poster of the Laredo-related communications at the time he authorized the adverse actions taken against the Complainant (b) McDonald's directive to Labor Counsel Tice to interrogate Complainant at the August 9 meeting as to whether he was the anonymous poster of the Laredo-related internet postings based on his belief that the postings violated FedEx policy, (c) Tice's testimony that his presence, as Respondent counsel, at a pilot meeting

was generally limited to meetings related to the disciplinary process and Tice's admission that the standard reason for suspending a pilot's jumpseat privileges, as occurs with an NOQ designation, is that the person is under investigation for a significant matter, (d) Tice's surprise that the unsuspecting Complainant did not seek union or legal representation for the August 9 meeting, (e) the Respondent's failure to disclose, in response to direct discovery requests, that Vice President of Flight Operations Bowman participated in the decision to ground the Respondent on August 5 pursuant to an NOQ designation, (f) evidence that Bowman's and McDonald's motive for the August 5 designation was to bar the Complainant from accessing Respondent's aircraft, rather than to "facilitate a meeting," (g) testimony from Respondent's own witnesses that non-disciplinary meetings with pilots are "typically" facilitated by an RMG (Remove for Management) designation, rather than an NOQ designation that punishes and stigmatizes a pilot by both grounding him and stripping him of his jumpseat privileges, (h) Complainant never asked for a meeting with Respondent's representatives, (i) Respondent gave no consideration to Estabrook's security concerns either before, during, or after the August 9 meeting, (j) none of the Respondent's representatives researched Estabrook's prior role as union Security Committee Chairman or his past dealings with the Respondent's Vice President of Corporate Security Bill Henrikson and Senior Vice President of Air and Ground Freight Services, William Logue, (k) Respondent's interference with the contractual 15D and 15G medical evaluation process for the purpose of compelling a psychiatric evaluation, (l) Respondent's attribution of its decision to its belief that the Complainant "knew too much," and (m) inconsistent interrogatory responses and testimony responses regarding the purpose of NOQ designations

implemented on August 5 and August 9, 2013 and the persons responsible for making these determinations.

14. While the ALJ stated that he was “troubled” by the adverse actions taken against the Complainant (Decision at 53), that the reasons given by Respondent principal witnesses for their determination to ground the Complainant after the August 9 meeting and subject him to mandatory psychiatric evaluation were “simply not credible” and “deserve[] little weight,” the ALJ failed to accord proper weight to evidence of a causal link between Complainant’s protected activity as detailed in the above paragraphs.
15. The ALJ erroneously concluded that “no Respondent member had an issue with Complainant’s refusal to fly through severe weather on April 10, 2013,” but rather, that “[t]he issue for Respondent’s management personnel was Complainant’s failure to arrive at the airport one hour prior to his department time at Laredo;” however, the ALJ failed to accord proper weight to evidence that the Respondent bore animus toward the Complainant because of his failure to depart and that Respondent’s witnesses misrepresented evidence regarding the Laredo incident and disciplinary investigation, including, *inter alia*, (a) the Respondent’s misrepresentations of the Complainant’s communications with the dispatcher, (b) the failure of Duty Officer Mark Crook to make any objection to the Complainant’s location at the hotel in his conversations with the Complainant, (c) Crook’s pressure on Estabrook to depart notwithstanding unsafe weather conditions and Fisher’s agreement to counsel Crook with respect to Crook’s pilot pushing, (d) Crook’s misrepresentations under oath regarding his unrecorded telephonic conversations with the Complainant, (e) Crook’s misrepresentations under oath regarding his review of the audiotapes of his conversations with the Complainant, (f) Crook’s

emphasis on the Laredo departure's "delay" and "time" issues in the communications to Respondent management representatives who initiated the disciplinary investigation, (g) the stated position of the GOC Manager, in response to learning of the Complainant's objection to being "pushed to leave" that: "It's his damn job," (h) Respondent's acknowledgement that the Complainant had a good faith belief that his extended stay at the hotel had been authorized, (i) Respondent's acknowledgement that there was no basis to assert that the extra time Complainant spent at the hotel resulted in a delayed departure of the aircraft, (j) the fact that additional time at a hotel during a gate hold promotes safety by allowing the pilots to rest in order to prevent subsequent fatigue, and (k) that the Respondent management representatives who initiated the disciplinary investigation of the Complainant were aware of all of the above.

16. The ALJ failed to accord proper weight to the untruthful denials by Respondent management representatives of any knowledge of Complainant's Laredo-related AIR 21 complaint during the course of the Department of Labor's investigation, or consider the retaliatory animus toward the Complainant that knowledge of the Laredo complaint engendered as a contributing factor toward the adverse actions taken against the Complainant by the Respondent. The ALJ also failed to appropriately discount the credibility of Respondent witnesses who engaged in these untruthful representations to the Department of Labor representative.

17. The ALJ failed to accord proper weight to the admission of Managing Director of Aviation and Regulatory Security Todd Ondra that the tracking data disseminated by the Respondent “potentially could be of interest or value” to terrorists.

Respectfully submitted on:

Date: May 26, 2017

By: 

Lee Seham, Esq.
lseham@ssmplaw.com
Seham, Seham, Meltz & Petersen, LLP
199 Main Street – Seventh Floor
White Plains, NY 10601
Tel: (914) 997-1346

Attorneys for Complainant Mark Estabrook

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Deposition was served on May 26, 2017 upon:

By Federal Express

Administrative Review Board
U.S. Department of Labor
Suite S-5220
200 Constitution Avenue, NW
Washington, DC 20210

By U.S. Mail:

Chief Administrative Law Judge
U.S. Department of Labor
Office of Administrative Law Judges
800 K Street, NW
Suite 400-North
Washington, DC 20001-8002

Assistant Secretary

OSHA
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Associate Solicitor

Division of Fair Labor Standards
200 Constitution Avenue, N.W., Room N-2716
U.S. Department of Labor
Washington, DC 20210

By U.S. Mail and Electronic Mail:

Daniel Riederer
Senior Counsel - Litigation
FEDERAL EXPRESS CORPORATION
3620 Hacks Cross Road
Building B, 3rd Floor
Memphis, Tennessee 38125



Lee Seham, Esq.

“JX 1”

“JX 2”

Captain Rob Fisher
Airbus Fleet Captain
International Operations

Flight Operations
3131 Democrat Rd.
Building C,

Telephone 901.224.3435
Fax 901.224.5516
refisher@fedex.com



VIA ELECTRONIC MAIL

April 23, 2013

Captain Mark Estabrook/88775
PO Box 1890
Manchaca, TX 78652

Captain Estabrook:

The Company requires your attendance at an investigative interview that will be conducted in accordance with Section 19.D.1 of the CBA on Wednesday, May 1, 2013 at 3p.m. in the ARTC (Airbus Flight Training Area, 2nd floor east end) located at 3040 Independence Road, Memphis TN, located across from AOC. Currently, PRISM shows that you have a PO box. Please update your address in PRISM to your primary residence address in accordance with section 26.N.2. prior to our meeting on May 1.

Company records indicate that you were late reporting to work for Flight1317/11Apr13. The interview is being conducted to investigate the facts and circumstances surrounding this late show.

You may have an ALPA representative present if you desire.

Sincerely,

Captain Rob Fisher
Chief Pilot/Regional
901-224-3435

Attachments

- cc Robert Tice, Sr. Counsel
- Scott Williams, Sr. Attorney
- Cindy Sartain, Sr. Paralegal Specialist, Labor Relations Law
- Terry McTigue, ALPA, FedEx MEC, Contract Enforcement
- Coy Briant, ALPA, FedEx MEC, Grievance Committee
- Maggi Comes, ALPA, Legal Secretary
- Domicile Personnel File

“JX 3”

(2)

Think Alibi: trying dozens of requests.
Data base or systems / finally, we have to
make ourselves to us

2nd → 2nd try. wanted full trial.
need ping some \$ in to operations
research center. Statistic, math, game view
new networks, tied to intelligence known,
humble security & other companies, best
& brightest.

3rd → Last try wanted to talk about
Rus:
Heard twice in last 6 months, Asbin
Callaway has converted to Islam.
wondering go to Dept of Justice & request
Eusebius on his cell.
- Callaway attacked corrupt
- Followed by Muhammad Atta
English @ on us for some reason.
Muslim English?
Don't know if Callaway is very communicative
gets to al-kaed

When Al-Kadi fails, they ^{are trouble,} know how
system works
I put threat assessments together for WFF, MCL
FDX 4-000061

Bill, ~~give~~ give him ⁽³⁾ WPH copy at
Al exhibit ~~transcript~~ manual,

— * All we need is ~~pick up~~ pick up
Scan & delivery Scan only

— * All Apps to track flights
we have to stop that.

Ondra Notes

8-9-13

Per B. McDonald

Off Line

Out [illegible]

J.S.

Send to Aeromedical [illegible]

Warrants a psychological examination

Mark Estabrook

Robb Fisher 83775

Robb Tice

Airline Pilot Central

“Mayday Mark”

Arrested by Soviet Police in Hungary when I was 18.

I’ve chased around Russians, etc.

Airlinepilots.com I had a website,

Sold for \$25k

Barbara Boxer

Recall procedures at ACARS, Billy Wilson took my suggestion and ran with it

“Why talking about it now?”

Part while surfing net. Al Qaeda very active. They wanted out live tracking

1st → Asking Fred to consider going to other CEOs, ATA, Homeland Security & tell customers can no longer receive tracking data.

[Illegible]/shipments to test

Think Alsiri training dozens of replacements. Database our systems/tracking. We have to make sacrifices to

2nd → 2nd thing wanted to tell Fred

Need put some \$ into operation

Research center. Statistic, math, game war neural network, tied to intelligence community, homeland security, and other companies, best& brightest

3rd → Last thing wanted to talk about

Heard twice in last 6 months, Auburn Calloway has converted to Islam

Wanting to go dept of Justice and request eavesdropping on his cell

-Calloway attacked cockpit

-Followed by Muhammad Atta

Emphasis on us for some reason

Muslim Emphasis

Don't know if Calloway is using communication path to al-Qaeda

*When al-Qaeda fails, they come back, know how system works

* I put that assessment together for WPH, WJC

Bill, gave him WPH copy of al-Qaeda training manual

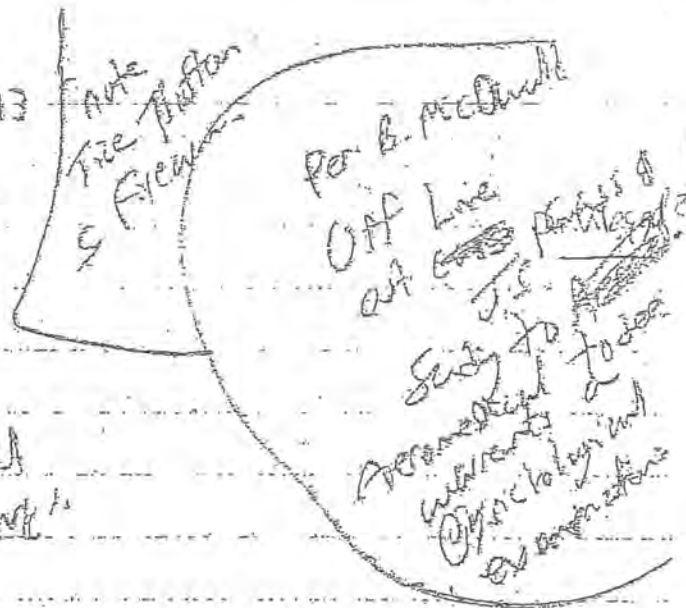
*All we need is pick up scan and delivery scan only

*All apps to track flights we have to stop that

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AND
CONFIDENTIAL

8-9-13

Mark Estabrook
Robb Poscher 88135
Bob Tice



Airline Pilot Central
"my long [unclear]"

Arrested by Soviet Police in Hungary when
I was 18.
I've chased around Russia, etc.

Airline pilots.com I had a website,
sold for \$25k

Burton Buser

Recall procedures at ACARS, Billy Wilson
took my suggestion & ran it.

Why talk about it now?
Part ~~of~~ WE surfing net. Always very
~~active~~ active. They wanted no line tracking.

NT → Asking Fred to consider going to
other cos: ATA, Handed Country &
tell customers can no longer receive tracking
data
Don't know if process flawed / improved to test

(2)

Think Alami trying dozens of references.
Data base or systems / tracking, we have to
make services to us

2nd → 2nd try wanted full field.
Need ping some \$ in to operations
research center. Statistic, math, game view
neuro networks, tied to intelligence program,
humble security & other agencies, best
& brightest.

3rd → Last try wanted to talk about
Rus:
Heard twice in last 6 months, Abdul
Callaway has converted to Islam.
wondering go to Dept of Justice & request
Eustachy on his cell.
- Callaway attacked cockpit
- Followed by Muhammad Atta
English @ on us for same reason.
Muslim English's
Don't know if Callaway is using communication
paths to al-Qaeda

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FDX 4-000061

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All exhibit ~~transcript~~ manual,

* All we need is ~~pick up~~ pickup
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*All we need is pick up scan and delivery scan only

*All apps to track flights we have to stop that

“JX 4”

PRIVILEGED
AND
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August 9, 2013

AOD-Flight Hearing; Mark Estabrook

Robb Tice-Legal, Rob Fisher-Fleet Captain, Todd Ondra-Security, Mark Estabrook, Crew Member

Privileged

The following is the recap of our discussions with Mark Estabrook:

On the above date a meeting was scheduled with the above mentioned employees. The goal of this meeting was to hear from Mark Estabrook, #88775, Crew Member, concerning an email note that Estabrook had sent to Bill McDonald, System Chief Pilot, on August 4, 2013. In this note, Estabrook wrote "Bill, I need to talk to Fred. It has nothing to do with Flight Ops or you. It deals with something related to 9-11. I did my best to protect the company and reported as much as I could through Bill Henrickson when I was the Security Chairman at ALPA. Ask Fred to call me on my cell but realize I turn it off when I sleep. I am about to close my eyes and call it a day".

Rob Fisher coordinated this meeting which took place at the Air Operations Building on Friday, August 9, 2013. Following introductions Estabrook opened the meeting by sharing that he is well versed concerning intelligence/information sharing and that he understands how this works. Estabrook advised this was the reason he requested such a small audience. Estabrook went on to say that his experience in this area dates back to his childhood when his father helped individuals escape from Cuba after Castro gained control of the country. Estabrook went on to say that he had been arrested when he was eighteen (18) by the secret police in Hungary and added that he had been chased all around Russia.

Estabrook then told us how he was proud of his accomplishments within Air Operations and that he had helped to develop the recall procedures in ACARS, adding that Billy Wilson took his suggestion and ran with it. Estabrook also told us that he had developed a website that was utilized by FedEx crew members to communicate and promote the crew members union at FedEx (airlinepilots.com). Estabrook told us that he no longer owned this website, adding that he has since sold this website for \$25K.

Estabrook then make three points: Point one, regarding 9-11, Estabrook told us that he was bringing this subject up now, because while recently surfing the internet due to the recent travel and threat alerts throughout the U.S. he noticed that al-Asiri was still very active. Estabrook talked about the previous bomb attempts targeted for cargo aircraft in October of 2010. He went on tell us that they wanted our live tracking information. Estabrook went on to say that Fred (Mr. Smith), needs to consider going to the other CEO's, ATA, and Homeland Security, and tell customers they can no long receive tracking information. Estabrook told us this was critical because previous shipments had been sent related to the October bombings to test the system and time lines. Estabrook advised the only scans on shipments should be the pick-up and the deliver scan. He went on to say that it is his belief al-Asiri is currently training dozens of replacements and that everyone needs to make sacrifices like giving up data base apps related to aircraft system tracking capabilities, e.g. being able to track aircraft while in flight.

Mark Estabrook Meeting Recap
August 9, 2013
Page 2

Point two, Estabrook advised the next thing that he wants to tell Fred is that he needs to pump some significant money in to an operations research staff hiring thirty (30) or so of the best and the brightest. Estabrook told us these individuals need to be well versed in statistics, math, war games, neural networks, and tied to the intelligence community, Homeland Security, and other companies. Estabrook told us that we cannot rely on the government alone and that FedEx needs to start making plans to now.

Point three, Estabrook told us he wanted to share with Fred that he has heard twice in the past six (6) months that Auburn Calloway has converted to Islam. Estabrook told us that if this is true that we should go to the Department of Justice and request eavesdropping on his jail cell. Estabrook went on to tell us that Calloway attacked the cockpit and that this was followed by the Mohammed Atta attack. Estabrook told us that there appears to be an emphasis on us (FedEx) for some reason. Estabrook told us there is a Muslim emphasis, adding that he is not sure, but that Calloway may be using a communication path to al Qaeda. Estabrook went on to tell us that when al Qaeda fails, they come back and that they know how the system works.

Estabrook thanked us for our time and the meeting concluded.

Regards,

“JX 5”

Captain Rob Fisher

Flight Operations
Airbus Fleet Captain
Building C
Memphis, TN 38118

Telephone 901.224.5460
3131 Democrat Rd.
refisher@fedex.com



VIA OVERNIGHT LETTER & EMAIL

August 16, 2013

Captain Mark Estabrook/88775
10026 Wild Dunes Drive
Austin, TX 78747

Email: msestabrook@fedex.com

RE: Company Mandated Medical Examination

Captain Estabrook:

The Company has a reasonable basis to question whether you have developed an impairment to your ability to perform duties as a pilot. Under the circumstances, I am directing you to contact Dr. Thomas Bettes, at Harvey Watt & Company, the Company's aeromedical advisor, for an evaluation pursuant to Section 15.D. of the Collective Bargaining Agreement. You are directed to contact Dr. Bettes's office and coordinate with Dana Bates by Wednesday, August 21, 2013, to schedule an evaluation. Their office telephone number is (800) 241-6103, Ext. 240.

You shall be removed from any conflicting scheduled activities with pay until the aeromedical advisor determines whether you are fit for flight duty.

Failure to comply with this directive may result in disciplinary action.

Please contact me if you have any questions.

Sincerely,

Rob Fisher
Airbus Fleet Captain
901-224-3435

- cc: Bill McDonald, System Chief Pilot
- Robb Tice, Lead Counsel
- Scott Williams, Sr. Attorney
- Cindy Sartain, Sr. Paralegal Specialist
- Coy Briant, ALPA Grievance Committee
- Maggi Comes
- Dana Bates
- Domicile Personnel File/PAC
- Shelia Voye
- 1010207

“JX 6”

AGREEMENT

between

FEDERAL EXPRESS CORPORATION

and

THE AIR LINE PILOTS

in the service of

FEDERAL EXPRESS CORPORATION

as represented by

THE AIR LINE PILOTS ASSOCIATION, INT'L

FEBRUARY 28, 2011

Table of Contents

- Section 1 – Recognition, Scope and Successorship
Letter from FedEx Corporation to ALPA
- Section 2 – Definitions
- Section 3 – Compensation
- Section 4 – Minimum Guarantees and Other Pay Provisions
- Section 5 – Traveling Expenses
- Section 6 – Relocation Expenses
- Section 7 – Vacation
- Section 8 – Deadheading
- Section 9 – Miscellaneous Flying
- Section 10 – Pilots Transferred to Management or Other Duties
- Section 11 – Training
- Section 12 – Hours of Service
- Section 13 – Leaves of Absence
- Section 14 – Sick Leave
- Section 15 – Medical Standards
- Section 16 – Workers' Compensation Benefits
- Section 17 – Prisoner of War or Hostage Benefits
- Section 18 – Witnesses and Representatives
- Section 19 – Investigation and Discipline
- Section 20 – Grievances: Administrative
- Section 21 – System Board of Adjustment
- Section 22 – Seniority
- Section 23 – Furlough and Recall
- Section 24 – Filling of Vacancies
- Section 25 – Scheduling
- Section 26 – General
- Section 27 – Insurance Benefits
- Section 28 – Retirement (Pension Benefits)
- Section 29 – Union Security and Checkoff
- Section 30 – ALPA-PAC Checkoff
- Section 31 – Effect on Prior Agreements, Effective Date and Duration

Lump Sum Letter (2011)
Mid-Term Discussions Letter (2011)
FDA LOA – EMEA/HKG (2011)
ASAP MOU and Letter (2011)
FOQA LOA (2011)
ICAO LOA (2011)
Iraq/Afghanistan LOA (2011)
Data Collection MOU (2011)
LOSA MOU (2010)
Additional Fund Options LOA (2008)
Special Provisions Related to Anchorage Domicile Moves for Pilots (2006)
Civil Reserve Air Fleet LOA (2003)
Pilots Defined Contribution Plan Changes (2003)
Professional Standards Letter of Agreement (2000)
Letter of Agreement on Safety (2000)
Maximum Open Time (1999)
Certain Retirement Provisions (1999)
Anchorage and Subic Return Moves (1999)

February 28, 2011

SECTION 15

MEDICAL STANDARDS

A. General

1. Pilots shall meet the medical standards and possess a valid medical certificate consistent with the FAA standards including its waiver, limitations, restriction, special issuance and related FAA policies for the class of medical certificate required for the pilot's crew seat.
2. Each pilot shall validate, through VIPS, the issuance of his new medical certificate not later than the earlier of the following:
 - a. 48 hours prior to the end of his due month; or
 - b. 0900 LBT the day prior to the start of any trip(s) scheduled to terminate either:
 - i. after the expiration of the pilot's medical certificate; or
 - ii. within 48 hours of the expiration.
3. While a VIPS notification(s) of a pilot's pending FAA medical certificate expiration is provided to each pilot, it is the pilot's responsibility to know and meet the medical standards by possessing a valid FAA medical certificate. Failure of a pilot to receive a VIPS notice shall not excuse the pilot's failure to maintain his/her valid FAA medical certificate. If a pilot fails to provide the Company with confirmation via VIPS that he has a valid medical certificate as required by this paragraph, before 0900 LBT on the day prior to the showtime of a trip or R-day scheduled to start within the time period as stated in Section 15.A.2., the trip or R-day shall be removed without pay, and the pilot shall not be eligible for make-up. Trip(s) or R-day(s) shall no longer be removed after the pilot provides the Company with the required validation.

