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I N D E XPROCEEDINGS:PAGE:

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WITNESSES:DIRECTCROSSREDIRECTRECROSSALJ

Philip Davis

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138

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EXHIBITS:IDENTIFIEDRECEIVEDREJECTEDJOINT

A through N

140

COMPLAINANT

1 through 197

140

198 through 200

140

201 through 205

142

205

57

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RESPONDENT

1 through 138

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P R O C E E D I N G S

1 (8:55 o'clock a.m.)

2 JUDGE MORRIS: On the record.

3 This is the hearing of Karlene Petitt versus Delta
4 Air Lines, Incorporated, a U.S. Department of Labor Case
5 Number 2018-AIR-00041. This is day eight or day nine, I
6 forget on how you count.

7 We have next on the witness stand, my understanding
8 is Captain Davis.

9 Sir, would you please raise your right hand?

10 Whereupon,

11 PHILIP T. DAVIS

12 having been first duly sworn by the Administrative Law Judge,
13 was examined and testified as follows:

14 JUDGE MORRIS: Please take your seat.

15 Captain Davis, please provide your full name and
16 business contact information?

17 THE WITNESS: My full name is Philip T. Davis,
18 Philip with one L. And my address is really home now, it's
19 2830 East 3725 North Layton, Utah 84040. I do still retain a
20 company phone number, 404-291-4376.

21 JUDGE MORRIS: Okay. You obviously own FAA
22 certificates and ratings. Would you please tell me what
23 those are?

24 THE WITNESS: Yes, sir. I'm rated on the 737, 757,

1 767.

2 JUDGE MORRIS: What's your total time?

3 THE WITNESS: Civilian 15,000.

4 JUDGE MORRIS: And military?

5 THE WITNESS: About 4,000.

6 JUDGE MORRIS: Are those the only three aircraft
7 you're type rated in?

8 THE WITNESS: Yes, sir.

9 JUDGE MORRIS: Okay. And what is your current duty
10 position?

11 THE WITNESS: Captain on the Boeing 767, 757 series
12 and I'm also a line check airman.

13 JUDGE MORRIS: In addition, I'm assuming you
14 obviously have an ATP, do you have any other ratings besides
15 an ATP?

16 THE WITNESS: No, sir.

17 JUDGE MORRIS: All right.

18 Counsel?

19 DIRECT EXAMINATION

20 BY MS. BROWN:

21 Q Captain Davis, could you briefly summarize, for the
22 Tribunal, your history with Delta?

23 A Yes, Ma'am. I hired on at Delta on February 16th
24 of 1989. And served as a first officer, based first in
25 Dallas/Fort Worth and then in the Salt Lake City area. I

1 checked out as a captain. I flew -- as a captain I initially
2 checked out in 2001, and then like all of us in the industry,
3 I slid backwards following 9/11 for a period of time. And
4 then I went back to captain, I think it was around 2004, and
5 that was on the old 737-200s. I did that until about late
6 '04, at which time I went to line check airman on the 737.
7 At that time we were flying 300s. And then in about '06, I
8 checked out as captain on the 757-67 series. And about 12
9 months later I checked out as line check airman on that
10 aircraft, where I remained until 2010, at which time I took
11 the position of chief pilot Salt Lake City. And I held that
12 until the first of March, 2013, at which time I assumed the
13 role of regional director and chief pilot, West Region Flight
14 Operations. And I held that position until September 1st of
15 2017, at which time I went back to line flying. And
16 recently, in December of '18, then I checked out as line
17 check airman again.

18 Q Can you explain, in your experience as a line check
19 airman, how line checks are assigned?

20 A Well, it's something that they handle over in
21 Atlanta. The line check airmen submit a set of volunteer
22 options. You can submit a trip that you have originally bid
23 and is on your schedule, and you say, well, I will accept
24 additional operating experience or training type work on my
25 trips, or you can say -- you can volunteer to fly additional

1 line check airman work on your days off. That can be
2 whatever they assign you to. Or you can say it's okay with
3 me if you drop my trips and put additional trips on my
4 schedule to accommodate either check rides or initial
5 operating experience type work. And then that's really your
6 only input into it. At that point a standards scheduler
7 picks it up and they decide then who you're going to either
8 train or check.

9 Q So, as a line check airman, can you request a
10 specific flight?

11 A No.

12 Q You mentioned you were in the role as regional
13 director. As regional director, could you assign a line
14 check airman to a specific flight?

15 A No.

16 Q What was the reporting structure while you were in
17 the regional director role?

18 A My report was up to Captain OC Miller. I had
19 succeeded Captain Miller as the West Region regional
20 director. And then he took the position of managing director
21 of Flight Operations, Flying Operations -- subtle difference
22 there. And I reported directly to Captain Miller. Captain
23 Miller then reported to Captain Graham. Captain Graham then
24 reported to Captain Dickson. And Captain Dickson reported
25 to, I believe, Gil West. To the best of my knowledge, Gil

1 reported directly to the CEO.

2 Q And who was underneath you as the regional
3 director?

4 A I had three bases. So, I had Salt Lake City, Los
5 Angeles and Seattle. And at each of those bases I had a
6 chief pilot who reported to me. And in addition to that, I
7 had an assistant chief pilot in each of those bases, who
8 reported to me. And then based in Seattle, but working
9 throughout the region, was a position entitled ROM, Regional
10 Operations Manager, and she worked for me at an
11 administrative level, she was not a pilot -- I should say an
12 operational role -- and she helped me do a lot of the
13 logistical work that was done across my region. And then
14 through her, included in my staff were administrating
15 assistants in each of the bases.

16 When I initially took the position, I had one ion
17 each base and they were Delta employees. That evolved
18 through my time to be two in each base, and they were
19 contract positions at that point.

20 Q And can you kind of briefly summarize your
21 responsibilities as the regional director?

22 A Well, I guess the first thing I should do is add
23 that all the pilots report to a regional director. So, I
24 had, approximately, 2100 pilots in the West Region that were
25 technically directly reporting to me. So, my duties were

1 really administering to those pilots. And like every other
2 employee at Delta, safety was a huge thing. The
3 administration of their daily needs, their more unusual
4 needs, were the kind of things that I would attend to. For
5 routine needs, scheduling, et cetera, they would generally go
6 through direct contact channels with those functional areas
7 in Atlanta. But if something arose that was maybe not
8 covered appropriately by those channels, then initially a
9 chief pilot and eventually I might have to get involved in
10 taking care of that. So, taking care of the not so routine
11 needs of our pilots was a big part of what I did.

12 It was also my job to interview and hire to those
13 positions that I described. And keep them on a rotation that
14 was appropriate. In other words, in a given base I wouldn't
15 want both the assistant chief pilot and the chief pilot to
16 rotate out at the same time, so I had a fairly well
17 choreographed schedule of rotations that we tried to stick
18 to, to keep each base manned with a somewhat experienced
19 either chief or assistant with maybe a slightly less
20 experienced person in the other seat.

21 Q You mentioned that assistant chief pilots reported
22 up to you. Can you tell me a little bit about the assistant
23 chief pilot role?

24 A Yes. In the West Region, because our bases were a
25 little bit smaller, we had one chief and one assistant chief

1 for the most part in each base. The assistant chiefs were
2 there, of course, to be an assistant to the chief, but given
3 that our chiefs and assistants were expected to also fly
4 about a third of the regular schedule, there were frequently
5 times when only one of them would be in the office. So,
6 specifically out here in the smaller bases, they would have a
7 little more responsibility to be able to administer to
8 day-to-day functions without their chief being there. So,
9 they functioned as both an assistant to the chief and in his
10 absence they functioned, I would say, at a somewhat higher
11 level.

12 Q So, the assistant chief pilot, is that a captain or
13 a first officer in that role?

14 A First officer.

15 Q Okay. And you mentioned that you were responsible
16 for hiring for the positions that reported to you, what
17 qualities did you look for in hiring an assistant chief
18 pilot?

19 A Well, a lot of things of course -- maturity,
20 character, reliability, all of those kind of things would
21 come into play. You know, we would review their records to
22 make sure that they didn't have, you know, for example,
23 disciplinary issues in their past. And we would kind of read
24 through their application answers and come up with a group of
25 them that we would want to interview. And then once I got it

1 down to that group, and usually that would be four or five,
2 then Captain Miller, my boss, would usually come out and sit
3 in the interviews with me and we would interview each of them
4 using that STARS format that is pretty well known, at least
5 at Delta. And at the end of that, we would make a decision
6 as to who we were going to hire.

7 Q Were there any particular experience requirements
8 that you looked for?

9 A No. Sometimes we did look a little bit for
10 variety, but not necessarily volume. In other words, in a
11 small base, for example like in Salt Lake City or in Seattle,
12 if I had a captain who was an Airbus pilot, I might look a
13 little more closely at to make sure that at least one of the
14 two had some Boeing experience, or vice versa, because you
15 might want them to be able to address both types of airplane
16 issues as they come up.

17 Q In your experience, did the assistant chief pilots
18 you hired typically have prior management experience at
19 Delta?

20 A A lot of them had some experience working in a very
21 introductory role, yes.

22 Q In your position as regional director, did you
23 interact with First Officer Petitt?

24 A As the regional director?

25 Q Yes.

1 A I did eventually, yes. I didn't interact with her
2 a lot, I would say, in probably the first year or so that I
3 was in that position, but after that I interacted with her
4 more frequently.

5 Q Tell me about the communications you had with her
6 when they started to occur, I guess more frequently, when
7 would that be?

8 A I think they first started around the first part of
9 2015. The first communication with her that I recall had to
10 do with a request I received from Captain Miller to contact
11 Ms. Petitt and discuss with her some requests that she had
12 been submitting for -- I think initially it was regarding a
13 book she was about to publish. There had been multiple
14 e-mails or communications back and forth between Ms. Petitt
15 and some entities over in Flight Operations, regarding
16 whether or not she could use a picture of a Delta airplane on
17 the cover of her book. And what I recall from that is that
18 Captain Miller asked me to reach out to her and relay certain
19 messages, of which were -- the first one was, no, she could
20 not put the picture of the Delta airplane on the cover of her
21 book. But primarily, he was asking me to have her submit
22 those kind of requests through me. He wanted to consolidate
23 those requests rather than have her touching different groups
24 over them.

25 Q Why did he want to consolidate those requests?

1 MR. SEHAM: Objection.

2 BY MS. BROWN:

3 Q If you know?

4 JUDGE MORRIS: Overruled.

5 THE WITNESS: My recollection is that he felt they
6 were touching more than one entity over in Flight Operations
7 and he wanted to centralize that. I recall at least that
8 part of it.

9 BY MS. BROWN:

10 Q And so what was your understanding of the
11 activities that First Officer Petitt was to report to you?

12 A Well, Captain Miller had been very specific that if
13 any -- I think his words were: "These types of requests need
14 to come through you." And so that's exactly what I conveyed
15 to her.

16 Q What did you understand "these types of requests"
17 to mean?

18 A I believed that he was telling me that if she was
19 contacting or she felt she was going to contact someone on
20 the fourth floor for some sort of publishing or use of Delta
21 type materials, or I also assumed that he was probably
22 talking about uniformed -- wearing her uniform in public,
23 those kind of things -- that those requests should come
24 through me.

25 Q Would you please turn to Complainant's 140, and let

1 me know when you're there?

2 A I'm there.

3 Q Okay. And will you turn to CX-140-16, please?

4 A 140-016?

5 Q Yes.

6 A I have it.

7 Q And do you see the last e-mail on that page dated
8 September 9th, 2015?

9 A Yes, I do.

10 Q Okay. Have you seen this e-mail before?

11 A Yes, I have.

12 Q Can you tell me about this e-mail?

13 A Yes. I received this e-mail when I was in Narita,
14 and in it Ms. Petitt starts out with:

15 "Since I've been ordered not to speak
16 to anyone else in the company except
17 you."

18 And I don't believe that I ever ordered her to not
19 speak to anyone else, except me.

20 "Only you are receiving this letter." And then she
21 does on to describe that -- if you'd like me to paraphrase or
22 read it, I can -- but that --

23 Q Let's start -- she says in here that:

24 "I've been ordered not to speak to
25 anyone else in the company, except for

1 you."

2 And then she says -- if you go to the second page,
3 that first while paragraph:

4 "While I followed your rules e-mailing
5 you my events, my personal life is
6 costing me a great deal of needless time,
7 energy and stress."

8 Do you see that?

9 A Yes, I do.

10 Q Do you recall ever instructing First Officer Petitt
11 to report to you items in her personal life?

12 A No, I did not. I had asked Ms. Petitt to report to
13 me -- to pass her requests to me for the types of things that
14 she had been requesting of Corporate Communications and other
15 entities in Atlanta.

16 Q And then if you see on CX-140-017, at the bottom of
17 the page there's an e-mail dated September 10th, 2015. Have
18 you seen that e-mail before?

19 A 140 dash what?

20 Q Seventeen.

21 A Seventeen. Yes, I have. That is my response to
22 Ms. Petitt's 9/9/15 e-mail.

23 Q And it appears you tell her that you're in NRT, is
24 that Narita, I think you were saying?

25 A That's Narita, yes, it is.

1 Q Okay, Narita.

2 A Yes. I basically informed her that I am in Narita
3 and I'm going to be out of the country until the following
4 Tuesday. And I believe that day is a Thursday, the 9th was a
5 Thursday. And I also made reference to the fact that there
6 seems to be some misunderstanding about what I wanted Ms.
7 Petitt to submit through me or -- I won't say report to me,
8 but to submit through me. And that's exactly what I said.

9 "I think it would be a good idea for you and I
10 to sit down and have a visit. There
11 seems to be some misunderstanding about
12 what types of things I need you to advise
13 me of."

14 Q And was that in response to the language in her
15 e-mail that we referred to earlier, where she said that she
16 was reporting her personal activities to you?

17 A Yes, it was.

18 Q Following First Officer Petitt's September 9th,
19 2015 e-mail to you, did she e-mail with you additional
20 concerns?

21 A Yes. It looks like she did respond to my 9/10
22 response, and then following that, on 9/18/15.

23 Q And just so we're clear, can you refer to the
24 pages? Are you on CX-140-018?

25 A Yes, I am.

1 Q Okay.

2 A And the one that's entitled: "Line Check."

3 Q Okay. And can you tell me about the e-mail that
4 you're referring to on September 18th, from First Officer
5 Petitt?

6 A Yes. She sends me this e-mail expressing concern
7 that she is getting a line check or her crew is getting a
8 line check. And in it she says:

9 "As you know, I expressed a fear of retaliation,
10 because I voiced my concern, and this
11 coincidence cannot be overlooked."

12 So, in my mind she was essentially saying that
13 there's a coincidence between her telling me that she was
14 being treated unfairly, and then her getting a line check.
15 And I guess I took from that, that she was insinuating that I
16 had done it.

17 Q And so this e-mail on September 18th came about a
18 week after her initial -- or her September 9th e-mail to you?

19 A Yes.

20 Q Had you had a chance to meet with Ms. Petitt, yet,
21 to discuss her --

22 A At that point, I had not, no.

23 Q Okay. What did you do after you received the
24 September 18th e-mail from Ms. Petitt?

25 A I don't recall, exactly, what I did with the

1 e-mail, who I sent it to or who I told about it, but I did
2 try and set up a meeting with Ms. Petitt.

3 Q Did that meeting occur?

4 A Yes, it did.

5 Q And when do you recall that meeting occurring?

6 A I know it was sometime after 9/18, of course, and
7 I'm not 100 percent certain, but it was not too long after
8 that -- I seem to remember 9/22, but I don't have an exact
9 date on that.

10 Q And who was present at this meeting?

11 A That would have been Rip Johnson, the chief pilot
12 in Seattle, and Captain Jud Crane, the union representative
13 for Ms. Petitt.

