

U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)



Issue Date: 19 August 2015

Case No. 2014-AIR-22

In the Matter of:

MARK ESTABROOK,
Complainant,

v.

FEDERAL EXPRESS CORPORATION,
Respondent.

ORDER TO PRODUCE DOCUMENTS OR SHOW CAUSE

This proceeding arises from a claim of whistleblower-protection under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR 21").¹ The statute prohibits retaliatory or discriminatory actions by covered employers against their employees who engage in activity protected by the Act.

On November 18, 2014, counsel for Mark Estabrook ("Complainant") submitted a Motion to Compel Requests for Admissions, Interrogatories, and Requests for Documents. After a December 18, 2014, conference call and further informal communication between the parties, Federal Express Corporation ("Respondent") provided the Complainant with a privilege log on January 15, 2015. Because discovery disputes were ongoing, the undersigned continued the hearing by order dated February 2, 2015. The Respondent continued to provide supplemental responses to discovery requests until February 3, 2015. The Complainant submitted an Amended Motion to Compel Requests for Admissions, Interrogatories, and Requests for Documents on February 19, 2015. On March 26, 2015, the Complainant submitted a Motion for Partial Summary Decision. An additional conference call between the parties was held May 1, 2015, during which the remaining discovery disputes were outlined. The undersigned's May 28, 2015, Order Regarding Discovery directed the Respondent to produce the withheld documents listed on its privilege log for *in camera* review. Regarding the Complainant's Motion to Compel more detailed answers to its Requests for Admission, the Order outlined:

¹ 49 U.S.C. § 42121 (2011).

As further discussed, discovery is still not complete, including the taking of depositions. Some of the alleged inadequacies will be resolved, hopefully, as discovery moves forward, making matters of particularly phraseology moot. If not, compelling revised discovery responses would be appropriate. In the interim, however, discovery will progress as described above, after which the parties will again confer to resolve any remaining disputes.

Additionally, the undersigned reviewed the documents withheld by the Respondent and issued an Order ordering disclosure of the non-privileged documents detailed therein. By correspondence received August 3, 2015, the Respondent purportedly supplemented its document production in accordance with the undersigned's *Order Following In Camera Review*.

However, on July 27, 2015, counsel for the Complainant requested further action regarding his Motion to Compel responses to one interrogatory and 15 document requests.² Review of the file reveals that the Respondent has not clearly objected to the Complainant's interrogatory or document requests. Because the undersigned has comprehensively reviewed the Respondent's privilege log and rendered findings thereon, no issues of privilege should remain. Therefore, the Respondent is **ORDERED** to produce the requested discovery within 10 days of the issuance of this order or show good cause why it should not be required to do so.

SO ORDERED.



Digitally signed by John P. Sellers III
DN: CN=John P. Sellers III,
OU=Administrative Law Judge, O=US
DOL Office of Administrative Law
Judges, L=Cincinnati, S=OH, C=US
Location: Cincinnati OH

JOHN P. SELLERS, III
Administrative Law Judge

² The Complainant moved to compel responses to interrogatory 7 and document requests 1, 6, 7, 8, 10, 11, 12, 13, 14, 17, 18, 19, 20, 23, and 27.

SERVICE SHEET

Case Name: ESTABROOK_MARK_v_FEDERAL_EXPRESS_CORP_

Case Number: 2014AIR00022

Document Title: Order

I hereby certify that a copy of the above-referenced document was sent to the following this 19th day of August, 2015:



Digitally signed by APRIL COOK
DN: CN=APRIL COOK, OU=LEGAL
ASSISTANT, O=US DOL Office of
Administrative Law Judges, L=Cincinnati,
S=OH, C=US
Location: Cincinnati OH

APRIL COOK
LEGAL ASSISTANT

Regional Solicitor
U. S. Department of Labor
Sam Nunn Federal Center
Room 7T10
61 Forsyth Street, S.W.
ATLANTA GA 30303
{Hard Copy - Regular Mail}

Associate Solicitor
Division of Fair Labor Standards
U. S. Department of Labor
Room N-2716, FPB
200 Constitution Ave., N.W.
WASHINGTON DC 20210
{Hard Copy - Regular Mail}

Director
Directorate of Whistleblower Protection Programs
U S Department of Labor, OSHA
Room N 3112 FPB
200 CONSTITUTION AVE NW
WASHINGTON DC 20210
{Hard Copy - Regular Mail}

Mark Estabrook
P. O. Box 1890
MANCHACA TX 78652
{Hard Copy - Regular Mail}

Lee Seham, Esq.
SEHAM, SEHAM, MELTZ & PETERSON
445 Hamilton Avenue, Suite 1204
WHITE PLAINS NY 10601
{Hard Copy - Regular Mail}

David P Knox, Esq.
Senior Counsel
FedEx Express
3620 Hacks Cross Road
MEMPHIS TN 38124
{Hard Copy - Regular Mail}

FedEx Express
3620 Hacks Cross Road
MEMPHIS TN 38124
{Hard Copy - Regular Mail}

Kurt A Petermeyer
Regional Administrator, OSHA
Sam Nunn Atlantic Federal Center
61 Forsyth Street, SW, Room 6T60
ATLANTA GA 30303
{Hard Copy - Regular Mail}