

**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 REQUESTS FOR ADMISSIONS**

Respondent Federal Express Corporation (FedEx), by and through counsel and pursuant to 29 C.F.R. § 18.20, hereby responds to Complainant's First Requests for Admissions 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 REQUESTS FOR ADMISSIONS

REQUEST NO. 1: That Complainant has been employed by you since 1989.

RESPONSE TO REQUEST NO. 1: Admitted.

REQUEST NO. 2: That you have never terminated Complainant.

RESPONSE TO REQUEST NO. 2: Admitted.

REQUEST NO. 3: That you have never suspended Complainant without pay.

RESPONSE TO REQUEST NO. 3: Admitted.

REQUEST NO. 4: That prior to 2013, you have not imposed any discipline on Complainant.

RESPONSE TO REQUEST NO. 4: Admitted.

REQUEST NO. 5: That Complainant's immediate supervisor in 2013 was Captain Rob Fisher.

RESPONSE TO REQUEST NO. 5: Admitted.

REQUEST NO. 6: That on August 9, 2013, in response to Complainant's question as to why he was being required to submit to a psychiatric examination, Captain Rob Fisher stated to the Complainant: "all they said was that you know too much."

RESPONSE TO REQUEST NO. 6: Denied. Captain Fisher has no recollection of making any such statement to Complainant.

REQUEST NO. 7: That the reason for placing Captain Estabrook on NOQ status on or about August 5, 2013, was that you suspected him of being the individual identified as Mayday Mark.

RESPONSE TO REQUEST NO. 7: Denied.

REQUEST NO. 8: That at your meeting with the Complainant on August 9, 2013, the Complainant referenced the fact that his military service included the tracking of Soviet aircraft.

RESPONSE TO REQUEST NO. 8: Denied as written. See Ondra's notes and summary of conversation, which summarizes the information discussed.

REQUEST NO. 9: That at your meeting with the Complainant on August 9, 2013, the Complainant stated his belief that the Respondent's practice of providing up-to-date package tracking information facilitated and maximized the criminal destruction of cargo, aircraft and human lives by granting terrorists the ability to carefully select the time of detonation.

RESPONSE TO REQUEST NO. 9: Denied as written. See Ondra's notes and summary of conversation, which summarizes the information discussed.

REQUEST NO. 10: That at your meeting with the Complainant on August 9, 2013, the Complainant stated his belief that Respondent's practice of providing up-to-date package tracking information had the result of encouraging terrorists to view the Respondent 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.

RESPONSE TO REQUEST NO. 10: Denied as written. See Ondra's notes and summary of conversation, which summarizes the information discussed.

REQUEST NO. 11: That at your meeting with the Complainant on August 9, 2013, the Complainant expressed an interest in improving the Respondent's security.

RESPONSE TO REQUEST NO. 11: Denied as written. See Ondra's notes and summary of conversation, which summarizes the information discussed.

REQUEST NO. 12: That Mr. Fred Smith, Chairman and Executive Officer of FedEx Corporation, is commonly referred to by your pilots by the single name "Fred."

RESPONSE TO REQUEST NO. 12: Respondent is without knowledge or information sufficient to form a belief about the truth of the contention in Request No. 12 and therefore can neither admit nor deny same.

REQUEST NO. 13: That the Complainant served as the Security Chairman of the FedEx Pilots Association (FPA), which was the certified labor representative of the FedEx pilots from 1996 to 2002.

RESPONSE TO REQUEST NO. 13: Respondent is without knowledge or information sufficient to form a belief about the truth of the contention in Request No. 13 and therefore can neither admit nor deny same.

REQUEST NO. 14: That, in his capacity as Security Chairman of the FPA, the Complainant requested that Respondent cease publishing package tracking information on the grounds that such publication would give potential terrorists assistance that would facilitate timing the detonation of bombs or incendiary devices.

RESPONSE TO REQUEST NO. 14: Respondent is without knowledge or information sufficient to form a belief about the truth of the contention in Request No. 14 and therefore can neither admit nor deny same.

REQUEST NO. 15: That, in his capacity as Security Chairman of the FPA, the Complainant met with FedEx Express COO Bill Logue in 2002 and expressed the Complainant's concern that the publication of real-time tracking information in the aftermath of the 9-11 terrorist attacks was the equivalent of providing valuable intelligence to the enemy.

RESPONSE TO REQUEST NO. 15: Respondent is without knowledge or information sufficient to form a belief about the truth of the contention in Request No. 15 and therefore can neither admit nor deny same.

REQUEST NO. 16: That, prior to December 4, 2013, you declined to respond to the repeated requests of the Complainant and his legal counsel to provide the "reasonable basis" for the Respondent's directive that Complainant submit to psychiatric evaluation.

RESPONSE TO REQUEST NO. 16: Denied. Respondent provided written responses to Complainant's counsel explaining the basis for its decision. Upon information and belief, Complainant and his counsel are already in possession of these written responses. Additionally,

see documents produced in response to Complainant's Request for Production of Documents, specifically correspondence between Respondent and attorney Alan Armstrong.

REQUEST NO. 17: That your placement of the Complainant on NOQ status on August 5, 2013, resulted in the Complainant's loss of flight privileges and overtime opportunities.

RESPONSE TO REQUEST NO. 17: Respondent can neither admit nor deny Request No. 17. Respondent admits Complainant was restricted from flying FedEx aircraft in any capacity while on NOQ status. However, whether NOQ status resulted in the loss of overtime opportunities is purely speculative.

Respectfully submitted,

s/ David P. Knox
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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 Requests for Admissions** was served upon the following via email and Federal Express overnight letter, postage prepaid:

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s/ David P. Knox
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