14 Q And what was discussed at the meeting?

15 A Well, we certainly discussed her allegation that I
16 had somehow or another set up a retaliatory line check for
17 her. And I was quite emphatic that I did not. While I don't
18 remember everything about the meeting, I do recall that
19 Captain Johnson, the chief pilot, was also a line check
20 airman, and I don't recall if the union guy was or not, but I
21 know at least Captain Johnson and myself did talk to Ms.
22 Petitt about how that just seems extremely improbable, to the
23 point of impossible, that -- I don't get to call somebody and
24 say who I'm going to give a line check to. And I would
25 expect that that would raise all kinds of flags to Flight

1 Standards, if that happened. I'd never heard of it happening
2 and I just couldn't imagine that that would happen. And of
3 course I knew that I had absolutely nothing to do with it.

4 Q Do you recall who the line check airman was, that
5 Ms. Petitt believed was administering the retaliatory line
6 check?

7 A Yes. It was Captain Tom Albain.

8 Q Okay. Did you ever look into the specific
9 allegations with Captain Albain?

10 A Yes. Partly as a result of this meeting with Ms.
11 Petitt, I did tell her that I would look into that. And I
12 did do that.

13 Q Okay. And if you could look at Complainant's
14 Exhibit 48 -- sorry -- 58?

15 A Fifty-eight?

16 Q Yes.

17 JUDGE MORRIS: It's going to be in Volume 2.

18 THE WITNESS: I have it.

19 BY MS. BROWN:

20 Q And can you identify Complainant's Exhibit 58 for
21 me?

22 A Yes. It is a letter dated January 8th, 2016, from
23 Captain Albain, and it is to his regional director, Captain
24 John O'Neil, Regional Director and Chief Pilot DTW. The
25 subject of it is: "Response To Allegations Made by First

1 Officer Karlene Petitt."

2 Q Okay. And are you familiar with this document?

3 A Yes, I am.

4 Q How do you have any familiarity with it?

5 A I was present in Seattle when -- well, no -- let me
6 back up.

7 I met with Captain O'Neil, the Detroit regional
8 director, in Atlanta. And because he was Captain Albain's
9 supervisor, and Ms. Petitt belonged to me, we did a joint
10 call to Captain Albain and interviewed him, and tried to find
11 out if there was anything that was -- that would give us any
12 indication that he might have somehow even tried to do a
13 retaliatory line check. And at the end of it, I believe his
14 Captain O'Neil requested -- or we requested -- that he make a
15 written statement about these allegations. And this is his
16 -- I believe this is his response to that request.

17 Q Okay. And if you want to take a second and review
18 it, or based on your understanding of this document, is it an
19 accurate reflection of the conversation you had with Captain
20 Albain, regarding Ms. Petitt's line check?

21 A I'd have no reason to believe that it isn't
22 correct, yes.

23 Q What do you recall Captain Albain telling you about
24 the line check?

25

1 A I think the thing that was most important is that
2 he iterated that it was just a normally scheduled line check.

3 And I believe he used the name of the Flight Standards
4 scheduler for the A330 Fleet. He seemed to not -- kind of
5 not recall much about Ms. Petitt initially. And then he did
6 talk a little bit more then, once we, I guess, gave him more
7 details about what happened on the check ride that day. But
8 he didn't seem to -- I asked him a very pointed question at
9 one point, too, if there was any personal relationship that
10 had gone -- I mean professional, but anything between the two
11 of them that had gone bad. And he didn't seem to have
12 anything there. He didn't give me any indication to believe
13 or any reason to believe that he had taken any steps to get
14 the check ride or that it was in any way retaliatory. And
15 quite frankly, I had never met the guy, so I certainly hadn't
16 communicated anything to him or anybody.

17 Q Did you talk to Captain Albain about any simulator
18 training he had conducted with First Officer Petitt?

19 A I think that I -- I believe that I asked him if he
20 recalled the simulator experience -- either myself or Captain
21 O'Neil did -- but I think we did touch on that. Yes, we did.

22 Q Was there anything that Captain Albain relayed to
23 you about the simulator training with First Officer Petitt,
24 that caused you concern?

25 A No.

1 Q And how did the simulator training even come up in
2 your conversation with Captain Albain, was that something
3 that was raised by First Officer Petitt previously?

4 A Yes.

5 Q Other than meeting with First Officer Petitt and
6 having this teleconference with Captain Albain, did you do
7 anything else in response to receiving the September 18th,
8 2015, e-mail from First Officer Petitt?

9 A Not that I recall.

10 Q Do you ever recall -- can you explain to me what
11 "Deals Calls" are?

12 A Yes. "Deals" is a meeting that we hold,
13 approximately once a week, in Atlanta. All regional
14 directors participate in it, along with the managing director
15 who chairs the meeting. We also have, usually, an LR is
16 represented there.

17 Q What's LR?

18 A Labor Relations.

19 Q Okay.

20 A HR, Human Resources, is represented on that table.

21 Captain Graham, when he could, would sit in on it. And then
22 we had an administrative function that was filled by Mr.
23 Jason Zwislak. And the regional directors would sometimes
24 participate via conference line, or sometimes if we were over
25 there to do other business, we would participate in person.

1 And it provided us with an opportunity to put things on the
2 table and put out in front of the other regional directors in
3 the most functional areas, to just tell them personnel type
4 issues that were going on in our region. And we used that to
5 kind of get us a little bit of a standardization, so that we
6 were handling situations similarly across the regions. And
7 also, sometimes, to seek advice from the parties at the
8 table, or other regional directors, on situations that we
9 might be facing. And I do believe that I would have talked
10 about this on the Deals Call, too.

11 Q As part of your communications with First Officer
12 Petitt, where she was sending you information related to
13 articles and public appearances and things, did she ever
14 offer to send you any articles she had written?

15 A Yes. And she offered me her books, too.

16 Q Did you ever read the articles or books she sent
17 you?

18 A I know I read one of the books.

19 Q How do you know you read it?

20 A Because I was in it.

21 Q Do you recall ever telling First Officer Petitt
22 that you were too busy to read the articles she sent you?

23 A No.

24 Q And if you would go back to CX-140, Complainant's
25 Exhibit 140, for me, please?

1 JUDGE MORRIS: It's in Volume 4.

2 BY MS. BROWN:

3 Q And page 13 of that exhibit, when you get there,
4 please?

5 A Hum.

6 Q Are you on CX-140-013?

7 A Yes, I am.

8 Q Okay. And do you see the middle two e-mails on
9 that page?

10 A I do.

11 Q Have you seen these e-mails before?

12 A Yes.

13 Q And what are these e-mails?

14 A It looks like just an exchange between Ms. Pettitt
15 and I, and we are talking about -- let's see -- recurrent, I
16 believe.

17 Q Does First Officer Pettitt offer to send you an
18 article in her August 14th, 2015, e-mail?

19 A Yes, she does.

20 Q And what was your response?

21 A I guess I did say: "I, too, am busy preparing for a
22 recurrence," which I was, "Saturday and Sunday SIMS. Thank
23 you."

24 Q Did you also tell her that you would enjoy reading
25 the article?

1 A At some point I think I did, yeah.

2 Q Is that the first sentence of your e-mail on August
3 14th?

4 A Yes. Yes, I did.

5 Q Following the September 2015 e-mails you had with
6 First Officer Petitt, what do you recall being the kind of
7 next substantive set of e-mails or communications you had
8 with First Officer Petitt?

9 A Well, Ms. Petitt and I had exchanged quite a few
10 e-mails about things like airplane cleanliness, I believe
11 there were some issues getting her training materials, a few
12 other things. So, that kind of went back and forth. And
13 then I guess the next really substantive thing that I
14 remember, though, had to do with when I was actually in
15 recurrent or we were actually in recurrent, that she notified
16 me that she was attending an IASS conference, an industry
17 conference on safety, and that Richard Anderson, the CEO,
18 would be attending that. She told me that she would be
19 attending and that she might be writing some kind of a paper,
20 and that it might find its way into publication.

21 Q If you turn to CX-140 --

22 JUDGE MORRIS: Wait a minute. What's on IASS?

23 THE WITNESS: The IASS is something -- I think it's
24 International Airline Safety Symposium.

25 JUDGE MORRIS: Okay.

1 THE WITNESS: Close -- close.

2 JUDGE MORRIS: Okay. Go ahead

3 BY JUDGE MORRIS:

4 Q If you turn to page 21 of CX-140, for me, please?

5 A Yes.

6 Q Are these the e-mails that you exchanged with First
7 Officer Petitt, regarding her attendance at the IASS
8 conference?

9 A Yes, I do.

10 Q And did you ask First Officer Petitt to send you
11 what she would be writing, regarding the conference?

12 A Yes.

13 Q And then do you see, on the bottom of page
14 CX-140-21, continued on to CX-140-22?

15 A Yes.

16 Q Is that Ms. Petitt's e-mail to you regarding her
17 attendance at the conference?

18 A Yes, it is.

19 Q And what did you do after you received her November
20 3rd, 2015, e-mail?

21 A I believe that I, of course, read it. And then I
22 believe that I forwarded it to Captain Miller.

23 Q And why did you forward it to Captain Miller?

24 A Well, it had some -- it had an indication there
25 that she wanted to meet with Captains Dickson and Graham. And

1 as they are Captain Miller's, and mine, bosses, I thought it
2 was fair to inform my leader that that was happening. I
3 didn't want there to be any surprises for those guys.

4 Q And do you know if First Officer Petitt ultimately
5 ended up meeting with Captains Graham and Dickson?

6 A Ultimately, yes.

7 Q Were you involved in scheduling that meeting?

8 A Well, she initially asked me to schedule the
9 meeting and I believe that date was 11/3. And then it looks
10 like on 11/7 she asked me, again, if I received her e-mail.
11 "I'm following up to see if there are any updates." And I
12 said: "I did receive your e-mail, I don't have anything to
13 add at this point."

14 And we had a little exchange between Ms. Petitt and
15 I, about the loss of a couple of pilots that we both knew.
16 One of them she had flown with recently and he died on
17 layover, kind of tragically. And then we had lost a lead
18 line check airman out here in Seattle, also. So, I had been
19 dealing with that a little bit and attending funerals, that
20 sort of thing.

21 But -- and then I think on 11/8 or 11/9, she
22 contacted Jim Graham to try and schedule the thing herself.

23 Q And did Graham agree to meet with First Officer
24 Petitt?

25 A Eventually, yes.

1 Q And do you know when their meeting occurred?

2 A I think their meeting actually occurred, I think it
3 was in January, late January.

4 Q Do you have any understanding as to why the meeting
5 occurred in January, if she initially asked for it to occur
6 in December?

7 A Yeah. Her initial e-mail asked for the meeting
8 anytime in December, was like the bottom line on it. And
9 there was -- once she started contacting Captain Graham,
10 directly, I was kind of out of the loop on that, because
11 Captain Davis was responding to her. And while they were
12 copying me on the e-mails, I really wasn't engaged, any
13 further, with the scheduling of that meeting, whatsoever.
14 But I do recall that there were some delays and some
15 questions about whether or not we should put Ms. Petitt on
16 like a paid day off. I think she had reserve days, to be
17 really honest with you, she had reserve days on like the last
18 day of November and the first day of December. And she had
19 requested that I had blocked those days, in other words leave
20 her on reserve and block, so that she would still get paid,
21 but not be called out on a trip. And she made a reference to
22 the fact that I had done that on an earlier meeting, where I
23 had her come in to see me. So, I thought that was a fair
24 reference.

25 JUDGE MORRIS: So the reference -- I know what you

1 mean by a reserve day, but each record stands on its own, so
2 could you just briefly explain for the record what you mean
3 when a pilot is on a reserve day?

4 THE WITNESS: A reserve day means that you're
5 on-call to go up and fly if they need you. You still get
6 paid a portion of a month's pay for each day that you
7 actually sit reserve. So, the plan would have been to leave
8 her on reserve status, so that her pay wouldn't be changed,
9 but she would be free to travel to a meeting in Atlanta.

10 JUDGE MORRIS: Okay.

11 Go ahead, counsel.

12 BY MS. BROWN:

13 Q And was there any -- are you aware of any
14 communication from First Officer Petitt asking for a delay,
15 so she could prepare for finals?

16 A Well I think initially, yes. There was an issue of
17 they were going to have a meeting on the first, and Captain
18 Graham had asked for preparatory materials, pre-read type
19 stuff, before her meeting with him. And she mentioned that
20 she couldn't get it prepared in time, so she wanted to slide
21 the meeting a little bit later. And I think at that time
22 there were some other delays and I think the Christmas
23 Holiday played into it, both in that it was a holiday and in
24 that we need our pilots over the holidays to fly a lot of
25 trips. And I believe at some point Ms. Petitt had a health

1 issue that she had to attend to. And so, again, I was a
2 little bit cut out of the decisions and stuff, but I did get
3 copied on e-mails. But I do remember there was some
4 significant delays in actually getting it scheduled.

5 Q During the time these communications are going on,
6 in November 2015, during your prior communications with First
7 Officer Petitt, since you had taken on the regional director
8 role, had you ever heard reference to a Section 15 for First
9 Officer Petitt?

10 A No.

11 Q Would you please turn to Complainant's Exhibit 121
12 for me, please? Are you there?

13 A Yes.

14 Q Okay. I'm interested in the e-mail from you to Dr.
15 Altman. Can you tell me about the content of this e-mail?

16 A Yes. This is regarding a meeting that took place
17 in my office on March 15th, 2016, and it was in Seattle. It
18 was the day of the regularly scheduled base meeting. And
19 following the base meeting, Ms. Petitt came to my office and
20 we just had a one-on-one conversation. And this is an
21 account of that.

22 Q What was discussed during this impromptu meeting?

23 A There were really two matters of discussion. The
24 first one was the wear of a specific lanyard, which she was
25 wearing. And she was questioning whether or not it was -- I

1 don't want to say "legal" -- but it was an acceptable lanyard
2 or by our Flight Operations Manual, was that lanyard okay,
3 was it approved. I didn't -- I think it had a lot of flags
4 on it or something like that. I know at the end of it I
5 essentially said, yes, go ahead and wear it, I don't have a
6 problem with it.

7 Q And what was the other issue?

8 A The second issue had to do with crew rest or
9 fatigue type issues. And she was concerned that pilots would
10 deviate -- we call "deviate from deadhead," on the front end
11 of the rotation.

12 So, in our -- our pilots have the ability to change
13 their schedule if the first leg of their rotation is a
14 deadhead leg. And they have the ability to go into the
15 computer and say I'm going to deviate from that scheduled
16 deadhead leg, but I will arrive on my own, somehow, at the
17 station, in time for the flight that I'm actually going to be
18 working. That sounds -- to me anyway -- it sounds fair
19 enough and it gets used quite often. For example, if a pilot
20 lives in Phoenix and was based in Atlanta on the 777, a lot
21 of the Atlanta rotations at one time had a first leg deadhead
22 Atlanta to Los Angeles, and then a flight to Sydney. Well
23 this guy lives in Phoenix, he didn't want to go all the way
24 to Atlanta and then fly the deadhead from Atlanta to Los
25 Angeles, and layover and then fly to Sydney. And quite

1 frankly, I wouldn't either. So, they would stay at home,
2 rest, and then take the short flight from Phoenix to Los
3 Angeles, and then work their flight to Sydney.

4 JUDGE MORRIS: Would that be non-rev?

5 THE WITNESS: No, it's not. When you deviate from
6 deadhead on the front end, they give you an option to book a
7 positive space leg. So, you are getting there, so you don't
8 have to stress about non-revving and actually getting there.
9 So, that's what deviate from deadhead on the front end of
10 the trip really is.

11 And Ms. Pettitt brought up situations that, quite
12 frankly, had merit. That what if a guy is doing that and
13 flying a really long deviate from deadhead leg, is he well
14 rested when he gets to the location from where he is going to
15 now work a flight? And that was the question that we
16 discussed at length. And my position on it was that we also
17 have pilots who commute to work, so would it be any
18 difference if a pilot lives, for example -- I know we have
19 pilots who live in Hawaii, who commute to Los Angeles -- is
20 it any difference for them to commute from Los Angeles --
21 from Hawaii to Los Angeles, and then work a trip?

