

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DEC. 06. 2005

MATTHEW J. DYKMAN
CLERK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

DHL Express (USA) Inc., and AIR ONE
TRANSPORT GROUP, INC., d/b/a AIR ONE
TRANSPORT OF NEW MEXICO, LLC and
AIR ONE TRANSPORT OF NEW MEXICO, LLC

Defendants,

And

DEBRA SMITH

Plaintiff in Intervention

v.

DHL Express (USA) Inc., and AIR ONE
TRANSPORT GROUP, INC., d/b/a AIR ONE
TRANSPORT OF NEW MEXICO, LLC and
AIR ONE TRANSPORT OF NEW MEXICO, LLC

Defendants.

No. CV-04-1118 JP/WP

**CONSENT DECREE
AS TO DEFENDANTS
AIR ONE TRANSPORT GROUP,
INC., AND AIR ONE
TRANSPORT OF NEW
MEXICO, LLC**

The United States Equal Employment Opportunity Commission (the Commission or EEOC) filed this action against DHL Express (USA), Inc., f/k/a Airborne Express, Inc., (hereinafter "DHL") and Air One Transport Group, Inc., and Air One Transport of New Mexico, L.L.C. (hereinafter "Air One") to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq. ("Title VII") and the Civil Rights Act of 1991, 42 U.S.C. § 1981a. In the Complaint and Amended Complaints, the Commission alleged that Charging Party Debra

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Smith was subjected to unwelcome comments and conduct by employees of Airborne Express and Air One, which created a hostile work environment for Ms. Smith because of her sex, female. The Commission also alleged that Air One, as a third party, an employer and an integrated-enterprise subject to Title VII, unlawfully interfered with Ms. Smith's employment by creating a hostile work environment which adversely affected the terms, conditions, and privileges of Smith's employment with her employer. Finally, the Commission alleged that Airborne Express subjected Ms. Smith to retaliatory discipline and failed to promote her because she opposed the unlawful employment practices of Defendants.

To resolve the claims of the Commission in this lawsuit, the parties have agreed that defendants Air One and DHL shall each separately agree to entry of a Consent Decree. This Consent Decree applies solely to Defendant Air One.

Air One denies all allegations of Plaintiff and Plaintiff-Intervener Smith, and specifically denies that it discriminated against any individual on the basis of sex or any other unlawful practice under Title VII or the causes of action set forth in the Complaint or the Complaint in Intervention.

This Consent Decree does not constitute an admission of liability by Air One, nor does it constitute an adjudication on the merits of the allegations in the Complaint or Complaint in Intervention. The parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law.

It is hereby **ORDERED, ADJUDGED AND DECREED:**

1. This decree resolves all claims of the Commission against Air One on behalf of Debra Smith, including claims for back pay, compensatory and punitive damages, interest, injunctive

relief, attorney's fees and costs arising out of the issues in this lawsuit.

INJUNCTION

2. Air One, their managers, agents, officers, employees, successors and assigns and all persons in active concert or participation with them, are permanently enjoined for the duration of the decree from discriminating against any employee because of his or her sex, including subjecting employees or individuals to sexual harassment. This injunction will remain in effect for the duration of the decree at any facility operated by Air One in New Mexico and Arizona.

3. Air One, their managers, agents, officers, employees, successors and assigns and all persons in active concert or participation with them, are permanently enjoined for the duration of the decree from retaliating against any employee or individual because the employee or individual has (a) opposed practices made unlawful by Title VII or a state equal employment opportunity statute, (b) filed a charge of discrimination, including sexual harassment, (c) assisted or participated in the filing of a charge of discrimination, including sexual harassment, (d) assisted or participated in an investigation or proceeding under Title VII or a state equal employment opportunity statute, or (e) files an internal complaint of discrimination. This injunction will remain in effect for the duration of the decree at any facility operated by Air One in New Mexico or Arizona.

RELIEF TO CHARGING PARTY

4. In accordance with this decree, Air One shall pay the total amount of \$125,000 payable to Debra L. Smith and her attorneys as compensatory damages.

5. Air One shall pay the settlement amounts described in paragraph 4 of this decree within fourteen (14) days of entry of this decree via business check payable to Ms. Smith and her

attorneys in c/o her attorneys. Within five (5) days of issuance of the check(s), Air One shall submit a copy of the check and related correspondence to the Regional Attorney, Equal Employment Opportunity Commission, Albuquerque Area Office, 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189.

