UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

DOBSON COLLINS,

Plaintiff,

-vs-

FLAGSHIP AIRLINES, INC.,
a Delaware corporation,

Defendant.
_____/

CASE NO.: 96-1104-CIV-GOLD
Magistrate Judge Stephen T. Brown

JC

MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER ORDER DENYING SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, TO WITHDRAW ORDER DENYING SUMMARY JUDGMENT

I. INTRODUCTION

On January 19, 1999, this Court issued an extensive order denying defendant's Motion for Summary Judgment in this action and apparently making factual findings on issues while determining that trial is necessary. Defendant respectfully requests that the Court reconsider its decision and its apparent findings of fact, and grant defendant's Motion for Summary Judgment. Defendant recognizes the extraordinary burden it bears in advancing this Motion, but requests the Court's indulgence in the following analysis. With deference to the Court, defendant suggests that the Court made factual findings that were neither appropriate at this stage in the litigation nor supported by the record, and misconstrued Eleventh Circuit law as it applies both to the evidentiary rules on Summary Judgment and to the shifting burdens of proof in a discrimination action.[1/] As a result, defendant respectfully suggests that the Court overlooked the undisputed record evidence that should impel the Court to reconsider and to grant

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1/ Throughout this memorandum, defendant will "flag" these apparent findings that it believes were improvident at this stage of proceedings if trial is necessary.

de[illegible]otion. If the Court is not inclined to grant defendant's motion, defendant requests that the Court withdraw its 29-page Order and reserve fact issues for trial.

II. STANDARD FOR SUMMARY JUDGMENT

As stated on page nine of the Court's order, a party seeking to avoid summary judgment "cannot defeat a defendant's properly supported motion for summary judgment without an affirmative presentation of specific facts showing a genuine issue, and may not merely rely on the general allegations of the pleading." (citing Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986)). As the Court correctly notes, the facts asserted by the party "opposing summary judgment must be regarded as true **if** supported by affidavit or other evidentiary material." (Order p. 9)[2/] (emphasis added) (citing Coke v. General Adjustment Bureau, Inc., 640 F. 2d 584, 595 (5th Cir. 1981)). Defendant suggests that plaintiff's allegations in opposition to summary judgment simply do not meet this standard because they are supported only by his own self-serving and conclusory affidavit which simply restates the allegations in his Complaint and are explicitly contradicted by defendant's documentary and testimonial evidence. Thus, plaintiff has failed to present specific facts to support the allegations upon which the Court based its denial of defendant's Motion for Summary Judgment.

2/ References are to the Court's Order dated January 19, 1999 ("Order"), Defendant's Memorandum of Law in Support of its Motion for Summary Judgment filed June 1, 1998 ("Memorandum Supporting Summary Judgment"), Plaintiff's Memorandum of Law in Opposition to the Summary Judgment filed June 29, 1998 ("Memorandum Opposing Summary Judgment") and copies of pages from the record. For the Court's convenience some of the record evidence most relevant to this motion is attached hereto behind lettered tabs. Deposition transcripts are cited as "Depo." and Declarations are cited as "Decl."

III. DISCUSSION

Initially, defendant submits that the Court's assertion underlying its discussion and analysis of defendant's Motion for Summary Judgment that plaintiff's claims of race discrimination, hostile environment and retaliation "primarily derive from allegedly disparate treatment he received from his immediate supervisor, Franz" is not only not supported by the record evidence, but is also incorrect. See Order p. 10. Noel Franz had nothing to do with the "Career Decision Day" advisory Flagship issued to plaintiff in May 1993. See infra pp. 8-9. Also significantly, there is simply no admissible evidence to indicate that Franz was in any way involved in the two incidents of harassment alleged by plaintiff in this case -- the noose and the Polaroid. See infra p.13, n.12.

As the Court analyzed the record under three categories: (1) disparate treatment discrimination, (2) harassment and (3) retaliation, defendant will present its argument on this Motion in that order.

A. Race Discrimination - Disparate Treatment Claim

While the Court accurately sets out the law and burden-shifting analysis applicable to employment discrimination claims, defendant respectfully suggests that the Court misapplied these standards to plaintiff's conclusory and unsubstantiated allegations and ignored the admissible record evidence that plaintiff attempted to meet only by repeating the allegations of his complaint. Compare Complaint (Dkt No.1) with Memorandum Opposing Summary Judgment, Ex. 1 (Dkt No. 53).

1. *Prima Facie* Case

To establish a *prima facie* case of discrimination, plaintiff must show that Flagship treated similarly situated non-Black employees more favorably. Holifield v. Reno, 115 F. 3d 1555, 1562 (11th Cir. 1997). Plaintiff cannot and has not done that. Moreover, Flagship

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has clearly articulated legitimate, non-discriminatory reasons for its actions against plaintiff, and plaintiff identified no admissible evidence competent to show that these reasons are pretextual.

As a basis for determining that plaintiff has established "an unrebutted *prima facie* case of discrimination" under a disparate treatment claim, the Court cites to plaintiff's allegations that: (1) he "received unique and difficult assignments," and (2) Franz failed to remove the notices of non-compliance from his file though he removed them from the files of white co-workers. See Order p. 16. These bare allegations are simply insufficient to establish a *prima facie* case of disparate treatment.

First, there is absolutely no record evidence that plaintiff received any "unique" or "difficult assignments." In the record before the Court, the only assignment plaintiff challenges is the project which he was asked to do when he volunteered for overtime on or about May 12, 1994. In its Motion for Summary Judgment, defendant presented a description, which plaintiff does not dispute, of the project as benefitting all mechanics, i.e., the creation of a list of appropriate parts for use in repairing open maintenance items on Flagship aircraft. See Memorandum Supporting Summary Judgment p.14 (Dkt No. 46). In support of Franz's declaration that this was a routine assignment, the company also offered its corroborating business records showing that Flagship (and Franz) assigned at least one white employee exactly the same work, and that he had received exactly the same sanction for failing to do it as that imposed on plaintiff. (Tab A, Franz Decl. Ex. 1). In response, plaintiff has offered nothing other than his subjective belief that the work was impossible and his mistaken belief that it was never assigned to other employees.

Under Anderson, an admissible company record demonstrating assignment of work to a white employee must "trump" conclusory repetition of allegations from the complaint which are not "significantly probative." See, Anderson, 477 U.S. at 249-250. Thus, the record

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evidence entitles defendant to prevail on its admissible evidence over the conclusory allegation of the plaintiff.

Second, plaintiff provides nothing but his own self-serving testimony that Franz removed "notifications of non-compliance" from the files of white employees. Significantly, while plaintiff lists the names of three specific employees, after discovery he fails to present any evidence from any of these individuals or information about who these employees are or the circumstances surrounding their notices of non-compliance. See Memorandum Opposing Summary Judgment p.4 (Dkt No. 53). In fact, plaintiff has presented nothing other than his own bold assertion that the alleged discriminatory removal of notifications occurred. On the other hand, Flagship has identified other co-workers who did receive notifications of non-compliance, also from Noel Franz, during the same period to which plaintiff referred. Flagship did so by producing the co-worker files, admissible business records that show notifications still in the files. (Tab B, Collins Depo. at 409-11, Ex. 72). Once again, that admissible business record must "trump" plaintiff's statements, contentions or averments. See Anderson, 477 U.S. at 248-250. Without any details, plaintiff's conclusory assertion simply is not evidence of any similarly-situated employees, much less disparate treatment. See Fed. R. Civ. P. 56(c).[3/]

In addition, while in analyzing Collins' *prima facie* case, the Court did not directly rely on Collins' allegations that he was discriminatorily docked pay or that he was discriminatorily denied promotions, defendant addresses these incidents, as the Court referred to them in its recounting of the facts. (Order pp. 3-4). Flagship had a requirement that all workers,

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3/ Respectfully , the Court's apparent finding that "Plaintiff was treated less favorably than similarly situated employees who are not members of the minority class" based on Plaintiff's alleged receipt of "unique and difficult assignments" and "Franz's failure to remove the non-compliance notification from Plaintiff's personnel file," overreaches on this record. See Order p. 16. Even at trial, such unsupported assertions by plaintiff would be excluded without foundation.

including plaintiff, "punch" the time clock only at the hour authorized for work, and had warned plaintiff that he must refrain from punching the clock earlier in order to be paid for a period for which he was neither working nor authorized to work. The record evidence is that two mechanics were engaging in the same practice of punching in early (one white and one black) and that both were given the same order not to punch the clock early. (Tab A, Franz Decl. Ex. 3; Tab B, Collins Depo. Ex. 52)

The Court's choice of verbs in describing this incident is telling. At footnote 4, the Court observes that plaintiff contends that he was the only employee docked for this hour, and that this "adverse" decision was motivated by discrimination toward plaintiff. Review of the record will disclose that plaintiff offered absolutely no admissible evidence that he was not treated the same as the other mechanics on this extra 7:00 a.m. shift. (See Tab A, Franz Decl. Ex. 4). Thus, in the context of the Supreme Court's direction in Anderson, on this record, plaintiff cannot avoid summary judgment based on his mere "contention." See Anderson, 477 U.S. at 248-50.

With respect to the Court's reference to plaintiff's allegation that he "did not receive promotions he believed were commensurate with [his] performance and seniority," defendant maintains that plaintiff is not entitled to any relief based on his upgrade applications in 1991 and 1992 because he is barred from pursuing those claims.[4/] In any event, these allegations are also insufficient to withstand defendant's Motion for Summary Judgment. See Order p. 3.

4/ Plaintiff entered into a settlement agreement in July 1992 in which he waived any rights to sue Flagship based on these allegations. Moreover, he never received a notice of right to sue from the EEOC on his April 1991 and February 1992 charges because of that agreement. Therefore, he failed to exhaust his administrative remedies as required prior to filing suit under Title VII. 42 U.S.C. § 2000e-5(f)(1). Similarly, plaintiff is time barred from suing on actions that took place more than five years prior to filing suit under 42 U.S.C. § 1981. See Paldano v. Althin Medical, Inc., 974 F. Supp. 1441, 1554 (S.D. Fla. 1996) (Graham, J.)

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Plaintiff has presented the Court only with his mere belief that the denial of promotional opportunities was racially motivated, and he has failed to identify any other person (of any race or color) who sought similar upgrade opportunities and was treated more favorably. In contrast, defendant has supplied admissible evidence showing that when plaintiff sought certain upgrade opportunities within his craft or class of aircraft maintenance mechanics in 1991, he appealed to a joint union/management committee which found him unqualified and "disapproved" the "promotions." (Tab B, Collins Depo. Exs. 23, 24, 27, and 28).

Moreover, the record evidence is undisputed that well in advance of any "settlement," and the "settlement agreement" reached in June 1992, plaintiff was "promoted." (Tab B, Collins Depo. Ex. 35). Contrary to the Court's apparent finding (Order p. 3) that plaintiff's promotion was "a result" of the settlement agreement, record evidence and plaintiff's own testimony establishes that the agreement simply "affirm[ed] and confirm[ed]" plaintiff's promotion a year earlier. (Tab B, Collins Depo. at 222, Ex. 35). It is simply not possible to conclude from this record of evidence that plaintiff received any promotion or entered this settlement agreement as a consequence of defendant's agreement to do anything that it had not already done.[5/] See Order p. 3.

It is unequivocally plaintiff's burden to show that there is some admissible evidence from which a jury could conclude that some non-Black person in the same job, under the same supervision, and subject to the same rules of work was treated better in the same or similar circumstances. See Holifield v. Reno, 115 F.3d 1555 (11th Cir. 1997). If this Court

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5/ While there is certainly no dispute that plaintiff filed numerous administrative charges of discrimination with the EEOC, it is significant that not even one of them ever resulted in a finding of cause under 42 U.S.C. § 2000e-5(b).

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attempts to find the name of such a comparator in this record it will seek in vain, for none has been identified.

2. Defendant's Legitimate Non-Discriminatory Reason

Flagship has outlined legitimate, non-discriminatory, non-retaliatory, and race-neutral business reasons for the employment actions taken against plaintiff. While the Court refers only to the incidents involving plaintiff's insubordination, defendant's Memorandum Supporting Summary Judgment cites to Federal Aviation Regulations, proper maintenance procedures and company policies to justify issuing plaintiff notices of non-compliance, refusing to pay him overtime when he reported early, and assigning the task of developing the list of parts for the repair of company aircraft. See Memorandum Supporting Summary Judgment pp. 13-15 (Dkt No. 46).

Because the Court focused on plaintiff's insubordination, however, defendant will address that issue. Respectfully, defendant requests review of the Court's finding that "[w]ith the exception of Franz's testimony, the record is virtually devoid of examples of Plaintiff's insubordination rising to the level of termination." (Order p.17). In fact, the record is uncontroverted that Franz was not in any way involved when plaintiff was given his final warning in the form of a "Career Decision Day" advisory for being insubordinate in May 1993 by "violat[ing] company policy and federal laws governing international travel" and "exhibit[ing] unprofessional and hostile behavior to his fellow workers." (Order p. 3). The undisputed record evidence shows that when plaintiff initially refused to travel to the Bahamas in May 1993, supervisor Harold Allen indicated to him that he would have to issue him a "direct order," at which point plaintiff then agreed to go.[6/] (Tab B, Collins Depo. at 247, Ex. 41). Base

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6/ Contrary to the Court's "finding," plaintiff was not "commanded to either report or be (continued...)

manager Edgar Cerezo issued plaintiff the disciplinary action -- the "Career Decision Day" advisory -- based on plaintiff's improper behavior after he agreed to travel. Thus, Noel Franz was not remotely involved in this incident in any way (as the Court seems to find in its Order at footnote 9).[7/]

Moreover, in this circuit, the law is that the courts should not attempt to evaluate or second guess the merits of an employer's policies or disciplinary decisions). Elrod v. Sears, Roebuck & Co., 939 F. 2d 1466, 1470 (11th Cir. 1991) (Federal courts 'do not sit as a super-personnel department that reexamines an entity's business decisions.'") The only relevant inquiry here is whether plaintiff has identified admissible evidence to show that someone other than himself violated company policies while under the scrutiny that attends on a "Career Decision Day" advisory by abusing the privilege of supervised review of his personnel file.[8/]

6/(...continued)
terminated." See Order p. 3.

7/ Also, the charge that Plaintiff filed with the EEOC because of this incident was not "resolved" as indicated by the Court's order on page four. Plaintiff unequivocally testified that he unilaterally withdrew his charge because no discrimination had occurred between May 1993 and the date of his withdrawal on March 16, 1994. (Tab B, Collins Depo at 231, Ex. 37).

In any case, as the Court observes, this charge is beyond the reach of this Court's jurisdiction, both because of the effect of a withdrawn charge, and because the law of the case is that plaintiff may not pursue any remedy based on this charge. See Order dated July 29, 1996 (Dkt No. 19); United Airlines v. Evans, 431 U.S. 553, 558 (1977) (conduct not subjected to EEOC charge process has no legal consequences). Moreover, the incident's "background" effect would seem to contradict any attempted inference that the "Career Decision Day" was discriminatory. Plaintiff acknowledged the appropriateness of the discipline under the collective bargaining agreement and unilaterally withdrew his EEOC claim. See Order p. 26 n. 9.

8/ Respectfully, the Court's observations at footnote 3 on page 4 of the Order simply overlooks the uncontested fact that Collins waived his right to contest discipline under the collective bargaining agreement. His "protest" expresses his undeniable right to pursue
(continued...)

Flagship identified its Final Advisory discharging plaintiff and the statements of co-workers on which the Company relied in determining that there was cause for discharge. See Memorandum Supporting Summary Judgment pp. 14-15 (Dkt No. 46). Evidence that an employee with a final warning in his file behaved in an insubordinate fashion by both secreting papers apparently taken from his file in violation of company policy and by refusing to allow his supervisor to review the document is a legitimate and non-racial reason for discharge.