22 We don't have total control over what our pilots do
23 before they report for work. But we do have some safety
24 valves in there. One is that if for some reason their plan
25 to get there and rested enough to fly the trip, if that

1 doesn't work out, then they must -- they are required by law,
2 really -- to sign -- to not sign the release saying that
3 they're rested enough to fly the trip. And so they can call
4 in fatigued and that's it, we're done. We take them off the
5 trip and we will live with the consequences of that. But
6 it's a contractual allowance that we give our pilots.

7 However, the situation -- we are aware that some
8 people don't use it quite as responsibly as they probably
9 should. And I know that in a Flight Operations meeting,
10 prior to Ms. Petitt coming to my office, that this issue had
11 come up. And we were quite actively looking at it and
12 discussing it, and trying to figure out what a solution is
13 for that.

14 So, I was aware of the situation. I could see the
15 legitimate concern on Ms. Petitt's part, but I felt, to me,
16 like it was already being looked at. The conversation was
17 professional the whole time and at least from my perspective
18 it was very professional and actually pleasant, as what I
19 would expect. It was someone who walked into my office with
20 a concern and we had a good talk about it.

21 BY MS. BROWN:

22 Q How would you characterize your relationship with
23 First Officer Petitt at that time?

24 A Well, I thought I had a strong -- a good
25 relationship with Ms. Petitt. I mean my exchanges with her

1 had been, at times, I would say maybe firm about whether or
2 not, you know, which protocol she should follow, going
3 through me with her submissions. But we were both adults and
4 it seemed like we went from that right back to pretty normal
5 communications about day-to-day functions. This meeting was
6 a case in point, I thought we had a pretty good relationship
7 at that time.

8 Q And at the time of this March 15th, 2016, meeting,
9 had you heard any conversations with anyone in Flight Ops, or
10 anyone at Delta management about a Section 15 for First
11 Officer Petitt?

12 A No.

13 Q You are aware at some point, in March 2016, First
14 Officer Petitt was removed from service and placed into a
15 Section 15, correct?

16 A Yes.

17 Q And you're familiar with what a Section 15 is?

18 A Yes.

19 Q When did you first hear about a Section 15 for
20 First Officer Petitt?

21 A It was on a phone call that I received from Chris
22 Puckett.

23 Q And what did Chris Puckett tell you during that
24 phone call?

25 A He told me that --

1 MR. SEHAM: I'm sorry to interject. I just saw the
2 glance to the back of the room and I now see that Mr. Puckett
3 is here. I would understand that that would be a waiver of
4 any further testimony from Mr. Puckett.

5 JUDGE MORRIS: Oh, for sure.

6 MR. SEHAM: Okay. Thank you.

7 JUDGE MORRIS: Yeah. He's been excused from
8 further proceedings.

9 MR. SEHAM: I did not recall that. Thank you.

10 JUDGE MORRIS: Go ahead, sir.

11 BY MS. BROWN:

12 Q What did Chris Puckett tell you on that phone call?

13 A He told me that a decision had been made to enter
14 Ms. Petitt into the Section 15 process. And the reason he
15 gave me for that was that Ms. Petitt had been interviewed by
16 EO rep, Kelley Nabors. And that in that interview Ms. Petitt
17 had said some things that alarmed Ms. Nabors to the point
18 that this decision had been made.

19 Q And were you involved in the decision to refer
20 First Officer Petitt for a Section 15?

21 A No.

22 Q And do you recall the date of that telephone call
23 with Mr. Puckett?

24 A I think it was on the 17th of March.

25 Q Okay. And what happened next with respect to the

1 Section 15, from your involvement?

2 A I received the Section 15 letter.

3 Q Okay. And just to make the record clear, would you
4 turn to Joint Exhibit F, for me, please?

5 A Joint F?

6 Q Yes. Are you there?

7 A I am.

8 Q Okay. And is this the letter you're referring to?

9 A Yes.

10 Q Joint Exhibit F?

11 A Yes.

12 Q So, you said you received Joint Exhibit F, correct?

13 A Yes.

14 Q Who did you receive it from?

15 A From Mr. Puckett.

16 Q When did you receive it?

17 A I don't know the exact day on which I received it,
18 but it would have been between the March 17th phone call and
19 the date that I issued it, which was 22nd March.

20 Q Will you turn to Respondent's Exhibit 47, for me,
21 please?

22 JUDGE MORRIS: Forty what?

23 MS. BROWN: Forty-seven.

24 THE WITNESS: I'm there.

25 MS. BROWN: Okay.

1 BY MS. BROWN:

2 Q And can you identify Respondent's Exhibit 47, for
3 me, please?

4 A Yes. It's an e-mail that I sent on 3/18, and I'm
5 sending it to Chris Puckett, telling him that I will be in
6 place Monday morning, and I expect to deliver at that time.

7 Q Okay. And your e-mail is in response to an e-mail
8 from Mr. Puckett?

9 A Yes, it is.

10 Q Okay. And does this document refresh your
11 recollection as to when --

12 A Yes, it does. It does say that on March 18th, at
13 2:07 o'clock p.m., Chris Puckett wrote:

14 "Attached is the Section 15 letter
15 that I mentioned to you yesterday.
16 Please plan to issue no later than
17 Tuesday."

18 Q And then if you flip to the next exhibit,
19 Respondent's Exhibit 48, for me, please? And what is
20 Respondent's Exhibit 48?

21 A It is an e-mail from me to Chris Puckett, again --
22 actually, it's Chris Puckett -- it starts out with Chris
23 Puckett telling me that I'm clear to bring First Officer
24 Petitt in and issue her the Section 15 letter, and then it's
25 my response indicating that I have ALPA representation

1 organized, and that's it.

2 Q Okay. And did you meet with First Officer Petitt
3 to deliver the Section 15 letter that was Joint Exhibit F?

4 A I did.

5 Q And what date did you meet with her?

6 A March 22nd.

7 Q And was there ALPA representation present?

8 A Yes.

9 Q And why was an ALPA rep present?

10 A I just felt like the gravity of the situation, it
11 would be best to have ALPA there.

12 Q And what was discussed during that March 22nd
13 meeting?

14 A Well, I issued the letter and I did my best to make
15 sure that she understood what it said. And then what the
16 next steps would be.

17 Q And do you recall what First Officer Petitt's
18 response was to your informing her of the letter?

19 A Well, it was kind of shocking to her, I think, very
20 serious. At one point then she -- as we discussed the next
21 steps, she did request that we could somehow delay contact
22 with Dr. Faulkner to accommodate a school need, I believe it
23 was testing, I don't know if it was finals, but it was
24 something with her school.

25 Q And did Delta accommodate that request?

1 A Yes, we did.

2 Q Do you know who, at Delta, made the decision to
3 accommodate that request?

4 A I think it was Captain Graham.

5 Q If you would turn to Respondent's Exhibit 51, which
6 is going to be Volume 5?

7 A Fifty-one?

8 Q Yes.

9 A I'm there.

10 Q Okay. And can you identify Respondent's Exhibit 51
11 for me, please?

12 A Yes. It is an e-mail from me to Ms. Laura Parnell,
13 and it's a request to remove First Officer Petitt from the
14 CASS program, until further notice.

15 Q And who is Laura Parnell?

16 A Laura Parnell, at the time, was the supervisor in
17 the Pilot Support Center, and that was one of her functions,
18 to administer to the CASS program.

19 Q And what is CASS?

20 A It's a database of pilots with participating
21 airlines in the United States, and it's a database that
22 identifies them for purposes of known crew member, for
23 purposes of jump seat, that sort of thing. So, they have a
24 database there that if a pilot from another airline shows up
25 at Delta, for example, and wants to ride our jump seat, that

1 we have the ability then to cross-reference their
2 identification with this database and it will provide us with
3 a verification that they are who they say they are, and a
4 photo of them.

5 Q Okay. And just for the record, CASS is C-A-S-S.
6 Do you know what that stands for?

7 A No.

8 Q Would Cockpit Access Security System sound right?

9 A Yes, it does.

10 Q Okay. And so what was the effect of having Ms.
11 Parnell remove First Officer Petitt from CASS?

12 A Well, there's multiple effects from it. The affect
13 on Ms. Petitt would be that she would no longer be able to
14 access a jump seat, nor would she be able to access the
15 secure area through known crew member.

16 JUDGE MORRIS: Would she still be able to get
17 expedited through TSA?

18 THE WITNESS: I think as an employee she still held
19 her badge, so she would be able to go through any employee
20 line that was functional. I think different employee lines
21 have different rules, I don't know all the stuff on that.
22 But she still had her employee line, so she could do that --
23 her employee badge, so she can do that.

24 JUDGE MORRIS: Okay.

25 BY MS. BROWN:

1 Q Do you know if, prior to March 23rd, when you sent
2 this e-mail, if Delta had taken any other steps to prevent
3 First Officer Petitt from flying?

4 A Yes, we had. When the decision was made to
5 initiate the Section 15 process, steps were taken by Captain
6 Graham to ensure that she would not be assigned a trip,
7 because she was on reserve duty that month.

8 Q Following the referral of First Officer Petitt to
9 Section 15, do you know who was selected to serve as the
10 Company Medical Examiner, as part of that process?

11 A Yes, Dr. Altman was.

12 Q And did you ever communicate with Dr. Altman?

13 A Yes.

14 Q Did you have an in-person meeting with Dr. Altman?

15 A Yes.

16 Q Can you tell me about that meeting?

17 A I met with Dr. Altman in Chicago on June 2nd. It
18 was as meeting with Attorney Puckett, myself, and Dr. Altman.

19 And I was there primarily to explain, you know, portions of
20 the Flight Operations documents and records that a non-pilot
21 might not quite understand. For example, schedules and
22 bidding processes and that sort of thing. As well as to
23 address any questions that Dr. Altman might have about my
24 interactions with Ms. Petitt. Generally speaking, to kind of
25 interpret, explain and then answer any questions that I

1 could.

2 Q And following that June 2nd meeting, did you have
3 any additional interactions with Dr. Altman?

4 A Yes. There were e-mail interactions and at least
5 one phone call with him. Most of them were e-mails
6 requesting further information, further explanation.

7 Q What was your understanding of your role with
8 respect to those additional communications with Dr. Altman?

9 A Well, it was the same. I expected to -- I thought
10 I was expected to explain what certain things meant, answer
11 his questions and try to help him get to an accurate
12 assessment.

13 Q Do you know what Dr. Altman did with the
14 information you provided?

15 A No.

16 Q Do you know what level of significance he placed on
17 the information you provided?

18 A No.

19 Q Based on your interactions with Dr. Altman, did you
20 perceive any attempt by him to discredit First Officer
21 Petitt's operational concerns?

22 A No.

23 Q Was it your role, in communicating with Dr. Altman,
24 to discredit First Officer Petitt's --

25 A No.

1 Q -- operational concerns?

2 A (Answer interrupted question.)

3 Q What was your -- if you have one -- what was kind
4 of your hope for the outcome of Dr. Altman's report?

5 A Accurate assessment was very important, either way.
6 Certainly for safety reasons, if there was an issue with Ms.
7 Petitt, it's extremely important that we find that out. And
8 likewise, you know, I was in the room when Ms. Petitt got the
9 letter, it's a very traumatic experience and a hard
10 experience for a person to go through. So, if there is
11 nothing wrong with Ms. Petitt, it's also extremely important
12 that that come out. So, accuracy, you know, thoroughness,
13 accuracy was absolutely paramount. I felt like, you know,
14 assisting in that was really my duty.

15 Q Ultimately, First Officer Petitt was returned to
16 line and is flying currently. Are you comfortable with that?

17 A Yes, I am. You know, I trust the professionals
18 involved and I did that from the beginning, trusted that
19 Kelley Nabors was concerned, and I trusted that Captain
20 Graham and Dr. Faulkner made a decent decision, or made a
21 professional decision. I believe that Dr. Altman was being
22 professional. But we have a process that says that two out
23 of three doctors say that she's fit for duty, then we accept
24 that. And so I do. I think that's what I have to do in this
25 case. If I didn't think he was, I'd be screaming from the

1 treetops.

2 Q We've heard some testimony about green slips.
3 Based on your knowledge of First Officer Petitt's seniority
4 and her flight history, would she be eligible to pick up
5 green slips?

6 A Well, green slips are a tool in scheduling that
7 they use to cover flight time that we say is an open time.
8 Open time is in a pot where there's no one assigned to fly
9 it. And if we don't have enough pilots on reserve to cover
10 the time that's in the open time pot, then they go into some
11 processes to cover it. And they look at yellow slips, which
12 is a reserve pilot who wants to fly more. Then we look at
13 white slips, and that's a regularly scheduled pilot, in other
14 words not on reserve, who wants to fly more. And then second
15 or third, we go to a green slip pilot who wants to fly more,
16 but for double pay. And then the last is a green slip with
17 conflict, which means that you are willing to drop a trip
18 that you are supposed to fly, to fly something that's in that
19 open time pot, and get paid for both. And then lastly, they
20 can use a thing called "inverse assignment," which means they
21 just assign it to somebody and that person has to take it and
22 fly. And if they're -- there's very few reasons you can get
23 out of an inverse assignment, for example, if you've had
24 something to drink or you had childcare issues.

25 So, those are the steps that crew scheduling would

1 go through. So, she referenced green slips. Green slips,
2 again, are a pilot on days off, regularly scheduled, not
3 reserve, who wants to fly for double pay. For that to work,
4 first they have to have a request in, a green slip request
5 in. Second, they have to be available on those days to fly
6 the trip. And it has to fit in your trip with regard to
7 hourly legalities. It has to fit in your schedule within
8 hourly legalities. So, it has to be legally assignable to
9 you at that point.

10 So, there's quite a few things that have to happen.

11 And then they take the people that meet all of those
12 qualifications, and then they stack them in a seniority
13 order. So, it starts out with the most senior pilot gets it
14 first, if he meets all of those. And then the second most
15 senior, and they continue down through that process, with the
16 caveat that the first -- once you get a green slip, in a
17 given month, then they continue past you down to the others,
18 so that more pilots get an opportunity to partake of the
19 premium pay. So, once you had a green slip, if you're a
20 senior pilot, you're not on the top of the list again until
21 the other pilots who are eligible for it have a green slip
22 in, it's legal, until they've had one, also, and then you go
23 back to the top of the list of guys with already one green
24 slip.

25 So, it's kind of a complex process, but generally

1 speaking, the senior guys, they take a lot of green slips.

2 Q And what level of seniority does First Officer
3 Petitt hold, if you know?

4 A Right now?

5 Q Um-hum.

6 A I think she's sort of mid level on the 777.

7 Q And was that the same when she was on the A330?

8 A I think she was probably a little more senior on
9 the A330. I don't know exactly. I can see it in the
10 records, but --

11 Q Was she top seniority?

12 A I don't believe she was, no.

13 Q Okay. Do you know if she's requested green slips?

14 A She has some, but not a lot.

15 Q Do the pilots that typically receive green slips,
16 would they request green slips with more frequency than First
17 Officer Petitt, if you know?

18 A Well, I think it's really an individual preference.
19 Sometimes you see individuals who request them almost every
20 month, and they're senior and they get a lot of them, and
21 they make a lot of money.

22 Q In this proceeding First Officer Petitt has claimed
23 that she should be paid the equivalent of the pay to the
24 highest paid first officer on A330 in Seattle for a period,
25 and the highest paid first officer on the B777 out of L.A.

