

28242 S. Salo Rd., Mulino, OR 97042
tel. (503) 710-1515

Thursday, June 25, 2009

Ms. Pamela Richards,
c/o FLRA, San Francisco Regional Office
901 Market Street, Suite 220
San Francisco, CA 94103-1791

Dear Ms. Richards,

In response to your request, please accept this letter and the attached supplemental exhibits for inclusion in the file for Case No. SF-CA-09-0098.

In our recent phone conversations, you have repeatedly stressed the need for me to provide evidence supporting my charge that the Agency discriminated against me for exercising my rights through necessary grievance and FLRA filing activities. My position remains as presented in my original filing on this case: Agency retaliated against me. Please note, I am NOT asserting my removal as a violation for FLRA review; what I am asserting is that clearly, Agency changed their plan in response to my protected activities. In short, while they intended to return me to work per a 4/17/08 Agency letter, they abandoned this plan and, instead, proposed my removal three months later. In the interim period, I did nothing to justify any disciplinary action; in fact, I was locked out from work, 600-miles away, in Oregon, collecting administrative leave and awaiting an imminent return to work. Well, actually, I did do something: I filed a grievance on 5/1/08, as part of the Settlement Agreement; I elevated this grievance in late May (it had been ignored); I got the Union to elevate it again in July, after it's first denial; and, I submitted an Affidavit for another FLRA filing.

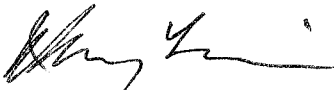
Please note, when Agency abandoned their declared and intended plan, their sole supporting documentation was a stale ROI which had been used a year earlier in my admonishment. This ROI was not only stale, it was never even substantiated; for example, in it's Summary section, it declares I claimed it was OK to use the n-word in the work environment...yet this is exactly the opposite of what I said in my sworn testimony (no, the n-word is not appropriate in the workplace). Twenty-six months later, this error has still not been corrected.

This case needs to be heard, so that justice may be served and the FAA will be deterred from repeating their reprehensible behavior, and precipitating future ULP charges.

Please do not hesitate to call if there are other documents needed, and I will gladly attempt to provide them.

Thank you for your assistance.

Sincerely,



Jeff Lewis

When I submitted documents for FLRA Case SF-CA-09-0098 on 12/14/08, I provided documents available at that time and also advised FLRA that I would gladly provide any additional documents they might ask for. Since then, a number of new documents have been procured during MSPB Discovery. Also, in just the past two weeks, I have been repeatedly asked to provide evidence of Agency discrimination against me for exercising protected rights. The following are Supplemental Exhibits responsive to this request.

–Jeff Lewis

Supplemental Exhibit #:	Date, document, content:
Sup. Exh. 1	<u>7/14/07 @12:18pm</u> , Fossier email to Ralph et al: <i>Five months after I was locked out, LR was trying to provide guidance to air traffic managers on appropriate discipline for the alleged misconduct. In this email, the key LR specialist, Dick Fossier, is recommending an admonishment or reprimand to close the Accountability Board case for which the ROI was produced. The proposal to remove me was never stated or documented until July 2008...three months after the “return-to-work-plan” letter from Andy Richards...and after I had grieved, elevated, elevated again, and filed an FLRA affidavit. (NOTE: Fossier is a coworker to Glen Rotella and the key LR specialist who handled the Lewis case in 2007)</i>
Sup. Exh. 2	<u>9/5/07 @ 1:58pm</u> , Fossier email to Giles: <i>this email shows that Fossier considered the 65-page ROI releasable, as I had been admonished. He also notes the Accountability Board case had been closed...yet, ten-months later, it was pulled off the shelf as the sole documentation for my removal.</i>
Sup. Exh. 3	<u>6/4/08</u> , FLRA Affidavit Filed by Lewis: <i>45-days after receiving the “a return-to-work-plan will be discussed soon” letter, I filed an 11-page affidavit for Case Number SF-CO-08-0046. In this case, I charged collusive activities between NATCA and Agency, intended to result in Agency discrimination against my protected rights. This case continues in abeyance pending a Counsel appointment. [not included here; please see FLRA files]</i>
Sup. Exh. 4	<u>10/8/08</u> , letter, Deplasco to Lewis (2p): <i>Deplasco was the acting District Manager during the month that my removal was decided (Andy Richards had been detailed to DFW to help cleanup a management problem related to retaliation against whistleblower controllers). Note the sentence in paragraph four, which states the ROI was the only documentation used to support this removal. Incidentally, Agency emails in Discovery (finally obtained on 2/19/09) indicate this letter was written by Castrellon, Acting Manager for the LR Branch at AWP. Castrellon supervises Fossier and Rotella.</i>
Sup. Exh. 5	<u>6/4/09</u> , FPPS Printout: <i>this shows the amendment of my sick leave to paid administrative leave. Note it was done 6/4/09. A year earlier, both Jason Ralph and Dan Castrellon wrote grievance denial letters declaring this amendment had already been done; their declarations were simply lies. I obtained this copy 6/18/09, as part of the Audit of my pay and leave.</i>

