

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: July 17, 2003

TO: The Federal Labor Relations Authority

FROM: PAUL B. LANG
Administrative Law Judge

SUBJECT: DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
CENTRAL REGION, MISSOURI

Respondent

and

Case No. DE-CA-02-0175

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION

Charging Party

Pursuant to Section 2423.34(b) of the Rules and Regulations 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits, and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION CENTRAL REGION, MISSOURI Respondent	
and NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION Charging Party	Case No. DE-CA-02-0175

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **AUGUST 18, 2003**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
1400 K Street, NW, Suite 201
Washington, DC 20424-0001

PAUL B. LANG
Administrative Law Judge

Dated: July 17, 2003
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION CENTRAL REGION, MISSOURI Respondent	
and NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION Charging Party	Case No. DE-CA-02-0175

Hazel E. Hanley
For the General Counsel

Mark G. Camacho
For the Respondent

Tracy Levine
For the Charging Party

Before: PAUL B. LANG
Administrative Law Judge

DECISION

Statement of the Case

This case arises out of an unfair labor practice charge filed on December 26, 2001, by the National Air Traffic Controllers Association (Union) against the Department of Transportation, Federal Aviation Administration, Central Region, Missouri (Respondent or FAA). On July 25, 2002, the Regional Director of the Denver Region of the Federal Labor Relations Authority (Authority) issued a Complaint and Notice of Hearing in which it was alleged that the Respondent committed an unfair labor practice in violation of § 7116(a) (1) and (8) of the Federal Service Labor-Management Relations Statute (Statute) by failing to comply with an arbitration award in which it was directed to

reinstate Manuel Falcon (Grievant) to full employment, to restore all wages and benefits to the Grievant and to expunge documentation related to the Grievant's removal from all relevant records. The General Counsel subsequently submitted a motion for summary judgment which was denied.

A hearing was held in Omaha, Nebraska on April 2, 2003. Each of the parties was represented by counsel and was afforded the opportunity to present evidence and to cross examine witnesses. This Decision is based upon consideration of all of the evidence, including the demeanor of witnesses, and of the post-hearing briefs submitted by each of the parties.

Positions of the Parties

The General Counsel

The General Counsel maintains that, on June 19, 2001, Arbitrator John R. Baker issued an award in which he upheld the grievance and ordered that the Grievant be returned to duty and made whole to the extent of wages, holiday pay and benefits not received during the period of his discharge from employment. The Arbitrator also directed that the Grievant should have his seniority restored and that any record of the removal action should be expunged from all relevant records maintained by the Respondent.

The General Counsel maintains that the award was unambiguous and that the Respondent departed from its clear language. The Respondent also excessively delayed the implementation of the award. Although the Grievant was reinstated on July 15, 2001, his back pay was not calculated, albeit incorrectly, until February 6, 2002.

Furthermore, the Respondent failed to effectuate the award in its entirety. Rather than restoring all of the Grievant's pay and benefits as ordered by the Arbitrator, the Respondent deducted the pay and benefits for the period in which the Grievant's Air Traffic Control Tower Operator (CTO) certificate had been revoked. Such a deduction was not reasonable in view of the fact that the Respondent did not raise the issue of the revoked CTO certificate during the arbitration proceedings and had neither requested clarification of the award nor initiated action to obtain

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Although counsel for the Union participated in the hearing, the Union did not submit a separate post-hearing brief and did not take positions which were different from those of the General Counsel.

judicial review pursuant to § 7121(f) of the Statute and 5 U.S.C. § 7703.

The General Counsel asserts that, regardless of the Grievant's eligibility to apply for a CTO certificate, he could have been engaged in meaningful work for the Respondent as evidenced by his activities prior to the final revocation of his CTO certificate and his removal from employment.

Finally, the General Counsel argues that the Respondent did not comply with the Arbitrator's order that it expunge references to the Grievant's removal from "all relevant records maintained by the employer." By the Respondent's own admission it moved the references from the Grievant's personnel file to another file which may be accessed by supervisors and management officials.

The Respondent

The Respondent maintains that it complied with a reasonable construction of the arbitration award. The Grievant is an Air Traffic Controller (ATC) and, as such, is barred by pertinent regulations from performing that function without a CTO certificate. It is undisputed that the Grievant's CTO certificate was revoked by the Administrator of the FAA and that her action was affirmed by the National Transportation Safety Board (NTSB). Therefore, the Respondent is precluded by law from retroactively reinstating the Grievant and paying him for the period during which the revocation of his CTO certificate was in effect. The Respondent further maintains that its construction of the award is consistent with its language inasmuch as the Arbitrator ordered that the Grievant was to be made whole to the "extent" that he did not receive wages during the period of his involuntary unemployment.