1 Based on your understanding of how pilot pay works, would
2 that be possible?

3 A No, that's not -- in my opinion, that's not a
4 logical conclusion to come to, because we just simply don't
5 know which of those months she might have gotten a green
6 slip. And you can look at each month and see who got paid
7 the most, and it's generally one of the senior guys and
8 almost always includes some sort of green slip pay. So, I
9 guess my answer is no, because Ms. Petitt didn't, very
10 frequently, put in a green slip and she wasn't the most
11 senior. So, that would have --

12 JUDGE MORRIS: Well --

13 THE WITNESS: Yes sir?

14 JUDGE MORRIS: Can that be calculated, though?

15 THE WITNESS: I think -- and where I was going with
16 this, Your Honor, is that if there's a month where she feels
17 that she could have gotten a green slip, then I would say
18 that she should present that case for that month and we could
19 look at it to see if she would have gotten one. But to just
20 blanket say she should get whatever the highest paid pilot in
21 her category got each month, that's not logical to me. And I
22 think that's sort of what you're asking. I would go more
23 with what Your Honor said, is that we could ask her which
24 months she felt she should have gotten a green slip, or even
25 which green slip she thought she could have received, and

1 then we could go back and see if she was available, if it
2 would have fit in her schedule, all that stuff.

3 BY MS. BROWN:

4 Q Do flight hours factor into whether pilots receive
5 top pay?

6 A No. Well, you mean their total accumulation of
7 flight hours?

8 Q Yes. As seniority?

9 A In life, you mean -- or --

10 Q Yes.

11 A -- or in that month?

12 Q Well, both.

13 A Well, her flying record that indicates how many
14 hours she's got on a type of aircraft and things like that,
15 no. But within a month, yes, it does have some effect. You
16 must reach a base level of hours at straight pay each month,
17 before you qualify for green slip pay. And there is a number
18 that's printed each month, on your schedule, and it says --
19 on your pay slip, actually, time card -- it says: "Green Slip
20 Trigger." And you have to hit that level of straight pay
21 before you qualify for double pay.

22 Q Are you familiar with the amount of pay that
23 First Officer Petitt received prior to the Section 15, and
24 then the amount of pay she received during and after the
25 Section 15?

1 A Yes, I am.

2 Q And based on your familiarity with those figures,
3 was the pay that she received during the Section 15
4 equivalent to the pay that she -- roughly equivalent to the
5 pay she had received beforehand?

6 A Yes.

7 Q And what about after?

8 A Actually, it was a little more after, because she
9 converted to the 777, which pays more.

10 JUDGE MORRIS: What's the highest paying aircraft?

11 THE WITNESS: At Delta it's the 777 and the 350,
12 they are equal pay.

13 JUDGE MORRIS: And do you know if the Complainant
14 has a type certificate or type rating in the 350?

15 THE WITNESS: I don't believe she does.

16 JUDGE MORRIS: Okay. Could she have obtained that
17 in the 22 months where she was grounded?

18 THE WITNESS: I could figure that out, Your Honor,
19 because you could take her seniority level and look at the
20 A350 category and see if she could have held it at any point
21 in that time. My belief is probably yes, it's not that
22 senior of a category. It is based in Detroit and I think
23 Atlanta. Ms. Pettitt bid the 777, which is based out in Los
24 Angeles and she was converted and went to training on the 777
25 as soon as we could, which was the same pay, yes, sir.

1 BY MS. BROWN:

2 Q Do you have an understanding of how the Section 15
3 would have affected First Officer Petitt's profit sharing?

4 A Profit sharing is paid as a percentage of your
5 earnings for a year, and that percentage would not have
6 changed based on her being on administrative leave. I do
7 believe, though, that when she went on disability that she
8 would not have gotten paid profit sharing during that time,
9 but I'd better caveat this with saying that's my
10 understanding.

11 Q Would you turn to CX-140, for me, one more time,
12 please?

13 A CX-140?

14 Q Yes. And pages 28 to 29?

15 A I'm sorry, what page?

16 Q Twenty-eight. Now, at the bottom of CX-140-028,
17 can you identify that e-mail for me?

18 A Yes. This is an e-mail from Ms. Petitt to me in
19 February of '17, and she is requesting that to move any
20 unused earned vacation to April and May of 2017.

21 Q And what was your understanding of why First
22 Officer Petitt was requesting her vacation be moved?

23 A My understanding was that she could move it to --
24 if she moved it to the end of when she ran out of sick leave,
25 if she put her vacation there, she wouldn't have to

1 transition to disability until her vacation was over. So,
2 actually extend the period of time that she was not on
3 disability.

4 Q And was this something that Delta would have done
5 without a request by First Officer Petitt or was it only done
6 because she had requested it?

7 A No, I think she had to request it.

8 Q And did Delta accommodate that request?

9 A Yes, to my knowledge we did. In my e-mail I said:

10 "I just finished speaking with crew
11 resources. I presume you wish to move
12 vacation forward to delay going of
13 payroll, i.e. on disability, we can do
14 that. We need to wait until your May
15 schedule is out, so we know exactly what
16 day you arouse sick leave and then we can
17 move vacation. Just contact me in April
18 and May when the schedule is out and I
19 will assist."

20 And I go on to say:

21 "If you're moving it for another
22 reason, just let me know, but I think you
23 would do that through a normal vacation
24 move process."

25 So, as near as I know, it did happen.

1 JUDGE MORRIS: So I'm clear -- because I don't
2 remember the date, counsel, that's why I'm asking -- is
3 February 18th, 2017, prior to the NME's decision?

4 MS. BROWN: Oh, sorry, you're asking me.

5 JUDGE MORRIS: Yes.

6 MS. BROWN: Yes.

7 JUDGE MORRIS: Okay. All right, thank you.

8 MS. BROWN: Could we take a break?

9 JUDGE MORRIS: We certainly can. Let's take --
10 let's see you at half past the hour.

11 The Court is in recess.

12 Sir, do not discuss your testimony with anyone,
13 since you're on the stand.

14 THE WITNESS: Yes, Your Honor.

15 JUDGE MORRIS: All right.

16 (Of the record at 10:18 o'clock a.m.)

17 JUDGE MORRIS: Back on the record.

18 All parties present when the hearing last recessed
19 are again present.

20 Go ahead, counsel.

21 BY MS. BROWN:

22 Q Captain Davis, I just want to clarify the dates
23 that First Officer Petitt was grounded for the Section 15.
24 She was pulled and put into the Section 15 process on March
25 22nd, 2016, correct?

1 A Correct.

2 Q And Dr. Huff, the Neutral Medical Examiner,
3 reinstated her September 2nd, 2017?

4 A That might be a fortuitous date, I left my pilot on
5 September 1st of 2017, so.

6 Q Why don't you take a look --

7 A I think that's correct, but I don't actually know.

8 Q Yeah. We can take a look at JX-N?

9 A JX-N?

10 Q Yes.

11 A Okay. I'm there.

12 Q And the date on JX-N is September 2nd, 2017?

13 A Yes, it is.

14 Q And that's Dr. Huff's report, regarding First
15 Officer Petitt?

16 A I presume it is. I haven't seen it before, but
17 yes, it looks like it is.

18 MS. BROWN: No further questions.

19 JUDGE MORRIS: Mr. Seham?

20 CROSS-EXAMINATION

21 BY MR. SEHAM:

22 Q This may be a question out of order that we'll have
23 to come back to, but did you -- was it your testimony on
24 direct that you never had reason to believe that Dr. Altman
25 was trying to discredit Ms. Petitt's safety and compliance

1 concerns?

2 A Yes.

3 Q Now, with respect to green slips, Scheduling has
4 the authority to call up pilots and offer them green slips,
5 correct?

6 A I believe at some point it is more than an offer,
7 but yes, they can call and offer someone a green slip.

8 Q And they would generally offer those green slips
9 before they would go to inverse assignments, correct?

10 A Yes. If they had someone to offer it to, yes.

11 Q Now, you testified you had no participation in the
12 decisional process that led to the issuance of a Section 15
13 letter, correct?

14 A Yes.

15 Q And the person who informed you that Ms. Petitt was
16 receiving a Section 15 letter was Mr. Puckett, correct?

17 A Yes.

18 Q And did you have any discussions with Captain
19 Graham prior to the issuance of the Section 15 letter, as to
20 the reasons for the issuance of that letter?

21 A No.

22 Q Have you ever had any discussions with Captain
23 Graham concerning the reasons for the issuance of the Section
24 15 letter?

25 A Not that I can recall.

1 Q And it was your testimony that Mr. Puckett stated
2 to you that the reason for the issuance of the Section 15
3 were things that Ms. Petitt had stated to Ms. Nabors, is that
4 correct?

5 A Yes.

6 Q And would you agree that you were not advised of
7 any of the specific statements that Ms. Petitt had made?

8 A Yes.

9 Q Okay. So -- and you never asked him to provide you
10 with those specific statements, correct?

11 A That's correct.

12 Q And you've never read any written report by Ms.
13 Nabors, correct?

14 A At this point --

15 Q Well, I would say -- let's say at the point of the
16 issuance of the Section 15 letter?

17 A That's correct.

18 Q And you say Ms. Petitt was shocked when you
19 provided her with the letter, correct?

20 A That was my impression, yes.

21 Q Okay. And she asked you why the letter was being
22 issued?

23 A Yes, she did.

24 Q All right. And when you told her that it was
25 because of things -- and you told her that it was because of

1 things that Ms. Nabors said?

2 A I told her that it was things that she had said to
3 Ms. Nabors that alarmed Ms. Nabors, yes.

4 Q Okay. And she asked you, at that point"
5 "What were the specific comments or what was it
6 that I supposedly said?"

7 Correct?

8 A I don't know if she used those exact words, but I
9 do know we had a discussion along that line, yes.

10 Q Okay. She asked you for further details, in terms
11 of what --

12 A To the best of my recollection, yes.

13 Q Okay. And you told her that you didn't know the
14 details, correct?

15 A I told her I didn't know specifically what she had
16 said to Ms. Nabors.

17 Q And you also said that the reasons were
18 confidential, correct?

19 A No, I don't think I said they were confidential. I
20 don't remember saying that. I just remember telling her that
21 I did not know, specifically, what Ms. Nabors -- what Ms.
22 Pettitt had said to Ms. Nabors.

23 Q Okay. Now, with respect to other pilots under your
24 supervision, you had occasion to sign a letter of warning or
25 a letter of counsel, correct?

1 A I don't recall exactly which letters I signed. I
2 do think that I signed a letter of counsel. I don't recall
3 if I signed a letter of warning. I think I did, but I'm not
4 100 percent sure.

5 Q Okay. And in that you say you do have a
6 recollection of signing a letter of counsel?

7 A I'm actually not certain.

8 Q Okay. You have a copy of your deposition there?

9 JUDGE MORRIS: Identified as CX-205 for
10 identification.

11 (Complainant Exhibit No.
12 205 was marked for
13 identification.)

14 MR. SEHAM: Okay.

15 BY MR. SEHAM:

16 Q I'm going to ask you to turn to page 56 and focus
17 on line 16. There was a question:

18 "Question: Have you, aside from
19 discipline, have you signed other letters
20 issued to individual pilots that took
21 some kind of employment action against
22 that pilot?

23 "Answer: Can you clarify what you
24 mean by employment action?

25 "Question: Termination, suspension,

1 warning, counseling letters?

2 "Answer: To my recollection, I have
3 signed a letter of warning and maybe a
4 letter of counseling, but I don't recall
5 ever signing anything more significant
6 than that."

7 Was that your testimony?

8 A Yes, it was my testimony.

9 Q And does that refresh your recollection as to
10 whether you signed a letter of warning and a letter of
11 counsel?

12 A I would say I think I did, but I just can't recall
13 the circumstances around it.

14 Q One or the other or perhaps both?

15 A Yes, sir.

16 Q Okay.

17 A That's fair.

18 Q And in those instances, would you agree with me
19 that you knew the specific factual basis for the issuance of
20 those letters?

21 A Yes.

22 Q And you have, during your career, you've also
23 recommended pilot terminations previously, correct?

24 A Yes.

25 Q You did that in a case of a pilot of the surname

1 Jones?

2 A Yes.

3 Q And you recommended termination of Captain Seuring?

4 A Yes.

5 Q Okay. But you made no recommendation with respect
6 to the Section 15 referral, correct?

7 A That's correct.

8 Q Now, you referenced that Ms. Petitt complained to
9 you about a line check that Captain Albain conducted on a
10 flight where she was a first officer, on September 18th,
11 2015?

12 A Yes.

13 Q And shortly before that letter, she had written a
14 letter of concern to you, in terms of unequal treatment,
15 correct?

16 A Yes.

17 Q And she expressed concerns to you that Captain
18 Albain's line check was -- might have been targeting her,
19 correct?

20 A Right. I think that would have been in the
21 September 18th letter, not the previous one, if that's what
22 you're talking about.

23 Q Correct.

24 A Yes.

25 Q And she advised you that she and Captain Albain had

1 a bad relationship, correct?

2 A I don't know if that's the exact words she used,
3 but that she did indicate there was a history between the two
4 of them, yes.

5 Q Okay. And that relationship -- if you're
6 comfortable with the expression "adverse relationship" or
7 "troubled relationship"?

8 A I'm comfortable with that.

9 Q Okay. And that related to a simulator check ride
10 that she had previously had with him, correct?

11 A Correct.

12 Q And you asked -- at some point you asked Captain
13 Albain about the simulator check, correct?

14 A Correct.

15 Q But wouldn't you agree with me that you have no
16 specific recollection of what Captain Albain told you in that
17 conversation about the simulator check?

18 A I would say that I don't recall him saying anything
19 that alarmed me further about it. He didn't seem to have
20 much recollection of it.

21 Q I'm asking if, in fact, you don't have much
22 recollection of your conversation with Captain Albain?

23 A No.

24 Q Would you agree that --

25 A Yes, that's fair, yes.

1 Q Okay. Ms. Petitt had raised the issue about
2 Captain Albain failing to provide the required briefing prior
3 to that simulator check, correct?

4 A Yes.

5 Q And you have no recollection of ever asking Captain
6 Albain about whether he conducted the required briefing,
7 correct?

8 A I don't recall him telling me he did or didn't, no.

9 Q But you didn't even ask Captain Albain that
10 question?

11 A I don't know if I did or not, sir.

12 Q Okay. And would you agree with me that you can't
13 recall if you ever referred this matter to Delta's Training
14 Department?

15 A I would recall I didn't do it directly. I can't
16 say it would happen indirectly in that I know my boss was
17 aware of it and that, in my mind, it would have gone up
18 through him and then over to the Training Department to
19 investigate.

20 Q If you could turn to your deposition, page 68?

21 A I'm there.

22 Q Okay. I guess, actually, maybe, again in deference
23 to Respondent counsel's desire for more than less, I'll start
24 at page 67 and refer you to line 16:

25 "Question: Did you ever investigate

1 Captain Albain for the manner in which he
2 conducted that training?

3 "Answer: To the extent I asked him if
4 there was something that had become a
5 personality conflict or is there some
6 reason you don't get along, or what the
7 answer would be, yes. But I didn't, at
8 the time that I spoke to him. I asked
9 him -- I think I did ask him if something
10 had happened in the check ride, but I
11 don't remember the exact conversation.

12 "Question: Did you ever ask him
13 whether he had been texting during the
14 time he was supposed to be overseeing?

15 "Answer: I don't recall if I asked
16 him.

17 "Question: Did you ever ask him
18 whether he had given the prescribed
19 briefing prior to the initiation of
20 the --

21 "Answer: I don't recall asking him
22 that.

23 "Question: Okay. Was someone else
24 assigned to investigate those issues?

25 "Answer: I don't -- I don't know. If

1 I can clarify, just a little bit?

2 "Question: Sure.

3 "Answer: That probably would have
4 been something that Training would have
5 looked at, if it was --

6 "Question: Did you ever refer the
7 issue to Training, to the Training
8 Department, to ensure an investigation
9 would be conducted?

10 "Answer: I don't recall."
11 That was your testimony on December 11th, 2018,
12 correct?