6. Air One shall not take any action against Debra Smith, any witness in this proceeding or any other individual in retaliation for filing a charge of employment discrimination or for participating, assisting or testifying in this action.

DEFENDANTS' CORRECTIVE POLICIES AND PRACTICES

7. Air One shall institute and carry out policies and practices that will provide a work environment free from sex discrimination and retaliation, including policies, procedures and practices to prevent sexual harassment of their employees and other individuals, and that allow employees and other individuals to raise concerns or complaints about matters made unlawful by Title VII, whether alleged, perceived or actual without retaliation. To assist Air One in their efforts to provide a work environment free of sex discrimination, sexual harassment and retaliation, Air One shall take the actions provided for in Paragraphs 8 through 10 and 12 at each of its facilities in New Mexico and Arizona.

8. Within sixty (60) days of the entry of this decree, Air One shall review any existing policies on sex discrimination, including sexual harassment and retaliation, which apply to its New Mexico and Arizona facilities, and make any changes necessary so that their policies and procedures comply with Title VII. Should Air One not currently have an existing policy prohibiting sexual harassment or retaliation, defendant shall implement an effective anti-retaliation policy and anti-harassment policy and procedure to receive employee complaints of

harassment based on sex. Air One shall ensure their written policy includes a statement which informs employees about their rights to complain directly to EEOC or any state equal opportunity agency. After reviewing and making any necessary revisions to its policies, Air One shall distribute within 30 days, the revised sexual harassment and non-retaliation policies and complaint procedures to each of its current full and part-time employees, and to each new employee hired for the duration of this decree. The policy and procedure statements that are provided to Air One employees should be designed to present easily understood, convenient, consistent, confidential and reliable procedures for reporting incidents of sexual harassment and retaliation at Air One facilities in New Mexico and Arizona. These procedures, at a minimum, shall include provisions incorporating the following:

- A. Within thirty (30) days of entry of this decree and for the duration of this decree, Air One shall designate at least one employee in a supervisory or managerial position for each facility to serve as investigative officer for sexual harassment or retaliation issues; that investigative officer need not work in the facility provided that the officer is reasonably available by telephone and, when necessary and appropriate, is willing and able to travel to the facility;
- B. Within thirty (30) days of entry of this decree and for the duration of this decree, the name(s), responsibilities, work location, and telephone number of the investigative officer(s) will routinely and continuously be posted and provided to all employees so that an employee seeking such name can enjoy anonymity and remain inconspicuous to other employees;
- C. For the duration of this decree, complaints of sexual harassment or retaliation will

be accepted in writing, orally, or anonymously and all complaints will be taken seriously and investigated;

- D. Only those who have an immediate need to know, including the investigative officer(s), senior management, the alleged target of harassment or retaliation, the alleged harasser(s) or retaliator(s) and any witnesses, may find out the identity of the complainant;
- E. During an investigation of a sexual harassment complaint of an employee or other individual, the investigative officer shall endeavor to interview as soon as practicable all affected individuals and potential witnesses to the alleged harassment;
- F. All parties contacted in the course of an investigation will be advised that any retaliation or reprisal against an individual who is an alleged target of harassment or retaliation, who has made a complaint, or who has provided evidence in connection with a complaint will not be tolerated and could result in disciplinary action;
- G. Each investigative officer will receive thorough and appropriate training about sexual harassment and will have the responsibility for expeditiously investigating all complaints. This training shall consist of at least two hours in addition to that provided under paragraph 10 of this decree;
- H. The investigative officer will recommend remedial measures, if appropriate, based upon the results of the investigation, and Air One will promptly consider and act upon such recommendation;

I. The investigative officer will maintain a file on the original complaint(s) and any follow-up investigation; and

J. Air One managers, officials, agents or employees who engage in sexual harassment or retaliation; who fail to cooperate with company-sponsored investigations of sexual harassment or retaliation; or who refuse to implement remedial measures will be advised that they may be sanctioned severely by, including but not limited to, suspension without pay or dismissal.

9. Air One shall post within thirty (30) days of the entry of this consent decree, and continuously for a period of 36 months, in prominent places frequented by employees of their New Mexico and Arizona facilities, the Notice attached to this decree as Exhibit A. This Notice shall be the same type, style and size as in Exhibit A.

10. Defendant shall provide training on sex discrimination, sexual harassment, and retaliation according to the following terms:

A. Defendant shall provide at least four training sessions during the term of this decree. All employees, including supervisors and managers, at facilities owned or operated by Air One in New Mexico and Arizona shall attend the training. In addition, Bill Haggar, Jim Haggar, and Monica Haggar shall attend at least one training session required by this decree each year. Duplicative or videotaped sessions may be held to accommodate staffing needs. Air One shall be responsible for all costs associated with this training.