This record evidence unequivocally burdens plaintiff with the obligation of identifying for the Court some significantly probative and admissible evidence that other persons who committed the same or similar infraction under similar circumstances were not discharged and (assuming a *prima facie* case) that discrimination based on race, and not Flagship's explanation for discharge, i.e., flagrant insubordination, was the real reason for Flagship's decision. St. Mary's Honor Ctr. v. Hicks, 113 S. Ct. 2742, 2752 (1993). Respectfully, Flagship urges the Court to review the record carefully for any such admissible evidence contradicting defendant's documented testimony. The Court will search in vain for such evidence because plaintiff did not identify any. That absence of evidence entitles Flagship to summary judgment that its discharge decision was not discriminatory under the law. Grigsby v. Reynolds Metals Inc., 821 F.2d 590 (11th Cir. 1987).

B. Race Discrimination - Hostile Work Environment Claim

Again, respectfully, defendant suggests that the Court has misconstrued the legal definition of racial harassment by combining into its analysis isolated incidents that are neither

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8/(...continued)

Title VII claims. See Alexander v. Gardner-Denver Co. 415 U.S. 36 (1974). Defendant would suggest that its continued employment of Collins in the face of his protest to the EEOC, later unilaterally withdrawn, simply comports with its obligation not to penalize him for exercising that statutory right. 42 U.S.C. § 2000e-3.

harassment nor documented on this record with admissible evidence. For purposes of this memorandum, Flagship accepts the Court's definition of harassment at page 18 of the Order.[9/] However, Flagship maintains that Collins identified no record evidence that plaintiff was subjected to severe or pervasive racial harassment.

1. Plaintiff was not Subjected to a Hostile Work Environment

To support its conclusion that plaintiff found his work environment to be subjectively hostile, the Court found that "[s]ubjected to constant harassment, [plaintiff] filed numerous EEOC charges." (Order p. 19). Defendant suggests that the record does not contain any evidence to support a "finding" of hostility under governing law. Moreover, the repeated EEOC charges furnish no support for such a finding. While plaintiff did, in fact, file various EEOC charges (two that were settled, one that was withdrawn and one, which was later amended and forms the basis of this lawsuit, resulted in a finding of no violation), they were all based on discrete actions allegedly occurring no more frequently than several months or years apart. Not one of them mentions any racial harassment -- not even his last charge dated December 12, 1994, six weeks after he now asserts a "noose" was found in the workplace.

Similarly, defendant submits that the basis for the Court's finding of an objectively hostile work environment is not evident in the record. The Court's "finding" that "Plaintiff recounted numerous instances [of] verbal abuse, during which Franz lost his temper and threatened to terminate Plaintiff," is -not supported by any record evidence. See Order p. 19 (emphasis added). Defendant can find no record evidence of any threats of discharge as

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9/ There is a question whether Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1998), should apply in cases involving alleged racial discrimination. Faragher explicitly sought to reconcile lower court decisions that had drawn what it believed were appropriate distinctions between quid pro quo sexual harassment where sexual favors are explicitly sought and hostile environment sexual harassment. There is no analogue to quid pro quo harassment in race discrimination cases.

described on page 19 of the Court's order without record citation. In fact, the only allegation involving any "verbal abuse" is plaintiff's assertion that when he was reviewing his personnel file and refused to show Franz the document in his possession, Franz "screamed at [him] that he was going to fire [him]." See Memorandum Opposing Summary Judgment p. 6 (Dkt No. 53).

The Court also appears to have found that "Franz solicited adverse statements from Plaintiff's co-workers to support Franz's behavior." (Order p. 19). Discovery has been completed, and plaintiff neither found nor proffered to the Court any such "unfavorable statement."[10/] Defendant therefore concludes from the absence of such evidence that plaintiff and the Court are referring to statements received by Franz in connection with his investigation of insubordination and the charges leading to plaintiff's discharge on November 30, 1994. Because they were necessarily procured pursuant to a bona fide investigation under the collective bargaining agreement, it is not possible to conclude that the receipt of those statements in connection with his discharge for review in any grievance arbitration plaintiff might have invoked, constitutes adverse employment action because of race or retaliation, or that they would contribute to any hostile work environment while plaintiff was employed at Flagship.[11/]

10/ The statement from Juan Cuadra, which is attached to Plaintiff's Memorandum Opposing for Summary Judgment, is not a sworn statement and is conspicuously lacking in detail as to the time these statements were allegedly solicited and the alleged purpose for which they were solicited.

11/ Again the Court appears to have "found" that "Franz actually caused the hostility to permeate throughout the work environment." (Order p. 19). Plaintiff has identified no evidence to support that finding. It is at best premature in light or the Court's determination that trial is necessary. The justification for discharge in the case (absent evidence of a racial motive) was clearly a matter between Flagship and Collins' union and subject to the grievance arbitration procedure they adopted under the Railway Labor Act for that evaluation. 45 U.S.C. § 185. If preparation for that procedure is discriminatory, the Court effectively supplants that procedure in violation of circuit precedent. See Elrod, 939 F.2d at 1470.

The Court also refers to the noose and the overexposed photograph as a basis for inferring that plaintiff was subjected to a hostile work environment. Significantly, as the Court notes, plaintiff's EEOC charge which forms the basis of this lawsuit is "conspicuously silent" as to the noose and the Polaroid -- "incidents highly relevant to the issue of discrimination and hostile work environment." (Order p. 5).

This fact is highly important in the context of plaintiff's allegation that the noose was placed in the workplace some time in mid-October 1994.[12/] (Tab B, Collins Depo. at 376-77). Not only did plaintiff fail to mention it in his charge of discrimination, but he also did not make a claim under internal company procedures or the collective bargaining agreement. (Tab B, Collins Depo. at 381-84). Additionally, after advising Flagship of his noose claim through his counsel, he then failed to participate in an investigation to attempt to discern the circumstances surrounding the incident (if it actually occurred). (Tab B, Collins Depo. at 386-88, Ex. 70).

Finally, there is the Polaroid picture. Although the Court assigns significance to that picture, no one has ever offered any admissible evidence of where that Polaroid came from or who put it in the workplace. (Tab B, Collins Depo. at 392). As with the noose, plaintiff claims he first saw the Polaroid some time in 1994, but he failed to include it in his EEOC charge and never made a claim under the internal company procedures. (Tab B, Collins Depo. at 393-94). Once again, plaintiff and plaintiff's counsel failed to respond to an invitation to participate in the company investigation of these incidents or offer any evidence that might help Flagship discern the circumstances surrounding them. (Tab B, Collins Depo. at 386-88).

12/ Collins could not identify the perpetrator(s) of the noose or the Polaroid. (Tab B, Collins Depo. at 396). Even if these two unreported incidents did occur, they are clearly not enough to justify a finding of severe and pervasive actionable harassment. See Thevenin v. Baptist Health Systems of South Florida, Inc., 931 F. Supp. 856, 859 (S.D.Fla. 1996) (King, J.) (a hostile work environment under Title VII is one that is "polluted" with discrimination).

In contrast to plaintiff's lack of evidence of a racially hostile work environment, Flagship offered plaintiff's own testimony that he did **not** experience any physical harassment, racial jokes, name calling or epithet(s) except in one incident where management took appropriate action to investigate and admonish the co-worker involved. (Tab B, Collins Depo. 209-11; Tab C, Perez Depo. at 129-33).

Plaintiff has submitted only conclusory affidavits of self-interested plaintiffs and charging parties alleging without detail or first hand knowledge that Noel Franz was motivated by discrimination in his treatment of Plaintiff. No one is secure in a legal environment where such mere accusations would be sufficient evidence to allow a jury to conclude that discrimination occurred.

2. Affirmative Defense

The Court also seems to have determined prematurely that Flagship is vicariously liable under Faragher for Franz's issuing a Final Advisory on December 12, 1994, by automatically and (we suggest) incorrectly assuming that Collins' discharge "culminated" from yet unproven acts of racial harassment. In order for defendant to be held vicariously liable under Faragher, a plaintiff must first prove that supervisory harassment culminated in his discharge. See Fierro v. Saks Fifth Avenue, 13 F. Supp. 2d 481 (S.D.N.Y. 1998) (despite having been discharged and having alleged supervisory harassment, employee failed to show that the harassment "culminated" in his discharge for violation of company rules and therefore defendant was not vicariously liable and could raise affirmative defenses). Plaintiff must prove that an employer's legitimate, nondiscriminatory reason for discharging him is a pretext for discriminatory discharge before a defendant can be held vicariously liable under Faragher. See Vandermeer v. Douglas County, 15 F.Supp.2d 970, 983 (D. Nev. 1998)(while female plaintiff obviously suffered a "tangible employment action," whether it resulted from the alleged sexual

harassment of her supervisor would best be analyzed under the familiar McDonnell Douglas burden-shifting analysis of most straightforward employment discrimination cases). In this case, as already shown, plaintiff is unable to proffer any admissible evidence to show that defendant's legitimate reason for firing him for insubordination was a pretext for discriminatory discharge.[13/] He therefore is unable to show that his discharge "culminated" from supervisory racial harassment or discrimination, and thus defendant cannot be held vicariously liable to him. Thus, the Court's finding that [d]efendant is liable for Franz's conduct is, not only premature but inaccurate. See Order p. 21.

With respect to defendant's affirmative defense, then, there is no evidence that plaintiff reported any acts of racial harassment during his employment, either to the company or to the EEOC, particularly on occasions when it would have been highly appropriate for him to do so (the filing of his amended EEOC charge December 12, 1994, and his invitation to Flagship headquarters January 9, 1995). The only record evidence here is that plaintiff, who from his 1992 experience with Rafael Perez (see infra p. 16) was familiar with company policy and procedures, and who knew that the president of his union was a black man, failed ever to bring any claim of supervisory harassment during his employment. (Tab B, Collins Depo. at 176).

Under Faragher, an employee claiming hostile environment harassment cannot unreasonably fail to bring a charge of harassment forward in a timely and appropriate fashion to allow the company to address it. It is simply not an appropriate reading of Faragher to allow plaintiff, caught in an act of violating a known policy, retrospectively to reconstrue prior years'

13/ At footnote 8 on page 25 of the Order, the Court states that it "does not determine whether Plaintiff's conduct during the [insubordination] incident substantiates termination." (Order p. 25, n. 8). Respectfully, defendant suggests that, for the reasons stated in p. 9 supra, it would be improper for the Court to attempt to make such a determination.

experiences as severe and pervasive racially hostile conduct when no such claim was ever asserted during his employment. Flagship cannot be held liable for severe and pervasive racial harassment where the noose and the Polaroid incidents — the only hostile environment allegations plaintiff makes — were not even reported to the human resources department or under the collective bargaining agreement and its grievance procedure. See Faragher, 118 S.Ct. at 2292.

The Court's finding that defendant did not "reasonably and promptly correct[] any of Plaintiff's complaints and concerns of racially-motivated harassment" also ignores the record evidence.[14/] See Order p. 21. The one time that plaintiff complained of another employee (Rafael Perez) using the word "nigger," Flagship reacted immediately and counseled the employee. (Tab B, Collins Depo. at 209-11) That Collins himself testified he never again heard that racial epithet in the workplace, (Tab B, Collins Depo. at 396 and 407), only underscores the reasonableness and promptness of Flagship's response to his reported complaints. Thus, particularly in context of his denial that other acts of harassment ever occurred, Flagship is entitled to conclude from Collins' unreasonable failure to report that no such harassment ever occurred during his employment, or that whatever happened simply did not offend him.[15/] See Faragher, 118 S. Ct. at 2292.

C. Retaliation

The Court appears to find that plaintiff has established an "unrebutted claim of retaliation." (Order p. 22). While defendant concedes that the cases cited by the Court contain

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14/ Again, this finding is at best premature in a case that is destined for trial.

15/ Defendant also respectfully seeks reconsideration of the Court's "finding" that "Plaintiff's participation in the EEOC process and the prior negotiated settlement placed Defendant on notice that extensive racial harassment was present." (See Order p. 21) As noted earlier, plaintiff never mentioned harassment in any of his EEOC charges.

the appropriate standard applicable to a retaliation case, it believes the Court has misconstrued its application to the record evidence. To establish a claim of retaliation, plaintiff must show that: (1) he engaged in protected activity, (2) an adverse employment action occurred, and (3) there is a causal connection between the protected activity and the adverse employment action. Little v. United Technologies, Carrier Transicold Div., 103 F. 3d 956, 959 (11th Cir. 1997).

1. Plaintiff's "Direct Evidence"

Defendant must concede that the "EEOC comment" attributed by plaintiff to Franz on this motion creates a factual controversy, but Franz denies it. However, if that comment occurred, it occurred in May 1994, and the only direct consequence of the transaction, in which plaintiff admitted that he either refused or expressed his inability to perform the work he was assigned during a voluntary overtime shift, was that he was not permitted to stay at work and be paid for that extra shift which he did not work. (Tab B, Collins Depo. at 327). Plaintiff has identified no evidence of any other adverse consequence of his failure or refusal to do that work on that day. Being sent home for refusing to perform work, when he volunteered to do that work on this overtime shift simply cannot constitute an "adverse employment action" sufficient to sustain a claim of retaliation.[16/] See Wideman v. Wal-mart Stores, Inc., 141 F.3d 1453, 1456 (11th Cir. 1998) ("there must be some threshold level of substantiality that must be met for unlawful discrimination to be cognizable under the anti-retaliation clause [of Title VII]"). As the court in Doe v. Dekalb County School Dist. noted, "not everything that makes an employee unhappy is actionable adverse action." 145 F. 3d 1441, 1449 (11th Cir. 1998). Particularly in light of its consequences, Franz's alleged comment cannot constitute "'direct' evidence of

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16/ At page 4 supra, Flagship has already shown that another employee was similarly reprimanded for refusing to perform the task assigned to plaintiff.

retaliation" or a "classic remark directly evidencing retaliatory motive."[17/] See Order pp. 23 and 24, n. 7.

2. Adverse Employment Action

As adverse employment actions supporting its ruling that plaintiff was retaliated against, the Court cites to plaintiff's allegations that:

- he was more closely scrutinized,
- he received written reprimands and unfavorable job assignments,
- he was threatened with termination,
- he received a non-compliance notification for the same conduct engaged in by other employees whose notifications were withdrawn, and
- Franz began soliciting employees for negative statements concerning plaintiff.

(Order p. 24). In addition to maintaining that these allegations do not constitute "adverse employment actions," defendant submits that neither these nor the Court's finding that "Plaintiff did not endear himself to his supervisor" require resolution by the trier of fact. See Order p. 25.

As detailed in pages 4 through 7 of this memorandum, plaintiff has not presented any admissible evidence in support of his self-serving affidavit recounting these allegations. In contrast, defendant has shown by admissible evidence that other employees received similar reprimands, assignments and notifications of non-compliance. (Tab B, Collins Depo. at 409-10, Ex. 72; Tab A, Franz Decl. Exs. 1 and 2) Similarly, defendant has addressed plaintiff's alleged threats of termination and his conclusory allegations that Franz solicited negative statements. See p.12, supra. On this record, plaintiff's allegations simply do not raise a "genuine issue of material fact."

17/ Similarly, as there is no retaliatory result, Franz's alleged statement cannot "establish[] the causal connection element of a retaliation claim." See Order p. 25, n. 9

The adverse employment action Flagship took against plaintiff was discharging him in December 1994 because he directly violated his base manager's explicit and repeated instructions to show him a piece of paper so that he could identify what plaintiff had removed or copied from his personnel file in violation of acknowledged company rules. While the Court notes that it "does not determine whether Plaintiff's conduct during this incident substantiates termination," defendant again suggests that such is not an issue for the Court's determination nor does it present a "question of fact" for this Court as it might have for an arbitrator. See Order p. 25. Rather, the proper issue before the Court is whether Flagship "gave an honest explanation" for its decision. See Order p. 25 n. 8; Elrod, 939 F. 2d at 1470.

