

U.S. Department of Labor

Occupational Safety and Health Administration
230 South Dearborn Street, Room 3244
Chicago, Illinois 60604
(312) 353-2220



FEB 13 2017

Mr. Jonathan McGory
Assistant Director of Law
Department of Law
City of Cleveland
601 Lakeside Avenue, Room 106
Cleveland, OH 44114

Re: City of Cleveland-Cleveland Hopkins International Airport/Ali/5-1680-15-060

Mr. McGory:

Please be advised that the initial phase of the investigation into the above-referenced retaliation complaint is complete. Based on information gathered thus far, the Occupational Safety and Health Administration (OSHA) has determined there is reasonable cause to believe that City of Cleveland-Cleveland Hopkins International Airport (Respondent) has violated the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. §42121 (AIR21), and that the preliminary reinstatement of Abdul-Malik Ali (Complainant) to his former position is warranted. Please be advised that OSHA's investigation of this matter is ongoing. This letter is sent prior to the issuance of Findings and a Preliminary Order and does not constitute a final determination by the agency of a finding of violation.

Under OSHA's procedures for the handling of retaliation complaints under the Act, 29 C.F.R. 1979.104(e), you are hereby notified of your opportunity to submit rebuttal evidence. Your client may submit a written response, meet with OSHA officials, and offer rebuttal witnesses to be interviewed. You may appear and act on your client's behalf regarding this matter. Please note that you have **ten business days** from receipt of this notice to present any rebuttal evidence. If you cannot present the rebuttal evidence within ten days, we may arrange a mutually acceptable date, but you must contact us within the ten-day period. All relevant information submitted in a timely fashion will be fully evaluated before OSHA issues Findings and a Preliminary Order in this case. See 29 C.F.R. Section 1979.105.

As a preliminary matter, we note that you were served notice of the complaint via Certified Mail, Article # 7012 2920 0001 7162 2653 on April 10, 2015. After being notified of this complaint, you were provided an opportunity to submit a written statement and other relevant documents explaining or defending your position. On May 15, 2015, our office received your written response and supporting documents. You were also afforded an opportunity to meet in person with the Investigator to submit information related to this complaint, and to make available individuals who also had relevant information. On-site interviews of these individuals were conducted on March 2, 2016 and March 17, 2016.

OSHA's investigation thus far indicates that the Complainant has demonstrated there is reasonable cause to believe that the Respondent has violated Air-21. Complainant alleged in a timely fashion, a violation of Air-21 by Respondent, a covered employer.

There is evidence that Complainant engaged in activity protected under Air-21. Complainant engaged in protected activity on a significant number of occasions over the course of a year and a half when he objected to lack of de-icing chemical acquisitions and lack of available staffing to support the Federal Aviation Administration (FAA) mandated Snow and Ice Control Plan (SICP). While far from exclusive, Complainant engaged in four significant instances of protected activity when he first made an emergency order of de-icing chemicals on February 4, 2014, in order to support air carrier safety related regulations and when it became apparent that to not do so would be a definite risk to air carrier safety. Complainant secondly engaged in significant protected activity when on November 10, 2014, he objected to an approved SICP as he had information to indicate that Respondent would be unable to meet the directed staffing levels. Complainant additionally engaged in significant protected activity on February 18, 2015, when he first informed his new senior manager of the current violations of FAA part 139 Subpart D requirements, and secondly when Complainant met privately that afternoon with the FAA, informing them of these violations and submitting a copy of the same email of earlier that date, and was going to meet again with the same inspector at 3:00 a.m., the following morning.

Respondent had sufficient knowledge of Complainant's protected activities. Respondent has admitted knowledge that Complainant routinely brought issues of lack of de-icing supplies and lack of field maintenance staffing to his managers and human resources attention, and that it was aware that Complainant had penned his email to Eric Turner, Deputy Commissioner for Maintenance and Support, on February 18, 2015, had met privately with the FAA later that day, and was going to again meet with the FAA the following morning.

These circumstances are sufficient to raise the inference that Complainant's protected activities were a contributing factor in the decision to remove him from his position as the Director of Field Maintenance, officially accuse him of being intoxicated, removal of his benefit of a city vehicle, and relegated to derogatory work all on February 19, 2015.

The Respondent has not demonstrated by clear and convincing evidence that it would have taken the same unfavorable personnel actions in the absence of Complainant's protected activities. Therefore, the evidence supports a finding in favor of Complainant. Accordingly, based on the initial phase of OSHA's investigation, it is reasonable to believe that Complainant's protected activities were a contributing factor in the adverse personnel actions. As noted above, you have ten business days to provide additional evidence that supports your position.

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It is the policy of the Secretary of Labor to facilitate resolution of complaints. This office will convey to the complainant any offer that you propose. If you have any questions, please contact me at the telephone number or address listed above.

Enclosed are copies of the relevant evidence OSHA relied upon to make this decision.

Sincerely,



Mary Ann Howe, CFE

Assistant Regional Administrator

Enclosures