Ex. 5

Dick Fossier/AWP/FAA
AWP-010, Human Resource
Management

07/14/2007 12:18 PM

To Jennifer J Johnson/ANM/FAA@FAA, Jason
Ralph/AWP/FAA@FAA, Dennis Sullivan/AWP/FAA@FAA,
Barry J Davis/ANM/FAA@FAA
cc Gwen Marshall/AWP/FAA@FAA, Vicki
Hendrickson/ANM/FAA@FAA
bcc

Subject Re: Any word on Jeff Lewis' feedback? (who/when)

JASON/DENNIS/BARRY - PLEASE note the message from Jennifer Johnson below. Per AB Order 1110:125A, Section 15g (1) & (3), Jason you are required to provide feedback to Jeffrey throughout the process. Gwen & I have both talked to you throughout the process about this. Now, I realize that you have tried to talk to Jeff and have found him "rebellious" and/or "uncooperative;" unfortunately, that does not relieve you of the responsibility. This feedback has to come from the LOB, and if you cannot talk to him for whatever his behavior may be, maybe Dennis and/or Barry need to step in and provide the feedback. If this cannot be accomplished, you may need to put it in writing and send him a letter. Anyway you do it, we can see that Jennifer has a deadline and it must be done it quickly (NLT Monday).

From my perspective, the feedback should be something to the effect that based on the ROI and other evidence you have that it is more likely true than not true that he in fact did use the "n" word in some context - (This is the AB piece of the situation). To close this AB piece, I would suggest that Lewis be counseled, admonished, and/or reprimanded re his behavior and the use of the "n" word.

(A)

Now as we all know, the case goes way beyond the AB piece. We are not medical staff (AWP - 300) and if he has any concerns about his medical being pulled, he needs to talk/communicate with them, probably Dr. Roberts or Goodman. Do not get into a discussion with him about this.

OF COURSE THE DOCTORS WERE REFUSING TO TALK TO LEWIS!

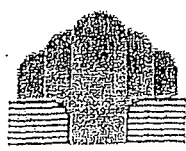
He may want to talk about his "enforced leave" being put on S/L, etc. This is something we can address, but I would advise against it. I received a letter and an e-mail from Lewis and owe him an answer. If I reply, I will BCC all of you (Jason, Dennis, & Barry). Now, I will be out starting Monday (7/16) and not be back until 7/31. Jason - I will call you on Monday, and we can talk about this. I hope this helps everyone, and again, PLEASE provide feedback to Jennifer NLT this Monday (7/16).

THANKS - dick (X - 7827).

(A) : FOSSIER RECOMMENDED AMMONISHMENT.

Jennifer J Johnson/ANM/FAA

JASON RALPH (TOWER MANAGER), DENNIS
SULLIVAN (DISTRICT MANAGER), AND BARRY
DAVIS (REGIONAL MANAGER)



Jennifer J
Johnson/ANM/FAA
ATO, Western Administrative
Services Group

07/13/2007 03:50 PM

To Gwen Marshall/AWP/FAA@FAA

cc Dick Fossier/AWP/FAA@FAA

Subject Re: Any word on Jeff Lewis' feedback? (who/when)

I need something early Monday morning at the latest... I need to write and route this and have it sent by Monday. Thanks, Gwen!