3. Causal Relation

Conceding, for purposes of this motion only, that Franz was aware of plaintiff's EEOC charges — defendant submits that the Court's finding that the "series of adverse employment actions commenced shortly []after [the charges]," is inaccurate.[18/] See Order p. 25. As discussed earlier, plaintiff's charges filed April 1991 and February 1992 were settled in July 1992. (See Tab B, Collins Depo. Ex. 35). Subsequently, plaintiff voluntarily withdrew his May 1993 charge in March 1994 because the "discrimination that was going on had ceased." (Tab B, Collins Depo. at 231).

Even if the April 1994 "docking" of overtime, the May 1994 notifications of non-compliance and the May 1994 overtime assignment incidents could be considered "adverse

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18/ Defendant finds no record support for the Court's finding that plaintiff presented "evidence that [d]efendant, including Franz, knew of his EEOC charges." See Order p. 25.

employment actions" — which defendant does not concede — these events took place after plaintiff voluntarily withdrew the charge he had filed a year earlier.[19/] And, it was after these incidents that plaintiff filed his EEOC charge dated May 12, 1994.

The adverse employment action plaintiff received -- his termination December 9, 1994 -- was almost six months after plaintiff's May 1994 EEOC charge. The courts have understandably held that a substantial time-gap between the allegedly protected activity and the adverse employment action dispels any inference that the protected activity motivated that action, and defeats any attempted showing of a *prima facie* case. See, e.g. Juarez v. Ameritech Mobile Communications, Inc., 957 F.2d 317 (7th Cir. 1992) (six months separated the protected activity from the adverse employment action); Mesnick v. General Elec. Co., 950 F.2d 816, 828 (1st Cir. 1991) (nine months, "more or less"), cert. denied, 504 U.S. 985 (1992); West v. Fred Wright Const. Co., 756 F.2d 31 (6th Cir. 1985) (seven months).

On this record, plaintiff may not rely on mere timing to show causation, and he has failed to identify admissible evidence that will support his retaliation claim.

V. CONCLUSION

For the reasons stated, Defendant requests that this Court reconsider its decision and grant its Motion for Summary Judgment. In the alternative, Defendant requests that the Court withdraw its Order Denying Defendant's Motion for Summary Judgment.

19/ The May 1993 "Career Decision Day" advisory was what prompted the May 1993 EEOC charge, so the advisory could not have been issued as a result of the EEOC charge.

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Respectfully submitted,

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Terence G. Connor
Florida Bar No. 291153
Lisette E. Simón
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Alexander K. Sun
Florida Bar No. 0076120

CERTIFICATE OF SERVICE

We hereby certify that a true copy of the foregoing was mailed this 22nd day of February, 1999, to Stewart Lee Karlin, Esquire, 400 Southeast Eighth Street, Fort Lauderdale, Florida 33316.

Lisette Simón
Lisette E. Simón

A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 96-1104-CIV-GOLD
Magistrate Judge Stephen T. Brown

DOBSON COLLINS,

Plaintiff,

-vs-

FLAGSHIP AIRLINES, INC.,
a Delaware corporation,

Defendant.
_____/

DECLARATION OF NOEL FRANZ
PURSUANT TO 28 U.S.C. § 1746

I, Noel Franz, a resident of Miami-Dade County, Florida, under penalty of perjury and from personal knowledge, make the following declaration in this matter:

1. I am a licensed airframe and power plant mechanic, and I was employed by Flagship Airlines at the Miami International Airport from September 1989 to February 1995 in the following positions:

September 1989 - February 1991	Mechanic.
February 1991 - September 1994	Supervisor.
September 1994 - February 1995	Acting Base Manager.

I am familiar with Dobson Collins, a mechanic who worked at Flagship from 1989 until 1994.

2. As either Supervisor or Acting Base Manager, I have had four interactions with Mr. Collins relating to his claims in this case.

Minimum Equipment List Assignment

3. Based on Federal Aviation Administration Regulations (FARs), each aircraft in Flagship's fleet has an approved Minimum Equipment List (MEL) that travels with the aircraft. It enables the operation of the aircraft even while certain non-critical instruments and equipment are in need of maintenance. Maintenance items are critical or non-critical depending on whether they affect the immediate airworthiness of the aircraft. Maintenance tracks the MEL of an aircraft and seeks to clear items from the MEL as promptly and efficiently as possible.

4. Maintenance on non-critical MEL items can be deferred if time pressures require doing so. A mechanic ~~enters~~ REQUESTS the "open MEL item" BE ENTERED into the computer. The open MEL item is then "cleared" at a later date when the repair is accomplished.

5. In order to "clear" MEL items, particularly when the work load is heavy, it is important for mechanics to have a list of every part number that might satisfy a particular open item and return the aircraft to service promptly. Having this list allows the stock room to order parts and enables the mechanics to work more efficiently.

6. In order to expedite clearance of open MEL items, we often offered overtime shifts to mechanics to have them research and identify part numbers that would satisfy all open MEL items, and we gave these overtime assignments to volunteers in order of their seniority with the company. This was particularly true during periods of MEL item backlogs. At times, we were ~~directly~~ instructed by Flagship headquarters to offer overtime for this purpose. We assigned this project to overtime volunteers and among them to mechanics of every race or ethnic group.

7. Although it would be difficult to go back and determine how many other mechanics were assigned this project besides Mr. Collins, I have reviewed the file of white mechanic David Wagner, which contains a counseling record (CR-1), showing that I assigned him to such a project as long ago as in 1991. Attached as Exhibit 1 is a true copy of that CR-1 from his company personnel file. In addition, I recall assigning this project in the past to Craig Underhill and Juan Cuadra.

Notifications of Non-Compliance

8. As a method of quality assurance, we adopted a system of issuing "Notifications of Non-Compliance" to mechanics who failed in any way to perform maintenance operations as required by the FARs or company manuals. Quality assurance inspectors or supervisors would issue these notices to mechanics and ask them to acknowledge the proper procedure in a response on the form.

9. These Notifications of Non-Compliance were not treated as disciplinary issues, but were given in an effort to remind mechanics of good maintenance practices and to seek their compliance. All supervisors, including myself, issued them to any mechanic as the situation required, without regard to their race or ethnic origin.

10. Mr. Collins has complained that only he was given notifications of non-compliance for failures to follow up on MEL items on or about May 5 and 6 1994. However, because of his race or his having filed an EEOC charge, we issued notifications of non-compliance to Craig Underhill on April 20, 1994, and to Juan Cuadra on May 10, 1994, for similar failures to enter follow -up information on maintenance items they had performed. I have

attached these true copies of notifications from our files at Exhibit 2. These notices are examples of our practice of issuing notifications to every mechanic where a deficiency was found regardless of race or ethnicity.

Overtime Shifts

11. At Flagship, as I have described, we often made overtime shifts available to mechanics when MEL items backed up. As indicated above, this project involved inspecting the MEL list and researching for part numbers that would serve as effective replacements pursuant to the MEL. It would enable mechanics working on the aircraft to complete their projects more efficiently if they had the parts lists available while working on the aircraft.

12. These shifts were explicitly made available with a start time of 7:00 a.m., in order to coordinate the shifts with other work shifts in the department. We had explicitly advised the mechanics by a memorandum that is attached to this declaration as Exhibit 3.

13. A couple of mechanics had made a habit of punching in at 6:00 a.m. for this shift, before any work was available for them to perform. I specifically told Dobson Collins and Craig Underhill and others that the start time for this overtime shift was 7:00 am, and that they would not be paid if they punched in early.

14. Both Craig Underhill and Dobson Collins punched in early for overtime shifts during the pay period between April 29 and May 13, 1994. As a demonstration of the fact that the overtime shift's start time was applicable to all mechanics of every race, I attach to this declaration as Exhibit 4, true and correct copies of the time cards of Craig Underhill and Dobson Collins, both showing that I adjusted their start time to 7 a.m. as I had advised them I would.

15. The start time for that shift was generally applicable and had nothing to do with the race of any employee or whether they had filed any grievances or charges of discrimination against the company.

Discharge

16. On November 30, 1994, based on his earlier request, I provided Dobson Collins his personnel file for inspection in the conference room outside my office. I reminded him of the company's policy that prohibits taking or photocopying documents from the file without explicit permission.

17. I first sat with Collins as he inspected his personnel file. After it became apparent that he was going to take his time with a very thick file, I went into my office and kept an eye on his progress through the window between the office and the conference room.

18. At some point, I saw Collins replacing the metal fasteners to one of the folders in this file. It appeared that he was putting documents back into the file. I then observed Collins fold up a piece of paper and put it underneath the file. When I moved the file, I saw what appeared to be photocopier marks on the piece of paper.

19. Collins quickly picked up the piece of paper, said it was a blank sheet on which he was going to take notes, and put it into his pocket. I asked him if I could see it to insure that it was not a company document and that I only wished to identify it as company or personal.

20. I directed Collins to show me the paper. He removed it from his pocket and waived it briefly in front of me, then refolded it and put it back in his pocket. Although I

could not read any of the print, I recognized the piece of paper as a company pay authorization form. Once again, I ordered Collins to allow me a further look, but he refused and proceeded to leave the room down a stairway to the hangar.

21. I directed Collins to return to the conference room but he ignored me and proceeded down the stairs. Several seconds later, I followed him down the stairs. When I got to the top of the stairs, he was already down at the bottom in the hangar. I was neither in a position to nor did I ever push Collins as he alleges.

22. I saw mechanic Jesus Sanchez at the bottom of the stairs and asked him to come and act as a steward or witness for Collins and I again directed Collins to return upstairs so that I could identify the paper he had taken during his file inspection.

23. Instead, Collins punched his time card and told me that he did not have to talk to me since he was "off the clock." I went downstairs and advised Collins that if he left without following my order, I would treat it as grounds for dismissal based on insubordination. Collins then agreed to go back upstairs to the conference room.

24. Ultimately, with Sanchez present, Collins continued to refuse to show me the paper I had seen him take during his inspection. He showed me a 3"x6" form that he pulled from a different pocket, and I told him that it was obviously not what I was asking to see. Collins persisted in his refusal to let me inspect the paper I had seen him take during his inspection and left the premises despite my advising that to do so would result in his discharge for insubordination. I did not follow Collins after he left the conference room for the second time.

25. After investigation, and upon learning that he was already the subject of a last step career decision day, on December 9, 1994, I issued a final advisory terminating Collins' employment with Flagship.

26. I was unaware that he had filed an EEOC charge of discrimination against Flagship when I took any of the actions described in this declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 1ST day of June, 1998.

NOEL FRANZ

EXHIBIT 1

AA AMERICAN AIRLINES PERFORMANCE COUNSELING RECORD

EMPLOYEE NO	INITIAL	LAST NAME	ORG CODE	STA. CODE	CO. SENIORITY DATE	YEAR	PAGE NBR
	D.	~~[illegible]~~ WAGNER	9962	8201		91	1

DATE OF INCIDENT OR ACTION	SUBJECT OR INCIDENT DISCUSSED	DETAILS/ACTION TAKEN/COMMENDATION/OTHER REMARKS BRIEFLY EXPLAIN WHAT WAS DISCUSSED/COMMITMENTS MADE INCLUDE ANY SIGNIFICANT DATE/TIME/PLACE. SUPERVISOR'S SIGNATURE/DATE FOLLOWING EACH ENTRY.
8/12/91	Problems with fellow workers,	Mr. Wagner came to me at aprox 1200 / 12th to discuss situation ~~[illegible]~~. working with other employees, especially those employees formally of EAL that went on Strike ~~April 19~~ March 1989. Mr Wagner was concerned about suspicions that Ex EAL striking mechs were "out to get him". ~~[illegible]~~ I explained company position of monitoring situation & expressed ~~[illegible]~~ the company would take action necessary should management witness any employee harassment taking place. Also stated that company would issue a memo to all ~~[illegible]~~ reiterating rules & regs and repercussions of infractions. Present was Supervisor Ed Reyes. [signature] 178918 8/12/91
8/25/91	Work perform.	Talked with David Wagner about the amount of time he spent removing & replacing a deice boot for a prop blade. He stayed for OT (3 HRS) and spent a total of 4 hours on the job and 2nd + 3rd shift had to remove his work and reinstall it. We discussed the procedures he used since I handed him the paperwork personally. We discovered that he followed the steps incorrectly & one STEP deleted. Deice boot was on 866 8/24/91 Today we had a problem with various jobs assigned to him at the line. Miscommunication and limited time caused 2 delays, and other mechanics having to do the work (AFT NAV LIGHT). Considering trying to get him to bid 3rd shift when there is less stress.
8/26/91	work assignment	Gave Mr. Wagner a single assignment of a list of mels in ATR cabs that existed on one a/c to work, with no need of any deadline (no stress applied). I told him he was to look up the parts necessary to fix these MEL's (STROBE LIGHTS, LOGO LIGHTS, TEMP IND. ETC). One hour later the lead Chris Reyes pulled on the a/c I gave Wagner and ask me what ~~[illegible]~~ he was suppose to do with it. I told him I gave it to Wagner to look up the PN's, get the parts for

AA FORM CR1

AA AMERICAN AIRLINES PERFORMANCE COUNSELING RECORD

YEAR	PAGE NBR.

DATE OF INCIDENT OR ACTION	SUBJECT OR INCIDENT DISCUSSED	DETAILS/ACTION TAKEN/COMMENDATION/OTHER REMARKS BRIEFLY EXPLAIN WHAT WAS DISCUSSED/COMMITMENTS MADE INCLUDE ANY SIGNIFICANT DATE/TIME/PLACE. SUPERVISOR'S SIGNATURE/DATE FOLLOWING EACH ENTRY.
	cont'	stock and have the parts sent to the line. Gus said he found Wagner sitting in the middle of the hangar (empty) on his tool box. I called Wagner back to my office and reexplained my instructions asked if he understood them and had him repeat those instructions. He repeated them and still insisted he understood all along but yet he still gave the list of incompleted items to his lead for which he was to ... by. I reexplained again and asked him to get one of the hardware problems. Approximately 1½ hours later I checked on his progress and so far he found 2 P/N but unfortunately it was not the part I asked for strobe light (wing). I told Wagner I would finish the list and gave him another task of labelling "waste" barrels with their contents and to put any buckets of used fluid in those appropriately labeled barrels. He was assigned a person (Deane) to help him. A couple of hours later (approximately 3) he returned to me saying he was finished. I returned to the area with him and found a number of things requiring additional work and correction such as the labeling the barrels from "miscellaneous fluid" to the one individual contents each. 75 minutes before his scheduled end of shift he was discovered in the break room. I gave him the benefit of the doubt and waited for him to come to me for another assignment or to his lead (I must mention that his lead sent him to me in the morning because I had some items to be worked.) Wagner was never seen from again that workday. [signature] 8/28/ 1935
8/30/91	TOOLS REQ.	ON 8/30/91 LEADMAN UNDERHILL ASSIGNED WAGNER A JOB IN WHICH HE NEED A FLASHLIGHT. HE TOLD CRAIG HE DID NOT HAVE ONE & CRAIG SUGGESTED HE GET ONE. MR. WAGNER REPLIED HE WAS NOT GOING TO BUY ANYTHING UNTILL THE COMPANY PAID HIM FOR DAMAGES TO HIS TOOL BOX. I COUNSELED MR. WAGNER AND MADE HIM AWARE THAT HE WAS REQUIRED TO HAVE MINIMUM TOOLS FOR THE JOB. SAID HE WAS SORRY & WOULD APOLOGIZE TO CRA[IG] [signature] 9/1/91

EXHIBIT 2

TULE FORM 8025

QUALITY ASSURANCE
NOTIFICATION OF NON-COMPLIANCE

TO: CRAIG UNDERHILL # 145069 17

COPY: BASE MGR

N 947AC STATION MIA DATE 2/15/91

MANUAL REF: GPM 5-01 FAR REF:

NON-COMPLIANCE

(1) ITEM 25 LOG PAGE 20969 MAINTENANCE MANUAL REFERENCE NOT DOCUMENTED

129871

SIGNATURE R. Reed

EMPLOYEE NAME (PRINT) Craig A Underhill EMPLOYEE NUMBER 145069

EMPLOYEE STATEMENT* REQUIRED ✓ NOT REQUIRED

In the rush of the banks I did not include the required MM reference.