13 A Correct.

14 Q And was that testimony accurate?

15 A Yes.

16 Q Okay. Is there -- and you fly a 757?

17 A Yes.

18 Q Do you fly with an augmented crew?

19 A Yes.

20 Q Okay. In terms of proper procedure, if one of your
21 co-pilots was a threat to the safety of operation while in
22 the cockpit, would you leave the cockpit and take a break
23 while that condition persisted?

24 A I don't know what the threat is. I guess I can see
25 what you're asking and I would certainly be hesitant to. It

1 would depend a little bit on what the threat is.

2 Q If a captain determines that a first officer is a
3 threat to the operation, to the aircraft's in-flight
4 operation, what obligation does that captain have to respond?

5 A I think his obligation would be to remove that
6 first officer, yes.

7 Q Is that something you would characterizes as a
8 Level 4 security threat?

9 A Again, I think it would depend on what the threat
10 was. I don't know if I would call it a Level 4 or not, but I
11 would have thought about it in that terms, but if I felt like
12 my first officer was a threat to the safe operation of the
13 flight, and I made that determination before we left, I
14 probably wouldn't have taken him.

15 Q Prior to January 28th, 2016, was there ever an
16 investigation as to whether Ms. Petitt was an in-flight risk
17 to aviation, to your knowledge?

18 A Not to my knowledge.

19 Q Okay. Did you ever initiate any investigation as
20 to whether Ms. Petitt was an in-flight threat to aviation?

21 A No.

22 Q Do you know --

23 A No, I did not.

24 Q Okay. Do you know if anyone else did, other than
25 the mental Section 15 referral?

1 A No, not that I'm aware of.

2 Q Okay. Is there such a thing as a "Chain of Command
3 Policy," at Delta Air Lines?

4 A I don't know of any written "Chain of Command
5 Policy," no.

6 Q But Delta does have a published "Open Door Policy,"
7 which permits pilots to express operation concerns to
8 management representatives above their direct report,
9 correct?

10 A That's correct.

11 Q Okay. Now, as a management pilot, were you
12 required to have knowledge of the company's Social Media
13 Policy?

14 A Some knowledge of it, yes. I wouldn't consider
15 that I knew everything in the FOM by heart, I didn't. But I
16 would have known where to go and look for it.

17 Q You dealt with Social Media Policy issues in terms
18 of your relationship -- management relationship -- with Ms.
19 Petitt, correct?

20 A Yes.

21 Q Okay. And are you somewhat knowledgeable of the
22 current Social Media Policy?

23 A Probably not.

24 Q Okay. Are you -- isn't it true that there have
25 been changes in the Social Media Policy since 2014?

1 A I would expect so, but again I'm not sure where
2 they are right now.

3 Q Okay. Now, was it your testimony that you were
4 requested by OC Miller that Ms. Pettitt submit her request for
5 approval of media and public speaking events to you,
6 directly, rather than to her chief pilot?

7 A Yes.

8 Q Okay. Can you identify any other pilot in the West
9 Region, which you supervised, who was instructed to bypass
10 his or her chief pilot with respect to such issues?

11 A No.

12 Q Do you know -- you referred to the FOM, what's the
13 FOM?

14 A Flight Operations Manual.

15 Q Okay. And do you know if the FOM is approved by
16 the FAA?

17 A Yes, it is.

18 Q And, therefore, under the FARs, a carrier must
19 adhere to the terms of its FOM, correct?

20 A Yes, sir. And I checked on that following our
21 deposition -- to save you that trouble.

22 Q Okay. Well, you may have saved us a trip to the
23 deposition transcript. So, at the time of your deposition,
24 would you agree with me that you did not know if the FOM was
25 approved by --

1 A I did not know if it was in its entirety. I felt
2 like there were probably sections of it that maybe were
3 exempt from that, but I don't believe there is now.

4 Q Okay. Now, I think I'm going to try to use -- I'd
5 ask you to turn to a document you were asked about on direct,
6 XC-140.

7 JUDGE MORRIS: Before I forget. I'll take official
8 notice of 14 CFR 119.5(g) and (l).

9 THE WITNESS: I'm there.

10 MR. SEHAM: Okay.

11 BY MR. SEHAM:

12 Q So, I'm referring you to page 140-016?

13 A I'm there.

14 Q And you saw, in this letter, without parsing it
15 sentence by sentence, but would you agree with me that there
16 are references in this letter to -- by Ms. Pettitt -- to a
17 "hostile working environment and harassment"?

18 A You're talking about the 9/9/15 entry?

19 Q Yes, sir.

20 A Yes.

21 JUDGE MORRIS: I'm sorry, what exhibit are you on?

22 MR. SEHAM: It's CX-140 at 016.

23 JUDGE MORRIS: One-six -- okay.

24 BY MR. SEHAM:

25 Q Did you ever refer this complaint letter to Human

1 Resources or the EO Department?

2 A I don't know exactly what I did with this letter.

3 Q You don't have any specific recollection of
4 referring it to HR or EO?

5 A I don't, but -- I don't know if you want me to
6 answer this now or not, but I do expect that I probably sent
7 it either to Captain Miller or discussed it on Deals, in
8 which case HR, LR and my supervision would have been made
9 aware of it.

10 Q Now, you recall that -- I think you referenced in
11 your direct testimony that Ms. Pettitt received a letter of
12 counsel at one point, correct?

13 A Yes.

14 Q And that was prior to the time that you were
15 supervising her?

16 A Yes.

17 Q And that would have been in -- would you agree with
18 me, that was on or about June 30th, 2011?

19 A Yes.

20 Q And you had no direct knowledge of the
21 circumstances underlying the issuance of that letter?

22 A None.

23 Q If you could turn to the same document, CX-140,
24 page 18?

25 A I'm there.

1 Q And in the second paragraph she expressed a fear of
2 retaliation, correct?

3 A Yes.

4 Q And you never asked her directly what her source --
5 the source of her fear was, correct?

6 A Not that I recall.

7 Q Okay. And your investigation into Ms. Pettitt's
8 expressed concern of a fear of retaliation was limited to
9 your calling Captain Albain, correct?

10 A Say that again, please?

11 Q Your investigation into her expressed -- her
12 concerns about the retaliatory line check and the prior
13 simulator check was limited to your calling Captain Albain,
14 correct?

15 MS. BROWN: Objection, mis-characterizes his
16 testimony.

17 MR. SEHAM: It's a leading question is what it is.

18 JUDGE MORRIS: Overruled. Go ahead.

19 THE WITNESS: I don't think it was just limited to
20 that. I think I had a conversation with other pilots, other
21 line check pilots, about how they are -- are they still
22 scheduling things the same way they used to. I know that I
23 talked with the chief pilot in Seattle, Captain Johnson,
24 about the 330 line check operations. When I hired Captain
25 Johnson, he had been a line check airman on the A330. And I

1 know that at some point I also looked at what Captain Albain
2 had put into our database management system, DVMS, regarding
3 both the simulator check and the recency that actually
4 occurred a couple days -- I think a month or so before the
5 simulator check.

6 Q If you could turn to your deposition testimony at
7 page 82?

8 A Okay.

9 Q And referring to line 15 -- tell me when you're
10 there, please?

11 A I'm there.

12 Q Okay. So, the question was:

13 "Question: Was there, to the best of your
14 knowledge, was there ever an
15 investigation with respect to allegations
16 that Ms. Pettitt communicated in this
17 e-mail dated September" --

18 A You're on page 82?

19 Q Yes, sir, 82. It would be the --

20 A I'm sorry, I picked up -- I guess I don't want that
21 -- 82.

22 Q Okay.

23 A Line 15, okay, I'm there.

24 Q So the question was:

25 "Question: Was there, to the best of

1 your knowledge, was there ever an
2 investigation with respect to allegations
3 that Ms. Petitt communicated in this
4 e-mail dated September 18th, 2015?

5 "Answer: There was certainly my
6 follow-up with Captain Albain. I don't
7 know what other investigation might have
8 been conducted by another department,
9 like Training, I don't know if they did
10 anything."

11 That was your testimony during your deposition?

12 A Yes.

13 Q Okay. Now, during -- I believe it's referenced in
14 the correspondence we've been reviewing, but let me just ask
15 you, generically, you had correspondence in the last quarter
16 of 2015, in which you expressed your appreciation to Ms.
17 Petitt for her great energy with respect to the piloting
18 profession, correct?

19 A Yes, that's correct.

20 Q And was that a sincere comment?

21 A Absolutely.

22 Q Okay. And would you agree with me that during this
23 period, the last quarter of 2015, Ms. Petitt was engaged in
24 outreach work to inspire young people to work for Delta?

25 A Yes, I would agree with that.

1 Q Okay. And that the uniform issue arose in the
2 context of her efforts to engage in outreach towards young
3 people and inspire them to the piloting profession, correct?

4 MS. BROWN: Objection, vague. What uniform issue?

5 JUDGE MORRIS: Rephrase.

6 BY MR. SEHAM:

7 Q You're aware that at times -- or are you aware that
8 at times -- let me see how I'll express this.

9 Do you have any knowledge of Delta management
10 having raised issues with respect to Ms. Petitt's uniform
11 usage outside of work?

12 A Yes.

13 Q Okay. And one of the instances or a set of
14 instances in which Ms. Petitt requested that permission, was
15 so that she could engage in an outreach to encourage young
16 people to join the piloting profession, correct?

17 A Yes.

18 Q Okay. Would you agree that in these outreach
19 efforts that you had reached the conclusion that Ms. Petitt
20 was trying to shed a good light on the piloting profession?

21 A Yes.

22 Q Okay. And with respect to check airman, are check
23 airman subject to the same flight duty limitations as line
24 pilots?

25 A Yes.

1 tonight and I'm concerned on many levels.

2 First, my captain is not due for another
3 four months. Second, the check airman is
4 deadheading to New York to conduct this
5 line check to Paris, then deadheading
6 home (not as if he were in the system and
7 decided to get someone). Third, this is
8 occurring a week after my e-mail to you
9 concerning my being treated differently."

10 With respect to that first point, did you ever
11 inquire as to whether the pilot was not due for a line check
12 for another four months, do you recall?

13 A That came up in an interview with the captain,
14 Captain Sheldahl.

15 Q Right.

16 A And that came up in the interview, I believe, with
17 Scott Wolfrey.

18 Q Okay.

19 A And so I it was verified that yes, he was not due
20 for four months.

21 Q Okay.

22 A Is that what you're asking me?

23 Q Correct.

24 A Yes.

25 Q And when did that interview occur?

1 A That was, I believe, in January of --

2 Q 2016?

3 A -- 2016, I think.

4 Q Okay. And did you check into whether Captain
5 Albain -- the second item -- Captain Albain was deadheading
6 to New York to conduct the line check in Paris, then
7 deadheading home?

8 A At some point I did.

9 Q Yeah.

10 A And I recall -- I don't recall exactly when I
11 looked at it, but I believe Captain Albain deviated from
12 deadhead to do that. I don't believe he was scheduled to
13 deadhead on the same morning that he flew to Paris.

14 Q Okay. And when did you investigate that?

15 A It was some time later, I don't recall when that
16 was.

17 Q Was it in September of 2015?

18 A No, it was after that. It was probably after this
19 interview at some time, but I just don't remember when it
20 was.

21 Q Okay. After -- I'm sorry -- after?

22 A After when we had the interview with Captain
23 Sheldahl, I think.

24 Q Okay.

25 A At some point in there I looked at Captain Albain's

1 schedule.

2 Q Okay. So, it would be several months after the
3 September letter?

4 A Yes, sir. It did occur to me to take a look at it
5 and -- I mean I can look at it again, if you'd like.

6 Q No, no, no. I mean --

7 A I do believe that Captain Albain deviated from
8 deadhead.

9 Q I was most interested in the time-frame in which
10 you did investigate that.

11 A Okay.

12 Q And is your testimony that you conducted an
13 investigation as to how the selection of Ms. Petitt's captain
14 for a line check had occurred?

15 A I know in -- say that again -- that I investigated
16 what?

17 Q Yes. Did you investigate how the selection of Ms.
18 Petitt's captain occurred, for a line check?

19 A Only in that Captain Albain stated that it was a
20 regularly scheduled line check by the standard scheduling
21 desk.

22 Q And you didn't go beyond that?

23 A I did not.

24 Q Okay. And so Ms. Petitt had complained to you that
25 Captain Albain had previously not conducted the simulator

1 training -- Ms. Petitt expressed her concern that Captain
2 Albain was retaliating against her, because she had raised
3 issues related to his non-compliance with simulator training
4 that he had performed, correct?

5 A Correct.

6 Q Okay. And you did not ask Captain Albain about the
7 manner in which he conducted that simulator check, correct?

8 A I don't recall if I did or didn't. I know we
9 discussed the simulator experience, but I believe remember
10 specifically what I asked him, no.

11 Q If I could refer you to page 94 of your deposition?

12 A I'm there.

13 Q So, again, to give the full context, page 94,
14 starting at line 3:

15 "Question: In either event, you never
16 investigated whether there was a
17 legitimate basis for alleging retaliation
18 by Captain Albain against Ms. Petitt for
19 her having advised of his misconduct,
20 correct?"

21 A Correct.

22 Q Answer -- I'm reading from the transcript, so hold
23 off.

24 A Yeah.

25 Q "Answer: That's not true. I did

1 talk with Captain Albain.

2 "Question: But you talked to him
3 about the check he performed on September
4 18th, correct?

5 "Answer: No. I did ask him if there
6 was something in the past that created a
7 bad relationship between the two of them.

8 "Question: But you didn't ask him
9 specific questions about how he had
10 conducted that simulator check, correct?

11 "Answer: I don't recall specifically
12 what I asked him about the simulator
13 check."

14 Is that testimony accurate?

15 A Yes.

16 Q Okay. And would you agree with me that a failed
17 line check can result in the pilot, subject to that check,
18 being grounded?

19 A Are you talking about a line check in the aircraft?

20 Q Yes.

21 A Can -- yes.

22 Q And that during that line check, the check airman
23 has a license to report any performance problems that he
24 observed with respect to the first officer, as well correct?

25 A Yes.

1 Q And would you agree with me that during a line
2 check, the check airman is checking over the shoulder of the
3 pilot, to see if he or she is performing the operations
4 correctly?

5 A I don't know exactly. I guess "over the shoulder"
6 is a -- yes, I'm fine with that.

7 Q Okay. Would you agree with me that you came to no
8 final conclusion, one way or the other, as to whether there
9 was a basis for Ms. Petitt's concern that she was being
10 subject to a retaliatory line check?

11 A That's correct.

12 Q Okay. I'm going to ask you to refer to CX-4. Do
13 you have CX-4?

14 A CX-4?

15 Q Yes.

16 MS. BROWN: I think it's the other volume of CX in
17 front of you. Yes.

18 THE WITNESS: Okay. I'm there.

19 BY MR. SEHAM:

20 Q And the pertinent part I want to reference in this
21 letter of September 8th, 2016, is:

22 "The FAA's Flight Standard Services completed
23 their investigation of your air carrier
24 safety allegations in Case Number
25 EWB16637. The investigation

1 substantiated the violation of an order,
2 regulation or standard of the FAA,
3 related to air carrier safety occurred.
4 Accordingly, the FAA is taking
5 appropriate corrective and/or enforcement
6 action. Our office will monitor these
7 actions until complete."

8 My question is, did anyone ever bring to your
9 attention that as a result of Ms. Petitt's AIR-21 filing, the
10 FAA had substantiated a violation of Federal Aviation
11 Standards?

12 A Yes.

13 Q They did bring it to your attention?

14 A Yes.

15 Q Okay. And when was that brought to your attention?

16 A It was pretty late. I think it was in preparation
17 for a deposition, or thereabout, it was very late.

18 Q Okay. So, that would have been -- when was your
19 deposition?

20 A In December, I think.

21 Q Okay.

22 A I think it took about a week.

23 Q So, December -- so you didn't know about this
24 substantiation of a Federal Aviation Standard violation until
25 December of 2018?