Jennifer J. Johnson
Inquiry & Investigation Specialist, WSA/ATO
425-227-1827

FLRA
SUP. EXH. #1

MANAGEMENT SUPPORT TEAM, ADMINISTRATIVE SERVICES
WESTERN SERVICE AREA (WSA) AIR TRAFFIC ORGANIZATION (ATO)
Gwen Marshall/AWP/FAA

15



Richard Giles /AWP/FAA
AWP-750, Internal Security &
Investigations

09/05/2007 02:25 PM

FILED -> 6/8/07

To Chris Grubbich/AWP/FAA@FAA

cc

bcc

Subject ROI Copy to LEWIS - AB FEEDBACK

what is this 9-5-07

Chris,

The Lewis ROI should be complete. Did we get a copy of the ROI sent to him?

Thanks

Richard Giles
Manager, AWP-750
Internal Security & Investigations Branch
Office (310) 725-3701
Cell (310) 925-6559

AT HB, Giles Forwarded. (2) copies letter. Also 11/2/07

— Forwarded by Richard Giles/AWP/FAA on 09/05/2007 02:23 PM —

Dick Fossier /AWP/FAA
AWP-010, Human Resource
Management

09/05/2007 01:58 PM

To Richard Giles/AWP/FAA@FAA

cc Barry J Davis/ANM/FAA@FAA, Monique
France/ANM/FAA@FAA, Jason Ralph/AWP/FAA@FAA,
Andy Richards/AWP/FAA@FAA

Subject Fw: LEWIS - AB FEEDBACK

**ADMONISHMENT
EMAIL**

RICHARD - fyi. PLEASE review the top two letters that Dennis Sullivan forwarded. On the basis of the ROI and management's review, Jeffery LEWIS was admonished for his use of the "racially offensive slurs." On the basis of this, we (HR & LOB) closed the Accountability Board case. Based on this, I would say it is OK to provide Lewis a copy of his redacted ROI, and if you have any questions, give me a call at X-7827.

As an aside, we are pursuing the removal of Mr. Lewis based on the permanenet loss of his medical. Lewis has appealed this; I just talked to AWP-300, and they have not heard back from Federal Air Surgeon re the Lewis appeal.

THANKS - dick (X - 7827)

NOTE: my later suggestion, Dennis (dy Redacted) was 8/30/07; AWP300 L-1

— Forwarded by Dick Fossier/AWP/FAA on 09/05/2007 01:33 PM —

Dennis Sullivan /AWP/FAA
08/07/2007 08:44 AM

Sullivan sent... 8/7/07

To Dennis Sullivan/AWP/FAA@FAA

cc Barry J Davis/ANM/FAA@FAA, Clemortee R
Marable/AWP/FAA@FAA, Dick Fossier/AWP/FAA@FAA,
Jason Ralph/AWP/FAA@FAA

Subject Re: Fw: LEWIS - AB FEEDBACK

Attached is a letter I received from Jeff Lewis today. Andy Richards is now the District Manager for SFO.

** -> likely 7/31/07 letter, replying to Dennis' 7/27/07 letter.*

**FLRA
SUP. EXH #2**

**SF-0752-09-0139-1-1
Appellant Exhibit**

*1/0
63*

RCVD FedEx overnight
10/10 9:55 AM



U.S. Department
of Transportation
**Federal Aviation
Administration**

San Francisco ATCT
T-2-6-30
San Francisco, Ca 94128

October 8, 2008

Jeff Lewis
Certified Professional Controller, CCR ATCT
28242 S. Salo Road
Mulino, OR 97042

RE: NC-08-87720-SFO
CERTIFIED MAIL NO: 7000 1670 0007 9726 1379
FED EX NO: 8558 1667 8871

FLRA
SOP. EXH #4
(2-pgs)

Dear Mr. Lewis,

This letter is in response to the formal Step 2 grievance filed by you on August 23, 2008. The number referenced above has been assigned to this case.

You allege that the Agency is in violation of law, rule and regulation, including but not limited to, Article 10, Section 12 of the 2006 CBA, Disciplinary/Adverse Action. You further allege you were not provided copies of "Records of Conversations" utilized by management in support of the proposed removal and were not advised of your representational rights under Weingarten prior to a February 6, 2007 meeting with FLM Hardy.

I have reviewed your grievance submission and can find no violation of the contract as alleged.