SIGNATURE Craig A Underhill 145069 DATE 2-15-91

*ATTACH SEPARATE SHEET IF NECESSARY

ACTION TAKEN TO PREVENT RECURRENCE

Will include MM for corrective actions.

SIGNATURE Craig A Underhill 145069 DATE 2-15-91

COPIES:

Respond to applicable manager within 72 hours.

DEFENDANT'S EXHIBIT DC-72

ALL-STATE® INTERNATIONAL

TULE FORM 8025

QUALITY ASSURANCE
NOTIFICATION OF NON-COMPLIANCE

TO: CRAIG UNDERHILL # 145069
COPY: BASE MGR

N 210 STATION MIAMI DATE 2/15/91

MANUAL REF: GPM 5-01 FAR REF:

NON-COMPLIANCE

(1) ITEM 61 LOG PAGE 02707 THE BLOCK IN MECHANICAL DISCREPANCIES BLOCK NOT A PAY ROLL SIGNATURE

12871

SIGNATURE R. ell

EMPLOYEE NAME (PRINT) Craig A. Underhill EMPLOYEE NUMBER 145069
EMPLOYEE STATEMENT* REQUIRED ✓ NOT REQUIRED

I thought information in this Section was only for informational Purposes, after reading GPM 5-01 (B.) f. I found I have to use full Name ~~whether its~~ Printed ~~or Signature~~

SIGNATURE Craig A. Underhill 145069 DATE 2-15-91

*ATTACH SEPARATE SHEET IF NECESSARY

ACTION TAKEN TO PREVENT RECURRENCE

Will USE Full Name AS instructed by GPM 5-01 Pg. 2 item B. Paragraph f. & Will Not use initials any More.

SIGNATURE Craig A. Underhill 145069 DATE 2-15-91

COPIES:

Respond to applicable manager within 72 hours.

SECTION F Item #19 States: PRINT Lastname

AE-MTX-1804-01MAR91

QUALITY ASSURANCE
NOTIFICATION OF NON-COMPLIANCE

American Eagle

TO: MAINTENANCE

COPY: C. UNDERHILL # 145069

A/C 912 CARR. NVEA STATION MIAMI DATE 11/5/91

MANUAL REF: _____ FAR REF: _____

NON-COMPLIANCE

(1) Item 1 Logpage 012443 PIREP IS NOTE to maintenance stating that the aircraft was not serped at the outstation. Upon return to the hub the aircraft should have been serped, and signed off in action taken column as being serped.

SIGNATURE: R. Cl 09871

EMPLOYEE NAME (PRINT) CA Underhill EMPLOYEE NUMBER 145069

EMPLOYEE STATEMENT* REQUIRED ✓ NOT REQUIRED _____

Corrective Action Should have included "Mx Noted - Fuel tanks Serped" Next time I'll be more Specific As the fuel tanks were Serped. SIGNATURE Cay Underhill DATE 11-9-91

* ATTACH SEPARATE SHEET IF NECESSARY

ACTION TAKEN TO PREVENT RECURRENCE:

PLACE IN FILE

SIGNATURE _____ E _____

COPIES: White - RETURNED ANSWERED
Yellow - STATION FILES

E

REPLY REQUIRED WITHIN 10 DAYS

AE-MTX-1804-01MAR91

QUALITY ASSURANCE
NOTIFICATION OF NON-COMPLIANCE

American

TO: [illegible]

COPY: [illegible]

A/C 754 CARR. AMEA STATION MIA DATE 4/21/94

MANUAL REF: GPM 17-02 pg 3 ITEM 7.C FAR REF: 121 ENT

NON-COMPLIANCE

ON 4/20/94 WAS ISSUED 2 MEL'S ON A/C 754 FOR A FUEL LEAK AT P5-1 & W/S HEAT. AS OF 2 GPM & FOR 3 LISTED ABOVE WE ARE REQUIRED TO GIVE FOLLOW UP AS OF 4/21/94 0600 THERE WAS NO INFORMATION AVAILABLE

SIGNATURE: [signature] / INSP

EMPLOYEE NAME (PRINT) Craig A Underhill EMPLOYEE NUMBER 125662

EMPLOYEE STATEMENT* REQUIRED ✓ NOT REQUIRED

To No Excuse of My own I was doing A P5-1, fuel leak and 2 mels in the rain while getting covered with fuel. I Understand it is my Responsibility to enter MEL info into Sabre for TIS and Parts As Promptly As Possible or to turn info to Next Supervisor For Prompt Return to service in MEL clearance

SIGNATURE C A Underhill DATE 4-25-94

* ATTACH SEPARATE SHEET IF NECESSARY

ACTION TAKEN TO PREVENT RECURRENCE:

I Believe Mr Underhill is aware of the injuries and the procedures we have discussed should future Mel occurrences in the future

SIGNATURE [signature] DATE 5/1/94

COPIES: White - RETURNED ANSWERED Pink - EMPLOYEE
Yellow - STATION FILES Gold - ORIGINATOR'S FILE

REPLY REQUIRED WITHIN 10 DAYS

AMERICAN EAGLE
AIRCRAFT MAINTENANCE LOG

A/C # N 201 AE

DATE 2 / 1 / 91

TYPE A/C SA226 [ ] SA227 [ ] OTHER SAAB 340

ENGINE DATA	IAS	240	IOAT C	-9	PRESS ALT	15000		
ENG #	EGT	TQ	RPM 1	RPM 2	FUEL FLOW	OIL PRESS	OIL TEMP	ANTI ICE	BLEED AIR
1	818	61	93	1270	460	80	80	OFF	ON
2	844	61	93	1270	480	80	79		

FIRST FLIGHT OF DAY ITEMS CHECKED — OK — ENTER PIREP NBR IF NOT OK

VOR CHECK

BY T FLANNIN

ID # 31364

STA TO	FREQ FROM
#1 MOL BSY	0°
#2 MOL RSV	0°
#3 MC3 RSV	0°

A/C ACCEPTED BY:

CAPT [signature]

CAPT [signature]

CAPT

CAPT

ID #	STA	OIL ADDED STA	1	2
134774	JAX			
134839	MIA			

MECHANICAL DISCREPANCIES

1 NO. 4 BY S. COLLINS ID # 134774 FLT # 4677 STA MIA

ON DESCENT AT AROUND 17000 FEET THERE WAS A BURNING SMELL IN THE COCKPIT. ALSO THE FLIGHT ATTENDANT SMELLED THIS - THE WEC WHITE LIGHT CAME; RESET EC & ELS - LIGHT WENT OUT

2 NO. 5 BY S COLLINS ID # 134774 FLT # 5640 STA MIA

COCKPIT UNABLE TO CONTROL ~~CABIN~~ TEMP. USING BOTH MANUAL AND AUTO.

3 NO. BY ID # FLT # STA

4 NO. BY ID # FLT # STA

ACTION TAKEN

1 NO. 4 DATE 2-1-91 STA MIA ATA

No further smell noted inspected systems checks good at this time. TAT - 914.1 CYC - 923

BY Carl A Clarke
ID # 145069
P/N OFF
S/N OFF
P/N ON
S/N ON

2 NO. 5 DATE 2-1-91 STA MIA ATA 21-50-1

Issued MEL 21-50-1 Auth ~~24D~~ C.O. "Ambient Air intake ~~S~~ Secured open 95 Per MEL 21-50-1: TAT - 914.1 CYC - 923

BY Carl A Clarke
ID # 145069
P/N OFF
S/N OFF
P/N ON
S/N ON

3 NO. DATE STA ATA

BY
ID #
P/N OFF
S/N OFF
P/N ON
S/N ON

4 NO. DATE STA ATA

BY
ID #
P/N OFF
S/N OFF
P/N ON
S/N ON

AE-MTX-1804-01MAR91

QUALITY ASSURANCE

NOTIFICATION OF NON-COMPLIANCE

American Eagle

TO: EDGAR CEREZO

COPY: JUAN CUADRA

A/C 918 CARR. NVEA STATION MIAMI DATE 5/10/94

MANUAL REF: GPM D-07 pg 3, ITEM 7C FAR REF: 121.627

NON-COMPLIANCE

ON MAY 5, MR CUADRA ISSUED AN MEL TO A/C 918 FOR APR. AS PER GPM & FARS LISTED ABOVE, THE REQUIREMENT FOR FOLLOW UP INFORMATION HAD NOT BEEN FULFILLED AS OF 5/6/94 @ 1300

SIGNATURE: [signature] 1283/

EMPLOYEE NAME (PRINT) J Cuadra EMPLOYEE NUMBER 12906

EMPLOYEE STATEMENT* REQUIRED _____ NOT REQUIRED _____

I did put the information in the computer on the same date that I issued the Mel.

SIGNATURE [signature] DATE 5/20/94

* ATTACH SEPARATE SHEET IF NECESSARY

ACTION TAKEN TO PREVENT RECURRENCE:

Employee apparently entered info but failed to complete entry. To prevent reoccurrence employee will double check K# for MEL

SIGNATURE [signature] DATE 5/20/94

COPIES: White - RETURNED ANSWERED Pink - EMPLOYEE
Yellow - STATION FILES Gold - ORIGINATOR'S FILE

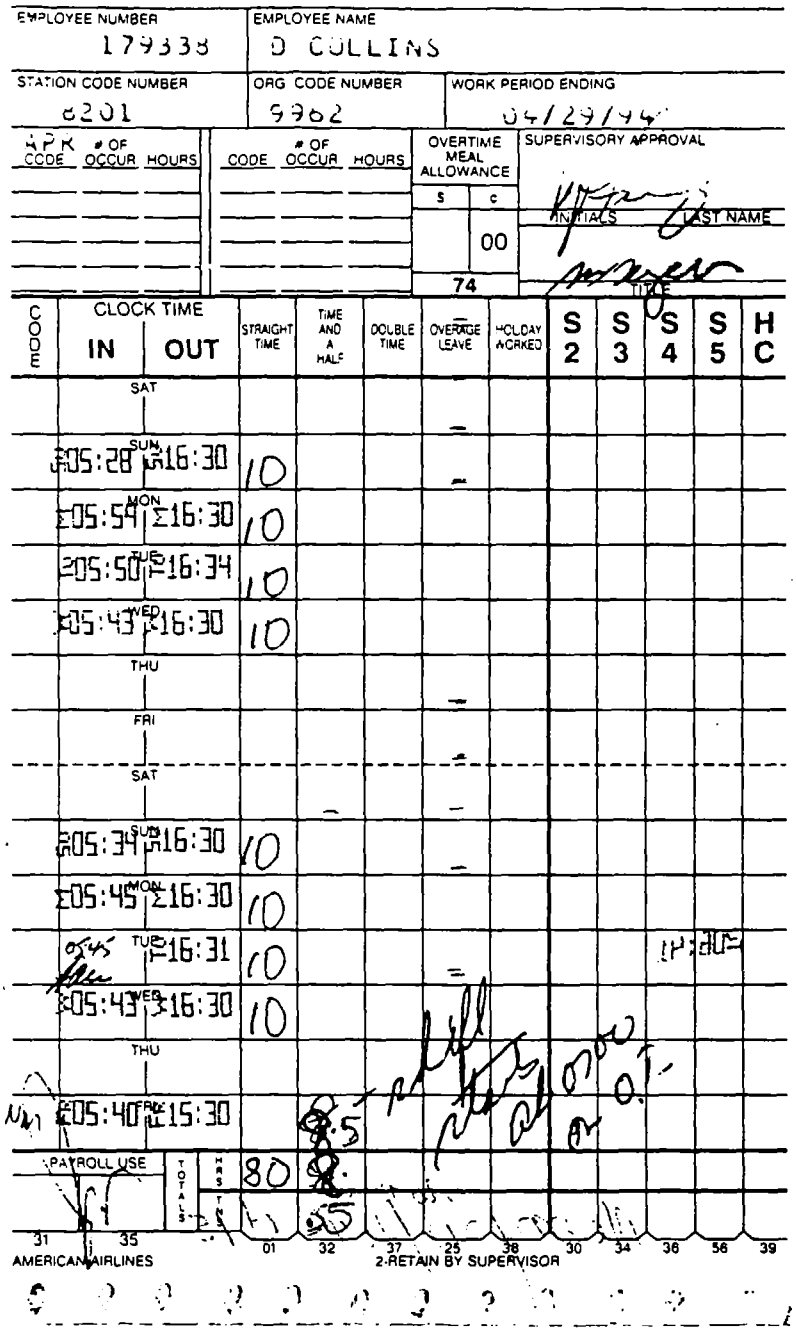
REPLY REQUIRED WITHIN 10 DAYS

EXHIBIT 3

FIRST SHIFT MECHANICAL OVERTIME

Overtime will start at 0700 unless otherwise noted.
Overtime will be approved according to the senor person not on double time.
If the workload demands, double time will be approved in order of senority.
Overtime will be issued to first shift employees first, first mechanics then inspectors.
If the workload demands mechanics from other shifts, they will be considered only if overtime slots on their respective shifts are full.
Overtime personel are to report to supervisor for assignment to line or hangar at the start of the shift..
Overtime will be approved seven days in advance.