According to the Respondent it is of no consequence that, prior to the final revocation of his CTO certificate, the Grievant was allowed to perform a number of functions which did not require a CTO certificate. Nor is it relevant to compare the Respondent's treatment of the Grievant with its treatment of employees who were medically disqualified from serving as ATC's.

The Respondent maintains that it fully complied with the Arbitrator's order that the record of the termination of the Grievant's employment be removed from all relevant records. All records of the Grievant's removal were expunged from his personnel file and placed in a special file which is kept in a locked room and to which no

supervisory employee has access. The special file is maintained in order to comply with the record retention requirements set forth in FAA regulations.²

Findings of Fact

The Revocation of the Grievant's CTO Certificate

The pertinent facts are undisputed. The Grievant is a member of a bargaining unit consisting wholly or in part of ATC's, including ATC's assigned to the Omaha Control Tower. The primary responsibility of an ATC is to maintain the proper separation of aircraft both on the ground and in the surrounding air space. Each ATC must have a valid CTO certificate in order to separate traffic.

On February 16, 2000, the Grievant committed an operational error while working as an ATC in the Omaha Control Tower.³ He was immediately decertified and the Respondent commenced an investigation of the incident. Pending the completion of the investigation the Grievant was assigned various duties which did not require a CTO certificate. Such duties included the preparation of a Quick Reference Guide, the updating of a call-back list and the classroom training of a prospective ATC who had not yet been certified. On April 26, 2000, the Administrator of the FAA issued an Emergency Order of Revocation of the Grievant's CTO certificate. Although the Administrator's Order did not directly address the Grievant's continued status with the Respondent, his employment was terminated on May 12, 2000 (GC Ex. 2).

The Emergency Order of Revocation was amended on July 28, 2000 (GC Ex. 3).⁴ The Amended Order cited the incident of February 16, 2000, as well as incidents which occurred on or about October 9, 1997, and May 23, 1998, as the basis for the permanent revocation of the Grievant's CTO certificate. On August 29, 2000, an Administrative Law

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The Respondent did not cite the regulations in which the record retention requirements are to be found.

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The Grievant had allowed an aircraft to taxi across a runway from which another aircraft was about to take off. No collision occurred because the second aircraft became airborne before reaching the intersection where the first aircraft was located.

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The original order of May 12, 2000, was not submitted in evidence and there is nothing in the record to indicate how and why it was amended.

Judge for the Department of Transportation affirmed the Amended Order in part, but reduced the sanction to a 60-day suspension of the Grievant's CTO certificate. On July 31, 2001 (subsequent to the issuance of the arbitration award), the National Transportation Safety Board reversed the decision of the Administrative Law Judge and affirmed the Administrator's decision to permanently revoke the Grievant's CTO certificate (GC Ex. 7).

The Arbitrator's Award

While the Grievant was appealing the revocation of his CTO certificate, the Union challenged the termination of his employment through the various steps of the contractual grievance procedure. On June 19, 2001, the Arbitrator issued an award (GC Ex. 4)⁵ in Case No. NC-ACE-00-034-OMA-3 with the following remedy:

The grievance is upheld. The Grievant shall be returned to duty and shall be made whole to the extent of any wages, holiday pay, [and] benefits not received during the period of his discharge from employment. The Grievant shall have his seniority restored and any record of this action shall be removed for [sic] all relevant records maintained by the employer.

In his findings of fact the Arbitrator included a statement to the effect that the Grievant's CTO certificate had been revoked subsequent to the incident of February 16, 2000, and that he had performed administrative duties from February 16, 2000, to May 12, 2000, at which time his employment was terminated. The Arbitrator also stated that the Respondent had made the following five arguments in support of its position:

1. That the Grievant had committed the acts cited in the Notice of Decision to Remove⁶ and that neither the Grievant nor the Union had disputed the underlying facts.

2. That the Grievant's operational errors were the result of his lack of qualifications rather than of unsatisfactory performance.

3. That the termination of the Grievant's employment is consistent with actions taken by the Respondent in similar situations.

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The award was served on the parties on June 21, 2001.

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This document was not offered in evidence.

4. That the termination of the Grievant's employment is consistent with the policy of the Respondent and that it will promote the efficiency of the service. As part of this argument the Respondent maintained that its actions were in accordance with cited portions of the collective bargaining agreement.