More specifically, you were issued a notice proposing your removal from the agency dated July 14, 2008. This proposed notice advised you of your right to copies of all materials relied upon in support of management's proposed action. You were provided copies of all materials relied upon on July 14, 2008 and I believe were provided other materials and/or documents pursuant to your several FOIA requests. The documents contained in the Record of Investigation (ROI) for which you have received were the only materials relied upon to support the proposed adverse action.

In reference to not being advised of your Weingarten right for a meeting conducted by FLM hardy on February 6, 2007, this meeting was not investigatory in nature but was for the purpose of issuing you a formal counseling letter of warning dated January 23, 2007 for which you signed, dated and received a copy. As such, there was no entitlement to representational rights under Weingarten.

In reference to the memo dated February 20, 2007 by FLM Hardy, which is contained in the ROI, you allege several false accusations were made in this document by FLM Hardy, but do not state with any specificity which accusations are alleged to be false. Furthermore, you

SF-0752-09-0139-1-1
Appellant Exhibit:

assert you were not provided a copy of this document prior to your receipt of the ROI. It is our position that the memo prepared by FLM Hardy is not a "record of conversation" directed to you but a memo directed specifically to Operations Manager Jason Ralph. As such FLM Hardy had no duty to provide you such copy at the time it was prepared. Moreover, this document was provided to you as part of materials relied upon and contained in the ROI for which you have received.

The proposed notice of removal provides you an opportunity to respond to the allegations presented in that notice either in person, in writing, or both. It is my understanding that the agency has received your written response to the proposed action and your response will be given appropriate consideration prior to a final decision is rendered. Moreover, as the proposed notice of removal is just that a proposed notice of a pending action and a final decision has not yet been rendered your grievance concerning any violation of Article 10, of the contract is premature.

Accordingly, for all the reasons stated above, the grievance and the requested remedies are denied.

Sincerely,



Mark A. DePlasco
Acting, Air Traffic Manager, San Francisco District

SF-0752-09-0139-1-1
Appellant Exhibit:

06/05/09
15:31:28
COMMAND: <=====

** FEDERAL PERSONNEL/PAYROLL SYSTEM **
* VIEW T&A RECORDS - CURRENT TO OLDEST *

PH910M1
PH910N1

LEWIS, JEFFREY N

PP: 0710 TD03.WP WPNT10

CURRENT TA RECORD 0001 OF 0001.

→ PAY PERIOD 2007 #10 (LATE APRIL)

USER ID: BATCHADJ DATE CREATED: 06/04/2009 TIME CREATED: 19:01:52
TO ACCESS NEGOTIATED RATE OR MESSAGE CODE, TYPE 'X' IN FIELD AND PRESS ENTER.
TYPE 'X' TO ACCESS MESSAGES: TYPE 'X' TO ACCESS LEAVE FROM/TO TIME:

USE: MASTER TA IND (Y/N): N REROUTE NET CK CD: N ADV LV IND (Y/N): N MSG CD: _

A PAY T N 2 S E WK C

C CDE I R R C H IN SUN MON TUE WED THU FRI SAT K COST STRUCTURE

C CDE	I R R C H	IN	SUN	MON	TUE	WED	THU	FRI	SAT	K	COST	STRUCTURE
010				1	0800						0006537	
060				1		0800	0800	0800	0800	0800	0006537	
060				2		0800	0800	0800	0800	0800	0006537	

REGULAR PAY

72 HAS ADMIN

PG: END LI: END

DAILY TOTAL: 1600 1600 1600 1600 1600 (BOTH WEEKS)

WEEK 1 TOTAL: 04000 WEEK 2 TOTAL: 04000 BIWEEKLY TOTAL: 08000

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
NEXT HELP ESC MAIN TLVW BACK EXIT

CODE "060" IS ADMINISTRATIVE LEAVE. THUS, THIS AMENDMENT FROM SICK LEAVE TO ADMIN. LEAVE WAS DONE ON 6/4/09 ... 12-MONTHS AFTER JASON RALPH'S GRIEVANCE DENIAL CLAIMING IT WAS DONE, AND 9-MONTHS AFTER CASTRELLON'S CLAIM OF THE SAME.

amended

done by HARDY on 6/4/09

amended 4/09 by 64hrs Admin 4/9/09 @ 4:14

FCRA
SWP. EXH #5