B. Company Payment of FAA Medical Exam Expenses

1. The Company shall cover an active pilot's cost of annual or semiannual FAA medical examinations including the cost of a required EKG, up to an annual maximum of \$275, which shall increase to an annual maximum of \$300 on January 1, 2014. The pilot shall use the Company issued travel card if accepted by the provider. If the provider does not accept the Company issued credit card, the pilot must comply with normal non-travel reimbursement procedures that require an itemized list of the services performed by the FAA physician (i.e., FAA physical, EKG if any, physician's office, date, charge).
2. If an active pilot incurs medical expenses in order to qualify for an FAA medical certificate, which are not covered by Section 15.B.1., the following shall apply:
 - a. If submitted within 90 days after having incurred the expense, the Company shall reimburse such pilot for the non-routine medical expenses if:

Sec. 15.B.2.a. (continued)

- i. the expenses were incurred at the direction of either:
 - (a) the FAA; or
 - (b) an FAA designated Aviation Medical Examiner (AME) who reasonably concluded that, in light of FAA requirements, it was necessary to perform a non-routine medical procedure in order for the active pilot to obtain or maintain his FAA medical certificate; or
 - ii. the expenses were incurred in order to obtain a special issuance FAA medical certificate, as required by the FAA.
- b. A pilot who incurs medical expenses covered by Section 15.B.2. shall submit or cause to have submitted a medical insurance claim for any such expenses that are covered by insurance. The pilot shall provide a copy of any response(s) to the medical insurance claim to his flight manager (currently titled Assistant Chief Pilot) within a reasonable time after receiving same. The pilot shall remit to the Company the amount of any insurance claim that was both paid by the Company and reimbursed by the insurance plan. The primary purpose of Section 15.B.2.b. is to allow any group health insurance discount to be recognized for medical charges that arise out of this section and to avoid any double payment being made for the same service. If a pilot gets reimbursed from both the Company and the service is also covered and paid through the group health plan, the pilot may receive a reimbursement from the health care provider for an overpayment that actually belongs to the Company. In this case, a pilot should remit or cause to have remitted the extra monies paid back to the Company.

C. Alcohol and Drug Testing

The Company may test pilots for drugs and alcohol only in accordance with the following:

1. The Company shall maintain the drug and alcohol testing programs that are in use on the effective date of this Agreement, as long as such testing is mandated by law or regulation. The term "programs" includes the type of specimen collected, substances for which a pilot is tested, the methods of testing and the thresholds at which testing is conducted.
 - a. If any change in a testing program is mandated by law or regulation and the law or regulation does not afford multiple options of compliance, the Company shall give the Association notice and shall consult with the Association at a mutually agreeable time and location concerning such change.
 - b. If a law or regulation mandates that a testing program be changed, but affords multiple options by which compliance can be achieved, then the Company and the Association shall meet to discuss the available alternatives. The initial meeting shall commence no later than 60 days following the date the final rule regarding the alternative methods is published in the

Sec. 15.C.1.b. (continued)

Federal Register. Should the parties be unable to mutually agree on an alternative testing method within 60 days, then each side may elect to advocate an alternative before a mutually selected arbitrator from the non-disciplinary panel. The parties' presentations shall be in writing unless either party elects an in-person hearing. The arbitrator shall select the method of testing from the two alternatives presented. If the Company is required to implement a change prior to the conclusion of the process described in this paragraph, nothing in this paragraph shall prevent it from doing so (subject to change depending on the outcome of the Section 15.C.1.b. process).

- c. The Company may implement a non-mandatory change in a testing program only with the written consent of the Association.
 2. The Company shall maintain the FedEx Drug and Alcohol Rehabilitation and Recertification Plan for Flight Crewmembers (HIMS program) that complies with FAA directives regarding pilots who require an Authorization for Special Issuance of a Medical Certificate. Such Plan shall continue to contain full Company participation (including monitoring) in rehabilitating, and returning to work, those pilots who need professional treatment, along with insurance coverage for medical and associated bills in accordance with the terms of those plans as provided in Section 27. Such Plan shall continue to contain payment by the Company of the initial evaluation and the associated psychiatric/psychological evaluation required in conjunction with the petition for a Special Issuance Medical Certificate as provided in Appendix H of the FOM.
 3. If the Company has a reasonable basis to believe that a pilot's ability to perform his duties is impaired for reasons relating to substances not covered by the legally mandated drug testing programs referred to above, the pilot's case shall be handled as provided in Section 15.D.
- D. Company Mandated Medical Examinations
1. The VP of Flight Operations, the System Chief Pilot, a Regional Chief Pilot, or a Chief Pilot may direct a pilot to contact or see the Company's aeromedical advisor if the Company has a reasonable basis to question whether a pilot has developed or recovered from an impairment to his ability to perform his duties as a pilot.
 2. A pilot in an active pay status who is directed to contact or see the Company's aeromedical advisor, shall be removed from any conflicting scheduled activities with pay until the aeromedical advisor determines whether the pilot is fit for flight duty.
 3. After the Company's aeromedical advisor consults and/or meets with the pilot, by written notice, he may require the pilot to undergo a test(s), medical examination(s), and/or an evaluation(s) by the advisor or a physician designated by the aeromedical advisor. Upon the pilot's request, the aeromedical advisor shall consult with the pilot to review

Sec. 15.D.3. (continued)

and discuss the aeromedical advisor's rationale for his concerns and the necessity of the prescribed examinations/evaluations.

4. The Company shall pay for all examinations, tests or evaluations performed or directed by its aeromedical advisor. If the pilot needs to travel from the pilot's permanent, primary address in connection with a Company directed examination(s), test(s) and/or evaluation(s) pursuant to this paragraph, the Company shall provide and arrange transportation, lodging and per diem as provided in Section 5.
5. Following the Company's aeromedical advisor's review of the results of the examination(s), test(s) and/or evaluation(s), a determination and written notice of same shall be sent to the pilot. The notice shall state the specific grounds for the determination. The determination shall be made in accordance with the following:
 - a. If the Company's aeromedical advisor finds the pilot fit for duty, and the pilot agrees, the pilot shall remain on or return to active flight status without loss of pay.
 - b. If the Company's aeromedical advisor finds the pilot not fit for duty, and the pilot agrees, he shall be placed on sick leave, disability or medical leave of absence, as applicable.
 - c. If the Company's aeromedical advisor finds the pilot fit for duty, and the pilot disagrees, then:
 - i. if the pilot supplies the Company's aeromedical advisor with medical documentation substantiating his disagreement, he shall be placed or remain on sick leave, disability or medical leave of absence, as applicable. He shall remain in that status until his case is resolved as provided in Section 15.D.7. (below).
 - ii. if the pilot does not supply medical documentation supporting his disagreement within 30 days from receipt of the Company's aeromedical advisor's determination, he shall be placed on personal leave of absence. If warranted by extenuating circumstances, the System Chief Pilot shall extend the 30 day period. If the pilot subsequently supplies the required documentation, his status shall be determined pursuant to Section 15.D.5.c.i. (above).
 - d. If the Company's aeromedical advisor finds the pilot not fit for duty and the pilot disagrees, the pilot shall be placed or remain on sick leave, disability or medical leave of absence, as applicable, until the Company's aeromedical advisor determines the pilot to be fit for duty, or his case is resolved as provided in Section 15.D.7. (below).
6. The Company shall give written notice to ALPA that the Company's aeromedical advisor has issued a direction to a pilot under Section 15.D.3 or that the Company's aeromedical advisor has issued a determination to a pilot under Section 15.D.5. Such notice shall occur as close in time to the Company's aeromedical advisor's notice to the pilot as is reasonably practical under the circumstances.

Sec. 15.D. (continued)

7. If the pilot disagrees with the Company's aeromedical advisor, the pilot shall engage, at his expense, a second physician to evaluate his medical condition. Unless otherwise agreed to on a case-by-case basis, the second physician shall be a physician designated as the Association's Aeromedical Advisor or a physician qualified to diagnose and treat the pilot's underlying medical condition. If the pilot fails to provide the second physician's evaluation within 30 days following the Company's aeromedical advisor's determination, the pilot may remain on sick, disability or medical leave or be placed on personal leave of absence, as applicable, until he provides the second physician's evaluation to the Company's aeromedical advisor. If warranted by extenuating circumstances, the System Chief Pilot shall extend the 30 day period.
 - a. If the second physician agrees with the opinion of the Company's aeromedical advisor, the pilot shall return to active flying status or remain or be placed on sick leave, disability or medical leave of absence consistent with the Company's aeromedical advisor's findings.
 - b. If the second physician disagrees with the opinion of the Company's aeromedical advisor, a Medical Review Panel (hereinafter MRP) shall be convened to decide whether the pilot, in their opinion, meets the standards for holding and exercising the privileges of the pilot's medical certificate. Pending the MRP's determination, the pilot shall be placed or remain on sick leave, disability or medical leave of absence, as applicable.
 - i. An MRP shall be composed of the Company's aeromedical advisor, the physician engaged by the pilot as provided Section 15.D.5. (above), and a third physician qualified to determine the medical issue in question. The third physician shall be selected by agreement between the Company's aeromedical advisor and the pilot's physician.
 - ii. As soon as practicable, the MRP shall consult and determine whether the pilot, in their opinion, meets the standards for holding or exercising the privileges of the pilot's medical certificate.
 - (a) Questions regarding the pilot's medical condition shall be resolved based on the MRP's determination. The pilot shall remain on or return to active flight status, sick leave, disability or medical leave of absence consistent with the MRP's determination as applicable.
 - (b) If the MRP rules that a pilot is fit for duty and the pilot still disagrees, the pilot shall be placed on personal leave of absence.
 - (c) If the MRP's determination disagrees with the opinion of the Company's aeromedical advisor, then:
 - (1) the Company shall make adjustments, including retroactive adjustments (e.g., back pay or restoration

Sec. 15.D.7.b.ii.(c)(1) (continued)

of sick leave), if applicable, that are necessary to make the pilot whole consistent with the MRP's determination; and

- (2) the Company shall reimburse the pilot for all reasonable costs and expenses he incurred in connection with the determination of his medical condition pursuant to Section 15.D.7. (this paragraph).

8. Questions regarding the medical condition of a pilot who has applied for or is receiving a benefit(s) pursuant to Section 27 or 28 shall be resolved in accordance with the provisions of the applicable benefit plan(s).

E. Medical Examination Documentation

Upon request, the Company's aeromedical advisor, the pilot and the pilot's physician or a physician associated with the Association's aeromedical office, as applicable, shall be provided a copy of any report or medical record relating to any medical examination, test or evaluation of that pilot conducted pursuant to this Section. However, in cases where the Company's aeromedical advisor believes that direct pilot access to information contained in the medical records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the pilot or the pilot's health, the aeromedical advisor may inform the pilot that access will only be provided to a designated representative of the pilot having specific written consent.

F. Effect on Certain Legal Rights

Nothing in this Section shall be construed to guarantee, deny or limit a pilot's right to FAA, NTSB or judicial appeal procedures, nor shall it preclude the Company from assisting a pilot with medical problems to regain his medical certificate and return to flight status. This assistance may also include directing the pilot to challenge or appeal the results of adverse findings to the Federal Air Surgeon. All costs of any Company directed challenge/appeal shall be paid by the Company.

G. Limitation of Medical Procedures

1. Flight Management shall not require a pilot to submit to a psychological or psychiatric examination. However, flight management may refer a pilot to the Company's aeromedical advisor in accordance with Section 15.D.1. (reasonable basis to question fitness). A pilot may be required to undergo a psychological/psychiatric examination if directed by the Company's aeromedical advisors based on their independent evaluation, in accordance with Section 15. The evaluation conducted by the Company's aeromedical advisors is expected to include contact with the pilot and any other preliminary evaluation that is necessary in order to reach an independent, informed decision as to the need for further testing.
2. Nothing contained in this Section shall be construed to permit the Company to require a pilot to submit to any medical treatment or invasive procedure which is not consistent with reasonable and

Sec. 15.G.2. (continued)

current medical practice or which poses an unreasonable threat to the pilot's health. This paragraph shall not be construed to prohibit testing for drugs, alcohol and, if applicable, other substances pursuant to the provisions of Section 15.C. (above).

- a. If the Company's aeromedical advisor determines that a treatment, procedure or evaluation is appropriate in the circumstances of a case, he shall consult with the pilot's physician or a physician associated with the Association's aeromedical office, as applicable, for the purpose of determining the permissibility of that treatment, procedure or evaluation under the provisions of Section 15.G. (this paragraph). The issue shall be resolved by mutual agreement of those 2 physicians.
- b. If the 2 physicians cannot agree, the matter shall be submitted immediately to a third physician selected by the Company and the Association. The Company, the Association and the pilot shall be bound by the findings of the third physician. The fees and expenses of the third physician shall be shared equally by the Company and the Association or the pilot; provided, however, that if the third physician agrees with the pilot, the Company shall reimburse the pilot for all reasonable costs incurred in connection with this paragraph.

H. Confidentiality of Medical Information

All reports and records of any medical examination, test or evaluation of a pilot pursuant to this Section shall be strictly confidential between the Company's aeromedical advisor and the pilot. Those reports and records shall not be divulged, except in the administration of this Agreement on a "need to know basis" or as required by law, to any other person or entity without the written permission of the pilot. If required by law to divulge, the Company shall provide the pilot notice of such, and upon the request of the pilot, provide the pilot with a copy of such records and reports, unless prohibited by law from doing so. If the final determination of a pilot's medical condition pursuant to this Section is that the pilot is not medically fit for duty, the Company's aeromedical advisor may provide a report regarding the pilot's medical condition to officials in the Benefits Department on a "need to know" basis. Those officials shall receive only as much information as is necessary for them to perform their job functions.

I. General

Nothing in Section 15 shall be construed to limit the Company's authority to act in accordance with Section 19. Disciplinary issues arising out of the application of Section 15 shall be handled in accordance with Sections 19 and 21.

“JX 7”

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August 13, 2013

Via Email
rwtice@fedex.com

Robert Tice, Esq.
Lead Counsel - Labor Relations Law
FedEx Corporation
3620 Hacks Cross Road
Memphis, TN 38125

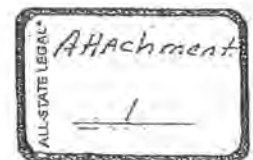
James H. Ferguson, Esq.
General Counsel
FedEx Corporation
3620 Hacks Cross Road
Memphis, TN 38125

Re: Captain Mark Estabrook's Security Meeting

Gentlemen:

This letter follows a meeting between Captain Mark Estabrook, Mr. Ondra, Mr. Tice, and Captain Rob Fisher of Friday, August 9, 2013. According to my understanding, the following facts are operative:

1. In 2002, Captain Estabrook raised a security issue with Federal Express senior executives Bill Logue and Bill Henrikson, the FAA Administrator, and the Airline Pilots' Associations (ALPA) about the wisdom of publishing real time package and aircraft flight tracking data because the terrorists can use this information to set timers on bombs to maximize damage to aircraft and improve collateral targeting. Captain Estabrook did so as the FedEx ALPA Security Committee Chairman during the months that followed September 11, 2001 and thereafter.
2. In 2002, Captain Estabrook predicted that a bomb maker would use flight-tracking data to set the timers on bombs loaded onto FedEx aircraft to maximize the damage to the aircraft and surrounding targets.
3. In 2010, Al Qaeda terrorist and bomb maker Ibrahim al-Asiri used live tracking data to set the timers on bombs loaded onto a Federal Express aircraft and a UPS aircraft.
4. On Sunday, August 4, 2013, Captain Mark Estabrook first learned that Ibrahim al-Asiri used several "dummy" shipments several days prior to the actual deployment of the live bombs, which initiated an email to Federal Express System Chief Pilot William McDonald. In that email, Captain Estabrook requested a phone call with Fred Smith, Chief Executive Officer to express his ideas about improving security at



Robert Tice, Esq.

August 13, 2013

Page 2

the airline. As a Federal Express pilot, Captain Estabrook is an "in-flight security coordinator" functioning within the purview of 49 CFR §1544.101, et seq.

5. At all times relevant to this letter, Federal Express has had in force and effect "if you see something, say something" security program consistent with the directives and promulgations of the Transportation Security Administration and the Department of Homeland Security. In fact, Federal Express is listed as a supporter of security initiatives on the website of the Department of Homeland Security concerning "if you see something, say something."
6. The request of Captain Estabrook for the meeting was not out of the ordinary, since Captain Estabrook, a former military pilot who flew AWACS aircraft flying top secret JCS directed missions in the Persian Gulf and in the North Atlantic, also served on Secretary of Transportation Mineta's ad hoc committee in the weeks following September 11, 2001, and proposed a number of security recommendations including (a) arming airline pilots which later became federal law under the Federal Flight Deck Officer (FFDO) Program, (b) requested an in-flight emergency recall procedure via electronic data link Aircraft Communications and Reporting System (ACRS), which was ultimately approved after Estabrook's meeting with FedEx executive Bill Logue and Bill Henrickson in 2002; and (c) restricting cockpit jumpseat access, among other security enhancements.
7. Notwithstanding Captain Estabrook's history with the company and with government officials toward maintaining aircraft security and safety, on Tuesday, August 6, 2013, Captain Estabrook was shocked to discover that he had been removed from flight status, this having been conveyed to Captain Estabrook by Captain William McDonald, System Chief Pilot, Manager/Director of Flight Operations.
8. Captain Estabrook is concerned that the action taken by Captain McDonald is a violation of federal law meant to invoke fear and intimidation in Captain Estabrook for reporting possible security threats and/or violations of federal law. See 49 USC §42121.
9. Captain Estabrook attended the meeting of Friday, August 9, 2013 with Messrs. Tice, Ondra and Fisher suggesting: (a) the removal of all flight and package tracking data from the internet and a request to Homeland Security that it order the remaining airlines to do so as well; (b) to start up an operations research group composed of mathematicians, statisticians, software engineers and game theorists to develop strategies to inhibit and prevent terrorist attacks directed towards aircraft; and (c) suggested finding out whether Auburn Calloway, a former Federal Express pilot who is in prison for hijacking a Federal Express aircraft and trying to kill three pilots

Robert Tice, Esq.
August 13, 2013
Page 3

during FedEx Flight 705 on April 7, 1994, had converted to Islam and whether he might be feeding operational data to terrorists.

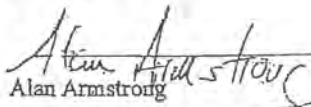
10. At the conclusion of Captain Estabrook's presentation, Mr. Ondra left the meeting. Captain Fisher and Mr. Tice did not ask any security related questions, but Mr. Tice was eager to ask Captain Estabrook whether he was the "Mark" posting disturbing information on a pilot bulletin board, that "Mark" allegedly having had a transient ischemic attack not disclose to his FAA Aeromedical Examiner. Captain Estabrook confirmed that he is not that individual and asked Mr. Tice if he had bothered to check the IP address of that person, to which Mr. Tice gave a negative response.
11. Mr. Tice and Captain McDonald, apparently laboring under the delusion that my client is the "Mark" publishing disturbing messages on an internet pilot bulletin board, had removed by client from flight status prior to the security meeting. After being notified by Captain Fisher at the end of the meeting that he would return Captain Estabrook to flying status, my client was later notified in the same day by Captain Fisher that company Security insisted he remain off of flying status indefinitely, or at least until Captain Estabrook undergoes a psychiatric evaluation.
12. In view of the fact that my client is an in-flight safety coordinator for Federal Express and was acting under the policies of Federal Express consistent with regulations and protocols published by the Transportation and Security Administration (49 CFR §1544.101, et seq.), demand is hereby made for the following:
 - (a) That Mr. Tice and Captain McDonald retract any accusations directed toward my client that my client is the person posting disturbing comments on a pilot bulletin board;¹ and that he has ever suffered any TIA.
 - (b) That Federal Express withdraw any request made by and through Chief Pilot Rob Fisher that my client undergo a psychiatric evaluation; and
 - (c) That Federal Express comply with the representations it has made on the internet that it follows the "if you see something, say something" policy of DHS/TSA and withdraw and abandon any acts of reprisal, intimidation or punishment directed toward Captain Estabrook, an in-flight safety coordinator, for raising legitimate security concerns with his employer.