B. During the first year of the decree, the first training session shall be conducted within ninety (90) days of the entry of this decree. In the first year of the decree,

an additional training session must be held within one-hundred-twenty (120) days of the previous training session for any new employees or new managers hired after the date of the first training session. Additional training shall be conducted at least once each remaining year of this Decree.

- C. Air One shall select a qualified trainer and shall submit the trainer's name, resume, training agenda and the date(s) of the proposed training to the Regional Attorney of the Albuquerque Area Office of the Equal Employment Opportunity Commission within forty-five (45) days of the entry of this decree. For the second training session in year one and during the second and third years of the decree, the above information shall be submitted to the Regional Attorney at least sixty (60) days prior to the seminar-training session. The Commission shall have thirty days from the date of receipt of the information described above to accept or reject the proposed consultant/lecturer and/or the contents of the seminar. In the event the Commission does not approve defendant's designated consultant/lecturer, the Commission shall designate the consultant/ lecturer at a cost not to exceed \$1000.00 per seminar-training session, which shall be paid by Air One.
- D. The training shall include a minimum of three hours of instruction. All personnel, designated in Paragraph A shall both register and attend the training. The registry of attendance shall be retained by Air One at least for the duration of the decree.
- E. The training, at a minimum shall include the subjects of: what constitutes sex

discrimination, including sexual harassment and retaliation; that sex discrimination in the hiring, firing, compensation, assignment or other terms, conditions or privileges of employment and retaliation violates Title VII; how to prevent sex discrimination and retaliation; how to provide a work environment free from sex discrimination, sexual harassment, and retaliation; and to whom and by what means employees may complain if they feel they have been subjected to sex discrimination, sexual harassment or retaliation in the workplace.

F. Immediately following the training sessions, Air One's highest ranking managerial official in the facility shall speak to the employees about: (1) potential discipline that can be taken against owners, stockholders, supervisors, managers and employees who commit acts of sex discrimination or retaliation or who allow sex discrimination or retaliation to occur in the workplace; (2) the importance of maintaining an environment free of sex discrimination and retaliation; and (3) the employer's policies regarding sex discrimination, sexual harassment, and retaliation. This time shall not be counted toward the three-hour minimum training required in paragraph 10.D.

G. For the duration of this decree, at or around the time of hire, employees hired after the annual training is presented, shall view a video tape of the training and/or a professional training tape which covers the topics set forth in paragraph 10.E. and shall be given any written material disseminated at the training.

11. The Commission, at its discretion, may designate Commission representatives to attend and participate in any of the training sessions described above.

REPORTING BY DEFENDANTS AND ACCESS BY EEOC

12. Air One shall report in writing and in affidavit form to the Regional Attorney of the Commission's Albuquerque Area Office at 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189, beginning six months from the date of the Entry of this Decree, and thereafter every six months for the duration of the decree the following information:

- A. Any changes, modifications, revocations, or revisions to its policies and procedures that concern or affect the subject of sex discrimination, sexual harassment and retaliation.
- B. The name, address, position, social security number and telephone number of any employee who during the six months preceding the report has brought allegations of sex discrimination, sex harassment, or retaliation arising from activities in Air One's facilities in New Mexico and Arizona against Air One or its personnel, including, but not limited to, owners, stockholders, management officials, vendors, agents, or employees. The nature of the complaint, investigatory efforts made by defendant and the corrective action taken, if any, shall be specified.
- C. The registries of persons attending each of the seminar-training sessions required in paragraphs 8 and 10 of this decree and a list of current employees on the day of the seminar-training session.
- D. An affidavit by Air One stating: (1) the Notice required in paragraph 9 of this decree was posted and the locations where it was posted, and (2) it has complied with paragraphs 7-10 and 12 of this decree.

E. Copies of any video presentations Air One has utilized to comply with the requirements of this decree.

13. The Commission upon reasonable notice shall have the right to enter and inspect the premises of Air One's facilities in New Mexico and Arizona ensure compliance with this decree and federal anti-discrimination laws.

COSTS AND DURATION

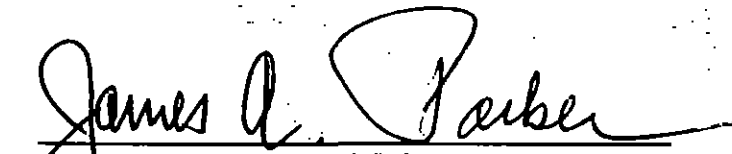
14. Each party shall bear its costs and attorney's fees incurred as a result of this action through the entry of this decree.