5. That it committed no harmful procedural error and, in any case, there were no errors which would have changed its decision with regard to the Grievant.

Nowhere in the award does the Arbitrator allude to an argument by the Respondent as to the effect of the revocation of the Grievant's CTO certificate on his entitlement to back pay and there is no evidence that the Respondent made such an argument. It is undisputed that the Respondent neither requested clarification of the award nor sought to obtain judicial review.

The Respondent's Computation of Back Pay and Benefits

By letter dated July 16, 2001 (GC Ex. 5), the Respondent officially informed the Grievant that, pursuant to the arbitration award, his separation action was being cancelled and that he was being "restored retroactively from 5/12/00 to the position of Air Traffic Control Specialist (T)". The reinstatement went into effect as of the pay period beginning on July 15, 2001. The Respondent also informed the Grievant that he was entitled to back pay from May 12, 2000, in accordance with 5 U.S.C. § 5596 (the Back Pay Act). He was instructed to provide a notarized statement of:

- a. Gross earnings since the date of his separation along with the names and addresses of employers and the periods within which the wages were earned.
- b. The amount of unemployment compensation which he received and the dates covered by such payments.
- c. Periods from May 12, 2000, to the present when he was "incapacitated or otherwise unavailable" to perform the duties of his position along with the dates and reasons. The Grievant was informed that such periods "may be covered by sick or annual leave if you so request and include in the affidavit."

The Grievant was urged to submit the affidavit as soon as possible so that the payroll office could be authorized to make a back pay settlement.⁷

The Respondent informed the Grievant that:

We will correct and reconstruct all the personnel actions for the period of your separation, and we will make every effort to process your back pay [sic] award as quickly as possible. However, please be advised that due to the complexity of some of the computations involved as well as the need for accuracy, an average of twelve weeks may be required to accomplish those actions necessary for you to receive your back pay entitlements.

It is not disputed that the Grievant provided all of the necessary documentation some time in July. It is also undisputed that he requested and received permission to take two weeks of annual leave to attend to personal affairs and that he reported to work on July 30, 2001. Upon reporting for work the Grievant began a regimen of classroom and on-the-job training and testing which eventually led to the restoration of his CTO certificate.

By letter dated February 6, 2002 (GC Ex. 12), the Respondent informed the Grievant that, upon review of his amended time and attendance records, it had determined that he was owed back pay for the period between April 27, 2001, and July 14, 2001. The amount of the back pay had been adjusted to reflect 16 hours and 15 minutes of leave without pay. The gross amount of the back wages had been calculated at \$18,290.40. Deductions were taken for retirement contributions, taxes, the Thrift Savings Plan, union dues, outside earnings and indebtedness for a total of \$14,180.36, thus leaving a net total of \$4,110.04. It is undisputed that the Grievant has not been paid for the period from the date when his CTO certificate was finally revoked to the date when he was eligible to reapply.⁸

The Grievant's accrued balance of annual and sick leave was also affected by the fact that the Respondent placed him

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The letter also provided detailed information concerning the option of electing retroactive deductions for life insurance, health benefits and the Thrift Savings Plan. None of those matters are at issue in this case.

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According to FAA regulations, an employee whose CTO certificate has been revoked is not eligible to reapply for twelve months from the date of revocation.

in nonpay status following the revocation of his CTO certificate. His Statement of Earnings and Leave for the pay period ending on November 17, 2001 (GC Ex. 8), reflects positive balances of 210.45 hours of annual leave and 240.00 hours of sick leave. His Statement of Earnings and Leave for the pay period ending on December 15, 2001 (GC Ex. 9), four weeks later, shows a negative annual leave balance of 25.15 hours and a positive sick leave balance of 122.00 hours.⁹ The Grievant had received no prior notice of his negative annual leave balance.

Although the exact chronology is unclear, the evidence indicates that, at some point after the issuance of the arbitration award, Herman Lyons, the Air Traffic Manager of the Central Region (which includes Nebraska), determined that the Arbitrator's make-whole order did not require, or even allow, the Respondent to restore pay and benefits to the Grievant for the twelve month period in which he did not hold a CTO certificate and was not eligible to reapply. Lyon's rationale, as ratified by the Respondent, was that the Grievant could not be paid for work that he could not have lawfully performed.