EXHIBIT 4



EMPLOYEE NUMBER 179338
EMPLOYEE NAME D COLLINS
STATION CODE NUMBER 6201
ORG CODE NUMBER 9962
WORK PERIOD ENDING 04/29/94
APK CODE # OF OCCUR HOURS
CODE # OF OCCUR HOURS
OVERTIME MEAL ALLOWANCE $ 00 ¢ 74
SUPERVISORY APPROVAL
INITIALS LAST NAME
TITLE

CODE	CLOCK TIME IN	CLOCK TIME OUT	STRAIGHT TIME	TIME AND A HALF	DOUBLE TIME	OVERAGE LEAVE	HOLIDAY WORKED	S2	S3	S4	S5	HC
	SAT											
	05:28 SUN	16:30	10									
	05:59 MON	16:30	10									
	05:50 TUE	16:34	10									
	05:43 WED	16:30	10									
	THU											
	FRI											
	SAT											
	05:34 SUN	16:30	10									
	05:45 MON	16:30	10									
	TUE	16:31	10									
	05:43 WED	16:30	10									
	THU											
	05:40 FRI	15:30		8.5								
PAYROLL USE		TOTALS HRS	80	8.								
		TOTALS $		25								

31 35 AMERICAN AIRLINES
01 32 37 25 38 30 34 36 58 39
2-RETAIN BY SUPERVISOR

☐ PART-TIME ☐ FULL-TIME	DAYS OFF SCHEDULED HRS	CODE	SUPV. INT.
SA			
SU			
M			
T			
W			
T			
F			
SA			
SU			
M			
T			
W			
T			
F	Ale 29 / 219 / 164 of 95 no meal		

EMPLOYEE NUMBER	EMPLOYEE NAME		
[illegible]	[illegible]		
STATION CODE NUMBER	ORG CODE NUMBER	WORK PERIOD ENDING	
3201	9952	05/13/94	

APA CODE	# OF OCCUR	HOURS	MAY CODE	# OF OCCUR	HOURS

OVERTIME MEAL ALLOWANCE: S [ ] C 00 — 74

SUPERVISORY APPROVAL: INITIALS [illegible] LAST NAME [illegible] TITLE [illegible]

CODE	CLOCK TIME IN	CLOCK TIME OUT	STRAIGHT TIME	TIME AND A HALF	DOUBLE TIME	OVERAGE LEAVE	HOLIDAY WORKED	S2	S3	S4	S5	HC
DO	SAT											
DO	SUN											
	05:57 MON	16:30	10									
	05:56 TUE	16:30	10									
	05:57 WED	16:30	10	5								
	05:59 THU	16:30	10									
LL	05:57 FRI	15:30	5	8		START TIME -0700						
	06:50 SAT	14:30	5		7							
	SUN											
	05:57 MON	16:30	10									
	05:54 TUE	16:30	10									
	05:55 WED	16:30	10									
NM	05:57 THU	17:00	10	1								
DW LL	07:05 FRI	15:31		8 4								
PAYROLL USE	TOTALS	HRS	81	17	7							
		TNS		9								

31 35 AMERICAN AIRLINES — 01 32 37 25 38 30 34 36 56 39 2-RETAIN BY SUPERVISOR

☐ PART-TIME
☐ FULL-TIME

DAYS OFF SCHEDULED HRS

		CODE	SUPV. INT.
SA			
SU			
M			
T			
W	5-4 AIC 280 Two Tire Chg. MAIN	M/m	
T			
F	5-6 day off worked A/C 314 AM late lunch 5-7 day off work 219 TIMES	DW LL DW LL	
SU			
M			
T			
W			
T	No Lunch A/C 92 A Bleeds 2 918 STUCK LATE MEAL OFF	NM	
F	day off worked late lunch A/C 180 & 847 PUMPS	DW	

EMPLOYEE NUMBER	EMPLOYEE NAME
145069	C A UNDERHILL

STATION CODE NUMBER	ORG CODE NUMBER	WORK PERIOD ENDING
8201	9902	04/29/94

APR CODE	# OF OCCUR	HOURS	CODE	# OF OCCUR	HOURS

OVERTIME MEAL allowance: $ — ¢ 00 — 74

SUPERVISORY APPROVAL: INITIALS LAST NAME TITLE

CODE	CLOCK TIME IN	CLOCK TIME OUT	STRAIGHT TIME	TIME AND A HALF	DOUBLE TIME	OVERAGE LEAVE	HOLIDAY WORKED	S 2	S 3	S 4	S 5	H C
	SAT 0606:53	1515:02			8	—						
	SUN					—						
	MON 0605:56	1516:30	10			—						
	TUE 0605:55	1516:30	10			—						
	WED 0605:58	1516:30	10									
	THU 0605:58	1516:30	10									
	FRI 0605:57	1514:30		8		—						
	SAT					—						
	SUN					—						
	MON 0606:02	1516:30	10			—						
	TUE 0600	1516:30	10									
	WED 0606:00	1516:30	10									
	THU 0605:58	1516:30	10									
	FRI											
PAYROLL USE	TOTALS	THIS TIME	79	8	8							
			9									

31 35 AMERICAN AIRLINES — 61 32 37 25 38 30 34 36 56 39 — 2-RETAIN BY SUPERVISOR

☐ PART-TIME
☐ FULL-TIME

SCHEDULED OFF _____
HRS _____

		CODE	SUPV. INT.
S	4/6 Second day off Attached	D/W	
S			
M			
T			
W			
T			
F	4/12 first day off Attached	V/W	
SA			
SU			
M			
T			
W			
T			
F			

B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 96-1104-CIV-GOLD

DOBSON COLLINS,

Plaintiff,

-vs-

FLAGSHIP AIRLINES, INC.,

Defendant.

_____/

5300 First Union Financial Center
200 South Biscayne Boulevard
Miami, Florida
Friday, October 10, 1997
8:42 a.m. - 4:21 p.m.

VIDEOTAPE DEPOSITION OF DOBSON COLLINS

Taken before Nancy Bryant, RPR, RMR, RDR and Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition issued herein and stipulation of counsel.

Q. '94 and '95?

A. Somewhere there.

Q. And was he involved in the union prior to being president?

A. Yes.

Q. Was he an officer?

A. I think so.

Q. Was he somebody that you knew was there if you were to file a grievance?

A. No.

Q. Okay. Why not?

A. Because I never -- I never heard of him until maybe late '94, early '95.

Q. But by that time, you knew that he was the person who was ultimately going to decide whether any grievances you filed went forward for arbitration, right?

A. Yes.

Q. Okay. And do you know when he began to serve in that role?

A. No, I don't.

Q. Okay. Now, Mr. Roberson is black, isn't he?

A. Yes.

Q. Okay. Do you have any reason to believe that he was prejudiced against you because you're

BY MR. CONNOR:

Q. Now, you've taken time off the record to read line by line all of DC 30, right? Right?

A. Yes.

Q. Okay. Now, when you read the entry for January 6th, 1992, did you conclude that Mr. Alvarez thought you did the job properly?

A. No.

Q. Okay. And you had seen this CR 1 before, hadn't you?

A. Yes.

Q. Okay. More than once, right?

A. Possible.

Q. Possibly?

A. Yes.

Q. Why do you say possibly, Mr. Collins? Did you or didn't you?

A. I did.

Q. Okay. And you submitted -- strike that. You went -- you reviewed the entry for 1-12-92, as well, correct?

A. Yes.

Q. And that involved an argument between you and Mr. Perez, right?

A. Yes.

Q. That was a subject about which you and Mr. Perez and Mr. Alvarez had a later conversation that's reflected in this CR 1, right?

A. Yes.

(Exhibit DC 31 was marked for Identification and retained by counsel.)

BY MR. CONNOR:

Q. All right. And you submitted what's marked as DC 31 as your response, correct? Is that correct?

You don't need to read it to answer that question. Is that correct?

A. Yes.

Q. Okay. At the end of the session, what did Mr. Alvarez do to you by way of counseling or, discipline?

A. Well, what he actually did was to told me that the aircraft needs to fly X time, and we need to work to get the airplane out on time. And I don't remember some of the stuff.

Q. On the January 6th incident, he was concerned that in six hours, you hadn't been able to complete the project; right?

A. Yes.

Q. And on the January 12 incident, he was discussing with you your claim that Mr. Perez had

called you a nigger?

A. Yes.

Q. Right? And he counseled with both of you, didn't he --

A. Yes.

Q. -- about the possibility of having -- or the fact that you shouldn't be having arguments, and he counseled with Mr. Perez as well, right?

A. Yes.

Q. And as far as you know, do you know whether Mr. Perez got a CR 1 in his file?

A. I don't know.

Q. Okay. And Mr. Perez didn't -- did not admit that he called you a nigger, did he?

A. No, he did not.

(Exhibit DC 32 was marked for Identification and retained by counsel.)

BY MR. CONNOR:

Q. Have you ever seen Defense Exhibit 32, which is a series of letters Mr. Perez hand wrote, apparently, to Mr. Vignogna, V-i-g-n-o-g-n-a?

Now the question -- first of all, put that aside. Look at the exhibit I gave you just now, 32. Have you ever seen those before? That's the question.

A. Yes.

A. I don't know.

Q. Okay. Exhibit -- that one there, what is that, 35?

A. 35.

Q. What is Exhibit 35?

A. It is -- it is a copy of a negotiated settlement between American Eagle, Flagship Airlines and myself.

Q. Okay. And that resolves two charges, right?

A. Yes.

Q. Okay. And at some point before you filed DC 34, the second charge, the 1992 charge, and before you entered into that settlement agreement, you had been promoted to Tech 1, right?

A. Yes.

Q. How did you get there?

A. I don't know.

Q. You don't know. Okay. Now the settlement agreement reflects that as long as you get paid as a Tech 1 from the date of your promotion, this settlement agreement resolves all outstanding charges between you and the company; right?

A. Yes.

MR. CONNOR: Okay. We'll stop there for today.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 96-1104-CIV-GOLD

DOBSON COLLINS,

Plaintiff,

-vs-

FLAGSHIP AIRLINES, INC.,

Defendant.

_____/

5300 First Union Financial Center
200 South Biscayne Boulevard
Miami, Florida
Thursday, December 4, 1997
9:30 a.m. - 2:55 p.m.

CONTINUED VIDEOTAPE DEPOSITION OF DOBSON COLLINS

Taken before Nancy Bryant, RPR, RMR, RDR and Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition issued herein and stipulation of counsel.

Charge of Discrimination filed in 1993?

A. That's correct.

Q. Okay. And DC 37 is a letter that the EEOC sent out received by Flagship concerning the withdrawal of that charge. Did you withdraw that charge?

A. Yes, I did.

Q. Do you have any correspondence reflecting that withdrawal, or did you just call them up, or what?

A. No. They came to the job and spoke to me at the job in front of my manager.

Q. The Commission people did?

A. Yes.

Q. Do you remember who it was?

A. It was -- I think it was Kendrick, Kendricks.

Q. Okay. And what happened?

A. Well, at the time, the discrimination that was going on had ceased right within that time, and there was nothing further in that particular period of time. So I didn't make any further reports to them. So they came to find out what had happened with it.

Q. Do you recall the date of that withdrawal letter was March 16, 1994, correct? Actually --

Q. Mr. Cerezo?

A. Mr. Cerezo asked me to wrote when I returned from Nassau the following day.

Q. Okay. Tell us what happened, from your perspective, in your own words, on that day, 4-22-93.

A. Okay. I was working the flight line as an avionics technician for American Eagle, Flagship Airlines, Miami International Airport.

I was asked by Harold Allen to recover an airplane in Nassau, Bahamas.

Q. By whom?

A. Harold Allen.

Q. Harold Allen?

A. Harold Allen.

Q. The man who wrote Exhibit 41?

A. Yes.

Q. Okay.

A. And I accept the assignment. And when I proceed to the ticket counter to pick up my ticket, which we never normally do, but I always try to get a ticket before I board the airplane, the agent gone and asked me for my passport. I respond to her, "I don't have a passport; however, I have a green card, and I show it to you."

I showed it to her. She said, "No, you have

Q. Okay. And the -- at the time that you filed this amended charge, it seems to me that it says explicitly that you were sent home on May 12. And I will ask you to read that sentence, sent home on May 12 out loud, if you could.

A. It said on May 12, 1994, I was sent home and denied overtime work when I questioned why I was being given job assignment in the minimum equipment listing book. Another employee --

Q. That's what I want to ask you about. Did that happen?

A. Yes. I was sent home, yes.

Q. Because you didn't want to do the work in the MEL list book?

A. No, I did not want to do the work. I explained -- I asked the question, I told him about what I need to do, and what I need to get the job done. And that's the time that he respond to me that, "Well, you got to go home."

Q. Do what he asked you to do or go home, right?

A. Do what he asked me to do or go home.

Q. Okay.

A. And I couldn't do the job.

Q. Did you know of anyone else who was asked to

see a noose hung at your workplace?

A. Yes.

Q. Where?

A. Beside the mechanics' trailer.

Q. Where is that?

A. At the flight line.

Q. Where was it hung?

A. It was hung from the center of the roof, hung it down, with my name on it.

Q. When was this?

A. This was sometime back in '94. I don't remember the exact date it was.

Q. Well, it's very important, if you can, to come up with that date. Is there anything that you can relate it to? What do you need? I'll help you.

A. If I can find the charge.

Q. Which one is that, which exhibit?

A. I'm just looking through Exhibit 47, DC 47 right now.

Q. Okay. I should get you 48 also.

MR. KARLIN: Can you show him the document to refresh his recollection?

MR. CONNOR: Uh-huh. You don't mean the Complaint? Wait just a minute. What paragraph?

MR. KARLIN: 21.

BY MR. CONNOR:

Q. Have you looked at 47 and 48, the EEOC charges?

A. Yes. I looked at them, yes.

Q. Okay. There isn't anything in there about it, is there?

MR. CONNOR: The witness is looking at which one? 47.

THE WITNESS: I haven't seen anything in 47 at this point.

BY MR. CONNOR:

Q. Okay. There's nothing in 48 about it either, right?

A. I haven't seen any.

Q. Okay. And in your complaint, Paragraph 21, there is an allegation that on or about the morning of October 14, 1994, Mr. Collins reported to work to begin his shift. Hanging from the mechanics' trailer was a noose with the words "To hang Dobson" written on it.

A. Yes.

Q. Where did that information come from?

A. What information?

Q. What I just read.

A. It came from this noose that I saw inside

Q. Okay. Who did you report that to?

A. I don't report it to the supervisor. I report it to my attorney.

Q. You did not report it to your supervisor?

A. No.

Q. Did you report to Mr. Roberson?

A. I don't remember.

Q. You don't remember?

A. I don't remember, no.

Q. Well, try hard. Is there anything that would help you to remember whether you told Mr. Roberson about this?

A. I remember that John Cordero knew about it. I told John about it. And I don't remember if I told Mr. Roberson, but I would imagine that he knew about it.

Q. Did you file any kind of a complaint under the company's EEO policy, Equal Employment Opportunity?

A. No.

Q. Did you bring it to the attention of the Human Resources Department?

A. We don't have a Human Resources in Miami when I was there.

Q. Pardon me?

A. I didn't know of a Human Resources Department when I was in Miami working.

Q. You don't know there was one?

A. No. I don't know of one, no.

Q. Personnel Department?

A. I know the Personnel Department, yes.

Q. Okay. And did you bring it to them?

A. No, I did not.

Q. Why not?

A. Because I have my attorney dealing with it already.

Q. In October of 1994?

A. That's correct.

Q. And your attorney assisted you in preparing your EEOC charge?

A. No, he did not.

Q. The amended charge?

A. He did not, no.

Q. He did not?

A. No, he did not.

Q. Why didn't you report that incident -- did you regard that as a racial incident?

A. Yes.

Q. Okay. Why didn't you report that to the EEOC when you amended your charge two months later?

A. Because I had reported to my attorney and I figured that whatever information, they usually need from the attorney. Because I already explained to my attorney that I filed the charges, and let the EEOC know that I have an attorney.

So I relayed the information to my attorney. If the EEOC needed, they will get it from my attorney.

Q. So when you went to amend the charge in October -- in December of 1994, let me ask you what went through your mind. How did you decide to go and make an amended charge?

A. I didn't decide to make an amended charge. I filed charges for retaliation then, and the officer who was going it, he decide to make it, to amend it.

Q. I'm sorry, I didn't --

A. I said I did not went to make an amended charge. I --

Q. Was that--

A. The officer who filed the charges, he is the one who determined the amended charge, not me.

Q. This is -- this Exhibit 48 is what you signed?

A. Yes.

Q. As the amended Charge of Discrimination, right?

A. Yes.

Q. Okay. Why did you go to the EEOC to file an amended charge? What impelled you to do that?

A. Because I was terminated for -- without a reason.

Q. Okay. Was there anything else that you had on your mind that you wanted to make sure was in an amended charge?

A. I really don't remember.

Q. When you made your amended charge, it was approximately two months after the incident with the noose that you described, right? And you regarded that as an act of racial discrimination?

A. Yes.

Q. But you didn't think it was important to tell the EEOC about it?

A. As I stated, it was already -- when I filed the final charge for termination on the basis of discrimination or retaliation, I already had my attorney was dealing with the whole situation already.

Q. Okay.

A. I didn't see it necessary to give the EEOC that up front unless they request further information.

Q. Was the -- so your understanding was unless the EEOC asks you about an act of discrimination, you

that, then?