¹ It would be interesting to find out how many employees Federal Express has with the given name of "Mark."

Robert Tice, Esq.
August 13, 2013
Page 4

I look forward to hearing from you in the near future.

Best regards,


Alan Armstrong

AA/kjw

Cc: Rob Fisher, Fleet Captain – Airbus Aircraft
Todd Ondra, Director of Corporate Security
Captain William McDonald, System Chief Pilot

“CX 6”

Maryanne Miller

From: Rob Fisher
Sent: Wednesday, April 24, 2013 10:17 AM
To: Cindy Sartain
Subject: FW: Cap Mark Estabrook #88775 Flight 1317/11 LRD-MEM
Attachments: F1317Sherrie first conversation.wav; F1317 Estabrook Crook conversation.wav; F1317-2 Sherrie second conversation.wav

Cindy.....Here they are.....rob

From: Mark Crook
Sent: Wednesday, April 10, 2013 11:46 PM
To: William McDonald; Rob Fisher; FODO; Michael Speer
Subject: Cap Mark Estabrook #88775 Flight 1317/11 LRD-MEM

Received a call at 0215Z from the LRD ramp manager informing me that the crew for FDX 1317/11 was not at the ramp and they were due out in 10 minutes. This was the first I had heard of any problem so I immediately called the Captain, Mark Estabrook. Cap Estabrook told me he had coordinated staying at the hotel with the dispatcher Sherrie Hayslett and was not going to operate an aircraft through any line of thunderstorms. I asked if Sherrie and he had agreed to delay the flight. He told me that he was delaying the flight.

I went over and talked with Sherrie. She told me she had no idea the crew was still at the hotel. When the Captain told her they were going to be late, she assumed the Captain meant that the flight was going to be delayed into MEM due to the MEM weather.

At the scheduled arrival time of FDX 1317 (0412Z), 40 aircraft were on the ground in MEM and no holding was in progress in any quadrant by MEM approach control.

At 0317Z a first tier ground stop was announced for MEM. Since LRD is in Houston Center, this included flight 1317. This ground stop was 52 minutes after the scheduled block time for flight 1317 and should have never included them.

I've attached Sherrie's first conversation with Cap Estabrook, my conversation and then Sherrie's second conversation. This Cap accuses me of pilot pushing and ordering him to takeoff during Sherrie's second conversation. At no time did that ever happen in my conversation with Cap Estabrook.

In my 2+ years as a DO, I have never had a Captain take it upon himself to delay a flight without coordinating and coming to an agreement with the dispatcher. Cap Estabrook was directive to Sherrie and told her how it was going to be. Cap Estabrook also never took it upon himself to touch base with the weather department. He became the sole source of weather by looking at the weather plot on intellicast and delayed the flight by that sole source of information.

Over to you guys but this Captain is on his own program in a system that runs by time not much slop.

Cap Mark Crook
ACP/Flight Operations Duty Officer

“CX 7”

Maryanne Miller

From: Rob Fisher
Sent: Wednesday, April 17, 2013 1:20 PM
To: Cindy Sartain
Cc: Robb Tice; Scott Williams; Mitch Matheny; William McDonald
Subject: RE: 19.D. Hearing for Captain Estabrook, 88775

I gave the wrong ID #.....actual ID is: 88775.....Thanks

From: Rob Fisher
Sent: Wednesday, April 17, 2013 1:18 PM
To: Cindy Sartain
Cc: Robb Tice; Scott Williams; Rob Fisher; Mitch Matheny; William McDonald
Subject: 19.D. Hearing for Captain Estabrook, 88775

Hi Cindy,

I just spoke to Bill McDonald and he has directed us to conduct an Investigative Hearing (19.D) for Mark Estabrook, 77885.

The 19.D will be conducted to investigate the facts on why he chose to report to work late for his flight FDX1317/11Apr while laying over in KLRD.

Below are the facts as presented to me by both the GOC Dispatcher and by the on duty D.O.

After looking at Capt. Estabrook's calendar, a good day to hold the Investigation would be on Wednesday, 01May13 due to me being out of town Thursday through Monday (18-22 April)??

Let me know how you want to proceed.

Rob

Trip Recap

Trip 214 MEM 30 10APR13 Rv 01

Shows in 0 days 0:00 hours

Block 405 Pay 6:07

		----- Scheduled -----								----- Actual -----					
R	D	Flight													
R	Flight	H	Date	Org-Dst	Eq	Dprt	Arrv	Blok	Turn	Duty	Dprt	Arrv	Blok	Turn	Duty
	1517		10Apr13	MEM-LRD	30	0912	1121	209	101		0953	1152	159	30	
	STDUTY		10Apr13	LRD-LRD		1222	1252	30	1333	440	1222	1252	30	1333	440
	1317		11Apr13	LRD-MEM	30	0225	0421	156		326	0451	0703	212		608

---- TOTAL SCHEDULED ----						----- TOTAL ACTUAL -----									
Away	Blok	DH	Dty	Min	Trip	Totl	Pay	Away	Blok	DH	Dty	Min	Trip	Totl	Pay
====	====	====	====	====	====	====	====	====	====	====	====	====	====	====	====
2039	405					607		2321	411					619	

	D	Employee								L B
Pos	Asg	V	Number	Pilot	Name					C R
===	===	=	=====	=====	=====	=====	=====	=====	=====	= =
CAP	TRP		88775	ESTABROOK,	MARK					<u>Legalities</u>
F/O	TRP		582928	BURLESON,	RANDY					<u>Legalities</u>

Trip Notes:

Note: crew stood by in lrd pending a/c 812 mx sat 97297 10APR13 1229z

Trip show date & time: 10APR13 0812z End date & time: 11APR13 0451z
 Trip record updated: 11APR13 0703z By: (Trip 214 ver 999)

Shift Note from GOC:

02:31Z: RAMP AGENT CALLED FOR FLT#1317 LRD/MEM AND SAID THAT PILOTS HAD NOT ARRIVED FOR FLT. I CHECKED WITH CREW SCHED WHO CALLED BACK AND SAID THEY WERE AT HOTEL,DUE TO THEY HAD BEEN TOLD TO STAY BY GOCC.(THIS DID NOT HAPPEN). THEY SPOKE TO SHERRI (GOC-DISPATCHER) WHO JUST TOLD THEM THEY WERE GOING TO HAVE WX.

BUT NEVER TOLD THEM TO STAY AT HOTEL. WE HAD TO GET D/O INVOLVED SINCE PILOTS SAID THEY WERE NOT LEAVING THE HOTEL UNTIL WX PASSED.

Email from Duty Officer, Capt. Mark Crook:

“CX 8”

Maryanne Miller

From: Rob Fisher
Sent: Monday, April 29, 2013 4:05 PM
To: Katherine Walker
Cc: alan@alanarmstronglaw.com; Robb Tice; Terry.McTigue@alpa.org; Coy.Briant@alpa.org; Rob Fisher; Mitch Matheny
Subject: RE: Mark Estabrook

Ms. Walker,

I acknowledge receipt of your letter. In accordance with established practice at FedEx, pilots participating in disciplinary processes under Section 19 of the FedEx/ALPA collective bargaining agreement are entitled to representation by ALPA. No outside attorneys are permitted to attend or otherwise participate in those processes. The interview will not be rescheduled. Mr. Estabrook is welcome to bring an ALPA representative to the interview as he was previously informed.

Sincerely,

Rob Fisher

Airbus Fleet Captain
901-494-2905

From: Katherine Walker [<mailto:AAparalegal@comcast.net>]
Sent: Monday, April 29, 2013 3:18 PM
To: Rob Fisher
Cc: alan@alanarmstronglaw.com
Subject: Mark Estabrook
Importance: High

Please see attached letter.

Katherine Walker, Paralegal
Alan Armstrong, Esq.
An AV Rated Law Firm Since 1989
2900 Chamblee Tucker Road
Bldg. 5, Suite 350
Atlanta, GA 30341
Phone: 770-451-0313
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ATLANTA, GEORGIA 30341

April 29, 2013

(770) 451-0813

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alan@alanarmstronglaw.com

www.alanarmstronglaw.com

Via Email and U.S. Mail

Capt. Rob Fisher
Chief Pilot/Regional
Federal Express
3131 Democrat Road
Bldg. C
Memphis, TN 38118-0123

RECEIVED**MAY 06 2013****LEGAL DEPARTMENT**

Re: Capt. Mark Estabrook/888775

Dear Capt. Fisher:

Please enter my name as counsel of record on behalf of Capt. Mark Estabrook. In order to allow Capt. Estabrook to have to have meaningful assistance of counsel and prepare for your interview scheduled for May 1, 2013 at 3:00 p.m., kindly reschedule the interview to a later date. Also, please confirm I may attend the interview. In connection with this request, please provide the undersigned with the following:

1. Any and all recordings, tapes, transcripts or materials reflecting or confirming communications between my client and the Fed Ex Dispatcher (Sherrie Hayslett) on April 10/11, 2013;
2. Any and all recordings, tapes, transcripts or other materials reflecting or confirming communications between my client and Fed Ex Crew Scheduling on April 10/11, 2013;
3. Any and all recordings, tapes, transcripts or other materials reflecting or confirming communications between my client and the Fed Ex Duty Officer (Mark Crook) on April 10/11, 2013;
4. Any and all recordings, tapes, transcripts or other materials reflecting, confirming or relating to the Federal Express flight from Laredo, Texas (KLRD) to Memphis, Tennessee (KMEM) scheduled for April 10/11, 2013 captained by my client; and
5. Any and all recordings, tapes, transcripts or other materials reflecting or concerning communications between the Fed Ex Dispatcher (Sherrie Hayslett), the Duty Officer (Mark Crook), Capt. Mark Estabrook and/or Fed Ex Crew Scheduling concerning the Fed Ex flight from KLRD to KMEM of April 10/11, 2013.

Captain Mark Estabrook
April 29, 2013
Page 2

I am sure that you can appreciate the need for Capt. Estabrook and his counsel to review and consider the contents of these recorded conversations in advance of any interview to afford Capt. Estabrook fundamental fairness.

At my direction, an AIR-21 Complaint has been filed pursuant to 49 U.S.C. §42121 with the U.S. Department of Labor/OSHA, and the Federal Aviation Administration. See Exhibits A and B attached.

Thank you for your assistance in this matter.

Sincerely,



Alan Armstrong

AA/kjw

Cc: Robert Tice, Sr. Counsel
Scott Williams, Sr. Attorney
Cindy Sartain, Sr. Paralegal Specialist, Labor Relations Law
Terry McTigue, ALPA, FedEx MEC, Grievance Committee
Maggie Comes, ALPA, Legal Secretary
Capt. Mark Estabrook

Submission Complete

https://www.osha.gov/pls/osha7/ecomplaintform.submit



U.S. DEPARTMENT OF LABOR

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Thank You!

Your Safety and Health Hazard Notice has been forwarded to the OSHA Federal Area Office listed below. Your complaint may be forwarded to the State of Tennessee, which operates its own OSHA approved State Plan. [Click here](#) for more information on State Plans or if you would like to contact the state directly. If you identified yourself, you will be contacted by OSHA. Please call the OSHA Federal Area Office below if you are not contacted.

Complaint Number: 861872

Tennessee

Nashville Area Office
 51 Century Boulevard Suite 340,
 Nashville, TN 37214
 (615) 232-3803
 (615) 232-3827 FAX

Establishment Name:	FedEx Express
Site Street:	3131 Democrat Rd., Building C
Site City:	Memphis
Site State:	Tennessee
Site Zip:	38118
Management Official:	Captain Rob Fisher
Telephone Number:	901.224.3435
Type of Business:	Express Shipping

Hazard Description:

On April 10, 2013, after coordinating a delay with GOC (Sherrie Hayslett) and speaking to the Fed Ex Duty Officer (Mark Crook) that there was a line of thunderstorms [described in an active SIGMET] between my departure airport Laredo, TX (KLRD) and Memphis, TN (KMEM), the Duty Officer directed me to depart and fly toward KMEM and through the line of thunderstorms. Asserting my pilot in command authority under 14 CFR Sec. 91.3(a) I related: "I am not going to depart until I can plan my arrival for storm passage through Memphis." He then told me he had consulted with our FedEx Weather Department and said they told him the thunderstorm would pass through Memphis in about 30 minutes. He directed me to takeoff and fly to Memphis. I declined. It would be 4-6 hours later before the storm would pass through Memphis. "You are the only one not taking off" he said, and directed me to go sit in the cockpit until we had our departure clearance. Laredo tower held us on the ground for over 2 additional hours due to a weather hold for all Memphis inbound flights as directed by Memphis Air Route Traffic Control. 14 CFR Sec. 91.3(a) provides: "The pilot in command is directly responsible for, and is the final authority as to, the operation of that aircraft." In addition to violating Sec. 91.3(a), such an operation would have violated 14 CFR Sec. 91.13(a) which provides: "No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another." These provisions in Part 91 of the Federal Aviation Regulations specifically apply to Part 121 operations such as those conducted by Federal Express.



Submission Complete

<https://www.osha.gov/pls/osha7/eclaimform.submit>

See 14 CFR Sec. 91.1(a) ["this part prescribes rules governing the operation of aircraft...within the United States."]. These directives are also in violation of FedEx Flight Operations Manual (FOM) procedures 8.17 TURBULENCE, which states, in part, that "Turbulence increases the difficulty of flight operations. In extreme cases it may cause damage to the aircraft. Areas of known severe/extreme turbulence should be avoided. If the Captain determines an area of turbulence to be unsafe, he will detour or delay the flight until conditions improve. All meteorological conditions (e.g., SIGMETS, PIREPS, ATC advisories, etc.) shall be considered prior to releasing a flight to or operating in areas of turbulence." My decision to exercise my pilot in command authority has led to a Section 19.D.1 disciplinary interview Capt. Rob Fisher has declared he intends to convene on May 1, 2013, in Memphis, TN. Despite my requests, I have not been provided with records or recordings of my conversations either with the Duty Officer or the Dispatcher. The GOC dispatcher lied about my consultation with her when she agreed I should stay at the hotel and wait out the storm. My first officer, Randy Burtson, can verify this. The audio tapes will also corroborate my account of events. My conversation with the Duty Officer was an act of intimidation in response to my reporting an FAR violation to my employer as is the receipt of the letter received from my supervisor Rob Fisher notifying me of an interview set for May 1, 2013, under the auspices of Section 19.D.1 of the Collective Bargaining Agreement (CBA) currently in force and effect at Federal Express. There are approximately 4,500 pilots at FedEx Express.

Hazard Location:

The hazardous location is airborne in nature. Every aircrew that may be intimidated by flight management to penetrate severe turbulence and thunderstorms is at risk all over the world.

This condition has previously been brought to the attention of:

* The following government agency: FAA

I am an employee.

My name may be revealed to the employer.

Complainant Name: MARK ESTABROOK

Complainant Telephone Number: 901-230-4933

Complainant Mailing Address:

PO BOX 1890

MANCHACA

Texas

78652

Complainant Email: cargopilot@gmail.com

[Freedom of Information Act](#) | [Privacy & Security Statement](#) | [Disclaimers](#) | [Important Web Site Notices](#) | [International](#) | [Contact Us](#)

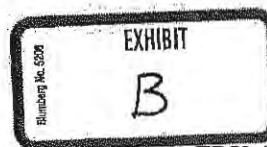
U.S. Department of Labor | Occupational Safety & Health Administration | 200 Constitution Ave., NW, Washington, DC 20210
Telephone: 800-321-OSHA (6742) | TTY: 877-889-5627
www.OSHA.gov

Whistleblower Protection Program - Electronic Complaint Notif...

<http://av-apps.faa.gov/wbpp/wbpp2.htm>

Federal Aviation
Administration

Electronic Complaint Notification



To qualify for the Whistleblower Protection Program (WBPP), you must be or have been an employee of a U.S. air carrier, or a contractor or subcontractor of a U.S. air carrier.

A PERSONAL REMEDY FOR DISCRIMINATION IS ONLY AVAILABLE THROUGH THE U. S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA). **You must file a WBPP complaint with OSHA within 90 DAYS of the discrimination event.** This notification advises the FAA but is not a substitute for filing the required complaint with OSHA.

Has this complaint been filed with OSHA?: Yes No

Required fields are marked with an asterisk (*).

Personal Information

Complainant's Name * : Date:

Address1 * :

Address2:

City * : State * : Zip Code * :

Country * : Province (Non-U.S.): Postal Code:

Phone * : Cell Phone: E-Mail Address * :

Employee's Job * : If other, please specify:

Employer Information

Company Type * :

Company Name * : Certificate Number:

Address1 * :

Address2:

City * : State * : Zip Code * :

Phone * : Extension:

Alleged Safety Violation(s)

Safety Violation Category * : If other, please specify:

Whistleblower Protection Program - Electronic Complaint Notif...

<http://av-apps.faa.gov/wbpp/wbpp2.htm>

“CX 9”

U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Federal Center
61 Forsyth Street, SW Room 6T50
Atlanta, Georgia 30303
(678) 237-0400
(678) 237-0447 FAX



May 2, 2013

Alan Armstrong
Attorney at Law
2900 Chamblee-Tucker Road
Building 5, Suite 350
Atlanta, GA 30341

Re: FedEx Express/Estabrook/Case No. 4-1760-13-080

Dear Mr. Armstrong:

The request to withdraw the complaint filed by Mark Estabrook (Complainant) in the above-captioned matter has been approved. With this withdrawal, the case in this matter is closed.

If, at any time in the future, you have any questions or require any information regarding employee rights and employer responsibilities under the whistleblower protection statutes administered by OSHA, please feel free to contact this office.