1 A No, I did not.

2 Q Okay.

3 A Not to my recollection.

4 Q And at that time, did you learn what the basis for
5 that substantiation was?

6 A Yes.

7 Q What's your understanding of the issue?

8 A I think it was based on an inverse assignment that
9 was assigned to Ms. Petitt.

10 Q So, that would be a Part 117 violation?

11 A Yes.

12 Q And now you're aware that Ms. Petitt, among other
13 allegations she made, was that Captain Albain had falsified
14 training records, correct?

15 A Correct.

16 Q And you never conducted an investigation into that
17 falsification issue, correct?

18 A Correct.

19 Q And do you know whether the issue of record
20 falsification by Captain Albain was ever investigated by
21 anyone at Delta?

22 A I don't know, sir, for certain. I believe that was
23 included in one of the complaints to the FAA, so I would
24 assume that somebody at Delta looked into it, but I don't
25 have direct knowledge of an investigation into falsification

1 of records.

2 Q Okay. And the letter -- let's see if we can do
3 this without fumbling through the volumes of documents. The
4 letter from Captain Albain, that's responding to some of the
5 issues raised by Ms. Petitt, was dated January 8th, 2016,
6 correct?

7 A Correct.

8 Q And do you know why such a letter was not obtained
9 until four months after she raised the issues?

10 A No.

11 Q Now, you were assigned to interact with Dr. Altman
12 on the Section 15 process, by Captain OC Miller, correct?

13 A Yes.

14 Q And did you receive any explanation from Captain OC
15 Miller as to what your role was?

16 A I had a discussion with Captain Miller about why I
17 was going up there. And I don't know, exactly, if he gave me
18 a directive or we just agreed that I would be going in a role
19 to answer questions, I don't recall exactly what our
20 discussion was, but he did know I was going and approved of
21 it.

22 Q But had you understood that you were involved in a
23 process that would -- concerning the evaluation of Ms.
24 Petitt's mental health, correct?

25 A Yes.

1 Q And I'm going to ask you to turn to CX-21. Now the
2 top of this e-mail thread is Captain Davis to Dr. Altman, on
3 July 25th, 2016, correct?

4 A Correct.

5 Q And you appear to be forwarding a prior e-mail that
6 was from you to Captain Miller, correct?

7 A Yes.

8 Q You see halfway down the page, right?

9 A Yes, yes.

10 Q So, you sent that, and you sent Captain OC Miller,
11 at that time, an e-mail with the subject heading: "Karlene
12 Petitt History"?

13 A Yes.

14 Q And that was a week before her scheduled meeting
15 with Captain Dickson and Captain Graham?

16 A Yes.

17 Q So, you forwarded the same: "Karlene Petitt
18 History," to Captain (sic) Altman, approximately six months
19 later, correct?

20 A Doctor Altman?

21 Q Yes. Did I say --

22 A Yes.

23 Q Thank you. And can you explain why you were
24 providing -- we're focusing on the middle part of that e-mail
25 -- can you explain why you were providing to OC Miller, on

1 January 21st, 2016, a summary of the West Region's dealings
2 with Ms. Petitt?

3 A I just presume that OC requested it, but I don't
4 know exactly what he wanted it for.

5 Q Okay. And you sent the 2011 letter of counsel, as
6 part of the information that you were sending to Captain
7 Miller in this e-mail, correct?

8 A That's correct.

9 Q You testified you were not -- you had no knowledge
10 of any prior discussion among Delta management
11 representatives, prior to January 28th, of a possible
12 referral of Ms. Petitt for a Section 15 evaluation?

13 A Prior to what date, sir?

14 Q Prior to January 28th, 2016, you had no knowledge
15 of discussions among Flight Ops representatives concerning
16 the possible referral of Ms. Petitt for a Section 15
17 evaluation?

18 A That's correct.

19 Q And had you ever personally given consideration
20 referring Ms. Petitt for a Section 15 evaluation?

21 A No.

22 Q Now, if you could -- if you can -- referring -- I
23 hope you still have CX-21?

24 A I do.

25 Q Did any of the incidents, that you summarize in

1 this Exhibit to OC Miller, did any of them bear any relation
2 to Ms. Petitt's meeting with Kelley Nabors?

3 MS. BROWN: I'm going to object to the extent that
4 this is an incomplete document. It doesn't look like it goes
5 all the way through 2015. I think it ends in 2011.

6 MR. SEHAM: This document -- it is what it is, and
7 the document has already been admitted into the record.

8 JUDGE MORRIS: I'll allow the question being
9 refined as to the extent it's reflected in the document.

10 MR. SEHAM: Okay.

11 BY MR. SEHAM:

12 Q To the extent of the document, CX-21, as you have
13 it, did any of the incidents bear any relation to Ms.
14 Petitt's meetings with Kelley Nabors?

15 A Not that I know of.

16 Q Okay. So, do you know what the purpose was of
17 forwarding this information, previously sent to OC Miller, to
18 Dr. Altman, on July 25th, 2016?

19 A No.

20 Q Okay. If you could turn to CX-70?

21 JUDGE MORRIS: That's going to be Volume 3.

22 THE WITNESS: Okay.

23 MR. SEHAM: Oh, son of a gun, I think that's not
24 what I'm referring to. Hold off on that.

25 BU MR. SEHAM:

1 Q All right. I'll use the reference to CX-140 at
2 021?

3 A Okay.

4 Q Now, I think you already testified to some degree
5 on direct about this, let me narrow my questioning to -- if
6 you look at the fourth paragraph, Ms. Petitt references:
7 "Safety Culture" and "SMS," do you see those references?

8 A You're talking about --

9 Q Yeah -- I'm sorry -- I'm turning to the next page.
10 Forgive me. Page 22.

11 A Okay. In the fourth paragraph down?

12 Q Right.

13 A Okay. I'm there.

14 Q Okay. So, you see the references to "Safety
15 Culture," and "SMS," in that third (sic) paragraph?

16 A Yes, I do.

17 Q Okay. And then do you see there's a reference in
18 the last full paragraph concerning actions that are not part
19 of SMS or any Safety Culture?

20 A You're talking about the paragraph --

21 Q Yeah, the paragraph that begins with: "All this
22 said"?

23 A Okay. Yes, I see that.

24 Q Okay. And did you -- you know what SMS stands for?

25 A Yes.

1 Q Okay. What does it stand for?

2 A Safety Management System.

3 Q Okay. And would you agree that you do not know the
4 specific components of the FAA mandated SMS compliance
5 obligation?

6 A Yeah, that's fair.

7 Q Okay. Do you know who the base safety coordinator
8 is for Seattle?

9 A Right now?

10 Q Correct?

11 A No.

12 Q Have you had SMS training?

13 A I don't know.

14 Q If you could turn to CX-60 -- oh -- maybe not --
15 hold on a second. No, that's not right. Hold on a second.
16 Hold off on that, because I may have given you the wrong --

17 Now, you had -- aside from having business
18 correspondence or Delta related correspondence with Ms.
19 Petitt, during the time of your supervision of her, you also
20 had some social e-mail exchanges with her, correct?

21 A We had some, I would say, lighter moments.

22 Q Okay.

23 A I wouldn't call them social. I've never met her
24 anywhere --

25 Q Oh, no, I don't mean to say that. But you had sent

1 her e-mails while you were on vacation, commenting on your
2 vacation?

3 A I did respond to an e-mail that she had sent me
4 while I was on vacation, yeah. We had a -- I would say we
5 had cordial exchanges, yes.

6 Q Okay. And you would comment on the cocktail you
7 had in front of you, correct?

8 A (Laughter) Yes, I did.

9 Q And would you agree with me that there was nothing
10 in the e-mail correspondence, that you had with her, that
11 raised any question to you in terms of her mental health?

12 A That's correct.

13 Q And you say that your correspondence with her was
14 generally amicable?

15 A Yes.

16 Q Okay. And you said you did have a meeting with
17 her, I believe you testified you had a meeting with her on
18 March 15th, 2016, face-to-face?

19 A Yes.

20 Q And that -- and you said at that time you had no
21 knowledge of any reports of mental health issues from Ms.
22 Pettitt, correct?

23 A That's correct.

24 Q And you consider that meeting to consist of a
25 professional exchange?

1 A Yes.

2 Q And would you agree with me that right up through
3 March 15th, 2016, you had what you would characterize as a
4 good relationship with Ms. Petitt?

5 A Generally. I think there were a couple times where
6 she wasn't particularly happy with me, but other than that,
7 yes.

8 Q Okay. If you could turn to CX-62?

9 A I'm there.

10 Q This is -- I want to refer you halfway down that
11 page to an e-mail from -- it appears to be from you to
12 Captain OC Miller, on November 8th, 2015. Is that an e-mail
13 that you sent to OC Miller on November 8th, 2015?

14 A Yes.

15 Q Okay. And your first sentence there is: "Karlene
16 is busy, again." What did you mean that she was "busy
17 again," with emphasis on the "again"?

18 MS. BROWN: Just to clarify for the record, is your
19 question emphasizing the "again"?

20 MR. SEHAM: Yes.

21 THE WITNESS: I don't know that I emphasized the
22 word "again."

23 BY MR. SEHAM:

24 Q Well, my question is emphasizing the "again"?

25 A Okay. Well, Ms. Petitt has always been very busy,

1 so it doesn't really assign any specific meaning to it.

2 Q Did you mean that in a negative way?

3 A No.

4 Q And would you agree with me that this e-mail was
5 sent to Dr. Altman?

6 A I think it was, yes.

7 Q Okay. And do you recall why it was sent to Dr.
8 Altman?

9 A No.

10 Q If you can turn to CX-22?

11 A I'm there.

12 Q Okay. So, this is an e-mail from Jim Graham to
13 Brendan Brandon, Steven Dickson, OC Miller, Phil Davis and
14 Meg Taylor, on November 18th, 2015. Did you -- you received
15 this letter on or about that date?

16 A Yes.

17 Q Okay. And you see at the bottom right-hand corner,
18 where it says: "DA435," would you agree with me that this
19 e-mail was sent to Dr. David Altman, as well?

20 MS. BROWN: Objection. I don't know if the witness
21 knows what Bates stamping is.

22 JUDGE MORRIS: Let's find out if he knows.

23 Overruled.

24 MR. SEHAM: Okay.

25 THE WITNESS: No, I don't know.

1 MR. SEHAM: We'll respond to counsel and stipulate
2 that documents marked DA were received from Dr. Altman.

3 MS. BROWN: I don't recall that stipulation.

4 MR. SEHAM: What?

5 MS. BROWN: Are you asking to stipulate to that?

6 MR. SEHAM: I'm asking to streamline this position
7 at this trial, is whether the company will concede that any
8 document that's Bates stamped DA is derived from Dr. Altman?
9 In view of the fact that we provided -- that Dr. Altman did
10 provide it to you.

11 MS. BROWN: I mean if you want to know if he knows
12 it came from Altman.

13 MR. SEHAM: Respondent's counsel is unwilling to
14 stipulate that DA documents were --

15 MS. BROWN: I would like to know what your question
16 is to him about it.

17 MR. SEHAM: Okay. Then I'll just -- we'll note for
18 the record that Respondent's counsel doesn't wish to
19 stipulate.

20 BY MR. SEHAM:

21 Q This document, this e-mail, was forwarded to Dr.
22 Altman, correct?

23 A I don't know.

24 Q You don't know. And then would you know, if it had
25 been, would you know why it would have been sent to Dr.

1 Altman?

2 A No.

3 Q Okay. And do you know why -- Brendan Brandon is an
4 attorney, correct?

5 A Correct.

6 Q Okay. And Mike Cochel, what's his position?

7 A Mike Cochel.

8 Q Cochel, yes.

9 A He was in HR.

10 Q Okay. And do you know why this correspondence was
11 being sent to Brandon Brendon and Mike Cochel?

12 A No.

13 Q Would you agree with me that in terms of
14 attendance, right up through March 17th of 2016, that Ms.
15 Petitt had been a reliable pilot for Delta?

16 A Yes.

17 Q Okay. And going back to her meeting with you on
18 March 15th, she raised issues with you concerning Delta pilot
19 scheduling practices and whether they complied with the
20 Federal Aviation Regulations, correct?

21 A Correct.

22 Q And she expressed concerns that Delta pilots were
23 flying in a fatigued condition, correct?

24 A Correct.

25 Q And you talked about, on direct, I think you talked

1 about a process of a pilot -- was it changing a deadhead to
2 another form of arriving at his assignment?

3 A It's called "deviating from deadhead," yes.

4 Q Okay. Deviating from deadhead. And that would be
5 -- did that conversation involve deviating from deadhead and
6 using a positive space as an alternative to arrive at the
7 assignment, the assignment origination point?

8 A It could involve that, but not necessarily.

9 Q Okay. Now, if a pilot arranges a positive space on
10 his own, is that counted towards his maximum duty day?

11 A I don't know what the position is on that now.
12 There was a time when it didn't, but keep in mind that a
13 pilot can also use a jump seat to get to work on Delta or
14 another carrier. And if a pilot elects to deviate from
15 deadhead, we don't always know how he gets to the location
16 from which he's going to fly his flight. So, if a pilot gets
17 -- you know, I use the example of a pilot who lives in
18 Phoenix, you know, if he wants to fly from Phoenix to Los
19 Angeles on Southwest, he can do that. And we wouldn't know,
20 necessarily, what he got, it wasn't positive space, he could
21 have bought a ticket to go over there. So, on a deviate from
22 deadhead, the thing that we do is, as long as he gets there
23 in time to fly his assigned working leg, then he met his
24 responsibility.

25 JUDGE MORRIS: Counsel, I will also tell you that

1 when it comes to flight and duty time, there's a whole
2 segment of FAA, AGC attorneys who are devoted to writing
3 legal interpretations about flight and duty time, which I'll
4 refer to as appropriate in determining whether or not it
5 complies with the flight and duty time requirements. There
6 are probably two binders of legal interpretations that give
7 various permutations and scenarios associated with what
8 constitutes flight and duty time for purposes of the
9 regulation. I don't care, frankly, what Delta thinks about
10 its flight and duty time. I care about what the FAA
11 regulations require to be the flight and duty time. And
12 there could be a discrepancy. I will tell you if there's a
13 discrepancy, I'm going to go with the regulations.

14 MR. SEHAM: Okay.

15 BY MR. SEHAM:

16 Q So, perhaps it goes without saying, but if Delta
17 doesn't know how the pilot got to the point of origination
18 for his trip assignment, Delta would not be counting those
19 flight hours to the point of origination towards his maximum
20 duty limitation for the day?

21 A You're pretty close. You said flight hours -- duty
22 hours.

23 Q Okay.

24 A Okay. Duty hours, I think that's correct, yes. We
25 have no way of knowing what his duty hours would have been,

1 as long as he gets there.

2 Q Okay. And whereas if it is a deadhead that Delta
3 requires to get to the point of the origination of the
4 flight, those hours are counted as duty hours?

5 A If it's a scheduled deadhead, yes.

6 Q Okay. So, part of what Ms. Pettitt was concerned
7 about were that pilots were resorting to a deviation from
8 deadhead in a manner that circumvented FARs with respect to
9 duty limitations, correct?

10 A That's correct. And I think it's important that I
11 add here, too, at least that I believe it would apply to this
12 time-frame, that a crew scheduler could not build an illegal
13 rotation. I don't believe the software in our system will
14 allow it even, to build an illegal, Your Honor.

15 JUDGE MORRIS: The software is only as good as the
16 programmers, understanding the regulations. So, I'm not
17 going to touch that with a 10-foot pole.

18 THE WITNESS: But what we would frequently see is
19 that, you know, the schedulers will build a trip -- and I
20 think that's what they did in the Albain case is they built a
21 trip where he would have gone to New York the day before,
22 laid over downtown, did the whole New York thing, and then
23 went out to the airport to fly to Paris. And his deviate
24 from deadhead takes him from his home straight to the Kennedy
25 Airport and then he goes, so.