The Expungement of the Grievant's Personnel File

It is undisputed that the Respondent has removed all records of the Grievant's termination of employment from his personnel file. On March 31, 2003, John Tune, the Central Regional Vice President of the Union, arranged to review the Grievant's personnel file in preparation for the hearing. At that time he was informed by Charlene Argo, a Personnel Management Specialist for the Respondent, that the records of the Grievant's termination had been removed from his personnel file and placed in a special file containing records of cancelled personnel actions for all affected employees. The purpose of the file is to retain such records for the period prescribed by FAA regulations. The special file is kept in a locked room and may not be accessed by any supervisor or management official who is contemplating any action with regard to the Grievant.

Discussion and Analysis

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It is unclear what portion, if any, of the differences in the annual and sick leave balances reflect leave actually taken by the Grievant. However, it is clear that the greatest portion of the differences is the result of the Respondent's failure to restore the Grievant to pay status for the twelve months following the final revocation of his CTO certificate.

The Applicable Legal Standards

Although the issues in this case arose out of proceedings before the Arbitrator and the NTSB, the merits of those proceedings can play no part in this decision. The jurisdiction of the Authority is limited to the sole question of whether the Respondent complied with a reasonable construction of the arbitration award when taken in the context of applicable laws and regulations and whether it unreasonably delayed the implementation of the award, *Oklahoma City Air Logistics Center, Oklahoma City, Oklahoma*, 46 FLRA 862, 868 (1992). The reasonableness of the Respondent's construction of the award depends upon its clarity, *U.S. Department of the Treasury, Internal Revenue Service, Austin Compliance Center, Austin, Texas*, 44 FLRA 1306, 1315 (1992).

It is axiomatic that the Authority's jurisdiction is derived from the Statute and that it is not empowered to review the decision of the NTSB with regard to the revocation of the Grievant's CTO certificate. As a corollary to that proposition, the Respondent is not entitled to collaterally attack the arbitration award by maintaining that it was prevented from fully implementing it because of the NTSB ruling, *U.S. Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington*, 55 FLRA 293, 297 (1999). The Authority is not empowered to modify the award or to address issues which were not presented to the Arbitrator, *Oklahoma City, supra*.

The Arbitration Award Was Clear and Unambiguous Regarding Back Pay and Benefits

A review of the award leaves no doubt either as to the Arbitrator's perception of the position of the respective parties or of his ultimate determination. Moreover, the remedy, as quoted above, is unconditional. Simply stated, the grievance was upheld and the Respondent was ordered to reinstate the Grievant with full pay and benefits.

In arguing that it is legally barred from paying the Grievant for a period of twelve months after the revocation of his CTO certificate, the Respondent is stating, in effect, that the Arbitrator was wrong. Even if that were so, the Respondent cannot attack the award on its merits in an unfair labor practice proceeding. The Respondent's argument should have been presented to the Arbitrator. Had the Respondent done so, it could then have requested clarification by the Arbitrator and/or requested the Director of the Office of Personnel Management to seek

judicial review of the award in the United States Court of Appeals for the Federal Circuit.¹⁰

The Respondent's Construction of the Award Was Not Reasonable With Regard to Back Pay and Benefits

The principal thrust of the Respondent's position is that it complied with the award to the extent that it was authorized to do so under FAA regulations. The regulation cited is 14 C.F.R. § 65.31 which states in pertinent part that:

No person may act as an air traffic control tower operator at an air traffic control tower in connection with civil aircraft unless he-

(a) Holds an air traffic control tower operator certificate issued to him under this subpart

The obvious intent of the regulation is the maintenance of the highest level of professional and safety standards for ATC's. Neither the General Counsel nor the Union has challenged that proposition, nor were there any objections when the Grievant was required to undergo a rigorous recertification process before being allowed to return to his former status as an ATC. The controversy in this case involves the restoration of the Grievant's pay and benefits, an issue totally separate from considerations of competence and safety.¹¹

The Respondent has vigorously argued that it acted in good faith in implementing the award in light of the pertinent FAA regulations. While that may be true, it is of no consequence. As stated above, the criterion is whether the Respondent has acted reasonably. Stated otherwise, the Respondent is not exonerated by the fact that it was sincere in its unreasonable construction of the Arbitrator's ruling.

¹⁰

Pursuant to § 7121(f) of the Statute, the award could not have been reviewed by the Authority because it involved the removal of the Grievant for unacceptable performance, an action falling within the scope of 5 U.S.C. §§ 4303 and 7512.

¹¹

Since the arbitration award was issued after the date when the Grievant was eligible to reapply for a CTO certificate it is not necessary to determine if there was other meaningful work to which he could have been assigned.