Sincerely,

Matthew E. Robinson
Regional Supervisory Investigator



“CX 10”

Ex 5

Mark Estabrook v. Federal Express Corporation
Defendant's Log of Privileged Documents
 (Revised 2/17/2015)



DOCUMENT NO.	DATE	DOCUMENT DESCRIPTION	PRIVILEGE
1.	4/23/13	Emails with advice from counsel from paralegal C. Sartain to managers R. Fisher and M. Matheny regarding draft letter to Estabrook	Attorney/Client Communication, Attorney Work Product - Prepared at the direction of or under the supervision of FedEx attorneys
2.	4/26/13	Email from paralegal C. Sartain to attorney R. Tice regarding recordings related to flight 1317 LRD-MEM	Attorney Work Product - Internal Legal Dept. Communication
3.	4/29/13	Emails with advice of counsel between manager R. Fisher, attorney R. Tice, and paralegal C. Sartain regarding 4/29/13 letter from attorney A. Armstrong	Attorney/Client Communication, Attorney Work Product - Internal Legal Dept. Communications
4.	4/29/13	Email from attorney R. Tice to paralegal C. Sartain and attorney S. Williams regarding manager R. Fisher letter to attorney A. Armstrong	Attorney Work Product - Internal Legal Dept. Communication
5.	4/29/13	Emails between director W. McDonald and attorney R. Tice regarding manager R. Fisher letter to attorney A. Armstrong	Attorney/Client Communication - Internal Legal Dept. Communications
6.	5/7/13	Email from paralegal J. Harrison to paralegal C. Sartain regarding attached Estabrook OSHA complaint with handwriting	Attorney Work Product - Internal Legal Department Communication
7.	5/7/13	Email from paralegal C. Sartain to managers M. Matheny and R. Fisher regarding Estabrook OSHA complaint	Attorney/Client Communication - Prepared at the direction of or under the supervision of FedEx attorneys
8.	8/4/13	Emails between VP and attorney J. Maxwell, VP J. Bowman, director W. McDonald, and attorney R. Tice regarding Estabrook 8/4/13 email	Attorney Work Product, Attorney/Client Communication - Internal Legal Department Communications
9.	8/5/13	Email with advice of counsel from attorney R. Tice to director W. McDonald and cc to manager R. Fisher, VP Jim Bowman, VP and attorney J. Maxwell, and director T. Ondra regarding R. Fisher	Attorney/Client Communication, Attorney Work Product - Internal Legal Department Communication

Mark Estabrook v. Federal Express Corporation
Defendant's Log of Privileged Documents
(Revised 2/17/2015)

		meeting with Estabrook	
10.	8/5/13	Email from attorney R. Tice to manager R. Fisher and director W. McDonald with cc to VP J. Bowman, VP and attorney J. Maxwell, and director T. Ondra regarding R. Tice communication with ALPA	Attorney/Client Communication, Attorney Work Product - Internal Legal Department Communication
11.	8/4-5/13	Emails with advice of counsel between attorney R. Tice, VP and attorney J. Maxwell, VP J. Bowman, director W. McDonald, director T. Ondra, and managers R. Fisher and T. Arnett and cc to VP T. Harris regarding Estabrook 8/4/13 email	Attorney/Client Communication, Attorney Work Product - Internal Legal Department Communications
12.	8/7/13	Email from G. Hubbard to R. Tice regarding message from director W. McDonald	Attorney/Client Communication - Internal Legal Dept. Communication
13.	8/7/13	Emails with advice of counsel between W. McDonald, VP J. Bowman, director T. Ondra, VP/attorney J. Maxwell, attorney R. Tice, and SVP Paul Cassel and cc to paralegal C. Sartain regarding Estabrook 8/4/13 email	Attorney/Client Communication, Attorney Work Product - Internal Legal Dept. Communications
14.	8/9/13	Email from attorney R. Tice to VP and attorney J. Maxwell regarding Estabrook case update	Attorney Work Product - Internal Legal Dept. Communication
15.	8/9/13	Emails with advice from counsel between attorney R. Tice and manager R. Fisher and cc to director W. McDonald regarding Estabrook decision	Attorney/Client Communication, Attorney Work Product - Internal Legal Department Communications
16.	8/12/13	Emails from attorney R. Tice to VP and attorney J. Maxwell and paralegal C. Sartain regarding Estabrook case update	Attorney Work Product - Internal Legal Dept. Communications
17.	8/12/13	Emails between director T. Ondra, attorney R. Tice, attorney S. Williams, and paralegal C. Sartain regarding Estabrook and Trafton case updates	Attorney/Client Communications, Privacy of Non-Party - Internal Legal Department Communications

Mark Estabrook v. Federal Express Corporation
Defendant's Log of Privileged Documents
(Revised 2/17/2015)

18.	8/12/13	Email from paralegal C. Sartain to attorney R. Tice and manager M. Matheny regarding Estabrook 15.D letter with draft attached	Attorney Work Product, Attorney/Client Communication - Internal Legal Department Communications
19.	8/13/13	Emails with advice of counsel between attorney R. Tice, VP and attorney J. Maxwell, SVP and attorney R. O'Keefe, attorney Phil Tadlock, directors T. Ondra and W. McDonald, manager R. Fisher with cc's to paralegal C. Sartain and VP J. Bowman regarding attorney A. Armstrong 8/13/13 letter (attached)	Attorney Work Product, Attorney/Client Communication - Internal Legal Department Communications
20.	8/13/13	Email from attorney R. Tice to assistant E. Garvey with a cc to VP and attorney J. Maxwell, attorney P. Tadlock, and paralegal C. Sartain regarding Estabrook case summary	Attorney Work Product - Internal Legal Dept. Communication
21.	8/13-14/13	Emails with advice of counsel between attorney R. Tice, manager R. Fisher, directors T. Ondra and W. McDonald, and paralegal C. Sartain with cc's to VP J. Bowman, VP and attorney J. Maxwell, attorney P. Tadlock regarding Estabrook 15.D letter with draft attached	Attorney/Client Communication, Attorney Work Product - Internal Legal Department Communications
22.	8/14/13	Email from attorney P. Tadlock to attorney R. Tice regarding response to A. Armstrong 8/13/13 letter with draft attached	Attorney Work Product - Internal Legal Dept. Communication
23.	8/15/13	Emails with advice of counsel between manager R. Fisher, attorney R. Tice, paralegal C. Sartain, and director W. McDonald regarding Estabrook 15.D letter	Attorney/Client Communication, Attorney Work Product - Internal Legal Department Communications
24.	8/16/13	Emails between attorney R. Tice and SVP and attorney R. O'Keefe regarding response to A. Armstrong 8/9/13 letter (attached)	Attorney Work Product - Internal Legal Dept. Communications
25.	8/16/13	Emails between attorney R. Tice and VP and attorney J. Maxwell with a cc to attorney P. Tadlock	Attorney Work Product - Internal Legal Dept. Communications

Mark Estabrook v. Federal Express Corporation
Defendant's Log of Privileged Documents
(Revised 2/17/2015)

		regarding response to A. Armstrong 8/9/13 letter	
26.	8/16/13	Emails with advice of counsel between attorney R. Tice and manager R. Fisher and a cc to attorney Phil Tadlock and paralegal C. Sartain regarding Harvey Watt's request for a written statement	Attorney/Client Communication, Attorney Work Product - Internal Legal Department Communications
27.	8/16/13	Emails between director W. McDonald and attorney R. Tice regarding response to attorney A. Armstrong 8/9/13 letter	Attorney/Client Communication - Internal Legal Department Communications
28.	8/20/13	Emails between assistant B. Harrison and SVP and attorney R. O'Keefe regarding attorney letter received	Attorney Work Product - Internal Legal Dept. Communications - Internal Legal Department Communications
29.	8/20/13	Emails between attorney R. Tice, VP and attorney J. Maxwell, SVP and attorney R. O'Keefe, attorneys S. Williams and P. Tadlock regarding attorney A. Armstrong 8/20/13 letter	Attorney Work Product - Internal Legal Dept. Communications
30.	8/22/13	Email from attorney R. Tice to attorney P. Tadlock with a cc to VP J. Bowman, VP and attorney J. Maxwell, directors W. McDonald and T. Ondra regarding 8/22/13 letters to J. Bowman, Dr. T. Bettes of Harvey Watt, and R. Fisher (attached)	Attorney/Client Communication, Attorney Work Product - Internal Legal Department Communication
31.	8/22/13	Emails between manager S. Voye, attorney R. Tice, Chris Johnson of Harvey Watt with a cc to C. Sartain regarding Hanson 15.D and Estabrook 15.D	Attorney/Client Communication, Privacy of Non-Party - Internal Legal Department Communications
32.	8/22/13	Email from attorney R. Tice to manager R. Fisher and cc to attorney P. Tadlock regarding attorney A. Armstrong 8/20/13 letter (attached)	Attorney/Client Communication, Attorney Work Product - Internal Legal Department Communication
33.	8/23/13	Emails between attorneys R. Tice and P. Tadlock regarding Tice response to attorney A. Armstrong 8/20/13 letter (draft attached)	Attorney Work Product - Internal Legal Dept. Communications
34.	8/23/13	Email from attorney R. Tice to VP	Attorney/Client

Mark Estabrook v. Federal Express Corporation
Defendant's Log of Privileged Documents
(Revised 2/17/2015)

		J. Bowman, director W. McDonald, manager R. Fisher with cc to attorney P. Tadlock, paralegal C. Sartain, and director T. Ondra regarding Estabrook case update	Communication, Attorney Work Product - Internal Legal Department Communication
35.	8/23/13	Email from attorney P. Tadlock to attorney R. Tice regarding draft response letter to attorney A. Armstrong (attached)	Attorney Work Product - Internal Legal Dept. Communication
36.	8/23-26/13	Emails between attorney R. Tice and SVP and attorney R. O'Keefe, SVP P. Cassel, VP and attorney J. Maxwell, VP J. Bowman, and attorney P. Tadlock regarding Tice 8/23/13 letter (attached)	Attorney/Client Communications - Internal Legal Department Communications
37.	8/26/13	Email between assistant B. Harrison and SVP and attorney R. O'Keefe and VP and attorney J. Maxwell and attorney R. Tice regarding attorney A. Armstrong 8/20/13 letter (attached)	Attorney Work Product - Internal Legal Dept. Communication
38.	8/26-27/13	Emails between VP J. Bowman and attorney R. Tice with cc to directors W. McDonald and J. Pearson; managers R. Fisher, N. Coplas, and A. Antonian; attorney S. Williams, paralegals M. Miller and C. Sartain regarding Estabrook grievance letters (attached)	Attorney Client Communication, Attorney Work Product - Internal Legal Department Communications
39.	8/27-28/13	Emails between VP and attorney J. Maxwell and attorneys R. Tice and P. Tadlock regarding attorney A. Armstrong 8/27/13 letters	Attorney Work Product - Internal Legal Dept. Communications
40.	8/28/13	Emails between attorney R. Tice and paralegal M. Miller regarding Estabrook grievance	Attorney Work Product - Internal Legal Dept. Communications
41.	8/28/13	Emails between assistant B. Harrison, SVP and attorney R. O'Keefe, and attorney R. Tice regarding attorney A. Armstrong letter of 8/20/13	Attorney Work Product - Internal Legal Dept. Communications
42.	8/28/13	Email from attorney R. Tice to attorney P. Tadlock and paralegal C. Sartain regarding 8/28/13 letter from attorney A. Armstrong (attached)	Attorney Work Product - Internal Legal Dept. Communication
43.	8/28/13	Email from director W. McDonald	Attorney/Client

Mark Estabrook v. Federal Express Corporation
Defendant's Log of Privileged Documents
(Revised 2/17/2015)

		to attorney R. Tice regarding Estabrook 15.D	Communication - Internal Legal Department Communication
44.	9/18-19/14	Emails between manager R. Fisher and attorney R. Tice with cc to VP J. Bowman, director W. McDonald, attorney P. Tadlock, and paralegal M. Miller regarding Estabrook case update	Attorney/Client Communication, Attorney Work Product - Internal Legal Department Communications

“CX 11”

Todd Ondra

From: Rob Fisher
Sent: Monday, August 05, 2013 2:58 PM
To: Todd Ondra
Cc: Rob Fisher; Mitch Matheny
Subject: FW: Fred Smith

Hi Todd,

Hope things are going well for you.....I'm writing you to check your availability for a meeting with Mark Estabrook. If you could give me some days and times that you would be available over the next week, I'll then coordinate with Estabrook and arrange a day that works for you and I.

Thanks for your time,

Rob

From: William McDonald
Sent: Monday, August 05, 2013 2:12 PM
To: Mark Estabrook
Cc: Rob Fisher; Todd Ondra; Robb Tice; Jim Bowman
Subject: FW: Fred Smith

Mark,

I have read your email and have some concerns about the issue you raised. I would like for you to meet with your Fleet Captain, Robb Fisher, as well as the Director of Corporate Security, Todd Ondra. I will have Rob contact you to arrange this meeting. Until that time I have directed that you be removed from flight status, with pay (NOQ).

I hope that in this way we will be able to resolve your concerns.

Thanks for your patience,

Bill

Captain William McDonald
System Chief Pilot
Managing Director/Flight Operations

Office: 901.224.5525
Mobile: 901.326.4175
wwmcdonald@fedex.com

From: Cargo Pilot [<mailto:carcopilot@gmail.com>]
Sent: Sunday, August 04, 2013 08:00 AM
To: William McDonald
Subject: Fred Smith

Bill,

I need to talk to Fred. It has nothing to do with Flight Ops or you. It deals with something related to 9-11. I did my best to protect the company and reported as much as I could through Bill Henrickson when I was the Security Chairman at ALPA. Ask Fred to call me on my cell but realize I turn it off when I sleep. I am about to close my eyes and call it a day.

Mark Estabrook
C 901-230-4933
H 512-772-1605

“CX 12”

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November 1, 2010

Earlier Flight May Have Been Dry Run for Plotters

By SCOTT SHANE and ROBERT F. WORTH

WASHINGTON — American intelligence officials in September intercepted several packages containing books, papers, CDs and other household items shipped to Chicago from Yemen and considered the possibility that the parcels might be a test run for a terrorist attack, two officials said Monday night.

Now the intelligence officials believe that the shipments, whose hour-by-hour locations could be tracked by the sender on the shippers' Web sites, may have been used to plan the route and timing for two printer cartridges packed with explosives that were sent from Yemen and intercepted in Britain and Dubai on Friday.

In September, after American counterterrorism agencies received information linking the packages to Al Qaeda in the Arabian Peninsula, the terror network's branch in Yemen, intelligence officers stopped the shipments in transit and searched them, said the officials, who would discuss the operation only on the condition of anonymity. They found no explosives, and the packages were permitted to continue to what appeared to be "random addresses" with no connection to the terrorist group in Chicago.

"At the time, people obviously took notice and — knowing of the terrorist group's interest in aviation — considered the possibility that AQAP might be exploring the logistics of the cargo system," one of the officials said, referring to Al Qaeda in the Arabian Peninsula.

The apparent test run might have permitted the plotters to estimate when cargo planes carrying the doctored toner cartridges would be over Chicago or another

city. That would conceivably enable them to set timers on the two devices to set off explosions where they would cause the greatest damage.

The September shipments were first reported by ABC News on Monday night, which also noted that Inspire, the English-language magazine of Al Qaeda in the Arabian Peninsula, recently published a picture of the Chicago skyline.

One of the officials said that when the American intelligence agents received a tip from Saudi intelligence officials last week that bombs might be on cargo flights to Chicago from Yemen, analysts “recalled the incident and factored it in to our government’s very prompt response.”

“Both events reflect solid intelligence work,” the official said.

On Monday, Germany, France and Britain said they had banned cargo shipments from Yemen, following a similar move by the United States. Britain prohibited passengers from carrying printer cartridges aboard flights, and Germany halted passenger flights from Yemen as well. Many countries have stepped up cargo screening, but no additional bombs have been found.

After the recovery of the unexploded printer cartridges in Dubai and Britain on Friday, Yemeni and American intelligence officials have stepped up the hunt for Ibrahim Hassan al-Asiri, 28, a Saudi who is believed to be the top technical expert of Al Qaeda in the Arabian Peninsula. They believe he designed the underwear explosives that failed to detonate aboard a Detroit-bound airliner last Dec. 25, as well as the body-cavity bomb that killed his younger brother, Abdullah al-Asiri, in a failed attempt last year to assassinate the top Saudi counterterrorism official, Prince Mohammed bin Nayef.

In a related development, a Yemeni official in Washington said late Monday night that prosecutors in Yemen intend to charge the American-born cleric Anwar al-Awlaki later this week with “the crime of promoting violence and the killing of foreigners.” The official, who asked not to be named, said the case would likely be sent to a specialized criminal court in Sana, the capital.

No evidence has been made public linking Mr. Awlaki to the printer cartridge bombs, but intelligence officials believe he played a role in the failed airliner bombing last December, and he has publicly called for more attacks on the United

States. Early this year, he became the first American citizen to be placed on the Central Intelligence Agency's list of terrorists approved for targeted killing.

On Monday, information about the latest failed plot continued to emerge. An American official said that the addresses on the packages were outdated addresses for Jewish institutions in Chicago. But in place of the names of the institutions, the packages bore the names of historical figures from the Crusades and the Spanish Inquisition, the official said. The addresses are one reason that investigators now believe the plan may have been to blow up the planes, since there were no longer synagogues at the Chicago locations.

Explosives experts with the Federal Bureau of Investigation have been sent to London and Dubai to inspect the printer bombs, and technicians planned to "reverse-engineer" the bombs to understand their construction and purpose, Janet Napolitano, the homeland security secretary, told National Public Radio. The Yemeni president, Ali Abdullah Saleh, said Sunday that he would keep up pressure on Al Qaeda, which he said had killed 70 members of the Yemeni Army and security forces during the past four weeks.

American counterterrorism officials, meanwhile, said they were taking a new look at the crash of a United Parcel Service cargo plane in Dubai on Sept. 3 in light of the explosives plot, which used both U.P.S. and FedEx. An investigation of the crash, which involved an onboard fire and killed the two pilots, found no evidence of an explosion.

New details about the two explosive packages were disclosed by security officials in several countries, who discussed the continuing investigation on condition of anonymity. The explosive powder, pentaerythritol tetranitrate, or PETN, was found inside toner cartridges that were themselves inside HP LaserJet P2055 printers, according to officials from Germany and the United Arab Emirates.

German security officials also offered new details about the two bombs, one of which was on a plane that made a stop in Cologne. They said that bomb, which was found at the East Midlands Airport near Nottingham, England, contained 400 grams, or about 14 ounces, of PETN, one of the most powerful explosives known. The one found in Dubai contained 300 grams of PETN, the officials said.

Neal Langerman, an expert on explosives at Advanced Chemical Safety, a

consulting firm in San Diego, said 14 ounces of PETN is the equivalent of five pounds of TNT. He said that a one-pound stick of TNT would level a house.

Both bombs contained circuit boards from cellphones, but the phone parts appeared to be used as timers, because the so-called SIM cards necessary to receive calls were missing, American officials said. Their construction appeared to support the conclusion, announced Sunday by John O. Brennan, the White House counterterrorism adviser, that the bombs were designed to blow up aboard the aircraft.

At least one of the packages was initially carried out of Yemen on two Qatar Airways passenger flights, and it was unclear whether they were intended to take down those passenger jets or the U.P.S. and FedEx cargo planes scheduled later to carry them to the United States.

An official familiar with the investigation said that both packages bore the name of a Yemeni student, Hanan al-Samawi, as the sender. Yemeni officials arrested Ms. Samawi but released her after determining that the packages were dropped off at the U.P.S. and FedEx offices in Sana, the Yemeni capital, not by Ms. Samawi but by another woman using her identity.

At the core of the shipping plot, American officials believe, was Mr. Asiri, the suspected Qaeda bomb maker. Saudi news accounts say he is the son of a Saudi military man and grew up in a religious family in the Saudi capital, Riyadh; studied chemistry at King Saud University, and later joined a militant cell hoping to fight the Americans in Iraq.

But he does not appear to have fought in either Iraq or Afghanistan. He appears to have gotten his training after moving to Yemen around 2005.

Scott Shane reported from Washington, and Robert F. Worth from Beirut, Lebanon. Reporting was contributed by Michael Slackman from Berlin; John F. Burns from London; Charlie Savage, Matthew L. Wald and Mark Mazzetti from Washington; and Joseph Berger from New York.

“CX 14”

FEDEX PILOTS ASSOCIATION

1129 Kirby Parkway, Suite 202 • Memphis, TN 38120
(901) 732-8743 / 1-800-372-8339
Fax (901) 732-0007 / 1-800-312-8811
e-mail: fedexa@fedexpilots.org
http://www.fedexpilots.org

VIA FACSIMILE & FEDEX TRACKING #7901 6400 6444

September 20, 2001

Capt. Bruce Cheever
Federal Express Corporation
Building C
3131 Democrat Road
Memphis, TN 38118

Re: Public package tracking

Dear Bruce,

During the last 24-hours it has been brought to our attention that package tracking information, a staple in FedEx customer service, may be a source of intelligence gathering for terrorists. As you know, the FedEx website allows customers to track their package by simply inputting an airbill number into the system or asking customer service agents on the telephone and at walk-up counters to provide the exact location of their package.

Although our company has prided itself on providing as much information as possible to its customers, that service should be reevaluated in light of the events of September 11, 2001.

It goes without saying that the biggest threat to our airline operation is the bomb threat. Therefore, we are asking FedEx management to temporarily suspend that portion of our package tracking software that deals with the flight segment.

In addition, we have already suggested to Captain Duane Woerth and the DOT Flight Standards and Certification task force that FAA flight tracking data no longer be distributed to private sector contractors who rebroadcast that real-time data on the internet. We would like your support through your government relations on this issue, as it is another troublesome source of flight tracking data that should no longer be permitted in the public arena.

These solutions can be done in short order, and cost very little to implement and increases the safety of our flight crewmembers.

Thank you for your time and attention in this matter and I look forward to working with you further on the numerous security issues that affect our pilots.

Sincerely,



Capt. David Webb
President

cc: Norman Mineta, Secretary of Transportation
Jane Garvey, FAA Administrator
Keith Mears, Vice Chairman FPA Security Committee

“CX 15”

FEDEX PILOTS ASSOCIATION

1609 Kirby Parkway, Suite 202 • Memphis, TN 38120
(901) 752-8749/1-888-372-4339
Fax (901) 752-9097/1-888-542-8831
e-mail: fedexpa@fedexpilot.org
<http://www.fedexpilot.org>

October 18, 2001

VIA FACSIMILE AND FEDEX AIRBILL #792682995755

Capt. Jack Lewis
Federal Express Corporation
3131 Democrat Road, Building C
Memphis, TN 38118

Re: FPA Security Committee Concerns

Dear Jack,

The Security Committee wishes to thank you for arranging the meeting between FPA and your representative on Tuesday; we are pleased to report that progress is being made towards implementing a Security Feedback Report (SFR) that will be useful in identifying and addressing the security concerns of our crewforce. FPA hopes that this progress continues and that we get this system up and running at the earliest possible opportunity. However, FedEx management has yet to address other security concerns that our crewmembers and the FPA Security Committee have previously voiced and identified.