A. I retained him after I filed the previous charges, after that.

Q. So you had some consultation with him --

A. Yes.

Q. -- after you filed the charge?

A. Yes.

Q. And before you filed the amended charge?

A. Yes.

Q. And you told him about the noose incident.

MR. KARLIN: You're getting into --

THE WITNESS: Yes.

MR. CONNOR: I'm not --

MR. KARLIN: Well --

MR. CONNOR: I don't think that's invading, and I'm certainly not going to try.

BY MR. CONNOR:

Q. Did you -- in -- you've now seen Exhibit 70, which is my letter to Mr. Kurzban after he came to see me about it in December of 1994.

Were you ever advised -- advised is -- were you ever -- did you ever consider going to Nashville to present evidence on this alleged noose incident to Cathy Janas in the Personnel and Human Resources Department?

A. If I was asked who my attorney then --

MR. KARLIN: Just answer the question.

THE WITNESS: Yes, I would.

BY MR. CONNOR:

Q. You did consider doing it?

A. Yes.

Q. When?

A. When I heard of the investigation was going on.

Q. And why didn't you go?

A. I wasn't asked to go.

Q. I don't want to get -- we'll make that clear, and you jump in as appropriate. I don't want to get between you and Mr. Kurzban, but I want to ask you to read the "however" paragraph on Page 2 of Exhibit 70 to yourself.

Now, that is an invitation to have you go to Nashville and present your evidence, isn't it?

A. Yes.

Q. Did you at any time after that January 9, 1995, consider going to Nashville to take up that invitation?

A. If I had known about it, then I will.

Q. Pardon me?

A. If I had known about it, I would have

considered going up there.

Q. Were there any other incidents that you regard as racial that occurred in the year before your discharge that you haven't already talked about?

MR. KARLIN: I'll object to the form. He can answer the question. It's kind of a broad question.

MR. CONNOR: It's late.

MR. KARLIN: What?

MR. CONNOR: It's getting late.

BY MR. CONNOR:

Q. Are you having trouble with that?

A. Yes, I have trouble with the way you phrase the question.

Q. All right. You have told us that there was a noose incident directed at you --

A. Yes.

Q. -- and that you believe that that was based on race.

A. Yes.

Q. Is there any other incident that occurred that you attribute to racial motives in the, let's say the three or four months before you were discharged?

A. Incidents where that mechanics were asked to write statements against me, so --

A. No, not right there and then.

Q. Did you get it later?

A. Yes.

Q. How did that happen?

A. The company oppose me getting it and I was to file an appeal and hire an attorney to represent me for the hearing, the appeal. And that's how I got it.

Q. And did the company withdraw its opposition?

A. It didn't show up.

Q. Didn't show up.

Was Mr. Kurzban that attorney?

A. No.

Q. Did you ever see a picture that depicted black people in a negative way?

A. Yes.

Q. What was it?

A. Polaroid -- Polaroid picture with my name on it and another mechanic, Ozzie Russell's name on it, state that Dobson has to meet me at the ramp at 10:00, something like that. The picture have white correct -- what you call it, correction --

Q. Correct tape?

A. Correct --

Q. Correct type?

A. Correction type fluid marked over it in

white, stuff like that.

Q. It was a plain black surface with two faces painted on it?

A. Two faces painted on it.

Q. When was that?

A. That was back in sometime like in '94.

Q. And do you regard that as a racial incident?

A. Yes, sir.

Q. So that's one -- that's what I was asking about is whether you knew of any others.

What did you do about that?

A. Well, that was forwarded on to my attorney, too.

Q. You didn't talk to anybody inside the company?

A. No, I did not.

Q. Didn't go to personnel?

A. I talked to the union, I didn't talk to the personnel.

Q. You did go to the union?

A. Yes, talked to the union about that, yes.

Q. Did you talk to Mr. Roberson?

A. Talked to Mr. Cordero.

Q. Mr. Roberson?

A. No, Mr. Cordero talked to him.

Q. You think Mr. Cordero talked to Mr. Roberson?

A. I think so.

Q. Okay. And what -- did you file a grievance or anything over that?

A. No, I did not.

Q. Do you have that photograph with you?

A. Not -- not in my possession, no.

Q. Do you know where it is?

A. I think my counsel should retain that.

Q. This counsel?

A. Initially, Ira has it, so I assume.

Q. And who put -- who put the noose up in the trailer?

A. I don't know.

Q. Who put the picture up?

A. I don't know.

Q. Where was the picture when you first saw it?

A. The picture was -- I found it on Ozzie Russell's mail box.

Q. Did you ever hear any employees teasing one another because they were Cuban or -- you referred to the Cuban clique in your last setting on this deposition.

Did you say that to them when you were

A. Well, I --
Q. -- assuming that's a different group.
A. I never heard them.
Q. Did you ever hear any -- either of those groups or any black mechanics joke about themselves?
A. No.
Q. On racial issues?
A. No.
Q. So you never heard any racial jokes while you were out there?
A. I haven't heard any from -- any black racial jokes.
Q. Okay. Did you work the same shift with Anthony Lee?
A. No.
Q. With Mr. Russell?
A. At some stage of the game, yes, he does.
Q. Mr. McLean?
A. I'm not sure about Mr. McLean.
Q. Camejo?
A. I'm not sure about. Mr. Camejo.
Q. Now, you've told me about -- did you ever find out from anybody through hearsay or rumor who made the picture and who made the noose?
A. Nobody talked about it.

A. Yes.

THE VIDEOGRAPHER: One moment. I need to change video. We're going off the record. The time is 2:33 p.m.

(Discussion off the record.)

THE VIDEOGRAPHER: The time is 2:33 p.m. We're back on the record.

BY MR. CONNOR:

Q. Did you ever hear anybody -- other than the time Mr. Perez allegedly called you a nigger, did you ever hear anyone else use that term?

A. On the job or --

Q. On the job.

A. No, never.

Q. Okay. Any other -- were you ever harassed physically based on your race in any way?

A. No.

Q. Other than the noose and the picture, were there any other demonstrations or things put up that you thought were racially offensive?

A. No.

Q. What assignments outside of your job classification did you experience?

A. I used to experience a lot of times I had to still come in and clean the hangar, sweep the hangar

didn't got as part of the file.

THE COURT REPORTER: I'm sorry, I didn't understand that last part. "Naturally, they wrote it, but I --"

THE WITNESS: It was not part of their personnel file.

BY MR. CONNOR:

Q. Let me show you --

MR. CONNOR: Have we entered into a confidentiality stipulation?

MR. KARLIN: I'm sorry?

MR. CONNOR: Have we entered a stipulation on confidentiality?

MR. KARLIN: I don't recall at the moment.

(DC Exhibit 72 Composite was marked for Identification and retained by counsel.)

BY MR. CONNOR:

Q. I'm going to ask you to look at what's marked as DC 72, it's a composite package.

(Discussion off the record.)

BY MR. CONNOR:

Q. Having reviewed Number 72, Mr. Collins, you would no longer say that Mr. Underhill had nothing happen to him for his quality assurance mistakes, would you?

A. No. What I would say that these are things that they never used to give to him, and maybe because I complained about it, they gave it to him and have him sign it.

Q. In 1991? When did you complain about it?

A. I've been complaining about it for quite awhile. Long time.

Q. Are there any other people that you think -- any other white people that you think did not get quality assurance notifications like yours besides Mr. Underhill?

A. I think Mark Howard never get these things for the same problems.

Q. And have you remembered him since the last deposition?

A. Yes.

Q. What did he do that was the same as you and --

A. What he do with same similar response was not updating MEL in the computer properly on time.

Q. Probably?

A. Computer MEL's properly.

Q. Properly.

A. In the required time and stuff like that.

Q. Now, are you testifying here under oath that

Mark Howard did that and never received a quality assurance notice?

A. In addition to that --

Q. Are you saying that?

A. Repeat the question for me.

Q. Are you saying here under oath that you know that Mark Howard never received a quality assurance notice?

A. I never said he never received one.

Q. Okay.

A. I know of incidents where there were problems develop with the computer, Sabre system, and I know of he didn't get one then.

However, American Eagle have a way of sticking things into people's files on them.

MR. CONNOR: I -- I -- if you're getting this, you've got to repeat that for me or maybe have it read back.

THE COURT REPORTER: Just the last part?

MR. CONNOR: Yeah.

(Answer read back by the reporter.)

BY MR. CONNOR:

Q. Oh, you -- what are you suggesting, that Exhibit 72 was stuck in someone's file like that?

A. Well, what I'm instigating is that they

NASHVILLE EAGLE, INC.

TECHNICIAN UPGRADE APPLICATION

NAME: COLLINS, DOBSON ID NO.: 179338

STATION: 8201 BRANCH: 9562

UPGRADE TO

LEVEL III ☐ LEVEL II ☐ LEVEL I ☒ LEAD ☐ INSPECTION ☐

APPLICATION

RECEIVED BY: _____ DATE: _____

REQUIREMENTS: COMPLETE INCOMPLETE

REVIEWED BY: _____

BOARD REVIEW

MEMBER	EMPLOYEE NO.	APPROVED	DISAPPROVED
CRAIG UNDERHILL	145069	☐	☒
JAMIE NINO	178825	☐	☒
NICK REUELOS	145070	☐	☒
PHILIP FRIDLEY	178918	☐	☒
EXTENDED BOARD			
_____	_____	☐	☐
_____	_____	☐	☐

BOARD CHAIRMAN

EMPLOYEE REVIEW: APPROVED ☐ DISAPPROVED ☒ SPLIT ☐ (TEST REQUIRED)

TEST REQUIRED: NO PASS ☐ FAIL ☐ DATE: _____

SIGNATURE: [signature] DATE: 1-23-91

ADMINISTRATIVE

UPGRADE: APPROVED ☐ DISAPPROVED ☒

EMPLOYEE NOTIFICATION: DATE: 1-25-91

PAYROLL NOTIFICATION: YES ☐ NO ☒ DATE: N/A

MANAGER SIGNATURE: [signature] DATE: 1/25/91

TA-1 8/90

DEFENDANT'S EXHIBIT DC-23 ALL-STATE® INTERNATIONAL

American
AmericanAirlines

January 3, 1991

RECEIVED
MAR 04 1991
BASE MGR.
NASHVILLE EAGLE

Approved and Concurred

Paul Gaynor
International Vice President
Transport Workers Union
P. O. Box 690597
Tulsa, OK 74169-0597

Dear Mr. Gaynor:

The following maintenance mechanic upgrade procedure will be used in lieu of testing from the date signatures are obtained on the agreement.

The only exceptions are as follows:

1) To upgrade to Tech level I flight line or Hangar Avionics ref: para: 4) a) 1) Personnel employed before the signing of this agreement need not have an airframe license or run and taxi authorizations. It is agreed within ninety (90) days after completing eighteen (18) months with the Company an airframe license will be obtained. Within one hundred and eighty (180) days of becoming a Tech I a run and taxi authorization in two (2) type of aircraft will be obtained.

Failure to do so will cause the upgrade and corresponding pay to be rescinded. The employee will be placed into their previous level and pay until such time as the complete requirements of para: 4) a) 1) are met.

2) Personnel employed before the signing of this agreement with medical restrictions at the time of employment will be allowed to upgrade, i.e. not able to operate company equipment.

All facets of the upgrade requirements must be met, except those particular to the medical restrictions, i.e. run and taxi qualifications.

Date Agreed Upon _____

John A. Hayes
President, Nashville Eagle

Paul Gaynor
Vice President, TWU

C:\BETTE\TWU.LTR

December 28, 1990

TO: MIKE STRANGE
JIM ENRIGHT

FROM: DOUG SHOCKEY

RE: MECHANIC UP-GRADE

Attached you will find a copy of a proposed Mechanic Up-grade Review Board. This was developed with the intent of eliminating testing as much as possible. The local TWU and Nashville Eagle management has approved this program, however we would like concurrence from you. Please review the document and give us your comments so we may proceed.

Thank You.

cc: John Hayes
Gene Bried

NASHVILLE EAGLE, INC.
TECHNICIAN UPGRADE APPLICATION

NAME: LOBSON COLLINS ID NO.: 179338

ATION: M/L 8201 BRANCH: 9762

UPGRADE TO

LEVEL III ☐ LEVEL II ☐ LEVEL I ☐ LEAD ☒ INSPECTION ☐

APPLICATION

RECEIVED BY: [signature] DATE: 2-25-91

REQUIREMENTS: COMPLETE INCOMPLETE Tech level II

REVIEWED BY: [signature] 2-25-91 Seniority date 12-4-89

BOARD REVIEW

MEMBER	EMPLOYEE NO.	APPROVED	DISAPPROVED
JOHN CORDEIRO	179097	☒	☐
[illegible]	[illegible]	☒	☐
NOEL FRANZ	178831	☐	☒
MARK FRIDLEY	178918	☐	☒
EXTENDED BOARD			
D. HARSCLICS	178842	☒	☐
R. CLINKSCALES	129871	☐	☒

BOARD CHAIRMAN

EMPLOYEE REVIEW: APPROVED ☐ DISAPPROVED ☐ SPLIT ☒ (TEST REQUIRED)

TEST REQUIRED: PASS ☐ FAIL ☐ DATE: 3-8-91

SIGNATURE: _____ DATE: _____

ADMINISTRATIVE

UPGRADE: APPROVED ☐ DISAPPROVED ☒

EMPLOYEE NOTIFICATION: DATE: 4-2-91

PAYROLL NOTIFICATION: YES ☐ NO ☒ DATE: 4/2/91

MANAGER SIGNATURE: [signature] DATE: 4/2/91

1 8 90

DEFENDANT'S EXHIBIT DC 24 ALL-STATE® INTERNATIONAL

TRANSPORT WORKERS UNION OF AMERICA
AIR TRANSPORT DIVISION
5

LOCAL ADDRESS
T.W.U. LOCAL 570
P.O. BOX 1063
LAVERGNE, TN
37086-1063

STATEMENT OF GRIEVANCE

Name of Employee Dobson Collins Employee No. 179338

Station Miami Shop or Section LINE Classification A&P Mechanic

Name of Immediate Supervisor Mark Fridley

EMPLOYEE'S STATEMENT OF GRIEVANCE:

On or about february 23RD 1991 I Dobson Collins applied for a lead mechanic position with American Eagle Air lines. for some unknown reason management went against me on a review board and made me take a written test. This test was given to me the friday before I went to Jet Stream training.

The Chairman of the review board had asked Craig Roberts to get with the union president to have him review the test which he did not do. I feel that I have been Discriminated against Maybe because I am Black and have an accent with my English. I also feel that they made it as hard as they could for me so that I could not the lead test. I did not finish the test in Miami and did so in Nashville a week later, but I was told by Craig Roberts that I could not recieve the Jet Stream part of the test. I feel this was unfair, before that I was asked to perform lead duties on several occasions in which I did and was commended for a job well done. In the past lead mechanic's were given lead test and they failed, but were still given the lead position. All I am asking for is to be given the same treatment and opportunity the other leads were given.

I authorize the Transport Workers Union of America as my representative to act for me in the disposition of this grievance.

Date 4/15/91 Signature of Employee D Collins

Signature of Union Officer John Cordeiro CHAIRMAN Title

e presented to Supervisor 4-22-91 Station MIAMI

This Statement of Grievance is to be made out in TRIPLICA signed by the employee and the TWU officer handling the ca are to be given to the Supervisor. No. 3 is to be given to the

ATD 16

Post-it brand fax transmittal memo 7671 # of pages ▸ 1

To Richie L	From Mark Fridley
Co.	Co.
Dept.	Phone #

To: Dobson Collins
From: Mark Fridley
Subject: Grievance of Dobson Collins
Date: April 25, 1991

I have investigated your grievance dated April 18, 1991 and find that on April 2, 1991 you were advised by the Review Board that you had not been selected to fill the position of Lead Mechanic.