The Respondent Unreasonably Delayed Implementing the Award

The issue of the timeliness of the Respondent's implementation of the award is largely superseded by its failure to fully implement it in the first place. However, the General Counsel has correctly asserted that an unreasonable delay in implementing an arbitration award is itself an unfair labor practice under § 7116(a)(1) and (8) of the Statute, *Naval Medical Center*, 54 FLRA 1078, 1080 (1998). The Grievant's reinstatement was timely, but the computation of his retroactive pay and benefits was delayed because of the Respondent's uncertainty as to how to make the necessary computations in view of his supposed disqualification from employment for the twelve month period after the revocation of his CTO certificate. While the weight of the evidence supports the Respondent's contention that it acted in good faith, the fact remains that the delay would not have occurred if the Respondent had construed the arbitration award in a reasonable manner. Therefore, the Respondent did commit the separate unfair labor practice of unreasonably delaying the implementation of the arbitration award.

The Record of the Grievant's Removal Was Properly Expunged

The language of the arbitration award regarding back pay and benefits was clear and unambiguous, but the expungement order was less so. Although the Arbitrator could have directed the Respondent to remove all records of the termination of the Grievant's employment from *all* of its files, he only directed that they be removed from all "relevant" records.

The Respondent offered un rebutted testimony that the expunged records were moved to a special file which is kept in a locked room and is not accessible by anyone who would be authorized to take action affecting the Grievant. Furthermore, the records would be kept in the special file in accordance with the time limits contained in pertinent regulations governing the retention of records. Therefore, it was not unreasonable for the Respondent to construe the arbitration award as allowing the records to be kept in the special file.

The Union's concern over the possible disclosure of the expunged records is understandable. The Respondent remains responsible for preventing the unauthorized disclosure of the records and for ensuring their destruction as soon as the time has passed for their retention. It is to be expected that the Union will verify that the records have been destroyed after the expiration of the retention period.

The Remedy

The General Counsel has proposed an order in which the Respondent is directed to refrain from relying on the removal of the Grievant as a basis for future discipline and a notice in which the Respondent states that it will not do so. While such reliance would certainly be a violation of the arbitration award and would subject the Respondent to further action by the Authority, there is no evidence that the Respondent has or plans to use the expunged records against the Grievant. Therefore, the proposed order and notice will be modified accordingly.

After careful consideration of the evidence and of the post-hearing briefs of the parties I conclude that the Respondent committed an unfair labor practice in violation of § 7116(a)(1) and (8) of the Statute by failing to fully and promptly implement the arbitration award arising out of the removal from employment of Manuel Falcon and that Mr. Falcon is entitled to pay and benefits, with interest, for the entire period of his removal.¹² Accordingly, I recommend that the Authority adopt the following Order:

ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-Management Relations Statute it is hereby ordered that the Department of Transportation, Federal Aviation Administration, Central Region, Missouri shall:

1. Cease and desist from:

(a) Failing to fully and promptly implement the arbitration award in Case No. NC-ACE-00-034-OMA-3 arising out of the removal from employment of Manuel Falcon.

(b) Interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action:

(a) Fully and promptly comply with the arbitration award in Case No. NC-ACE-00-034-OMA-3 by making Manuel Falcon whole for all pay and benefits, with interest, for the period of his removal from employment.

¹²

Interest on back pay awards is mandated by the Back Pay Act, 5 U.S.C. § 5596.

(b) Post at all of its facilities in the Central Region copies of the attached Notice on forms to be furnished by the Authority. Upon receipt of such forms they shall be signed by the Air Traffic Manager of the Central Region and shall be posted and maintained for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced or covered by any other material.

(c) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director of the Denver Region, Federal Labor Relations Authority, in writing, within 30 days of the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, July 17, 2003

PAUL B. LANG
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF

THE FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of Transportation, Federal Aviation Administration, Central Region violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail to fully and promptly implement the arbitration award in Case No. NC-ACE-00-034-OMA-3 arising out of the removal from employment of Manuel Falcon.

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL make Manuel Falcon whole for all pay and benefits, with interest, for the period of his removal from employment.

-
(Agency)

Dated: _____

By: _____
(Signature) Air Traffic Manager
Central Region

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Denver Regional Office, whose address is: Federal Labor Relations Authority, 1244 Speer Boulevard, Suite 100, Denver, CO 80204-3581, and whose telephone number is: 303-844-5226.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by PAUL B. LANG, Administrative Law Judge, in Case No. DE-CA-02-0175 were sent to the following parties:

CERTIFIED MAIL AND RETURN RECEIPT

CERTIFIED NOS:

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Dated: July 17, 2003
Washington, DC