There appears to be a vast difference between FPA and FedEx concerning the urgency of addressing these issues. Developing and implementing procedures and policies which address security issues in a way that the pilots can support is complex and difficult. We have asked to be included in that process so that we can assist you and expedite the formation and implementation of security policies in the post-September 11 attack environment. You stated on Friday that you wanted us to be included in the formation of a standardized security program that would benefit everyone concerned; however, we have not received written responses to any of our previous queries. Attached to this letter are samples of the concerns that we and our members have identified as serious issues. There are many more issues that need to be resolved.

As you confirmed in our October 12 meeting, FedEx flight operations are conducted under FAA Security Directive Part 108. Under Part 108, the PIC is the "Senior Security Coordinator." As such, he has a valid need to know, and he should be familiar with the security plans and directives in place. When will we see the plan? The Security Committee is ready to assist in the dissemination of the relevant parts of that plan to the pilots.

ME 882

We agree that inclusion of FPA in a standardized security program is the best way to ensure the safe and orderly conduct of our flight operations. We need to meet with you regularly to achieve that goal. Our crewforce has expressed frustration at what they perceive as a lack of action in management; they are growing impatient for results. We implore you not to let this perception become a reality. Our goal should be to remedy these problems internally and in a timely manner. We would appreciate your written response to the attached questions as soon as possible. Further delay in responding to these issues will create an environment of mistrust.

As always, you can contact me at any time, day or night. We hope that we can move forward on these critical issues. In closing, I want to compliment you on a story we just received from CNN regarding your application to the FAA to bypass normal design requirements so that you can quickly modify and strengthen our cockpit doors. I only wish we had participated in that design process and didn't have to hear about it on CNN.

Sincerely,



Capt. Mark S. Estabrook
FPA Security Committee

cc: Capt. David Webb, FPA President
Darrell Green, FPA Legal Counsel
Capt. David Harvell, Regional Chief Pilot

ME 883

Attachment to October 18, 2001 Letter to Capt. Jack Lewis

1. What is management's position on our pilots being certified to carry weapons should the law permit it?
2. How fast can we be supplied with and receive training on the use of restraint devices, such as "flexi-cuffs," in the event we need to restrain a hijacker?
3. What is management doing to get restricted-access technology (e.g., IDs with electronic data chips, retinal scanning access, thumbprints) for all personnel who access not only the cockpit, jumpseats, and passenger seats, but the AOA as well? What is the timeline?
4. What are management's proposals for relocating/securing the crash axe so that the pilots have immediate access, but jumpseaters do not?
5. Why is jumpseat administration still scheduling non-pilot jumpseaters in the cockpit seats?
6. What levels of background investigations are being completed on non-pilot jumpseaters and passengers? What company is conducting those background investigations? Are they receiving input from the FBI, CIA, and INS in addition to a normal criminal check?
7. On what authority does management schedule non-pilot jumpseaters on the aircraft? If you are relying on FAA guidance or directives, please provide a photocopy of the FAA authority to schedule non-pilot jumpseaters.
8. Assuming that management is lawfully scheduling non-pilots on our cockpit jumpseats and cabin passenger seats, will management require a minimum period of employment, such as five years, prior to extending those privileges to company employees?
9. When will corporate security begin escorting animal handlers on all flights?
10. What steps have been taken in screening cargo at the point of origin (i.e., customer service counters, couriers, and outlying ramp stations)?
11. What specific policies and procedures referenced above deal with:
 - a. Open package procedures at point of origin
 - b. Bomb wipe test
 - c. Bomb sniff test
 - d. Bomb particle test
 - e. Bomb x-ray
12. What is being done to ensure that FedEx security personnel at each AOA entry point are properly screened and qualified? Do any have criminal records? Are any employed under work visas?
13. Are all contract employees (i.e., caterers, mechanics, and anyone else who pierces aircraft security on regular basis) receiving background investigations prior to their receiving access to the AOA?
14. What levels of background checks (e.g., Interpol, CIA, the State Department, INS, FBI) are being conducted for all foreign employees?

15. When will management remove flight tracking data from public access, such as customer service telephone assistance, websites, and all other sources?
16. When will management standardize flight-planning procedures to avoid areas of conflict around the globe, and when will those procedures be given to FPA? Will management facilitate the meeting of FPA Security Committee members with GOCC, so that we can coordinate flight planning around areas of concern?
17. What is being done to ensure restricted access to AOA by properly qualified and screened security personnel? When will management search all ramp employees to the same degree that pilot jumpseaters are currently being searched? When will management verify and crosscheck the identification of all non-pilot employees who access the AOA?
18. What are the design specifications of the "bar mechanism" that management has selected to secure the cockpit door? When can we inspect it? When will management begin installing these devices fleet-wide? When will management finish installing these devices? Assuming that the doors are all modified and closed, how does management expect pilots to defend themselves against attack when they are using the restroom or preparing meals?
19. What is management doing to improve the bomb blast protection of our aircraft and cargo cans? Can we expect to be active participants in establishing the design and selection criteria for these materials? What is the timeline for improving our bomb blast protection?
20. Will onboard military security personnel escort us during CRAF flights?
21. When can the pilots expect to receive permission to carry personal utility tools and knives, considering the fact that they have access to a deadly crash axe in the cockpit?
22. When will we standardize, improve, and disseminate procedures for emergency communications to and from the pilots during pre-flight and flight operations? Why are some crews not being informed of bomb threats, considering that the PIC is the Senior Security Coordinator and that not advising the PIC violates Part 108? When will crews begin receiving critical system-wide threat announcements via ACARS and radio communications? Do you intend to include FPA in the revision of current notification procedures?
23. In the event that our pilots are exposed to biochemical agents, what procedures are in place domestically and internationally to ensure that pilots are immediately notified of such exposure and receive immediate and effective medical treatment, as well as evacuation from foreign countries? Is management conducting research regarding the threat of airborne biochemical agents in a pressurized aircraft? Do our aircraft have the filtration capability to trap these agents? When will management begin a training program addressing the biochemical risks mentioned above?
24. What procedures are in place to ensure that all of the USPS mail we carry is carefully screened for both biochemical agents and bombs? When will all USPS mail be packaged in sealed, air-tight plastic bags within shipping containers prior to delivery, to minimize the possible spread of biochemical agents in our pressurized aircraft?

“CX 16”

William P. Henrikson
Vice President
Corporate Security
Worldwide

Delivery Code 7097
3810 Hackle Cross Road
Building A, 1st Floor
Memphis, TN 38126

Telephone 901.434.3861
Fax 901.434.3864
Email wohenrikson@fedex.com



VIA FAX #901/752-9097

February 26, 2002

Captain Mark Estabrook
FPA Security Committee Chairman
FedEx Pilots Association
1669 Kirby Parkway, Suite 202
Memphis, Tennessee 38120

Re: Security Plans for Resumption of Employee & Offline Jumpseating

Dear Captain Estabrook:

As I think Todd and I have indicated to you, the jumpseat plan for employees is not complete at this time. However, we appreciate your offer to help us plug any security breach we may have overlooked.

Regarding XTec and the Universal Access Smart Card, just last week a Company rep attended a detailed briefing provided by XTec officials. Additionally, I have forwarded the material you gave me to the Company people who are developing the technical support required for the pilot and jumpseat check-in. We want to ensure that the XTec system is adaptable to the photo I.D. system that we plan to utilize or if not, perhaps we can structure our system to be compatible the XTec system.

By copy of this letter I will ask Todd to contact you to see if we need to postpone tomorrow's meeting until:

- (a) the jumpseat plan is further along, or
- (b) the technical questions about XTec can be answered.

Sincerely,

FEDEX EXPRESS

A handwritten signature in cursive script that reads "Bill".

William P. Henrikson
Vice President
Corporate Security
Worldwide

/sam

cc: Todd Ondra

“CX 17”

William J. Logue
Senior Vice President
Air-Ground & Freight Services (AGFS)

Delivery Code 7043
3610 Hacks Cross Road
Building A, Suite 3110
Memphis, TN 38125

Telephone 901.434.5210
Fax 901.434.5205
Email wjlogue@fedex.com



Express **VIA FedEx Express OVERNIGHT LETTER**

April 10, 2002

Captain David Webb
President
FedEx Pilots Association
1669 Kirby Parkway
Suite 202
Memphis, TN 38120

SUBJECT: Jumpseat/Security Issues

Dear Captain Webb:

At our meeting on Tuesday, March 26, 2002, you suggested that we meet with FPA's subject matter experts about the security issues attendant to the reinstatement of jumpseats to persons other than FedEx Pilots. Based on that suggestion, yesterday, we met with your representatives (specifically Captains Hap Carpenter, Bob Chimenti, Mark Estabrook, and Dave Wells. First Officer Ted Duell and Mr. Darrell Green), to discuss those issues.

Thank you for making these individuals available for this discussion. As stated at our first meeting, we believe our Security Program can benefit from FPA's input into the process and from having some open communications between the Company and the FPA regarding this topic.

As a case in point, out of yesterday's meeting, I believe we reached an understanding of how luggage will be handled in terms of searching and placement on the aircraft. As of our March 26th meeting, our intention was to put all bags into the belly of the aircraft, except for some small carry-on items like laptops and purses. During today's discussion, we reached the understanding that both pilots' bags and jumpseaters' bags would be placed behind the cargo net, as in the past, rather than in the belly compartment. To accomplish this, all bags will have to be screened using the following process. All jumpseaters' bags (whether pilots or non-pilots) will be hand-searched when they check in for their jumpseat. When an operating pilot checks in at a facility that has x-ray equipment, ordinarily, his bags will be screened by x-ray only. If an operating pilot checks in at a facility that does not have x-ray equipment, his bags will be hand searched, just like jumpseaters. This process is designed to ensure that the bags that go behind the cargo net are safe from a security standpoint.

SUBJECT: Jumpseat/Security Issues

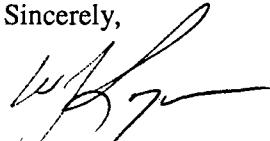
April 10, 2002

Page 2

In addition to our discussions on that item, Captain Chimenti provided us with a memorandum from the FPA advocating the inclusion of nine elements in our Security Plan. We will study each proposed element expeditiously. We understood from today's meeting that if we have questions about the items the FPA proposed, we should direct them to Captain Estabrook. After we take a good look at each item, I suggest that we reconvene the group of subject matter experts for further discussion regarding long-term items, and to have whatever discussions are necessary before finalizing the plan to reinstate business jumpseats. I will contact your office on Monday to let you know our progress on the issues we are studying and to propose a date to meet again with your representatives.

Thank you again for your cooperation.

Sincerely,



William J. Logue
Senior Vice President – AGFS

WJL:clh.170939

cc: See attached list

cc:

Bill Henrikson

Dennis Kenny

Todd Ondra

Mike Higley

Steve Carkeet

John Maxwell

Jim Dunham

Ed Bradley

Captain Hap Carpenter

Captain Bob Chimenti

Captain Mark Estabrook

Captain Dave Wells

First Officer Ted Duell

Darrell Green

“CX 18”

901.492-5205 fax
pac@fedex.com

From: Rob Fisher
Sent: Monday, August 05, 2013 3:38 PM
To: PAC (Pilot Administration Center)
Cc: William McDonald; Robb Tice; Cindy Sartain
Subject: Mark Estabrook,

PAC,

Please place Mark Estabrook, 88775, on NOQ UFN.

Thanks,

Rob

“CX 19”

and all facts, documents, and things which it does not presently recall but may recall at some time in the future.

RESPONSES TO INTERROGATORIES

~~INTERROGATORY NO. 7:~~ State the reasons why the Complainant was placed on NOQ status on or about August 5, 2013.

RESPONSE TO INTERROGATORY NO. 7: Complainant was placed on NOQ status on or about August 5, 2013 because he had been referred for examination under Section 15.D. of the collective bargaining agreement between Respondent and the Air Line Pilots Association.

SUPPLEMENTAL RESPONSE: This Supplement Responses supersedes Respondent's original response. Complainant was placed on Administrative NOQ status on or about August 5, 2013 to facilitate the scheduling of a meeting he requested. The effect of the placement on Administrative NOQ status was to clear his work schedule and prevent the scheduling of conflicting activities. Pursuant to Fed. R. Civ. P. 33(d), additional information responsive to this interrogatory may be obtained from documents previously produced, bates numbered FDX 4-000021, 23, 49, 72, 90-91, 415, 417, 419-421, 448, 456 and 507-508. A meeting was conducted on or about August 9, 2013. Following that meeting, Todd Ondra questioned whether Complainant was fit to fly based upon his observations of Complainant during that meeting. Based on Ondra's concerns, FedEx exercised its rights under Section 15.D. of the Collective Bargaining Agreement and referred Complainant to the Company's aeromedical advisor for evaluation. Pending the results of the aeromedical advisor's evaluation, Complainant was placed on Company Aeromedical Advisor ("CAMA") NOQ status. Pursuant to Fed. R. Civ. P. 33(d), additional information responsive to this interrogatory may be obtained from Ondra's meeting notes, which were previously produced at Bates Nos. FDX4-000060-64.

Respectfully submitted,

Daniel Riederer

P. Daniel Riederer
Federal Express Corporation
3620 Hacks Cross Road, Building B
Memphis, Tennessee 38125
Telephone: (901) 434-8556
Facsimile: (901) 434-9279
daniel.riederer@fedex.com

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2014, a copy of the foregoing Respondent Federal Express Corporation's Supplemental Answers to Complainant's First Set of Interrogatories was served upon the following via Federal Express overnight letter, postage prepaid:

Lee Seham, Esq.
Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, suite 1204
White Plains, NY 10601
Telephone: (914) 997-1346
Facsimile: (914) 997-7125
Email: lseham@ssmplaw.com

Daniel Riederer

Counsel for Respondent

1132530

VERIFICATION

MaryAnne Miller, being of full age, certifies and states that she is authorized to sign the foregoing Respondent Federal Express Corporation's Supplemental Answer to Complainant's First Set of Interrogatories and that she has read and knows the contents thereof, and that the Responses, subject to inadvertent or undiscovered errors, are based upon and, therefore, limited by, the records and information still in existence, presently recollected, and thus far discovered in the course of the preparation of these Responses; that consequently, Respondent reserves the right to amend the Responses if it appears at any time that omissions or errors have been made therein, or that more accurate information is available; that subject to the limitations set forth therein, said Responses are true to the best of her knowledge, information, and belief.

I hereby certify under penalty of perjury that the foregoing statement is true.



MaryAnne Miller
Senior Paralegal Specialist, Labor Relations

“CX 20”

Maryanne Miller

From: Robb Tice
Sent: Wednesday, August 07, 2013 4:32 PM
To: 'McTigue, Terry, FDXMEC'; 'Sago, Latasha, FDXMEC'
Cc: Rob Fisher; Cindy Sartain
Subject: RE: Estabrook -- Meeting Date

Terry and Latasha –

To my surprise, Rob Fisher advises that Estabrook told him he doesn't want ALPA representation at the meeting. Let me know if you wish to discuss with me.

Robb

From: Robb Tice
Sent: Wednesday, August 07, 2013 4:28 PM
To: 'McTigue, Terry, FDXMEC'
Cc: Rob Fisher; Cindy Sartain
Subject: RE: Estabrook -- Meeting Date

OK. Copying Fisher & Sartain for their info in scheduling. I'll give Latasha a call.

From: McTigue, Terry, FDXMEC [<mailto:Terry.McTigue@alpa.org>]
Sent: Wednesday, August 07, 2013 4:18 PM
To: Robb Tice
Subject: RE: Estabrook -- Meeting Date

I will have to check with Latasha as she will be handling.

From: Robb Tice [<mailto:rwttice@fedex.com>]
Sent: Wednesday, August 7, 2013 4:17 PM
To: McTigue, Terry, FDXMEC
Subject: FW: Estabrook -- Meeting Date

Would Friday morning work for you or someone in your office? Rob Fisher is giving your name and phone numbers to Estabrook if he wants ALPA at the meeting. We can fly Estabrook here on Thursday and get him a hotel room Thursday night if needed.

From: Robb Tice
Sent: Wednesday, August 07, 2013 3:54 PM
To: McTigue, Terry, FDXMEC
Subject: Estabrook

Terry – FYI – Rob Fisher is trying to set up a meeting with Estabrook. They have missed each other's calls. Now looking at Fri, Mon or Tue. Not sure if any of those days will work or not. Attendees for the Company will be Rob Fisher, me and Todd Ondra of Corporate Security.

Robb

“CX 21”



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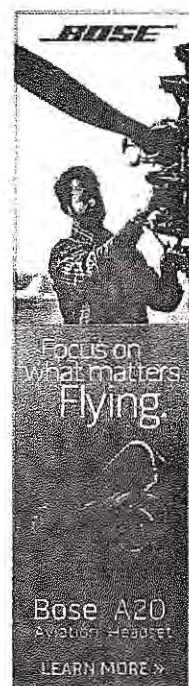
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07-27-2013, 08:58 PM #1 (permalink)

The Walnut
Gets Weekends Off

Joined APC: Feb 2010
Position: Socket Drawer
Posts: 948

Sell your soul for \$20 per day..... FDX


Wear the sleep watch for \$20 per day, and give them data to manipulate into more optimization of our schedules. The line forms to the right. 😊



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07-27-2013, 09:02 PM #2 (permalink)

The Walrus
Gets Weekends Off



Joined APC: Feb 2010
Position: Socket Drawer
Posts: 948


Just another hotdog cookout. Anybody ever wander into a bar and your buddy says "What a sausagefest"? This is one of those.

Runaway! Runaway!

Quote

07-27-2013, 09:46 PM #3 (permalink)

ptarmigan
Gets Weekends Off



Joined APC: Aug 2006
Posts: 435

The data is the data. It can't be manipulated, we have full access to the raw data. It can only help us, that is, unless you think that we are NOT as tired as everyone thinks...

Quote

07-27-2013, 10:21 PM #4 (permalink)

Pakagecheck
trip trading freak

Joined APC: Oct 2010
Position: MD-11
Posts: 377

Quote:

Originally Posted by **ptarmigan**
The data is the data. It can't be manipulated, we have full access to the raw data. It can only help us, that is, unless you think that we are NOT as tired as everyone thinks...


You are correct. The data is the data. However, controlling the variables, can be manipulated. Would you say that the 4 different Indy night hub turns and a few AFW turns is representative of our "standard" night hub turn? IMHO is does not. Take your own little poll and ask some that do week on/week off night hub turns and I think you will find the overwhelming majority will tell you they would prefer to do Indy turns than Memphis turns. Pretty sure it's not because the popcorn is better there or that the movies or newer. Just saying it might not be a true representation of our night hub turn sleep habits.

Last edited by Pakagecheck; 07-27-2013 at 10:31 PM.

Quote

07-27-2013, 11:03 PM #5 (permalink)

42GO
Gets Weekends Off



Joined APC: Jul 2006
Position: MD-11 Capt
Posts: 311

Quote:

Originally Posted by **The Walrus**
Just another hotdog cookout. Anybody ever wander into a bar and your buddy says "What a sausagefest"? This is one of those.

Runaway! Runaway!


Then I would advise you NOT to volunteer....let those that want the REAL trips represented....See that was easy, let others do the work.

"Some minds are like concrete thoroughly mixed up and permanently set."

Quote

07-28-2013, 04:15 AM #6 (permalink)

DLax85
Gets Weekends Off



Joined APC: Jul 2007
Position: Gear Monkey
Posts: 1,860

Quote:

Originally Posted by **ptarmigan**
The data is the data. It can't be manipulated, we have full access to the raw data. It can only help us, that is, unless you think that we are NOT as tired as everyone thinks...

Were you a Math/statistics major?

The data can't be manipulated...???

Even if you truly believe that, do you at least believe it can be interpreted differently by two different experts ?

It is very common for statisticians to dismiss / eliminate certain data point outliers when analyzing the data and building their models/conclusions.

That process, at times, can be very subjective.

Most of us have backgrounds in "deterministic math", while the real world is far more "probabilistic" and "fuzzy", especially when dealing with biological models.

I don't believe any set of data or study would be definitive, or that the conclusions would necessarily apply across our entire cohort of pilots.

There is always the question of how sensitive the model/conclusions are across the differences in the larger population, not just the survey data.

Much in the way we have learned to build aircraft strength at factors above expected real world stress levels, we need to build work/rest schedules which don't push the edges of the fatigue envelope.