Pusuant to Article 20 of the Agreement between AMR and the TWU, your grievance is untimely.

Accordingly, your grievance is denied.

DISPOSITION OF GRIEVANCE

5

Decision of Immediate Supervisor:

Reference attached ; grievance denied due to untimely.

Date of Decision April 25, 1991 Signature [signature], Base Manager
Supervisor's Title

Received

Case appealed by Date

Decision on First Appeal:

Date of Decision Signature , Title of Company Official

Received

Case appealed to Board of Adjustment by Date

Decision of Board of Adjustment:

Date of Decision Signature

ved

ow was this grievance finally disposed

Signature of person recording final disposition Date

White Copy - Company Yellow & Pink Copy - Union

NASHVILLE EAGLE, INC.
TECHNICIAN UPGRADE APPLICATION

NAME: Dobson Collins ID NO.: 179338

STATION: 8201 BRANCH: 9962

UPGRADE TO

LEVEL III ☐ LEVEL II ☐ LEVEL I ☐ LEAD ☐ INSPECTION ☑

APPLICATION

RECEIVED BY: Robert Clinkscales DATE: 8/12/91

REQUIREMENTS: COMPLETE INCOMPLETE ✓ SENIORITY DATE 12/4/89

REVIEWED BY: Robert Clinkscales

BOARD REVIEW

MEMBER	EMPLOYEE NO.	APPROVED	DISAPPROVED
Robert Clinkscales	129871	☐	☑
Pete Holm	134760	☐	☑
Jimmy Marsellos	178842	☐	☑
ES Reyes	179326	☐	☑
EXTENDED BOARD			
		☐	☐
		☐	☐

BOARD CHAIRMAN

EMPLOYEE REVIEW: APPROVED ☐ DISAPPROVED ☑ SPLIT ☐ (TEST REQUIRED)

TEST REQUIRED: PASS ☐ FAIL ☐ DATE: _____

SIGNATURE: Robert Clinkscales DATE: 9/4/91

ADMINISTRATIVE

UPGRADE: APPROVED ☐ DISAPPROVED ☑

EMPLOYEE NOTIFICATION: DATE: 9/5/91

PAYROLL NOTIFICATION: YES ☐ NO ☑ DATE: _____

DEFENDANT'S EXHIBIT DC 27 ALL-STATE® INTERNATIONAL

NAGER SIGNATURE: Robert Clinkscales DATE: 9/5/91

IA-1 8/90

NASHVILLE EAGLE, INC.
TECHNICIAN UPGRADE APPLICATION

5-29-91

NAME: DOBSON C. ID NO.: 129338

STATION: 8201 BRANCH: 8862

UPGRADE TO AVIONICS

LEVEL III ☐ LEVEL II ☐ LEVEL I ☐ LEAD ☒ INSPECTION ☐

APPLICATION

RECEIVED BY: [signature] DATE: 10/8/91

REQUIREMENTS: ☒ COMPLETE INCOMPLETE

REVIEWED BY: [signature]

BOARD REVIEW

MEMBER	EMPLOYEE NO.	APPROVED	DISAPPROVED
[signature]	178871	☐	☒
[signature]	134957	☐	☒
[signature]	178828	☐	☒
[signature]	178825	☒	☐
EXTENDED BOARD			
		☐	☐
		☐	☐

BOARD CHAIRMAN

EMPLOYEE REVIEW: APPROVED ☐ DISAPPROVED ☐ SPLIT ☐ (TEST REQUIRED)

TEST REQUIRED: PASS ☐ FAIL ☐ DATE: _____

SIGNATURE: _____ DATE: _____

ADMINISTRATIVE

UPGRADE: APPROVED ☐ DISAPPROVED ☐

EMPLOYEE NOTIFICATION: DATE: _____

PAYROLL NOTIFICATION: YES ☐ NO ☐ DATE: _____

MANAGER SIGNATURE: _____ DATE: _____

TUA-1 8/90

DEFENDANT'S EXHIBIT DC28 ALL-STATE® INTERNATIONAL

Date: 10-8-91 PREVIOUS BID REQUESTED WAS JUNE 1990 & APRIL 1991

BID REQUEST SHEET

To ATT. AL ALVAREZ

This is to notify you that I am submitting a bid request for the position of AVIONICS TECHNICIAN.

Employee Name Dobson Collins (Please print or type)

Employee No. 179336

Present Tech Level II

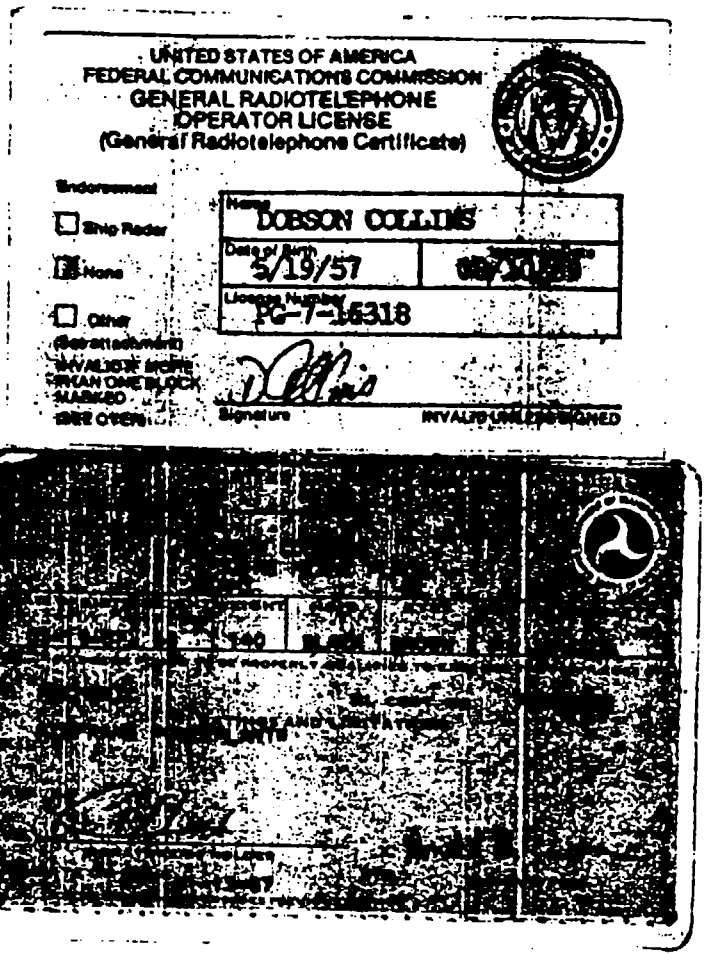
Seniority Date 12-4-89

Current Station MIAMI

Date Submitted 10-8-91 D. Collins

Employee Signature

Note: In order to expedite your request we suggest you facsimile this request with a telephone follow-up call to the person whose name appears above. This assures you that your bid has been received.



UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
GENERAL RADIOTELEPHONE
OPERATOR LICENSE
(General Radiotelephone Certificate)

Endorsement
☐ Ship Radar
☒ None
☐ Other

Name: DOBSON COLLINS
Date of Birth: 5/19/57
License Number: PG-7-16318

Signature

INVALID UNLESS SIGNED

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Miami District Office

Miami District Office
1 Northeast First Street, 6th Floor
Miami, FL 33132
(305) 536-4491

July 24, 1992

Mary F. Dugue
5700 NW 36th Street
Building 1040
Miami, Florida 33122

RE: Dobson Collins vs American Eagle Airline
EEOC Charge No. 150 91 1879, 150 92 1019

Dear Ms. Dugue:

Enclosed please find a fully executed copy of the Negotiated Settlement Agreement in reference to the above charge for your file.

The Commission thanks you for your cooperation and prompt attention in resolving this matter.

Sincerely,

Ken Gillespie
Investigator

7/28/92
Date

KG/mcl

Encl.: Negotiated Settlement

07-20-92 09:04AM FROM

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Miami District Office

Miami District Office
1 Northeast First Street, 6th Floor
Miami, FL 33132
(305) 536-4491

NEGOTIATED SETTLEMENT AGREEMENT

1. The following agreement refers to Charge No. 150 91 1879 and 150 92 1019 on file with the Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act of 1964, as amended.

2. In exchange for satisfactory fulfillment by Respondent of the promises contained in paragraph (3) of this Agreement, the Charging Party agrees not to institute a lawsuit with respect to the above referenced charge.

3. In exchange for the promises of Dobson Collins contained in paragraph (2) of this Agreement, the American Eagle Airlines agrees to:

   A. Affirm and confirm that the Charging Party has been upgraded to Tech Level (I) as of June 1991, and his rate of pay adjusted to its equivalent in accordance with established policies.

   B. That Respondent affirms that Charging Party will not be penalized in future consideration transfers, promotions, and other terms and conditions of employment because of these proceedings.

   C. That there should be no discrimination or retaliation of any kind against any person because of opposition to any practice declared unlawful under Title VII of the Civil Rights Act of 1964, as amended; or because of the filing of a charge; giving of testimony or assistance; or participation in any matter in any investigation, proceeding or hearing under Title VII of the Civil Rights Act of 1964, as amended.

   D. To re-emphasize its EEO policy to all of its Maintenance employees, particularly, to those who perform in a supervisory or lead capacity, limited to Respondent's Miami facility. The emphasis will go to the extent of requiring all employees to attend a meeting.

4. It is understood that this Agreement does not constitute an admission by the Respondent of any violation of Title VII of the Civil Rights Act of 1964, as amended.

5. The Respondent agrees to provide written notice to the Director of the Miami District Office within 10 days of satisfying each obligation specified at paragraph (3) of this Agreement.

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To K Gillespie | From M. Duque

6. The parties agree that this Agreement may be specifically enforced in court and may be used as evidence in a subsequent proceeding in which any of the parties allege a breach of this Agreement.

Mariluz Duque/Personnel Representative

Respondent

7/20/92.
Date

Charging Party

7/20/92
Date

7. In reliance on the promises made in paragraphs (2) and (3), (5) and (6) EEOC agrees to terminate the investigation which it has begun and not to use the above referenced charge as the jurisdictional basis for a civil action under the Title VII of the Civil Rights Act of 1964, as amended and/or the Age Discrimination in Employment Act of 1967, as amended. EEOC does not waive or in any manner limit its right to process or seek relief in any other charge or investigation including but not limited to, a charge filed by a member of the Commission against the Respondent.

On behalf of the Commission:

7/23/92
Date

Federico Costales
District Director

FC/WD/JMG/KLG/mcl

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Miami District Office
1 Northeast First Street, 6th Floor
Miami, FL 33132-2491
PH: (305) 536-4491
TDD: (305) 536-5721
FAX: (305) 536-4011

Mr. Dick Malahowski
Labor Relations Attorney
American Eagle Airlines
P.O. Box 619616, MD 5675
DFW Internat'l. Airport, Texas 75261-9616

Re: Charge No: **150-93-2683 and 150-93-2699**
D. COLLINS VS. AMERICAN EAGLE AIRLINES

Dear Mr. Malahowski:

This is to inform you that the charge cited above has been withdrawn as the result of a request from the Charging Party pursuant to the Commission's regulations under Title VII.

The Commission's acceptance of this withdrawal terminates investigation of this charge. This withdrawal does not affect the investigation of any other charge.

On behalf of the Commission:

3-16-94
Date

William Daly for
Federico Costales
District Director

FC/EMU/DPK/ayh

RECEIVED
MAR 22 1994
LEGAL DEPT

DEFENDANT'S EXHIBIT
DC 37
ALL-STATE® INTERNATIONAL

American Eagle
AmericanAirlines

4-22-93

To: Edgar Cerezo

From: Harold Allen

Subject: Dobson Collins - Road Trip

MOC informed us at 1815 that A/C 298, was down in Nassau, with a AHARS computer fail. I contacted lead mechanic Chris Muise who informed me that he was not able to get a qualified mechanic to volunteer for the trip. I than proceeded to the terminal, to attempt to convince the only Avionics mechanic, Dobson Collins, to go on the field trip. Dobson initially refused, than later agreed to go when I informed him, I would have to issue a direct order. After completeing the required paperwork, I believed that the problem had been resolved, and Dobson was on his way. I last saw Dobson at operations where he was told to report to the ticket counter. After reporting to the ticket counter He refused to show his identification to agent Annete Gano. He told her, it was in his pocket and if he had to show it he would not go to Nassau. Than Dobson walked out of the terminal and proceeded to attempt to board the Aircraft. Ms. Gano informed him that he could not board without first showing the required documentation. At this point a loud argument broke out between Dobson and Ms. Gano which was eventually broken up by the Capt. who agreed to take responsibility for Mr. Collins and the flight was dispatched. This flight was delayed 10 minutes.

Harold Allen - mx supervisor

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To R. Lapinski-Well	From E. Cerezo
Co.	Co.
Dept.	Phone #
Fax # 871-1323	Fax # 526-1976

DEFENDANT'S EXHIBIT
DC 41
ALL-STATE® INTERNATIONAL

FIRST SHIFT MECHANICAL OVERTIME

Overtime will start at 0700 unless otherwise noted.
Overtime will be approved according to the senor person not on double time.
If the workload demands, double time will be approved in order of senority.
Overtime will be issued to first shift employees first, first mechanics then inspectors.
If the workload demands mechanics from other shifts, they will be considered only if overtime slots on their respective shifts are full.
Overtime personel are to report to supervisor for assignment to line or hangar at the start of the shift..
Overtime will be approved seven days in advance.

MORGAN, LEWIS & BOCKIUS

PHILADELPHIA
NEW YORK
MIAMI
PRINCETON
BRUSSELS

COUNSELORS AT LAW
5300 FIRST UNION FINANCIAL CENTER
200 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131-2339
TELEPHONE: (305) 579-0300
FAX: (305) 579-0321

WASHINGTON
LOS ANGELES
HARRISBURG
LONDON
FRANKFURT
TOKYO

TERENCE G. CONNOR
DIAL DIRECT (305) 579-0316

January 9, 1995

Ira J. Kurzban, Esquire
Kurzban, Kurzban & Weinger
2650 S.W. 27th Avenue
Miami, Florida 33133

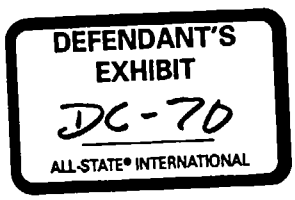
Re: Flagship Miami: Anthony Lee, Dobson Collins, Oren Camejo, Oswald Russell and Charles McLean

Dear Ira:

I am sorry to have been longer than anticipated in getting back to you. However, the combination of urgent commitments at Flagship and of the holiday season have conspired to make full communications difficult to complete. Our inquiry last week also indicated that you were unavailable until Wednesday of this week. We do not want to wait any longer.

I am, of course, responding to your approach, made in our meeting of December 7, 1994 concerning the employees indicated above. In our meeting, you summarized certain incidents your clients have described to you, alerted us to the existence of discrimination charges filed by some of those clients and generally described an environment that your clients regard as racially hostile. Of particular concern is a length of rope, tied in a noose, that you produced for our view, and a polaroid photograph that appears to portray a black person in a negative manner.

Complicating my review of this matter is the fact that two of your clients, Messrs. Lee and Collins, have been discharged from employment, and have initiated proceedings under the Railway Labor Act - governed Collective Bargaining Agreement. In addition, based on allegations of some of your clients, Flagship personnel officer, Cathy Janas, had completed a series of investigative interviews under the company's formal harassment policy (copy attached) in an effort to determine whether violations had occurred. She had not completed her evaluation or investigation at the time when I alerted her to your contact.