1 BY MR. SEHAM:

2 Q And if Delta, in that time-frame, if Delta were to
3 assign the positive space to the pilot, to get that pilot to
4 the point of the origination of his assigned trip, would
5 Delta have counted the positive space trip hours towards the
6 duty limit?

7 A You're talking about the deviation?

8 Q Yeah. In terms of the schedule.

9 A His original schedule --

10 Q Yeah.

11 A -- yes, they would count duty time. So, if his
12 original schedule said he would start in Detroit, deadhead to
13 JFK, and then fly to Paris, that would have to meet legal
14 duty day limits.

15 Q Okay. And in this context, on March 15th, Ms.
16 Petitt raised the issue -- well, let me back up.

17 You characterized green slips as a manner of
18 substantially increasing a pilot's income, correct?

19 A Yes.

20 Q And Ms. Petitt raised her concern that pilots were
21 resorting to deviating from deadhead, for the reason of
22 obtaining green slip pay, in a manner that was resulting in
23 pilots flying fatigued?

24 A I don't see that happening, because they can't
25 build an illegal rotation --

1 Q Well, no -- but you're not answering my question.

2 A -- they can't build an illegal rotation and,
3 therefore, they wouldn't be able to get that green slip. Do
4 you see what I'm saying? If they're not legal for the
5 original rotation, the way scheduling built it, then they
6 won't even get caught for it.

7 Q Well, let's back up. Green slip is a form of
8 obtaining additional pay?

9 A Yes.

10 Q And then how does that work?

11 A What do you mean?

12 Q How does a pilot increase his income significantly,
13 by resorting to green slips?

14 A You submit a green slip request and you have an
15 option of requesting certain rotations that are in that open
16 time pot, or you have an option to put in -- I'll fly on
17 these days or a block of days that you are willing to fly to
18 Delta, or you will say both, I'll do either. And you can
19 even take it one step further and say that I will fly green
20 slips with conflict, requiring that one of your trips be
21 dropped for you to pick up this time out of open time and you
22 get paid for both. The regular green slip with no conflict,
23 you get paid for the trip, but you get paid double. So,
24 there are different methods that guys would use within those
25 constraints. Regardless of which method you use, a rotation

1 in the open time pot has to be -- in my opinion -- a legally
2 built rotation. They can't build an illegal rotation and put
3 it in the pot.

4 So, you're only eligible for it, if it legally fits
5 on your line. So, if it doesn't legally fit on your line,
6 you're not even going to be offered that trip.

7 JUDGE MORRIS: So, what I'm hearing is, for flight
8 and duty time there's a maximum -- I'll just block out a
9 month -- in a month there is the maximum number of hours
10 you're available for duty -- we'll just focus on duty.

11 THE WITNESS: Okay.

12 JUDGE MORRIS: But not all pilots at Delta have
13 maximum duty hours in that month. And they're allowed to
14 expand their maximum -- their hours -- up to the maximum
15 legal -- we'll assume the software is correct. So, this is
16 the benefit for people who can go up to the max, but can't
17 exceed the max when the needs of the company require
18 additional pilots. Is that what we're saying?

19 THE WITNESS: I think I follow what you're saying,
20 Your Honor, in that a -- are you suggesting then that a pilot
21 says I'm going to deviate from deadhead, so that I have less
22 duty time, therefore making myself eligible for a legal green
23 slip trip?

24 JUDGE MORRIS: No. What I'm saying is -- I'm just
25 going to use a number. In a given month -- just to make math

1 easy -- a pilot is allowed to fly 100 hours.

2 THE WITNESS: Block time.

3 JUDGE MORRIS: Block.

4 THE WITNESS: Okay.

5 JUDGE MORRIS: Okay. But Delta does not have all
6 of its pilots flying 100 hours in a given month, they have
7 them flying 75 hours. There's nothing wrong with a pilot
8 then bidding, if necessary, to go from 75 up to 100. Is that
9 what this green slip is used for?

10 THE WITNESS: No. A white slip will get you up --
11 not to 100, there's actually a limit on what you can get on
12 a white slip, too, and that's straight pay. So, if a pilot
13 says, I want to work 85 hours this month, every month the
14 computer builds a line construction window and your
15 construction, the construction of your line for that month,
16 must fit into that window. And it is a minimum number of
17 hours and a maximum number of hours, that's the line
18 construction window. So, you bid and you get your monthly
19 schedule that has a number of hours that fits into that
20 window.

21 Now, after that, if you want to fly more, there is
22 a maximum pick-up number on your schedule, and it's based on
23 the difference between what you actually have and the top of
24 the line construction window. So, you could pick up to the
25 top of that window, wherever that is, but not -- it's not 100

1 -- it's usually like 80 to 85. If you want to fly more than
2 that, it has to be either in a green slip or inverse
3 assignment type stuff. So, now you put in a green slip
4 request and you can go above that line construction window
5 number, and get paid double for each of those hours that
6 you're up there. So, that's what really a green slip does,
7 so you can go from let's say 80 hours of pay -- if someplace
8 in that month you can pick up a 20-hour trip and be legal for
9 it, you get an extra 40 hours of pay, now you're at 120 hours
10 and it's pretty lucrative.

11 So, that's the idea that they're trying to do
12 there. But you still have to be legal for the trip.

13 MR. SEHAM: Okay. We're just going into --

14 JUDGE MORRIS: We're way in the weeds.

15 MR. SEHAM: Yeah, we're way in the weeds much more
16 than -- maybe I could shortcut to the nub by asking this
17 question.

18 BY MR. SEHAM:

19 Q Isn't it true, on March 15th, that Ms. Pettitt
20 expressed a concern -- irrespective of your analysis of the
21 system -- that she expressed a concern with respect to green
22 slips, that it was incentivizing pilots to fly fatigued?

23 A I don't recall exactly if she did, but I kind of
24 vaguely remember it. But I don't remember where the green
25 slip part came in. I think it mostly -- I think most of our

1 discussion was centered around the deviating from deadhead.
2 But I don't -- I'm not saying that she's wrong, I just don't
3 remember.

4 Q Well, green slip -- you're talking about green
5 slip, and I may -- I'm going to just ask two or three
6 questions about this, because I think we're spending -- and
7 it's -- whatever, I don't want to spend an inordinate amount
8 of time on it.

9 Green slip, in terms of analyzing the legality of
10 the green slip assignment, that's the legality is based on
11 hours from departure from base, correct?

12 A Yes. Well, you mean the hours they're being paid
13 for a green slip?

14 Q Yes, correct.

15 A It's a rotation. The hours are based on
16 contractual rules. So, it could depend on a lot of things.

17 Q But if someone deviates from deadhead, they could
18 make themselves eligible for a green slip assignment that
19 they would not have been eligible for if they had not
20 deviated from deadhead, correct?

21 A I don't think so. I think you still have to be
22 eligible for the initial rotation. I don't know how they --
23 and I know there are other aspects to this thing that I
24 don't, maybe, understand. I think what you're getting at is
25 -- let's go back to that Phoenix pilot that lives in Phoenix

1 explanation. Are you saying that if a pilot wants to -- just
2 wants to deviate from -- and fly from Phoenix to Los Angeles,
3 instead of going all the way to Atlanta and back, but he is
4 somehow making himself eligible for a green slip that he
5 wouldn't otherwise have been eligible for?

6 Q Let me give my own hypothetical. A required
7 deadheads to get to a base or to get to the point of
8 departure for the trip, those hours are counted towards the
9 max limits, correct?

10 A Yes.

11 Q Okay. But then if the pilot decides to deviate
12 from deadhead and arrange his own transport, say on a jump
13 seat, those hours are not counted?

14 A Now you're talking about pay hours, flight hours,
15 duty hours?

16 Q No. I'm talking about duty limit hours?

17 A (No verbal response.)

18 Q Because Delta wouldn't even know, correct? Wasn't
19 that your prior testimony that the pilot doesn't -- if Delta
20 doesn't know how the pilot is getting there, they're not
21 going to count those hours towards the max limit?

22 A You're talking about towards the FAR 117 limit?

23 Q Yes.

24 A I don't believe they count towards -- they would
25 count towards the FAR 117 limit, if that's what you're

1 asking.

2 Q Yeah, okay. In your own experience, you've heard
3 that recommend pilots tell you that they felt they were
4 flying fatigued, correct?

5 A I have, yes.

6 Q Okay. And certainly as of March 15th, m 2016, in
7 that time-frame, would you agree that you did not know what
8 the FARs prescribed in terms of pilot training, as it related
9 to fatigue?

10 A That's correct.

11 Q Now, you had a full day meeting, face-to-face, with
12 Dr. Altman on or about June 2nd, 2016, correct?

13 A Correct.

14 Q And you understood that this meeting was in
15 furtherance of the Section 15 Mental Health Evaluation?

16 A That's correct.

17 Q Okay.

18 THE WITNESS: Would a bathroom break be out of the
19 question?

20 JUDGE MORRIS: That's fine.

21 MR. SEHAM: Did you want a break?

22 JUDGE MORRIS: Yeah. We're going to take -- let's
23 take -- what time is it, is it almost noon?

24 MR. ROSENSTEIN: It is.

25 MR. SEHAM: Yeah.

1 JUDGE MORRIS: All right. Why don't we break for
2 lunch, reconvene at 12:30 o'clock p.m.

3 Don't discuss your testimony during the break.

4 All right, we're in recess.

5 (Whereupon, the hearing was recessed for lunch at
6 12:00 o'clock p.m.)

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1 AFTERNOON SESSION

12:36 O'CLOCK P.M.

2 JUDGE MORRIS: On the record.

3 All parties present when the hearing last recessed
4 are again present.

5 You may proceed, counsel.

6 CROSS-EXAMINATION RESUMED

7 BY MR. SEHAM:

8 Q Yes. If you can turn to CX-63, did you have that
9 one?

10 A I'm there, yes.

11 Q Okay. So, this is information that Mr. Puckett --
12 "Training History Glossary of Terms," information that Chris
13 Puckett sent to Dr. Altman on or about June 10th, 2016,
14 correct?

15 A Correct.

16 Q And what was your understanding as to how this
17 information related to Ms. Petitt's mental health?

18 A I don't know what Dr. Altman had in mind here, so I
19 don't know.

20 Q But you had no understanding of how this related to
21 an evaluation of her mental health?

22 A No.

23 Q And you understood that was the process that you
24 were involved in, correct?

25 A That's correct.

1 Q If you can turn to document 64 -- excuse me --
2 CX-64. And you recognize this document, that's attached to
3 Mr. Puckett's e-mail, to be an FAA Advisory Circular?

4 A Yes, I do.

5 Q And it's addressing RVSM issues, correct?

6 A Yes.

7 Q And Ms. Petitt had raised concerns about compliance
8 with RVSM air space restrictions in her safety report,
9 correct?

10 A Correct.

11 Q And what was your understanding as to how this
12 related to Ms. Petitt's mental health?

13 A Again, I don't know what Dr. Altman had in mind.

14 Q Okay. And if you could turn to Exhibit 65. Now,
15 this is -- if you go to the bottom of the page -- actually,
16 halfway down the page, this is correspondence between Richard
17 Anderson and Ms. Petitt, from January 22nd, 2016, correct?

18 A Correct.

19 Q Okay. And she's raising issues related to SMS and
20 Safety Culture in her correspondence with CEO Anderson?

21 A That's correct.

22 Q Okay. And this was forwarded from Captain Graham
23 to you, OC Miller and Chris Puckett, on or about January
24 22nd, 2016, correct?

25 A Correct.

1 Q Did you consider her communications with CEO
2 Anderson, that aware part of this thread, to be inappropriate
3 in any way?

4 A No.

5 Q No. Now, if you could -- and to the best of your
6 knowledge, was her writing to CEO Anderson, in this manner,
7 violating any Delta policy that you're aware of?

8 A No.

9 Q If you could turn to a different volume here,
10 CX-20, so that would be the first volume. And just let me
11 know when you're there?

12 A I'm there.

13 Q Okay. And this is an Exhibit from Captain Graham
14 to Chris Puckett, Meg Taylor, Brendan Brandon, and to you and
15 OC Miller, and you received this on or about January 25th,
16 2016, correct?

17 A Correct.

18 Q And the attachment or communications from Ms.
19 Pettitt related to training programs, correct?

20 A Correct.

21 Q And she also, on the last page, she's also making
22 reference to SMS issues on CX-20-006?

23 A Yes.

24 Q Okay. Did it strike you as unusual that Captain
25 Graham was sending this information to Chris Puckett?

1 A I had no -- I guess no opinion on whether it was
2 unusual or not.

3 Q If you could turn to your -- before I move on to
4 that question or to your deposition -- do you know why this
5 document was forwarded to Dr. Altman?

6 A No.

7 Q No. Okay.

8 MS. BROWN: Objection, foundation.

9 MR. SEHAM: We've had testimony from Ms. Pettitt
10 that anything marked with DA was produced by Dr. Altman. If
11 the company wants to engage in that obfuscation that it
12 doesn't know what the DA references, then we'll rely on Ms.
13 Pettitt's testimony.

14 BY MR. SEHAM:

15 Q Now, I'd like you to turn to your deposition --

16 JUDGE MORRIS: Well, wait a minute.

17 MS. BROWN: I would like you to ask the witness if
18 he knows what it refers to.

19 MR. SEHAM: I asked him whether he knew whether it
20 was sent -- whether he knew why it was sent to Dr. Altman.
21 He said he didn't know why.

22 MS. BROWN: That's not what you asked him. And
23 there's a foundation that you never established that it was
24 sent to Dr. Altman.

25 JUDGE MORRIS: Do you know if this document was

1 sent to Dr. Altman?

2 THE WITNESS: No, I don't know, other than it's got
3 the DA on there and what they've testified to. But I don't
4 know.

5 JUDGE MORRIS: Well, they don't testify.

6 THE WITNESS: Okay.

7 JUDGE MORRIS: Despite their contrary, they don't
8 testify.

9 Do you have personal knowledge that this was sent?

10 THE WITNESS: No.

11 JUDGE MORRIS: All right. Move on, counsel.

12 MR. SEHAM: Okay.

13 BY MR. SEHAM:

14 Q So, I'd like to move to your deposition testimony
15 at page 141 -- excuse me -- 142.

16 JUDGE MORRIS: CX-205.

17 MR. SEHAM: Yes, CX-205.

18 THE WITNESS: Okay.

19 MR. SEHAM: Okay.

20 BY MR. SEHAM:

21 Q So, it's:

22 "Question: I've handed you a document
23 we've identified as Davis Exhibit 16,
24 it's Bates stamped DA496 to 501. It's
25 reflecting an Exhibit from Chris Puckett

1 to Meg Taylor, Brendan Brandon and a cc
2 to you and Miller and Graham. Did you
3 receive this e-mail from Chris Puckett?"

4 So, to move on -- Plaintiff's Exhibit 16 was marked
5 for identification.

6 "Answer: And you said that it was sent
7 by Jim Graham, correct?

8 "Question: Well, I'm sorry, no. I
9 said -- well -- yeah, I shouldn't have,
10 if I did. It was sent by Jim Graham?

11 "Answer: This is an e-mail from Jim
12 Graham to Chris Puckett and that threw me
13 a little bit, because Chris is on the
14 very first addressee. I don't really
15 recall the e-mail, I can see that it was
16 sent to me, so yes.

17 "Question: Reflecting on the subject
18 line: '29th Meeting Structural Redesign
19 of Pilot Training and Safety Culture,
20 SMS', would you agree with me that this
21 relates to SMS compliance issues, this
22 correspondence?

23 "Answer: Did you say 'FMS'?

24 "Question: SMS?

25 "Answer: SMS, yes.

1 "Question: Okay. Did you know why
2 this was transmitted to Dr. Altman?

3 "Answer: No."