A true safety culture/system looks at man, machine, mission, median & management --- all objectively & equally.

Last edited by DLax85; 07-28-2013 at 04:49 AM.

Quote

07-28-2013, 04:34 AM

#7 (permalink)

FLMD11CAPT
Ok, No more sleeping Dog



Joined APC: Feb 2007
Position: MD-11, Capt
Posts: 810

L

The real problem, as I see it is we still do not have access to the NASA sleep study OR the Enders report. Why not? Does anyone really think that if the data obtained in this current "effort" indicates a strong probability of rampant and chronic fatigue that those results as well will not end up in the same locked box as the two aforementioned studies? I for one do not.

Mr. President, The only thing I want you to redistribute is my work ethic.....

Quote

07-28-2013, 04:56 AM

#8 (permalink)

flextotaline
Gets Weekends Off



Joined APC: Jul 2007
Position: Left Seat, Moving
Target
Posts: 184

Quote:

Originally Posted by **FLMD11CAPT**

The real problem, as I see it is we still do not have access to the NASA sleep study OR the Enders report. Why not? Does anyone really think that if the data obtained in this current "effort" indicates a strong probability of rampant and chronic fatigue that those results as well will not end up in the same locked box as the two aforementioned studies? I for one do not.

.....+1

This is nothing more than another way for those bombastic idiots at the VP level to say, "Look, we're trying, see? Now sign up for PBS and we can make this ALL better". If they were serious about this, it would have happened way before section six openers.....

derka derka derka, Muhammad Jihad....

Quote

07-28-2013, 05:02 AM

#9 (permalink)

MaydayMark
Gets Weekends Off



Joined APC: Apr 2005
Position: MD-11 Captain
Posts: 3,007

Quote:

Originally Posted by **ptarmigan**

The data is the data. It can't be manipulated, we have full access to the raw data. It can only help us, that is, unless you think that we are NOT as tired as everyone thinks...

You're right ... the data is the data, but we were NEVER given the results of the NASA Sleep Study or the Enders Report. I have to assume they had VERY BAD things to say.

I've had military, civilian and airline safety training and I have NEVER heard of the results of safety surveys not being released to the crew force.

Accordingly, I will NEVER volunteer to participate in another FDX sponsored "Safety Survey."

Edit: PS ... One of my doctors thinks I may have had a seizure due to being chronically tired (for which FedEx management opened a disciplinary hearing, so much for doing your best job for the company!*)


I used to be indecisive. Now I'm not so sure.

Last edited by MaydayMark; 07-28-2013 at 05:27 AM.

[Quote](#)

07-28-2013, 06:36 AM #10 (permalink)

ptarmigan
Gets Weekends Off



Joined APC: Aug 2006
Posts: 435

The NASA report was, eventually, released. The MEC should have it if you want it. However, the issue of that and the Ender's report are red herrings here.

What people are forgetting is that we, ALPA, have equal say in how the data is collected and equal say in all the variables that are considered. The sleep scientists have a reputation that would be wrecked if either tried to play games, and both, ours and the Company's, need to reach consensus on all the variables.

The initial study is not going to show any major results, but was chosen to narrow the scope to make sure that the whole process for collecting the data works. The data will be a small part of the whole package, just a piece of it representing one type of trip, so in addition to testing the processes, it is not wasted data.

We, ALPA, found hard to get real testing to happen to prove these issues. This study is the beginning of that.

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07-28-2013, 07:27 AM #11 (permalink)

MaydayMark
Gets Weekends Off



Joined APC: Apr 2006
Position: MD-11 Captain
Posts: 3,007

Quote:

Originally Posted by [ptarmigan](#)
The NASA report was, eventually, released. The MEC should have it if you want it. However, the issue of that and the Ender's report are red herrings here.

I've seen Dr. Rosekind's (NASA's) sleep study. I contacted NASA and asked for their presentation as part of my Naval Reserve squadron's Safety Stand Down. I personally picked up Dr. Rosekind at the airport and had the opportunity to speak with him at length. The portion that included the FedEx pilots is a major portion of their presentation.

The NASA Sleep Study report was only released after a FDX ALPA member requested it via an (FBI?) Freedom of Information Act request (after all, it was paid for with tax dollars). Management seemingly fought hard to keep the results from us. Quite frankly I don't like that.

While I understand that the nature of our system form leads to excessive night flying by default, I'm disappointed by managements long held philosophy that optimized schedules are better for them.

On a different but related subject ... PBS will make is problem worse!*


I used to be indecisive. Now I'm not so sure.

[Quote](#)

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07-28-2013, 07:47 AM #12 (permalink)

MaydayMark
Gets Weekends Off



Joined APC: Apr 2006
Position: MD-11 Captain

\$20/day?

NASA says participation is worth \$189/day ...

[NASA Offers \\$5000 a Month For You to Lie in Bed - Wired Science](#)

I used to be indecisive. Now I'm not so sure.

Posts: 3,007 Quote


07-28-2013, 08:14 AM #13 (permalink)

Patches
Line Holder

I feel asleep reading this...NASA Sleep study Summary

<http://fdx.alpa.org/Portals/26/docs/...%20Summary.pdf>

Lighten up...its just an opinion



Joined APC: Jan 2013
Posts: 33 Quote

07-28-2013, 10:45 AM #14 (permalink)

Full pull
Line Holder


In the end it comes down to trust. I don't trust he company, management, who ever it is that actually pulls the strings. They never have given me a reason to trust them but have given me plenty to not trust them. They need to earn my trust first!

Joined APC: Feb 2011
Position: Bus driver
Posts: 69 Quote

07-28-2013, 12:55 PM #15 (permalink)

HIFLYR
Gets Weekends Off

Quote:

Originally Posted by Full pull 

In the end it comes down to trust. I don't trust he company, management, who ever it is that actually pulls the strings. They never have given me a reason to trust them but have given me plenty to not trust them. They need to earn my trust first!

Amen Brother !!


Joined APC: Sep 2007
Position: Airbus Captain
Posts: 545 Quote

07-28-2013, 08:42 PM #16 (permalink)

HKFlyr
Gets Weekends Off

No trust...but we got just culture...

Quote:

Originally Posted by Full pull 

In the end it comes down to trust. I don't trust he company, management, who ever it is that actually pulls the strings. They never have given me a reason to trust them but have given me plenty to not trust them. They need to earn my trust first!

I'm just happy we got just culture, oh yeah, and they working hard to communicate better. At least they are communicating...not much from ALPA...

Still have 4 fired in HK
Mechanics can book positive space jumpseats in the cockpit over the phone without PIC permission in hand...(pilots can't...)
Bid line spread dispartites are huge
No MOU or LOA on protections regarding issues on the IPAD
Quality Checks...oops, it is like LOSA...but treat like a line check...***?

(and nothing but crickets chirping from Kirby and Poplar...I understand why they are close to a decertification of ALPA at Delta...money better spent in house than on funding a bunch of clowns in DC that can't spell CARGO)

Air Wisconson has Known Crew Member...but we can't afford it?

But I don't blame the company for trying to save money...(even when they are sending LCA's from Memphis to line check guys in HK)

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Would love to see some leadership from our dues money to show that we are trying to fix some of these issues, confront them head on, instead of the canned Top 10 Q and A from our chairman on "unity for dummies". (how about a real negotiations update, with real details, instead of vague talking points)

But hey, \$20.00 a day - knock yourself out - (do you get a free hot dog?)

Joined APC: Apr 2012
Posts: 134 Quote

07-28-2013, 09:20 PM #17 (permalink)

The Walrus
Gets Weekends Off



Joined APC: Feb 2010
Position: Socket Drawer
Posts: 948

HKFlyr

I understand from a friend who had your Fleet Capt RF on the jumpseat from mem that he is coming out to try and sell PBS to the hkg guys. He was talking it up to the crew on the js.

[Quote](#)

07-29-2013, 12:53 AM #18 (permalink)

HKFlyr
Gets Weekends Off

Joined APC: Apr 2012
Posts: 134

Quote:

Originally Posted by **The Walrus**
HKFlyr

I understand from a friend who had your Fleet Capt RF on the jumpseat from mem that he is coming out to try and sell PBS to the hkg guys. He was talking it up to the crew on the js.


There was a pilot meeting yesterday, last minute. Didn't go, had shirts to iron.

Figured it was a brown bag direct dealing we love you meeting...

[Quote](#)

07-29-2013, 12:54 AM #19 (permalink)

Knots2you
Gets Weekends Off




Joined APC: Dec 2007
Posts: 109

The first thing that we were taught in college Statistics class was: "Figures don't lie, but liars figure"

[Quote](#)

07-29-2013, 05:16 AM #20 (permalink)

Gunter
Gets Weekends Off



Joined APC: Aug 2006
Posts: 3,396

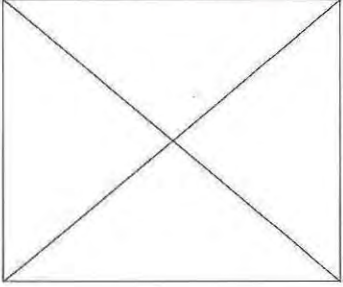
Quote:

Originally Posted by **The Walrus**
HKFlyr

I understand from a friend who had your Fleet Capt RF on the jumpseat from mem that he is coming out to try and sell PBS to the hkg guys. He was talking it up to the crew on the js.

Talk about selling your soul. Can you tell him to sit in the back if he does that?

[Quote](#)



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07-29-2013, 06:31 AM

HIFLYR
Gets Weekends Off



Joined APC: Sep 2007
Position: Airbus Captain
Posts: 545

Quote:

Originally Posted by **HKFlyr**

I'm just happy we got just culture, oh yeah, and they working hard to communicate better. At least they are communicating...not much from ALPA...

*Still have 4 fired in HK
 Mechanics can book positive space jumpseats in the cockpit over the phone without PIC permission in hand...(pilots can't...)
 Bid line spread disparities are huge
 No MOU or LOA on protections regarding issues on the IPAD
 Quality Checks...oops, it is like LOSA...but treat like a line check...***?*

(and nothing but crickets chirping from Kirby and Poplar...I understand why they are close to a decertification of ALPA at Delta...money better spent in house than on funding a bunch of clowns in DC that can't spell CARGO)

Air Wisconsin has Known Crew Member...but we can't afford it?

But I don't blame the company for trying to save money...(even when they are sending LCA's from Memphis to line check guys in HK)

Not much trust anywhere, I'm afraid.

Would love to see some leadership from our dues money to show that we are trying to fix some of these issues, confront them head on, instead of the canned Top 10 Q and A from our chairman on "unity for dummies". (how about a real negotiations update, with real details, instead of vague talking points)

But hey, \$20.00 a day - knock yourself out - (do you get a free hot dog?)

I know you feel disgust towards the union because you bid HGG but they have sent info out on at least two of your gripes. They have gone to FAA national regarding the jumpseat issue. I have asked you once and I will again what would you have them do, as they do not control how jumpseats are scheduled. The Chairman sent out a email on 7/12 stating they were grieving the Fleet Check Airman issue. The Ipad is issued by the company not sure what they could do to stop it. I do think they should have grieved the training we received, especially the splitting of two required LMS modules so they would not have to pay us. Yes unfornantly we still have 4 fired not sure what you want the union to do. They gave them advice and

only one took it and she is back. I would think it is now a civil matter but since I am not a lawyer I cannot say that is so.

Quote

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07-29-2013, 07:20 AM

#22 (permalink)

Dakota

Gets Weekends Off

Joined APC: Mar 2007

Posts: 154

Excellent

Quote:

Originally Posted by **HIFLYR**
I know you feel disgust towards the union because you bid HKG but they have sent info out on at least two of your gripes.
They have gone to FAA national regarding the jumpseat issue. I have asked you once and I will again what would you have them do, as they do not control how jumpseats are scheduled.
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Yes unfournatly we still have 4 fired not sure what you want the union to do. They gave them advice and only one took it and she is back. I would think it is now a civil matter but since I am not a lawyer I cannot say that is so.

Excellent non-emotional, factual response. How refreshing.

Quote

07-29-2013, 07:51 AM

#23 (permalink)

HKFlyr

Gets Weekends Off

Joined APC: Apr 2012

Posts: 134

Another view of the kingdom...

Quote:

Originally Posted by **HIFLYR**
I know you feel disgust towards the union because you bid HKG but they have sent info out on at least two of your gripes.
They have gone to FAA national regarding the jumpseat issue. I have asked you once and I will again what would you have them do, as they do not control how jumpseats are scheduled.
The Chairman sent out a email on 7/12 stating they were grieving the Fleet Check Airman issue. The Ipad is issued by the company not sure what they could do to stop it. I do think they should have grieved the training we received, especially the splitting of two required LMS modules so they would not have to pay us.
Yes unfournatly we still have 4 fired not sure what you want the union to do. They gave them advice and only one took it and she is back. I would think it is now a civil matter but since I am not a lawyer I cannot say that is so.

You obviously have a different view and opinion.

My opinion and view. (Last I knew, I am allowed to have one)

I told you what I would have them do. Observe, Orient, Decide, Act. In a timely matter. They haven't.

I didn't say disgust. You did. Frustrated at the very least.

Bidding HK

Yes I did, and I knew the LOA well. After living under it, found it to not be worth the paper it is written on...not enforceable, vague language, grey language - but typical of our CBA. And more important things for the other 98% of the crew force to worry about...
We are only 130 pilots.

Jumpseats.

We didn't need to go to FAA in DC. Already ruled upon in the recent past. Enforced at several other properties in recent history. But ask your JUMPSEAT chair, don't take my word on it. The MEC leaders knew this was coming and didn't act till well after the FCIF was out on it. Too little too late. SS knew it was coming and did the ostrich act, his head in sand and didn't respond on it for a long time...but yeah, waiting on an answer in Washington.

I'm sticking with the FAR on that one. Easy decision. Mech needs to be on duty, and need for him on the flight deck. FARs don't address personal. On duty, off duty.

iPads, ...IPA had a clue how to proceed...we sure didn't. Training pay, hell, just decent training would have been nice. Agree with your points on that.

FCA's.

Issues that are being grieved now were brought up early by many, and again ignored, until we the have problems we have now with the issue.

The HK issue might have received more attention earlier, but the issue was blown off way in the beginning as two of our three MEC officers were trying to get elected to national office. After they didn't, MEC was wrapped up selling 3% pay raise number one and putting HK issues in the shadows, instead on the front burner. And then pay raise two, 767 LOA. Gave up all leverage. We were told we had no leverage. I beg to differ.

Rumors of more investigations abound. The issue is still being discussed as to what the rules are between

the union and the company.

Talk to more HK people about the hearings and advice the accused got. I would have gotten outside counsel also. It will be civil. And I think they will win. (After years in court I'm sure.)

I'm not disgusted, but I am dissatisfied, disappointed, and I expect more. Our leaders react after the fact, slowly, and just seems to plod along.

My 2 cents worth. Time to make Fred some money and enjoy that Lovely CAN catering.

Quote

07-29-2013, 07:57 AM

#24 (permalink)

HKFlyr

Gets Weekends Off

Joined APC: Apr 2012
Posts: 134

Facts, but not all the facts...more to the story.

Quote

07-30-2013, 06:04 PM

#25 (permalink)

FLMD11CAPT

Ok, No more sleeping Dog



Joined APC: Feb 2007
Position: MD-11, Capt
Posts: 810

Quote:

Originally Posted by **ptarmigan**

The NASA report was, eventually, released. The MEC should have it if you want it. However, the issue of that and the Ender's report are red herrings here.

What people are forgetting is that we, ALPA, have equal say in how the data is collected and equal say in all the variables that are considered. The sleep scientists have a reputation that would be wrecked if either tried to play games, and both, ours and the Company's, need to reach consensus on all the variables.

The initial study is not going to show any major results, but was chosen to narrow the scope to make sure that the whole process for collecting the data works. The data will be a small part of the whole package, just a piece of it representing one type of trip, so in addition to testing the processes, it is not wasted data.

We, ALPA, found hard to get real testing to happen to prove these issues. This study is the beginning of that.

OK, I don't buy the "Red Herring" argument, but for now I will buy into the fact that this is a fully, mutually participatory program that was hard won and precedence setting. So with that being said how many "small" proof of concept slices will we see before we tackle the section of such beasts as the MEM-BLR and back in 8 days with 2 day to night swaps and 12 hrs of circadian change?

Mr. President, The only thing I want you to redistribute is my work ethic.....

Quote

07-30-2013, 06:40 PM

#26 (permalink)

The Walrus

Gets Weekends Off



Joined APC: Feb 2010
Position: Socket Drawer
Posts: 948

I do not trust the Company to use the data to better my safety. If the union thought that it was in my best interest to participate, I would have imagined that they would have at least mentioned it in the Positive Rate today. Sometimes what is not said is really the message.

Quote

07-30-2013, 07:19 PM

#27 (permalink)

ptarmigan

Gets Weekends Off



Joined APC: Aug 2006
Posts: 435

Quote:

Originally Posted by **The Walrus**

I do not trust the Company to use the data to better my safety. If the union thought that it was in my best interest to participate, I would have imagined that they would have at least mentioned it in the Positive Rate today. Sometimes what is not said is really the message.

Why put it there when nobody reads any of it? Maybe you should look at them? I am not sure how much more clear they could be.

In May, the SIG put out "The SIG will be participating in the upcoming Fatigue Risk Management Group (FRMG) meeting at the beginning of May. Expect a report from either or both ALPA committees from that meeting."

In the June 11 Positive Rate, you can find the following: "Fatigue is the best pillow." You may recognize this statement as a famous quote attributed to Benjamin Franklin.

Data collection is finally coming - line pilots hub-turning through IND in the July bid month will provide initial data to ALPA and FedEx as we begin collecting fatigue data. This study seeks to understand how pilots sleep on all types of FedEx Operations, with this first group of crews forming the "baseline" of domestic night hub turn operations. Pilots who would like to volunteer for this must be awarded a line that turns a minimum of three consecutive nights through IND, with less than a 4-hour turn. Please read the MOU here.

Then in the July SIG notes: "Some IND hub-turning A-300 Crews will be participating in Fatigue Data Collection via wrist-worn actigraphs in July. ALPA FRMC and company members of the FRMG will begin the data collection efforts to measure the alertness of pilots flying IND night hub turns.

In the future, this data will help the company design safer pairings and the PSIT design safer lines. We want to thank you in advance for your voluntary participation in this first of many studies."

Quote

07-30-2013, 09:55 PM

#28 (permalink)

HKFlyr

Gets Weekends Off

Joined APC: Apr 2012
Posts: 134

Not happening...

Quote:

Originally Posted by **ptarmigan**
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You actually believe they will design safer lines? They have had the data and recommendations for years...and no changes...

New data won't change anything...otherwise we would be living under the new flight time rules.

Delay and stall. That is all this is. And try get us to negotiate something away in return for safer schedules.

It is all about money. Flight time, duty time, lithium batteries.

Safety costs money.

Quote

07-31-2013, 05:59 AM

#29 (permalink)

Gunter

Gets Weekends Off



Joined APC: Aug 2006
Posts: 3,396

Quote:

Originally Posted by **HKFlyr**

My opinion and view. (Last I knew, I am allowed to have one)

Rumors of more investigations abound. The issue is still being discussed as to what the rules are between the union and the company.

Talk to more HK people about the hearings and advice the accused got. I would have gotten outside counsel also. It will be civil. And I think they will win. (After years in court I'm sure.)

Yeah, you're allowed to have an opinion. You're also allowed to have a persecution complex if that is your preference.

Word of advice, consider yourself investigation worthy anytime you go to work. The housing allowance wickets are too much of a temptation for the company to make money by denying it. You'll never see me bid HKG.

Outside counsel didn't do so well. The union advice was to take the deal and keep your job. You're going to have to define "winning" a civil suit.

More than likely, if they get a decent settlement, part of it will be you can't come back to work ever. If the settlement exceeds their probable lifetime earnings and retirement it might be considered a win. With their youth I doubt this will be the case. The stress of working on that project would never be worth it to me.

[Quote](#)

07-31-2013, 06:22 AM

#30 (permalink)

ptarmigan
Gets Weekends Off



Joined APC: Aug 2006
Posts: 435

Quote:

Originally Posted by **HKFlyr**
You actually believe they will design safer lines? They have had the data and recommendations for years...and no changes...

New data won't change anything...otherwise we would be living under the new flight time rules.

Delay and stall. That is all this is. And try get us to negotiate something away in return for safer schedules.

It is all about money. Flight time, duty time, lithium batteries.

Safety costs money.

Did you miss the safety brief a couple of years ago? This is mandated by HR5900. The company did not want this. The terms of how we conduct it was negotiated, that is all. They are required, by law, to use the data and adjust schedules accordingly. Go read the bill yourself!