15. The duration of this decree shall be three (3) years from its entry. This Court shall retain jurisdiction of this action for the duration of the decree, during which the Commission may petition this Court for compliance with this decree. Should the Court determine that Air One has not complied with this decree, appropriate relief, including extension of this decree for such period as may be necessary to remedy its non-compliance, may be ordered.

16. This decree shall expire by its own terms at the end of three (3) years after entry, without further action by the parties.

17. The parties agree to entry of this decree and subject to final approval by the Court.

ENTERED AND ORDERED this ____ day of _____ 2005.



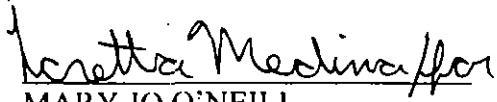
THE HONORABLE JAMES A. PARKER
SENIOR UNITED STATES DISTRICT JUDGE


APPROVED AND CONSENTED TO:

James L. Lee
Deputy General Counsel

Gwendolyn Young Reams
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
1801 L. Street, N.W.
Washington, D.C. 20507


MARY JO O'NEILL
Regional Attorney


C. EMANUEL SMITH
Supervisory Trial Attorney

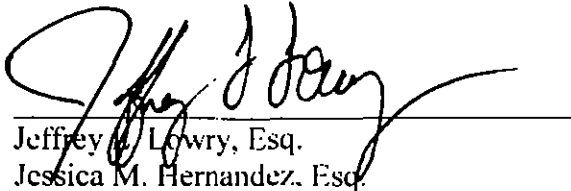
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
3300 N. Central Ave., Suite 690
Phoenix, Arizona 85012


LORETTA MEDINA
Senior Trial Attorney

VERONICA MOLINA
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Albuquerque Area Office
505 Marquette NW, Suite 900
Albuquerque, New Mexico 87102-2189

Attorneys for Plaintiff



Jeffrey M. Lowry, Esq.

Jessica M. Hernandez, Esq.

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

Post Office Box 1888

Albuquerque, New Mexico 87103

(505) 765-5900

Attorneys for Defendant Air One Transport Group, Inc.

Approved by Telephone 12/1/05 


Michele Masiowski

Serra, Garrity & Masiowski, LLC

P.O. Box 8177

Santa Fe, New Mexico 87504

(505) 983-6956

Approved by Telephone 12/1/05 

George Geran, Esq.

Law Offices of George Geran

625 Franklin Avenue

Santa Fe, NM 87505

(505) 983-1085

Attorneys for Intervener Debra Smith

NOTICE TO ALL AIR ONE EMPLOYEES

It is unlawful under the federal law (Title VII of the Civil Rights Act of 1964) and state law to discriminate against an employee on the basis of sex in hiring, firing, compensation or other terms, and conditions or privileges of employment, including sexual harassment. It is also unlawful under federal and state law to retaliate against any individual who complains of harassment.

Air One prohibits all forms of sex discrimination, including sexual harassment. Prohibited sexual harassment includes, but is not limited to, the following conduct:

- a. unwelcome touching of a sexual nature;
- b. unwelcome comments, including comments regarding intimate body parts, or clothing and discussion of sexual jokes or sexual behavior;
- c. unwelcome requests for dates, sexual favors and propositions
- d. unwelcome distribution in the workplace of cartoons, pictures or drawings of a sexual nature; and
- e. unwelcome display of pornographic material in the workplace.

Air One shall not discriminate on the basis of sex and shall not retaliate against any employee who opposes a practice made unlawful under federal law, files, assists or participates in the filing of a charge of discrimination or participates in any investigation under Title VII, or who files a grievance alleging discrimination.

If you believe you are being sexually harassed, discriminated against based on sex or retaliated against you should report this to the designated investigative officer at your workplace who may be contacted at _____.

If you believe you have been discriminated against or retaliated against by Air One, you always have the right to seek assistance from or file a charge with:

- 1) Equal Employment Opportunity Commission (EEOC), 505 Marquette, Suite 900, Albuquerque, New Mexico 87102, (505) 248-5201.
- or
- (2) The New Mexico Department of Labor, Human Rights Division, 1596 Pacheco St., Suite 103, Santa Fe, New Mexico 87505, (505) 827-6838.

EXHIBIT A