We have conferred with Flagship, and we propose to proceed as follows.

Flagship will treat your contact as an expansion of the Janas investigation with certain particular modifications because of exigent circumstances. The company takes the suggestion that an African-American employee may have been the target of a "noose" incident very seriously, and we assume that no one would be callous enough to make such an accusation without sound basis.

However, Ms. Janas is at an advanced stage of pregnancy, and she is not currently able to travel. Therefore, she will be requesting that your clients, who have any new or additional information to provide to her, make arrangements to travel to her office in Nashville (on Flagship travel documents). Because of the nature of the matter, and because of your willingness to seek informal resolution, she will invite you to participate in her hearing with the caveat that counsel for Flagship will be present at meetings where witnesses or claimants' counsel is present.

As required by EEOC Guidelines and company policies, Flagship will continue to conclusion a thorough and objective investigation, and will take whatever action may be indicated by the results of this expanded investigation.

It is our intention that this occur expeditiously, and I would appreciate your contacting me so that we can obtain suitable dates for meetings in Nashville. To the extent that further interviews of Miami-based individuals may be required, they will either travel to Nashville under similar circumstances or Ms. Janas will arrange for a suitable delegate official to meet with those persons in Miami under her supervision.

We appreciate your bringing this matter to our attention. I am confident that your clients will receive a thorough and objective investigation of their allegations. As it proceeds, we will ask that you and your clients refrain from any public discussion of these matters so that the investigation can proceed unimpaired to its appropriate conclusion.

Of course, if you have any suggestions for moving this matter forward to an appropriate conclusion, we are prepared to discuss them with you. I look forward to your call.

Sincerely,

Terence G. Connor

TGC/sk

cc: Andrew M. Kofsky
Michele Valdez
Cathy Janas

TULE FORM 8025

QUALITY ASSURANCE
NOTIFICATION OF NON-COMPLIANCE

TO: CRAIG UNDERHILL # 145069

COPY: BASE MGR

N 947AC STATION MIA DATE 2/15/91

MANUAL REF: GPM 5-01 FAR REF:

NON-COMPLIANCE

(1) ITEM 25 LOG PAGE 20969 MAINTENANCE MANUAL REFERENCE NOT DOCUMENTED

129871

SIGNATURE R. ELD

EMPLOYEE NAME (PRINT) Craig A. Underhill EMPLOYEE NUMBER 145069

EMPLOYEE STATEMENT* REQUIRED ✓ NOT REQUIRED

In the rush of the banks I did not include the required MM reference.

SIGNATURE Craig A. Underhill DATE 2-15-91

145069

*ATTACH SEPARATE SHEET IF NECESSARY

ACTION TAKEN TO PREVENT RECURRENCE

Will include MM for corrective actions.

SIGNATURE Craig A Underhill DATE 2-15-91

145069

COPIES:

Respond to applicable manager within 72 hours.

DEFENDANT'S EXHIBIT DC-72

ALL-STATE® INTERNATIONAL

TULE FORM 8025

QUALITY ASSURANCE
NOTIFICATION OF NON-COMPLIANCE

TO: CRAIG UNDERHILL #145069
COPY: BASE MGR

N 210 STATION MIAMI DATE 2/15/91

MANUAL REF: GPM 5-01 FAR REF:

NON-COMPLIANCE

(1) ITEM 61 LOGPAGE 02707 THE BY BLOCK IN MECHANICAL DISCREPANCIES BLOCK NOT A PAY ROLL SIGNATURE

125871

SIGNATURE R. ell

EMPLOYEE NAME (PRINT) Craig A. Underhill EMPLOYEE NUMBER 145069
EMPLOYEE STATEMENT* REQUIRED ✓ NOT REQUIRED

I thought information in this Section was only for informational Purposes, after reading GIM 5-01 (B.) f. I found I have to use full Name ~~whether it's~~ Printed ~~or Signed~~

SIGNATURE Craig A. Underhill 145069 DATE 2-15-91

*ATTACH SEPARATE SHEET IF NECESSARY

ACTION TAKEN TO PREVENT RECURRENCE

Will USE Full Name AS instructed by GPM 5-01 Pg. 2 item B. Paragraph f. & Will Not use initials any More.

SIGNATURE Craig A. Underhill 145069 DATE 2-15-91

COPIES:

Respond to applicable manager within 72 hours.

SECTION F item #19 States: PRINT Lastname

AE-MTX-1804-01MAR91

QUALITY ASSURANCE

NOTIFICATION OF NON-COMPLIANCE

American Eagle

TO: MAINTENANCE

COPY: C. UNDERHILL # 145069

A/C 912 CARR. NVEA STATION MIAMI DATE 11/5/91

MANUAL REF: _____ FAR REF: _____

NON-COMPLIANCE

(1) Item 1 Footage 012443 PTRCP IS NOTE to maintenance stating that the aircraft was not serped at the outstation. Upon return to the hub the aircraft should have been serped, and signed off in action taken column as being serped.

SIGNATURE: R. Cl 129871

EMPLOYEE NAME (PRINT) CA UNDERHILL EMPLOYEE NUMBER 145069

EMPLOYEE STATEMENT* REQUIRED ✓ NOT REQUIRED _____

Corrective Action Should have included "MX Noted - Fuel tanks Sumped" Next time I'll be more specific As the fuel tanks were Sumped. SIGNATURE [signature] DATE 11-9-91

* ATTACH SEPARATE SHEET IF NECESSARY

ACTION TAKEN TO PREVENT RECURRENCE:

PLACE IN FILE

SIGNATURE _____ E _____

COPIES: White - RETURNED ANSWERED
Yellow - STATION FILES

E

REPLY REQUIRED WITHIN 10 DAYS

AE-MTX-1804-01MAR91

QUALITY ASSURANCE
NOTIFICATION OF NON-COMPLIANCE

American

TO: EDWARD COLLINS

COPY: C. PA. - UNDERHILL

A/C 254 CARR: UAEA STATION MIAMI DATE 4/24/94

MANUAL REF: GPM 17-02 pg 3 ITEM 7.C FAR REF: 121 WD

NON-COMPLIANCE

ON 4/20/94 YOU ISSUED 2 MEL'S ON A/C 254 FOR A RAIN DANCE + W/S HEAT. AS PER GPM & FAR'S LISTED ABOVE YOU ARE REQUIRED TO GIVE FOLLOW UP AS OF 4/21/94 0600 THERE WAS NO INFORMATION AVAILABLE

SIGNATURE: [signature]

EMPLOYEE NAME (PRINT) Craig A UNDERHILL EMPLOYEE NUMBER 115069

EMPLOYEE STATEMENT* REQUIRED ✓ NOT REQUIRED

To No Excuse of My own I was doing A PS-1, fuel leak and 2 mels in the rain while getting covered with fuel. I Understand it is my Responsibility to enter MEL info into Sabre for TIS and Parts As Promptly AS Possible or to turn info to Next Superviser For Prompt Return to service in MEL clearance

SIGNATURE CA Underhill DATE 4-25-94

* ATTACH SEPARATE SHEET IF NECESSARY

ACTION TAKEN TO PREVENT RECURRENCE:

I Believe Mr Underhill is aware of the infractions and the procedures we have demanded. He should prevent any occurrences in the future

SIGNATURE [signature] DATE 5/1/94

COPIES: White - RETURNED ANSWERED Pink - EMPLOYEE
Yellow - STATION FILES Gold - ORIGINATOR'S FILE

REPLY REQUIRED WITHIN 10 DAYS

DEPO 10472

AMERICAN EAGLE
AIRCRAFT MAINTENANCE LOG

A/C # N 201 AE

DATE 2 / 1 / 91

TYPE: A/C SAAB 340 SA226 ☐ SA227 ☐ OTHER

ENGINE DATA		IAS 200	IOAT C -9	PRESS ALT 15000				
ENG #	EGT	TQ	RPM 1	RPM 2	FUEL FLOW	OIL PRESS	OIL TEMP	ANTI ICE	BLEED AIR
1	818	61	93	1270	460	80	80	OFF	ON
2	844	61	93	1270	480	80	79		

FIRST FLIGHT OF DAY ITEMS CHECKED	OK	ENTER PIREP NBR IF NOT OK
VOR CHECK	STA TO	FREQ FROM
BY T. FLANAGAN	#1 JAX	134 CSG 0°
ID # 317364	#2 MIA	115 CSG 0°
	#3 MCO	113 CSG 0°

A/C ACCEPTED BY:
CAPT [signature]
CAPT T. Hunter
CAPT
CAPT

ID #	STA	OIL ADDED STA	1	2
134774	JAX			
134839	MIA			

MECHANICAL DISCREPANCIES

1 NO. 4 BY S. COLLINS ID # 134774 FLT # 4677 STA MIA

ON DESCENT AT AROUND 17000 FEET THERE WAS A BURNING SMELL IN THE COCKPIT. ALSO THE FLIGHT ATTENDANT SMELLED THIS - THE WEC WHOLE LIGHT CAME; RESET EC & ELS - LIGHT WENT OUT

2 NO. 5 BY S. COLLINS ID # 134774 FLT # 5640 STA MIA

COCKPIT UNABLE TO CONTROL ~~CABIN~~ TEMP. USING BOTH MANUAL AND AUTO.

3 NO. BY ID # FLT # STA

4 NO. BY ID # FLT # STA

ACTION TAKEN

1 NO. 4 DATE 2-1-91 STA MIA ATA

No further smell noted inspected systems checks good at this time. TAT - 914.1 CAT - 923

BY [signature]
ID # 145069
P/N OFF
S/N OFF
P/N ON
S/N ON

2 NO. 5 DATE 2-1-91 STA MIA ATA 21-50-1

Issued MEL 21-50-1 Auth # 24D C/C "Ambient Air intake Shutter secured open" as Per MEL 21-50-1. TAT - 914.1 CAT - 923

BY [signature]
ID # 145069
P/N OFF
S/N OFF
P/N ON
S/N ON

3 NO. DATE STA ATA

BY
ID #
P/N OFF
S/N OFF
P/N ON
S/N ON

4 NO. DATE STA ATA

BY
ID #
P/N OFF
S/N OFF
P/N ON
S/N ON

AE-MTX-1804-01MAR91

QUALITY ASSURANCE

NOTIFICATION OF NON-COMPLIANCE

American Eagle

TO: EDGAR CEREZO

COPY: JUAN CUADRA

A/C 918 CARR. NVEA STATION MIAMI DATE 5/10/94

MANUAL REF: GPM 17-07 pg 3 ITEM 7C FAR REF: 121.627

NON-COMPLIANCE

ON MAY 5, MR CUADRA ISSUED ~~AN~~ MEL TO A/C 918 FOR APR. AS PER GPM & FARS LISTED ABOVE, THE REQUIREMENT FOR FOLLOW UP INFORMATION HAD NOT BEEN FULFILLED AS OF 5/6/94 @ 1300

SIGNATURE: [signature] 12883

EMPLOYEE NAME (PRINT) J Cuadra EMPLOYEE NUMBER 12883

EMPLOYEE STATEMENT* REQUIRED _____ NOT REQUIRED _____

I did put ~~enter~~ the information in the computer on the same date that I issue the Mel.

SIGNATURE [signature] DATE 5/20/94

* ATTACH SEPARATE SHEET IF NECESSARY

ACTION TAKEN TO PREVENT RECURRENCE:

Employee apparently entered info but failed to complete entry. To prevent reoccurrence employee will double check ~~K~~ for ACR

SIGNATURE [signature] DATE 5/20/94

COPIES: White - RETURNED ANSWERED Pink - EMPLOYEE
Yellow - STATION FILES Gold - ORIGINATOR'S FILE

REPLY REQUIRED WITHIN 10 DAYS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 97-0722-CIV-GRAHAM

ANTHONY LEE, an individual

Plaintiff,

VS.

EXECUTIVE AIRLINES, INC., a Delaware Corporation d/b/a AMERICAN AIRLINES INC., a Delaware Corporation, and FLAGSHIP AIRLINES, INC., a Delaware Corporation

Defendants.

_____/

2650 S.W. 27th Avenue
Miami, Florida
January 27, 1998
9:45 a.m.

Deposition of RAPHAEL PEREZ

Taken before Elaine Somma, Certified Shorthand Reporter and Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.

- - - - - - - - - - -

Q. Did anybody, when Harold Allen walked in, say "Harold, you got to stop this, this is insulting" or outrageous or offensive"?

A. No.

Q. Do you find the use of the term nigger offensive?

A. To me personally?

Q. Yes.

A. If somebody called me a nigger?

Q. If somebody called Tony Lee a nigger in your presence?

A. For him, yeah.

Q. Not to you?

A. No.

Q. Do you know of anyone who was ever counseled or disciplined for using the word nigger?

MR. KURZBAN: Objection, time frame, when, where, at the company?

MR. CONNOR: At the company called Flagship at any time that you were employed there.

THE WITNESS: I don't remember.

BY MR. CONNOR:

Q. Do you not remember yourself, called in because you were accused by Mr. Collins of calling him a nigger, and then being called in to Mr. Alvarez

in January of 1992?

A. There was an incident that I had with Dobson Collins, but I don't remember the exact details.

Q. But he did accuse you of calling him a nigger during work time on the shop floor, didn't he?

A. I think he did.

Q. And you denied it?

A. Right, true, exactly, I didn't call him.

Q. And you indeed were called in to talk to Al Alvarez, who was a supervisor at the time, because of that allegation by Mr. Collins, right?

A. I remember I was called in.

Q. For that?

A. I think so.

Q. And Mr. Collins stuck to his story that you did it and you stuck to your story that you did not, correct?

A. Right.

Q. And both of you were counseled to go and work together and you were told if you did call him a nigger, that that would violate company policy, right?

A. I don't remember.

Q. This man sitting to my left told you

that?

A. I don't remember.

Q. You don't remember?

A. I don't remember offhand.

Q. How do you remember that meeting with Mr. Alvarez ending?

A. Excuse me?

Q. How do you remember the end of the meeting with Mr. Alvarez over this issue?

A. How do I remember?

Q. What happened to close this issue?

A. You got to rephrase the question. I don't understand.

Q. I will use the last names. Collins goes to Alvarez and complains that Perez called him a nigger while he was working on the flight line or hangar or somewhere.

A. Hangar, right.

Q. Alvarez calls both Perez and Collins in to see him?

A. Right.

Q. Together?

A. I don't remember.

Q. But you know--

A. We had a meeting.

Q. You three?

A. I think it was us three, but I am not sure.

Q. And at the meeting, one guy said Collins said Perez called me a nigger and it is outrageous, right, in substance, not those words?

A. Yeah.

Q. And Perez says "I did not and by the way you are not a very good mechanic", in substance?

A. Right.

Q. Because you were complaining about his work?

A. Exactly.

Q. You didn't think he was any good as a mechanic?

A. No.

Q. It wasn't because he was black, was it?

A. No.

Q. Now this meeting in which you were all three in the room over this nigger calling allegations ended at some point, right?

A. You are talking about the meeting with Alvarez?

Q. Yes.

A. Yes, sir, right.

Q. And you all left the room?
A. Right.
Q. You walked out of that room?
A. Right.
Q. When you walked out of that room, did you have a belief that Mr. Alvarez would approve of your calling Mr. Collins a nigger?
A. No.
Q. Why not?
A. Because it is against company policy.
Q. And he told you that in no uncertain terms?
A. He probably did, but I couldn't tell you definitely.
Q. Did you ever do it again?
A. No.
Q. And you never did it the first time?
A. No, I never did it.
Q. Do you know of anyone else who has been counseled or called in for using racial terms with another employee?
A. No, not offhand.
Q. Do you know why Mr. Collins was discharged?
MR. KURZBAN: Objection as to relevancy