[Quote](#)



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07-31-2013, 06:48 AM #31 (permalink)

MX727
 Gets Weekends Off

IT'S OK IF YOU DISAGREE WITH ME
(I CAN'T FORCE YOU TO BE SMART)

Joined APC: Aug 2006
 Posts: 1,174

Here is the full report:
<http://www.ipilot.org/norm/NASAFed...tionsStudy.pdf>

Be careful what you wish for. Scroll down to the Recommendations and pay particular attention to bullet number two:

2. The night off represents an important opportunity for recuperation. It breaks the pattern of accumulating sleep debt, with its accumulating impairment of alertness and performance. Its position in the sequence of night duties needs to be related to the rate of sleep loss imposed by the schedules. On the Destination-Layover pattern, for example, it would clearly have been unwise to add a fourth consecutive night of flying when a third of the crew members had already lost more than 8hr of sleep after three nights of flying. In contrast, on the Out-and-Back pattern, only a quarter of crew members had lost more than 8 hr sleep after 5 nights of flying. The use of naps as a fatigue countermeasure in overnight cargo operations deserves further attention (39)

The recommendations from the study are no more than three consecutive nights of flying for hub-turns that layover at the out station. On the other hand, five consecutive nights of AM O&B where deemed less onerous. Had those recommendations been implemented, week-on, week-off schedules would've been eliminated. FPA and ALPA never wanted to pursue those recommendations. You can't complain about the NASA sleep study being ignored without knowing what is in there.

"I suggest you don't assume anyone has a plan" -- Tractor Bob

Last edited by MX727; 07-31-2013 at 06:58 AM.

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07-31-2013, 07:20 AM #32 (permalink)

HKFlyr
 Gets Weekends Off

Live in a glass house

Quote:

Joined APC: Apr 2012
Posts: 134

Originally Posted by **Gunter**

Yeah, you're allowed to have an opinion. You're also allowed to have a persecution complex if that is your preference.

No persecution complex here, just stating the obvious.

Word of advice, consider yourself investigation worthy anytime you go to work. The housing allowance wickets are too much of a temptation for the company to make money by denying it. You'll never see me bid HKG.

I live here, wife, kids, dogs and fish. I live live in a glass house and follow the rules as we know them. I also work that way. We all have seen how living on the margins can help you become a target.

Outside counsel didn't do so well. The union advice was to take the deal and keep your job. You're going to have to define "winning" a civil suit.

More than likely, if they get a decent settlement, part of it will be you can't come back to work ever. If the settlement exceeds their probable lifetime earnings and retirement it might be considered a win. With their youth I doubt this will be the case. The stress of working on that project would never be worth it to me.

I think if you talk to the individuals it is clear why they didn't take the deal offered...it wasn't a "deal". Conditions in it were ridiculous. and all the while, we negotiated away any leverage to fix it quickly for 3%.

The one that settled is the only one the company really wanted back. The company dug a hole on that one and filled it as best they could. Heard from a management source it wasn't a good deal. Yeah, job back, along with I'm sure some shackles.


The others will spend years recouping their losses. I agree, no job ever, but it will be a large out of court, non disclosure deal. How much are your principals worth, is what it comes down to? That at least in the case on the one involved I know very well. (I hope that is something you and I don't have to ever experience)

Last edited by HKFlyr; 07-31-2013 at 07:55 AM.

[Quote](#)

07-31-2013, 07:30 AM #33 (permalink)

Gunter
Gets Weekends Off



Joined APC: Aug 2006
Posts: 3,396

Quote:

Originally Posted by **HKFlyr**

Heard from a management source it wasn't a good deal.

Talking to a management type may have satisfied you in some fashion but I think the conversation was worthless. I don't trust their answers, especially on things that aren't supposed to be disclosed.

[Quote](#)

07-31-2013, 07:34 AM #34 (permalink)

HKFlyr
Gets Weekends Off

Joined APC: Apr 2012
Posts: 134

(b) Fatigue Risk Management Plan-

(1) SUBMISSION OF FATIGUE RISK MANAGEMENT PLAN BY PART 121 AIR CARRIERS- Not later than 90 days after the date of enactment of this Act, each part 121 air carrier shall submit to the Administrator for review and acceptance a fatigue risk management plan for the carrier's pilots.

You mean this? I guess I am missing where there are requirements for enforcement on limiting duty hours, circadian disruptions, etc if the data shows something to be onerous, or unsafe...

Famous words..."we are in compliance with FAR flight time duty times.." It again comes back down on us to manage the fatigue, since we were cut out of the new regs.

But, I know many members don't want to see it implemented as it will possibly make commuting more difficult, or mess up week on, week off schedules.

Again, all about money.

Data is data. Change the schedules...now then I will believe they are doing something positive with the data.

[Quote](#)

07-31-2013, 07:39 AM #35 (permalink)

HKFlyr
Gets Weekends Off

Joined APC: Apr 2012
Posts: 134

Totally agree on management "stories". Always taken with a pound of salt.

Other info out there, but as you say...non disclosable.

Didn't say I was satisfied, but after talking with many people, formed an opinion.

Quote

07-31-2013, 08:42 AM

#36 (permalink)

ptarmigan
Gets Weekends Off



Joined APC: Aug 2006
Posts: 435

Quote:

Originally Posted by **HKFlyr**
(b) *Fatigue Risk Management Plan-*

(1) SUBMISSION OF FATIGUE RISK MANAGEMENT PLAN BY PART 121 AIR CARRIERS- Not later than 90 days after the date of enactment of this Act, each part 121 air carrier shall submit to the Administrator for review and acceptance a fatigue risk management plan for the carrier's pilots.

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Again, all about money.

Data is data. Change the schedules...now then I will believe they are doing something positive with the data.

Actually, you need to read the entire section and the regulation. They have to use actual scientific analysis to see what the issues are, what really will work and what does not, and then modify accordingly. I think that both the Company and us would like to show that flying 3 hub turns, taking one night off, then flying another one or two is NOT as safe as just flying 4 or 5 in a row. If that is the case, we can use that data to make a schedule that is both safer and better for commuters, but the data has to show it and be compelling enough to convince the ALPA, Company and then, possibly, some FAA sleep scientists.

Quote

08-01-2013, 12:25 AM

#37 (permalink)

HKFlyr
Gets Weekends Off

Joined APC: Apr 2012
Posts: 134

I have read and understand most if the rule...however, how long will that process take(it is the government...), can the data be manipulated(statistics don't lie, but liars use statistics), watered down, politicized, waived or "alternative means of compliance". Lets not forget the power the company has with the Feds...(remember the cargo carve out)

But I will give you that I hope it does make a difference. I'm doubtful it will be much of a difference or anytime in the next 3 years.

Quote

08-01-2013, 04:38 AM

#38 (permalink)

ptarmigan
Gets Weekends Off



Joined APC: Aug 2006
Posts: 435

Quote:

Originally Posted by **HKFlyr**
I have read and understand most if the rule...however, how long will that process take(it is the government...), can the data be manipulated(statistics don't lie, but liars use statistics), watered down, politicized, waived or "alternative means of compliance". Lets not forget the power the company has with the Feds...(remember the cargo carve out)

But I will give you that I hope it does make a difference. I'm doubtful it will be much of a difference or anytime in the next 3 years.

While it is true that data can be manipulated, I am not too concerned about that as we (FDX-ALPA) not only has an equal part in what data is procured but also we have our own sleep scientist to ensure that there are no mistakes, plus we have the resources of the ALPA engineering staff to check it, as well as our own people. The "alternative means of compliance" are ways around the basic regulation, which, essentially, means that if you and your scientists can show with data that there is an alternative means that is just as safe, they might approve it (again, this would have to mean that the ALPA side agrees, as in my example of the possible advantage of more consecutive nights of hub turns than the 3 max).

I agree with you regarding 3 years, real scientific studies and analysis do not happen overnight.

Quote


08-01-2013, 09:52 PM

#39 (permalink)

42GO
Gets Weekends Off

You chronic complainers might need to read this.

Rush Limbaugh
It's always seductive to hang around people who tell you how mean the business is -- whatever your



Joined APC: Jul 2006
Position: MD-11 Capt
Posts: 311

business is -- and how unfair it is and how they got screwed by a bunch of people that didn't care. It's easy to find failures, and it's easy to be seduced by failure.

"Some minds are like concrete thoroughly mixed up and permanently set."

[Quote](#)

08-02-2013, 12:20 AM #40 (permalink)

HKFlyr
Gets Weekends Off

Joined APC: Apr 2012
Posts: 134

Now that is thread creep, quoting Rush...now I am really worried!

[Quote](#)



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Sample Schedules	skylover	Regional	50	07-26-2012 07:31 PM
What a 58 YO UPS pilot thinks about the TA	Zoro	Cargo	32	07-26-2012 06:32 AM
OooUps, they did it again.	Ernst	Cargo	148	07-08-2010 06:04 PM
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08-02-2013, 12:46 AM #41 (permalink)

42GO
Gets Weekends Off



Joined APC: Jul 2006
Position: MD-11 Capt
Posts: 311

Quote:

Originally Posted by **HKFlyr**
Now that is thread creep, quoting Rush...now I am really worried!

While you are entitled to your own opinion, I would bet you money 85% of your line buddies listen and like his point of view..... Consider yourself in the minority.

"Some minds are like concrete thoroughly mixed up and permanently set."



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08-02-2013, 01:07 AM #42 (permalink)

HKFlyr
Gets Weekends Off

Joined APC: Apr 2012
Posts: 134

Actually listen to him myself...meant as total humor as we have bounced around a lot in typical APC fashion(or pilot ADHD) on several topics...

08-02-2013, 04:55 AM #43 (permalink)

onetime
Gets Weekends Off

What side of this US versus the company argument would Rush side with?




Joined APC: Jul 2007
Position: MD11 F/O
Posts: 279

[Quote](#)

08-02-2013, 05:42 AM #44 (permalink)

MaydayMark
Gets Weekends Off



Joined APC: Apr 2006
Position: MD-11 Captain
Posts: 3,007


It's time for another illegal parking lot deal! That will expedite negotiations ...

I used to be indecisive. Now I'm not so sure.

[Quote](#)

08-02-2013, 07:43 AM #45 (permalink)

FrankTheTank
Gets Weekends Off



Joined APC: Jun 2008
Position: FDX Widebody FO
Posts: 309

Quote:
Originally Posted by **onetime**
What side of this US versus the company argument would Rush side with?

That's the problem with politics, it's all about sides. And this trend has gotten worse. How bout the merits. Sometimes, the company's side is right and sometimes the individuals is right. I would say that Rush leans in favor toward company's success but I would also say that he is smart enough to recognize when the company is wrong. However, remember these guys get paid for drama so they (left and right) will sensationalize and inflate for those ratings (pay check)!


Preparing for incoming sh1t storm....

The World On Time, except Memphis.

[Quote](#)

08-02-2013, 08:35 AM #46 (permalink)

Gunter
Gets Weekends Off



Joined APC: Aug 2006
Posts: 3,396

Quote:
Originally Posted by **42GO**
You chronic complainers might need to read this.

Rush Limbaugh
It's always seductive to hang around people who tell you how mean the business is -- whatever your business is -- and how unfair it is and how they got screwed by a bunch of people that didn't care. It's easy to find failures, and it's easy to be seduced by failure.

It's easy to be seduced by the desire to pull up the ladder once you get yours.

It's also easy to justify it in a myriad of ways.

Enjoy

[Quote](#)

08-02-2013, 09:09 AM #47 (permalink)

Busboy
Gets Weekends Off

Joined APC: Aug 2006
Position: leaning to the left
Posts: 3,605

Since we're posting quotes...

"...Drug use, some might say, is destroying this country. And we have laws against selling drugs, pushing drugs, using drugs, importing drugs. And the laws are good because we know what happens to people in societies and neighborhoods which become consumed by them. And so if people are violating the law by doing drugs, they ought to be accused and they ought to be convicted and they ought to be sent up,"
Rush Limbaugh, 1995

I couldn't agree more.

My Negotiating Committee Speaks For ME!!

Quote

08-02-2013, 09:18 AM

#48 (permalink)

ptarmigan
Gets Weekends Off



Joined APC: Aug 2006
Posts: 435

[Money on the Mind - YouTube](#)

Quote

08-02-2013, 09:20 AM

#49 (permalink)

ptarmigan
Gets Weekends Off



Joined APC: Aug 2006
Posts: 435

Quote:

Originally Posted by **Busboy**
Since we're posting quotes...

"...Drug use, some might say, is destroying this country. And we have laws against selling drugs, pushing drugs, using drugs, importing drugs. And the laws are good because we know what happens to people in societies and neighborhoods which become consumed by them. And so if people are violating the law by doing drugs, they ought to be accused and they ought to be convicted and they ought to be sent up," Rush Limbaugh, 1995

I couldn't agree more.

He already admitted to being addicted by that time, but I guess the arrest was not until later.

Quote

08-02-2013, 10:13 AM

#50 (permalink)

Busboy
Gets Weekends Off

Joined APC: Aug 2006
Position: leaning to the left
Posts: 3,605

Quote:

Originally Posted by **ptarmigan**
He already admitted to being addicted by that time, but I guess the arrest was not until later.

He admitted to being a drug addict in Oct. 2003, about 8 years after that quote.

My Negotiating Committee Speaks For ME!!

Quote

Reply

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Post #51 (permalink) by ptarmigan. Gets Weekends Off. Quote: Originally Posted by Busboy: He admitted to being a drug addict in Oct. 2003, about 8 years after that quote. I stand corrected, thank you! Hypocrite in any event.

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Post #52 (permalink) by 42GO. Gets Weekends Off. Quote: Originally Posted by Gunter: It's easy to be seduced by the desire to pull up the ladder once you get yours. It's also easy to justify it in a myriad of ways. Enjoy. I might ask you WHO do you say feels "once you get yours" would that be anyone who is senior to YOU. Remember EVERYONE gets more senior every year they are here, including YOU. What a crock... "Some minds are like concrete thoroughly mixed up and permanently set."

Post #53 (permalink) by MX727. Gets Weekends Off.

IT'S OK IF YOU DISAGREE WITH ME
I CAN'T FORCE YOU TO BE RIGHT

Joined APC: Aug 2006
Posts: 1,174

Quote:

Originally Posted by [onetime](#)


What side of this US versus the company argument would Rush side with?

I'm guessing that most pilots side with almost every company, except airlines.

I can almost guarantee that when those pilots hire someone to do work for them, be it around the house or in a side business, the plight of the worker isn't high on their list of getting the job done. It like the theory of relativity, are you in the train or in front of the train?

"I suggest you don't assume anyone has a plan" -- Tractor Bob

[Quote](#)



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Joined APC: Jun 2006
Posts: 658

[Quote](#)

08-05-2013, 08:06 AM

#46 (permalink)

MEMbrain
Gets Weekends Off



Joined APC: Oct 2012
Posts: 174

Quote:

Originally Posted by [hypoxia](#)
I actually can see a need for reject/go training on the normal 15/0 takeoff! For so many years we have been doing 15/20 takeoffs with a "V1/rotate" callout virtually simultaneously. Now its "V1" one potato, two potato, potato, "Rotate". I'm concerned a "normal" flap 15/0 takeoff at lets say an airport like Burbank with an "engine failure" callout two potato past V1 may result in a reject because the nose is still on the ground. Kind of a muscle memory thing. Could be ugly!

"Change is often the genesis of mistakes." I agree!

You won't be doing a 15/0 T/O out of BUR unless you are EMPTY!

[Quote](#)

08-05-2013, 08:07 AM

#47 (permalink)

MaydayMark
Gets Weekends Off



Joined APC: Apr 2006
Position: MD-11 Captain
Posts: 3,009

Quote:

Originally Posted by [2cylinderdriver](#)
The Union should not have any need to defend these pilots if the ASAP program works as advertised.

While I agree with your ASAP observation ...

I've attended Several ALPA (National) Accident Investigation Courses. At one of the courses, an (one of the many) ALPA attorneys came it to give a lecture. He said, "It's my job to protect your license and your job if you're involved in any sort of incident. **If you bend metal at FedEx you get FIRED!**" In as much as this was an ALPA NATIONAL class (I was the only FedEx pilot), I found his observation quite telling.

The good news ... we finally got an ASAP program!

The bad ... I'm not sure how good a reputation the ALPA attorneys have keeping jobs?

I used to be indecisive. Now I'm not so sure.

[Quote](#)

08-05-2013, 08:42 AM

#48 (permalink)

2cylinderdriver
Gets Weekends Off



Joined APC: Jun 2006
Posts: 658

Quote:

Originally Posted by [MaydayMark](#)
While I agree with your ASAP observation ...

*I've attended Several ALPA (National) Accident Investigation Courses. At one of the courses, an (one of the many) ALPA attorneys came it to give a lecture. He said, "It's my job to protect your license and your job if you're involved in any sort of incident. **If you bend metal at FedEx you get FIRED!**" In as much as this was an ALPA NATIONAL class (I was the only FedEx pilot), I found his observation quite telling.*

The good news ... we finally got an ASAP program!

The bad ... I'm not sure how good a reputation the ALPA attorneys have keeping jobs?

ALPA Lawyers will not be involved if it goes through ASAP, the whole point of an accepted report means the Company can not discipline the pilot for said event. I would say that ALPA National Lawyer was looking at the past history at FedEx not the new one with a working ASAP program.

We all make mistakes, if you make an honest mistake, report it and were not conducting yourself in a manner to get your report rejected then you should be OK, provided you can complete any required corrective action required by the ERC.

[Quote](#)

08-05-2013, 09:19 AM

#49 (permalink)

hypoxia
Gets Weekends Off



Quote:

Originally Posted by [MEMbrain](#)
You won't be doing a 15/0 T/O out of BUR unless you are EMPTY!

First of all, you missed my point but secondly you proved it! The pilot group as a whole uses "muscle memory" with years and years of doing the same procedures. The now "normal" 15/0 default

“CX 22”

UNITED STATES DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
OFFICE OF ADMINISTRATIVE LAW JUDGES

MARK ESTABROOK,)	
)	
Complainant,)	
)	Case No.: 2014-AIR-00022
v.)	Hearing Date: TBA
)	
FEDERAL EXPRESS CORPORATION,)	
)	
Respondent.)	

**RESPONDENT FEDERAL EXPRESS CORPORATION'S RESPONSES TO
COMPLAINANT'S FIRST SET OF INTERROGATORIES**

Respondent Federal Express Corporation (FedEx), by and through counsel and pursuant to 29 C.F.R. § 18.18, hereby responds to Complainant's First Set of Interrogatories to Respondent FedEx as follows:

PRELIMINARY STATEMENT

Respondent has not completed its investigation, discovery, or analysis of all the facts of this case and has not completed preparation for trial. Accordingly, all of the following responses are provided without prejudice to Respondent's right to supplement or amend discovery responses as permitted by the applicable rules, or introduce at trial any evidence that is subsequently discovered relating to proof of presently known facts and to produce and introduce all evidence whenever discovered relating to the proof of subsequently discovered material facts. Moreover, facts, documents and things now known may be imperfectly understood and accordingly such facts, documents, and things may not be included in the following responses. Respondent reserves the right to reference, discover or offer into evidence at the time of trial any



and all facts, documents, and things which it does not presently recall but may recall at some time in the future.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Identify each person you have interviewed to obtain facts relating to the Complaint.

RESPONSE TO INTERROGATORY NO. 1: Respondent objects to Interrogatory No. 1 to the extent it seeks information protected by the attorney-client privilege and attorney work product doctrine. Without waiver of or prejudice to the foregoing objections, Respondent identifies the following individuals:

- Robb Tice, Lead Counsel, Labor Relations
- Phil Tadlock, Senior Attorney, Labor Relations
- Cindy Sartain, Senior Paralegal Specialist
- Maryanne Miller, Senior Paralegal Specialist
- Rob Fisher, Assistant System Chief Pilot
- Todd Ondra, MD Aviation & Regional Security

INTERROGATORY NO. 2: Identify each person with first-hand knowledge of any fact upon which you might rely in defense of the Complaint.

RESPONSE TO INTERROGATORY NO. 2: See Response to Interrogatory No. 1. In addition, Respondent identifies Manager Fleet Operations Mitch Matheny, Duty Officer Mark Crook and Senior GOC Specialist Sherrie Hayslett.

INTERROGATORY NO. 3: Identify each person you intend to call to testify in your case in chief.

RESPONSE TO INTERROGATORY NO. 3: Respondent has not completed its preparation for the hearing in this matter and has not yet determined each and every person it intends to call in the case in chief. Respondent will supplement this response as required.

INTERROGATORY NO. 4: Identify each person you might call to testify in your rebuttal case.

RESPONSE TO INTERROGATORY NO. 4: Respondent has not completed its preparation for the hearing in this matter and has not yet determined each and every person it intends to call in the case in chief. Respondent will supplement this response as required.

INTERROGATORY NO. 5: Identify the custodian of any recorded conversations in which the Complainant was a party relating to the Laredo Departure referenced in paragraphs 4 through 8 of the Complaint.

RESPONSE TO INTERROGATORY NO. 5: With respect to the Laredo Departure referenced in Paragraphs 4 through 8 of the Complaint, copies of the recorded conversations were retrieved and preserved shortly after the events in question. The custodian of these recordings is Michael McAfee, Manager Global Ops Control. Copies of the recorded conversations are also currently maintained by the legal department.

INTERROGATORY NO. 6: Identify any persons involved in the decision to place the Complainant on not qualified (NOQ) status on or about August 5, 2013.

RESPONSE TO INTERROGATORY NO. 6: Respondent identifies the following individuals, who may be contacted through undersigned counsel:

Robert Fisher

William McDonald

Todd Ondra

Robb Tice

INTERROGATORY NO. 7: State the reasons why the Complainant was placed on NOQ status on or about August 5, 2013.

RESPONSE TO INTERROGATORY NO. 7: Complainant was placed on NOQ status on or about August 5, 2013 because he had been referred for examination under Section 15.D. of the collective bargaining agreement between Respondent and the Air Line Pilots Association.

INTERROGATORY NO. 8: Identify all efforts made to preserve recorded conversations between FedEx GOCC, the Flight Duty Officer and the Complainant on April 10, 2013, and record conversations between the Complainant and Manager of A300/310 Fleet Operations, Captain Rob Fisher on August 9, 2013.

RESPONSE TO INTERROGATORY NO. 8: With respect to the April 2013 conversation referred to in Interrogatory No. 8, copies of the recorded conversations were retrieved and preserved shortly after the events in question. Copies of the recorded conversations are currently maintained by the legal department. With respect to the August 9, 2013 conversation referred to in Interrogatory No. 8, after reasonable investigation Respondent is unaware of any recorded conversation between Complainant and Fisher.

INTERROGATORY NO. 9: Identify any persons who prepared or assisted in the preparation of your answers to any of these interrogatories.

RESPONSE TO INTERROGATORY NO. 9: Maryanne Miller, Senior Paralegal Specialist, Labor Relations; Robb Tice, Lead Counsel, Labor Relations; Phil Tadlock, Senior Attorney, Labor Relations.

INTERROGATORY NO. 10: With respect to any denial in response to the Requests for Admissions below, identify the person you intend to call to testify to support your denial.

RESPONSE TO INTERROGATORY NO. 10: With respect to Request No. 6, Respondent intends to call Complainant and Rob Fisher. With respect to Request No. 7, Respondent intends to call Complainant, Rob Fisher, Robb Tice and/or Todd Ondra. With respect to Request No. 8, Respondent intends to call Complainant, Rob Fisher, Robb Tice and/or Todd Ondra. With respect to Request No. 9, Respondent intends to call Complainant, Rob Fisher, Robb Tice and/or Todd Ondra. With respect to Request No. 10, Respondent intends to call Complainant, Rob Fisher, Robb Tice and/or Todd Ondra. With respect to Request No. 11, Respondent intends to call Complainant, Rob Fisher, Robb Tice and/or Todd Ondra. With respect to Request No. 16, Respondent intends to call Robb Tice.

INTERROGATORY NO. 11: Identify all efforts made by you to identify the individual posting as Mayday Mark after August 5, 2013.

RESPONSE TO INTERROGATORY NO. 10: Respondent objects to Interrogatory No. 11 on the grounds that it seeks information not relevant to this matter nor reasonably calculated to lead to the discovery of admissible evidence. Without waiver of the foregoing

objections, Respondent states that, upon learning of the postings, Robb Tice printed copies of them. During the meeting with Complainant on August 9, 2013, Tice asked Complainant if he were the individual posting messages under the name "Mayday Mark." Complainant denied making the postings, and Tice made no further inquiry of Complainant. No further investigation was done.

Respectfully submitted,

s/ David P. Knox

David P. Knox (TN Bar No. 020162)

Federal Express Corporation
3620 Hacks Cross Road, Bldg. B – 3d Fl.
Memphis, Tennessee 38125
Telephone: (901) 434-6286
Facsimile: (901) 434-9279
david.knox@fedex.com

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2014, a copy of the foregoing **Respondent Federal Express Corporation's Responses to Complainant's First Set of Interrogatories** was served upon the following via email and Federal Express overnight letter, postage prepaid:

Lee Seham, Esq.
Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, suite 1204
White Plains, NY 10601
Telephone: (914) 997-1346
Facsimile: (914) 997-7125
Email: lseham@ssmplaw.com

s/ David P. Knox

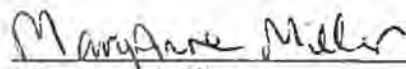
David P. Knox
Federal Express Corporation

1084903

VERIFICATION

MaryAnne Miller, being of full age, certifies and states that she is authorized to sign the foregoing **Respondent Federal Express Corporation's Responses to Complainant's First Set of Interrogatories** and that she has read and knows the contents thereof, and that the Responses, subject to inadvertent or undiscovered errors, are based upon and, therefore, limited by, the records and information still in existence, presently recollected, and thus far discovered in the course of the preparation of these Responses; that consequently, Respondent reserves the right to amend the Responses if it appears at any time that omissions or errors have been made therein, or that more accurate information is available; that subject to the limitations set forth therein, said Responses are true to the best of her knowledge, information, and belief.

I hereby certify under penalty of perjury that the foregoing statement is true.



MaryAnne Miller
Senior Paralegal Specialist, Labor Relations

“CX 23”

CAPT Rob Fisher FLT CAPT for Airbus. Jan 2011 to Mar 14.
4/30/2014

MOQ happens once per month I would say.
That is pretty common. Psyc issues once that
I recall.

If company has reasonable cause to believe Psyc
Issues we can send a pilot for evaluation
Repayment agreement. Comp. Doc and PDoc
agreed on same Doc agreement

First learned from Rob Tjce and Bill McDonald.
Got a curvish letter. We decided to talk to
him. he got together and he told us his
concerns. he talked about two areas. One was
about tracking issues. One was about Auburn
Calloway. The meeting was very short. He was
placed back on FLT STATUS.

Knowing what I know as a flight mgr,
there was no reason to keep him off FLT STATUS.

The Corporate Sec guy left before meeting was
over. In hindsight we probably should have
kept him off FLT STATUS and conferred with
Todd Ondra rather than make the decision
on our own.

Todd Onda called us back and told us he had to be on 15D psyc.

Rob Tyce: Todd called me and said what concerned him was reference to Andrew Calloway and Al Qaeda.

I acknowledged since this was safety of Security, they had a stake in say of a 15D referral.

We consult with Harvey Bass in ATL for medical. It keeps flight ops from knowing personal medical information and personal intimate information.

Rob called me and gave me the news.

I had to make the difficult call to Mr Estabrook. I was not completely convinced. I take up to my people. I called Mark and told him in the interest of caution he had to be placed back on NOA. He was very upset. I wrote everything and sent it all to Rob Tyce.

May 2003 I brought Mark in and counseled him about the weather incident.

he tell him when to be @ work the tells us when he is going to move the airplane.

- I did not know Mark filed a harassment complaint until you just told me.

Todd Onda had no idea he filed a HR complaint for the weather incident. He had no reason to know

No knowledge of previous concerns raised in 2002 as he claimed.

I am responsible for 950 pilots. He was another guy in the crowd.

We have 4,500 pilots now. Absolutely no pilot or any other employee for that matter should believe they can just make a phone call and expect Fred Smith to call him over a security issue.

000097

ME 1486

C-131

I think we exercised considerable restraint in that we did not have him go through another USD who goes to ~~the~~ a place where was in going on and not being paid to do so. And places his self in the face of danger? We still have an obligation to be safe.

He flew 2 trips before we knew what kind of injuries he had. Being under anesthesia, surgery would require him to be cleared by his AME.

As of now he is back on the line and flying.

000098

ME 1487

C-132

CAPT Rob Fisher

FLT CAPT for Airbus

Jan 2011 to March 14

4/30/2014

NOQ happens once per month I would say. That is pretty common. Psyc issues once that I [need it?]

If company has a reasonable cause to believe psych issues we can send a pilot for evaluation. Repayment agreement. Comp and CP doc agreed on 3rd doc agreement.

First learned from Rob Tice and Bill McDonald. Got a [illegible] letter. We decided to talk to him. We got together and he told us his concerns. We talked about two areas. One was about tracking issue. One was about Auburn Calloway. The meeting was very short. He was placed back on FLT Status.

Knowing what I know as a flight mgr, there was no reason to keep him off FLT Status. The copriate Sec. guy left before meeting was over. In hindsight we probably should have kept him off FLT Status and conferred with Todd Ondra rather than make the decision on our own.

Todd Ondra called us back and told us he had to have a 15D psyc.

Rob Tice. Todd called me and said what concerned him was reference to Auburn Calloway and al Qaeda.

I acknowledged since this was safety and security, they had a stake in say of a 15D referral.

We consult with Harvey Watt in ATL for Medical. It keeps flight ops from knowing personal medical information and personal intimate information.

Rob called us and gave us the news. I had to make the difficult call to Mr. Estabrook. I was not completely convinced. I take up to my people. I called Mark and told him in the interest of caution he had to be placed back on NOQ. He was very upset. I [wrote?] everything and sent it all to Rob Tice.

May 2013 I brought Mark in and counseled him about the weather incident.

We tell him when to be at work. He tells us when he is going to move the airplane.

I did not know Mark filed a whistleblower complaint until you just told me.

Todd Ondra had no idea he filed a whistleblower complaint for the weather incident. He had no reason to know.

No knowledge of previous concerns raised in 2002 as he claimed.

I am responsibly for 950 pilots. He was another guy in the crowd.

We have 4,500 pilots now. Absolutely no pilot or any other employee for that matter should believe they can just make a phone call and expect Fred Smith to call him over a security issue.

I think we exercised considerable restraint in that we did not have him go through another 15D. Who goes to a place [illegible] was in going on and not being paid to do so. And places himself in the [illegible] of danger? WE still have an obligation to his safety.

He flew two trips before we knew what kind of injuries he had. Being under anesthesia, surgery would require him to be cleared by his AME.

As of now he is back on the line and flying.

“CX 27”

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Re: Captain Mark Estabrook

Dear Mr. Tice:

We are in receipt of your letter dated August 16, 2013.

This letter will serve to inform you of my client's intention to proceed with an AIR-21 action pursuant to 49 U.S.C. §42121. This letter shall also serve as a formal grievance pursuant to Section 20 of the Collective Bargaining Agreement (CBA) based on the Company's violation of Captain Estabrook's rights under Sections 15.D and 15.G of the CBA. Pursuant to Section 20.C of the CBA, Captain Estabrook hereby demands that the Company provide him "as soon as practicable" with the names of all witnesses and copies of all documentary information (including all electronic documents and correspondence) that have been, or may be, used to establish a reasonable basis for suspecting that Captain Estabrook is currently suffering from an impairment that would prevent him from performing his duties as a pilot – including, but not limited to, the highlighted postings of "Mayday Mark" that the Company brought to the meeting of August 9, 2013.

Protected Activity

We will first briefly address the disingenuous argument contained in your letter of August 16, 2013, that Captain Estabrook has not engaged in protected activity.

Captain Estabrook is a professional pilot whose first objective has been the safe operation of Company aircraft. His service on the FedEx ALPA Security Committee, Secretary of Transportation Mineta's emergency ad hoc 9/11 Committee, his expressed concerns over the Company's handling of its flight and cargo operations are both well-known and documented. Due to the Company's countervailing interests in meeting its schedule and ensuring profitable



Robert Tice, Esq.
August 20, 2013
Page 2

operation, Captain Estabrook's focus on safety has repeatedly placed him in conflict with FedEx management.

In terms of recent events, on April 10, 2013, Captain Estabrook refused to depart on a FedEx flight because of a severe and solid line of thunderstorms between his departure airport, Laredo (LRD), and scheduled arrival airport of Memphis (MEM). In retaliation for his safety-based determination as Pilot-in-Command, as defined by the Company's own Flight Operations Manual (FOM), and Federal Aviation Regulations (FARs), FedEx commenced disciplinary proceedings against Captain Estabrook. This retaliation caused Captain Estabrook to file AIR-21 Complaint No. 861872 with the United States Department of Labor on April 29, 2013. When the Company subsequently terminated its disciplinary proceedings, Captain Estabrook, being non-litigious in nature, withdrew his AIR-21 action.

Captain Estabrook's zealous advocacy of safety over schedule no doubt left a bitter taste in the mouth of the Company's legal department. This resentment appears to have substantially motivated the threats of psychiatric and medical evaluation, based on shifting pretextual rationales, discussed further below. Nevertheless, federal law strictly prohibits such retaliatory action where an employee:

...has filed, caused to be filed, or is about the file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle [49 USCS §40101, et seq.] or any other law of the United States.

49 U.S.C. §42121(a)(2). The temporal proximity of Captain Estabrook's protected activity under §42121(a)(2) to the recent threats of psychiatric/medical evaluations, standing alone, establish a *prima facie* case of discriminatory motive.

Still more recently, on August 9, 2013, Captain Estabrook sought to bring to the Company's attention that FedEx's policy of giving live tracking information relating to packages in transit would, albeit inadvertently, facilitate and maximize the criminal destruction of cargo, aircraft, and human lives, by granting terrorists the ability to carefully select the time of detonation. Your letter of August 16 seeks to preserve FedEx's ability to retaliate against employees' raising these issues by suggesting that FedEx has no affirmative legal obligation to minimize the potential for such terrorist activity. This disturbing piece of sophistry must be laid to rest.

Robert Tice, Esq.
August 20, 2013
Page 3

Federal law establishes the duty of every air carrier to:

Provide for the safety of persons and property traveling on flights provided by the aircraft operator against acts of criminal violence and air piracy, and the introduction of explosives, incendiaries, or weapons aboard an aircraft.

49 CFR §1544.207(c)(1). This federal aviation safety standard, as it relates to cargo carriers, is reiterated in the following terms:

Each aircraft operator operating under a full program or a full all-cargo program must use the procedures in its security program to control cargo that it accepts for transport on an aircraft in a manner that:

- (1) Prevents the carriage of any unauthorized person, and any unauthorized explosive, incendiary, or other destructive substance or item in cargo onboard an aircraft.

49 CFR §1544.205(c). Under federal law, the carrier's objective is "*to prevent or deter the carriage of any unauthorized persons, and any unauthorized explosives, incendiaries, and other destructive substances or items in cargo onboard an aircraft.*" 49 CFR §1544.205(a) (emphasis supplied). Under FedEx's federal mandated security program, Captain Estabrook, as an in-flight security coordinator, is directed: if you see something, say something. 49 CFR §§1544.101, et seq.

It cannot be disputed that the meeting of August 9, 2013 was scheduled in response to Captain Estabrook's stated position that the Company's live package and flight tracking practice had the unfortunate result of encouraging terrorists to view FedEx as a particularly effective means of utilizing explosive, incendiary and other destructive devices by placing in the terrorists' hands the ability to select the most optimum timing for detonation. The conclusion that a Company policy that encourages the use of FedEx as a terrorist vehicle violates the carrier's federal legal obligation to prevent and/or deter the carriage of destructive devices appears to be compelled by the plain language of the regulations. At minimum, this conclusion may arise from a good faith reading of the retaliatory language. In either case, the suggestion implicit in your August 6th letter that Fed Ex could retaliate with impunity against a person raising these safety issues is misplaced. 49 U.S.C. §42121(a).

We are also of the opinion that FedEx's retaliatory action in response to a good faith effort by an in-flight coordinator to identify objects in the carrier's security program may violate the Company's obligations under §1540.105 ["No person may: (1) Tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with,

Robert Tice, Esq.
August 20, 2013
Page 4

compromise, modify, or attempt to circumvent any security system, measure, or procedure implemented under this subchapter.

Retaliatory Action

As discussed at greater length in our letter to you dated August 13, 2013, Captain Estabrook presented his safety concerns at a meeting August 9, 2013, ostensibly scheduled for that purpose. The recitations in your letter of August 16, 2013, about the events of August 9, 2013 are inaccurate and incomplete. During the meeting of August 9, 2013, you asserted Captain William McDonald, FedEx Managing Director/System Chief Pilot, believed and reported to you that my client was “Mayday Mark.” You then explained to my client that you were obligated to explore whether my client was “Mayday Mark.” Management representatives made no response to Captain Estabrook’s safety concern other than to pepper him with questions concerning his health.

The sole rationale proffered by the Company for these health injuries was the attribution to Captain Estabrook of internet communications by a purported FedEx pilot posting under the sobriquet “Mayday Mark.” Management representatives had in their possession numerous pages of highlighted postings and asked pressing questions concerning their contents, including references to a transient ischemic attack. During the entire course of the August 9th meeting, the Company raised no other basis for questioning Captain Estabrook’s medical status.

Captain Estabrook denied that he was “Mayday Mark” and the Company’s August 16th letter confirms FedEx’s abandonment of its efforts to ascribe these postings to Captain Estabrook. Not surprisingly, Captain Rob Fisher, Manager Fleet Operations – A300/310, advised Captain Estabrook at the end of the meeting that he would be returned to flying status.

Notwithstanding the utter implosion of the “Mayday Mark” postings as a rationale for subjecting Captain Estabrook to his removal from flying status and psychiatric/medical evaluation, Captain Estabrook was subsequently telephoned and informed by Captain Fisher that “FedEx Security insisted that his flying status remain suspended until he submitted to a psychiatric evaluation.” When my client asked Captain Fisher why Security was asking for this evaluation, after it had been determined earlier in the day that he was being returned to flying status, Fisher responded “all they said was is you know too much.” Your August 16th letter also demands that Captain Estabrook submit to a medical evaluation, but provides no explanation for this demand. And then again in a separate letter dated August 16, 2013, and delivered to my client on August 19, 2013, Captain Fisher directed Captain Estabrook to contact Dr. Thomas Bettes regarding a medical appointment no later than Wednesday, August 21, 2013, leaving little time to consult with his legal counsel. Captain Fisher claims in the same letter that FedEx has a “reasonable basis” to direct the medical exam, but does not provide the source or justification of that basis or identify the alleged impairment as required by the Collective Bargaining

Robert Tice, Esq.
August 20, 2013
Page 5

Agreement. Captain Estabrook is in possession of a current and valid FAA First Class Medical Certificate, which was submitted to the Company in a timely fashion as per the CBA.

On its face, the Company's actions and demands constitute discriminatory action in response to protected activity under AIR-21.

Contract Violations

Section 15.D provides that specified management representatives may direct a pilot to contact or see the Company's aeromedical advisor if the Company has a "reasonable basis" to question the pilot has an impairment to this ability to perform duties as a pilot. A medical evaluation may only be directed by the aeromedical advisor and only after a meeting with the pilot. Section 15.G provides Flight Management (or anyone other than the Company aeromedical advisor) may not require a pilot to submit to a psychological or psychiatric examination."

The Company sought to compel psychiatric/medical evaluation based on the "Mayday Mark" postings. Now that this justification has been exposed as pretextual, the Company seeks to demand said evaluation without any stated basis whatsoever – reasonable or unreasonable. Moreover, demands for the psychiatric/medical evaluation appear to be emanating from Labor Relations, Flight Management, and Security – anywhere but from the aeromedical advisor after a meeting with Captain Estabrook.

The CBA states clearly that management may only direct the pilot to see the Company aeromedical advisor and that this directive may issue if, and only if, it has a "reasonable basis" for believing that a pilot is suffering from an impairment. Thus, the Company's actions constitute a violation of the CBA, including, but not limited to, Sections 15.D and 15.G. We hereby grieve the Company's actions and request that the Company cease and desist from its actions in violation of the CBA and provide Captain Estabrook with make whole relief, i.e., immediate return to flight status and withdrawing the request for a medical evaluation of Captain Estabrook.

If the Company intends to press forward with its demands for a psychiatric/medical evaluation, we hereby request that it provide a written explanation of its "reasonable basis" for suspecting that Captain Estabrook is suffering from an impairment and identify the witnesses and the documentary information (including all electronic documents and correspondence on which it relies, including, but not limited to those emails from and between Captain William McDonald and Captain Robert Fisher, FedEx Security personnel, FedEx Legal Department and all FedEx management copied in the correspondence involving Captain Mark Estabrook's actions this calendar year). This documentation should include all audiotapes involving Captain Estabrook, the FedEx Duty Officer, the Global Operations Control Center and FedEx management relating to the above referenced incident of April 10, 2013, as well as all audio tape recordings made on