4 Now, you see --

5 MS. BROWN: That's not the -- will you please
6 finish reading the answer, that was not the complete answer.

7 MR. SEHAM: "No"

8 "Question: Was it
9 transmitted to Dr. Altman -- he's not on
10 that -- if you look at the bottom of the
11 documents that have the DA, at the
12 bottom, those are documents that we
13 received from Dr. Altman.

14 "Answer: Okay. But I don't see him
15 on the e-mail address. No, I don't know
16 why it was sent."

17 BY MR. SEHAM:

18 Q Now, what I'm referring to -- again, I'm reading
19 more than I would generally care to, in deference to
20 Respondent's counsel -- but if you refer back to 143, at line
21 12, you answered:

22 "This is an e-Mail from m Graham to
23 Chris Puckett, and that threw me a little
24 bit, because Chris is on -- is the very
25 first addressee."

1 That was your testimony at this deposition on
2 December 11th, 2018, correct?

3 A Yes.

4 Q So, it did throw you a little in reviewing this
5 e-mail, that Chris Puckett was the addressee, first
6 addressee?

7 A That's what I said. I don't have any idea why it
8 threw me or what I meant.

9 Q Okay. Very good. If you can turn to CX-67. Okay.
10 And if you turn to the second page, it refers to:
11 "Attachments: Petitt Safety Presentation Paper PDF"?

12 A I see it.

13 Q Yeah. And going back to the first page, Chris
14 Puckett is writing to David Altman:

15 "Here is the presentation. Will send
16 the talking points paper separately."

17 And do you know why Ms. Petitt's safety
18 presentation was sent to Dr. Altman?

19 A No.

20 Q And if you can turn to CX-68, you see that's an
21 e-mail from Dr. Altman to Phil Davis and Chris Puckett. And
22 at Point 2 he asks:

23 "Is there an official document or
24 press release about Delta achieving full
25 compliance with SMS and, if possible, the

1 dates of the achieving the earlier three
2 levels?"

3 Do you know why Dr. Altman was seeking information
4 regarding Delta's SMS compliance, in the context of a mental
5 health evaluation of Ms. Petitt?

6 A No.

7 Q Do you recall Ms. Petitt raising issues in her
8 safety report about the adequacy of stall related training
9 for the A330 aircraft?

10 A Say that again, please?

11 Q Did you recall Ms. Petitt raising -- in the context
12 of her safety presentations -- issues concerning the adequacy
13 of stall related training for the A330 aircraft?

14 A I did not participate in that presentation.

15 Q Okay. But you were aware that she was raising
16 those issues?

17 A I know that at some point she did, but I don't know
18 in what context or what situation.

19 Q Do you recall reaching any conclusion, one way or
20 the other, as to the merits of the issues that she raised
21 with respect to that issue?

22 A No.

23 Q If you can turn to CX-69?

24 A Sixty-nine?

25 Q Yes.

1 A I'm there.

2 Q Okay. Would you agree with me that -- turning to
3 the second page -- that you and Mr. Puckett were engaged in
4 an effort to calculate what Ms. Petitt's flight hours were,
5 for the benefit of Dr. Altman?

6 A Yes.

7 Q Was there anything in this flight hour information
8 that gave rise to a concern, on your part, in terms of Ms.
9 Petitt's proficiency as a pilot?

10 A No.

11 Q Was there anything in terms of her -- the flight
12 hour information that you obtained with respect to Ms.
13 Petitt, that gave rise to concerns, on your part, in terms of
14 her expertise with respect to flight?

15 A No.

16 Q Now, you and Mr. Puckett provided to Dr. Altman
17 information relating to the multiple ways that a pilot could
18 report safety issues at Delta, correct?

19 A Correct.

20 Q Did you ever have an objection to the manner or --
21 let's put it this way -- did you ever have an objection to
22 the persons to whom Ms. Petitt addressed her safety issues at
23 Delta?

24 A No.

25 Q Did you ever make a determination that Ms. Petitt

1 had violated a Delta chain of command policy, in reporting
2 her safety concerns?

3 A No.

4 Q Did you ever tell Dr. Altman that, to the best of
5 your knowledge, Ms. Petitt had not violated any chain of
6 command policy at Delta?

7 A I don't recall.

8 Q If you could turn to document CX-70, and let me
9 know when you've gotten to that document?

10 A I'm there.

11 Q At the bottom paragraph, first two sentences read:

12 "With this data, it is possible to
13 answer the question over time is FO
14 Petitt changing the amount of time flying
15 and the number of times is piloting the
16 plane? The strategy is to graph time
17 against cumulative hours or cumulative
18 flights."

19 Did you understand what Dr. Altman was pursuing, in
20 terms of the strategy reference here?

21 A Are you asking me how he's trying to use this for
22 assessment purposes?

23 Q Yeah. What did you understand by his reference to
24 "strategy"?

25 A Oh. Well, I don't know for certain. It could be a

1 lot of things, I guess.

2 Q Okay. Did the use of -- would you agree with me
3 that Dr. Altman, several times in his correspondence,
4 discussed his -- used the term "strategy," in terms of
5 analyzing data related to Ms. Pettitt?

6 MS. BROWN: I'd object, vague for "several times."

7 JUDGE MORRIS: And what's the relevance?

8 MR. SEHAM: What's the relevance?

9 JUDGE MORRIS: Yes.

10 MR. SEHAM: Well, in our view, the concept of a
11 "strategy" by a psychiatrist who is supposed to be a neutral
12 examiner is indicative of partiality. And certainly when
13 someone is confronted with that, I think another neutral
14 person might have pause. The Tribunal may not see it that
15 way, but we see it that way and anyone might be concerned
16 when a neutral -- when a purportedly neutral examiner is
17 talking about a "strategy."

18 MS. BROWN: Sounds like argument.

19 JUDGE MORRIS: Go ahead.

20 MR. SEHAM: It's not argument. It's argument in
21 terms of whether I get to ask this question.

22 MS. BROWN: Can I respond, first -- can I respond
23 to your initial --

24 JUDGE MORRIS: All right, hold on. Go ahead,
25 counsel.

1 MS. BROWN: First, it sounds like argument, not
2 questioning for a witness. If these are the questions about
3 why he used a certain term, they would be presented to Dr.
4 Altman, not to Captain Davis, who didn't write the e-mail and
5 doesn't know why the word selection was chosen.

6 JUDGE MORRIS: Agreed.

7 Move on.

8 I'll also note for the record I've heard this line
9 of questioning on a multitude of occasions, so it's
10 cumulative, as well.

11 MR. SEHAM: Well, I wouldn't --

12 JUDGE MORRIS: Move on.

13 MR. SEHAM: Okay. All right. I would like to
14 express why I consider it's relevant and make an offer of
15 proof or at least state for the record why I don't agree with
16 the rule. But if I'm being instructed to move on, I'll move
17 on.

18 BY MR. SEHAM:

19 Q Your understanding was that the CME was to proceed
20 with the examination of the pilot in a neutral fashion,
21 correct?

22 A Correct.

23 Q Did you and Mr. Puckett ever have a discussion
24 about the appropriateness of Dr. Altman's information
25 requests?

1 A No.

2 Q This is related to a prior question. In your view,
3 did Ms. Petitt's flight hours render her opinion on
4 compliance issues less credible?

5 A No.

6 Q Did you ever expressed that view to Dr. Altman?

7 A I don't recall.

8 Q Okay. Would you agree that a pilot's bidding for
9 his or her schedule involves a lot of quality of life
10 choices?

11 A Yes.

12 Q And a pilot might choose to be a low seniority
13 captain or a high seniority first officer on the same
14 equipment, based on lifestyle preferences?

15 A Yes.

16 Q And that some pilots choose to bid reserve lines,
17 in order to have more time at home to pursue other non-flight
18 interests?

19 A Yes.

20 Q And would you -- to your mind, is a pilot's
21 decision to bid reserve lines indicative of a mental health
22 issue, from your perspective?

23 A No.

24 Q Can you explain what a "trip buy" is?

25 A Yes.

1 Q Okay. Would you do that for me, please?

2 A Yes. A "trip buy" is a function that we use with
3 management, pilots use to give someone flying time. It might
4 be someone who needs some training. For example, a new pilot
5 in a given category trains in the simulator, passes the
6 simulator training, and when he completes that he's got to do
7 what's called an "Initial Operating Experience," with a line
8 check airman.

9 JUDGE MORRIS: IOE.

10 THE WITNESS: And they have to have a minimum
11 number of hours and landings on that "Initial Operating
12 Experience," before the line check airman can sign him off as
13 good to go out and fly with just any ordinary captain. So,
14 they will pick a trip that meets those needs and they will
15 buy it -- in other words, pay the pilot who is originally
16 scheduled to fly it -- they'll pay him to just simply stay
17 home. And then they will assign the line check airman and
18 either the new captain or the new first officer to that trip.
19 And those two will also get paid for flying that trip. So,
20 it's a "trip buy" that they're kind of buying the trip away
21 from the guy that originally bid the trip and was assigned
22 it, and they're giving it to the other guy, and then he's
23 trained.

24 The second instance of a "trip buy" can be for
25 recency purposes or for proficiency purposes. And in that

1 case they are buying a trip and giving it to someone who it
2 is determined needs and wants additional flying time, so the
3 same thing applies, they buy it from someone who already has
4 it assigned to them, and give it to this other pilot. That's
5 what a "trip buy" is.

6 MR. SEHAM: Okay. Thank you.

7 BY MR. SEHAM:

8 Q And the term "reserve guarantee," as it applies to
9 a reserve pilot, can you explain that concept for us?

10 A Yes. When a pilot is placed on reserve for a
11 month, they are guaranteed a certain number of hours of pay.

12 That's called a "reserve guarantee," they're guaranteed
13 that. As they go through the month and they fly, the credit
14 time that they fly, the hours, builds up towards that reserve
15 guarantee. If it passes that, then they get paid the higher
16 of the two. If it remains below that, at the end of the
17 month, they get that reserve guarantee.

18 Q Okay. Now, would you agree with me that if a
19 bought trip from a line pilot is given to a reserve pilot,
20 the reserve pilot's pay comes out of their reserve guarantee
21 with no additional compensation if the pilot is not close to
22 his or her reserve guarantee?

23 A Yes.

24 Q Okay. And if you can turn to Exhibit 73, okay,
25 this was correspondence that you transmitted to Dr. Altman on

1 June 13th, 2016?

2 A Yes.

3 Q Okay. And in this correspondence, looking at the
4 second page, you provided him with an explanation of a trip
5 buy concept, correct?

6 A Correct.

7 Q Okay. Now, you've been with Delta for
8 approximately 30 years, is that correct?

9 A That's correct.

10 Q And would you agree with me that during that
11 period, Delta has had, at times, labor problems with its
12 pilots?

13 MS. BROWN: Objection to the phrase "labor
14 problems," and no events.

15 JUDGE MORRIS: Yeah. Relevance, counsel?

16 MR. SEHAM: The relevance relates to issues that
17 were discussed between Mr. Puckett and Dr. Altman, in terms
18 of Ms. Petitt's conduct.

19 JUDGE MORRIS: How do we know that? How do they
20 know they talked about labor problems?

21 MR. SEHAM: Well, that was in -- that's within the
22 exhibits that have been admitted into the record. And during
23 Dr. Altman's testimony he confirmed that he received
24 documents from Chris Puckett, related to Ms. Petitt's
25 purported involvement in a job action.

1 JUDGE MORRIS: Well, that's different than "labor
2 problems." Are you -- labor problems, as the question I
3 understand it is much bigger than problems associated that
4 the Complainant may have had on a given issue or a given
5 event.

6 MR. SEHAM: No, no -- okay. Job action is a term
7 of art within airline labor law, referring to concerted
8 activity, whether it's an overtime boycott or a slowdown or
9 work to rule, where either pilots or mechanics or baggage
10 handlers engage in a slowdown to try to gain leverage in the
11 contest of collective bargaining. And the testimony that we
12 elicited from Dr. Altman was that Mr. Puckett was providing
13 information to Dr. Altman related to Ms. Pettitt's purported
14 participation in a job action, and advocacy of a job action.

15 JUDGE MORRIS: Counsel?

16 MS. BROWN: I think the specific e-mail that you're
17 referring to would be an appropriate topic of questioning,
18 but going through Delta's history of "labor problems,"
19 quote/unquote, is broad and not relevant to these
20 proceedings.

21 MR. SEHAM: It's to give context as to whether
22 there was any legitimacy to Chris Puckett transmitting
23 information of that nature to Dr. Altman, in the context of a
24 mental health evaluation.

25 JUDGE MORRIS: I'll allow you to briefly --

1 MR. SEHAM: Oh, it will be brief.

2 BY MR. SEHAM:

3 Q Would you agree with me that there's been
4 litigation by Delta against Delta, based on job actions, in
5 the form of overtime flying boycotts?

6 A I don't know what litigations, specifically, there
7 was. I do recall that there was something that went on, but
8 I -- I think there was, yes.

9 Q Okay. You think there was?

10 A Yes.

11 Q And in your opinion, would you consider a pilot who
12 participates with other pilots, in an overtime flying
13 boycott, to obtain leverage in collective bargaining, to have
14 a mental health issue?

15 A No.

16 Q No. If you can turn to Exhibit 76?

17 A Okay. 76?

18 Q Yes.

19 JUDGE MORRIS: CX-76.

20 MR. SEHAM: Yes.

21 THE WITNESS: Okay.

22 BY MR. SEHAM:

23 Q And do you see that this was an e-mail from Chris
24 Puckett to Dr. Altman, with a copy to you, correct?

25 A Correct.

1 Q And in this e-mail he addresses Dr. Altman.

2 "Dr. Altman, Attached" --

3 A One moment, please?

4 Q Oh, sure.

5 A The number was kind of scrubbed off.

6 Q Okay.

7 A I was reading 78. Okay. Go ahead on 76, I'm
8 there.

9 Q Okay. It reads:

10 "Dr. Altman, Attached are the e-mails
11 where First Officer Petitt appears to be
12 advocating for an illegal collective job
13 action. She is told to stand down, then
14 sends another e-mail with the same
15 encouragement to refrain from work. Phil
16 has been out of town on vacation, but now
17 that he is back we'll open an
18 investigation and he will need to bring
19 her in for an investigatory interview."
20 You received this e-mail?

21 A Yes.

22 Q And did you bring Ms. Petitt in for an
23 investigatory interview?

24 A I don't believe so.

25 Q Was Ms. Petitt ever disciplined for this alleged

1 job action?

2 A Not to my knowledge.

3 Q Were you aware that Dr. Altman relied on this
4 information in support of a finding that Ms. Pettitt suffered
5 from mania?

6 MS. BROWN: Objection, foundation.

7 MR. SEHAM: I'm asking if he's aware.

8 JUDGE MORRIS: It's a foundational question.

9 Okay, go ahead.

10 THE WITNESS: No.

11 BY MR. SEHAM:

12 Q Hum -- no?

13 A No, not aware.

14 Q Now, if you can turn to Exhibit 77?

15 A I'm there.

16 Q This is an e-mail that you sent to Dr. Altman on or
17 about July 12th, 2016, correct?

18 A Yes.

19 Q And if you look at the second sentence, it begins:

20 "It all begins with an e-mail on 11/3, in which

21 she describes her meeting with CEO

22 Richard Anderson."

23 Do you see that?

24 A I do.

25 Q Okay. And could you explain to us what you meant

1 by "It all begins," what's the "It" referring to?

2 A I don't know.

3 Q Okay. If you could turn to Exhibit 78, and this is
4 an e-mail that you -- that was sent by Chris Puckett to Dr.
5 Altman, and which you received, as well, on or about July
6 8th, 2016?

7 A Yes.

8 Q And Mr. Puckett was providing, with this e-mail,
9 information to counter Ms. Petitt's concerns that pilots did
10 not have access to sufficient information relating to
11 aircraft operational issues, correct?

12 A Ask me that again, please?

13 Q That Mr. Puckett was providing this information to
14 counter Ms. Petitt's concerns that pilots did not have access
15 to sufficient information relating to aircraft operational
16 issues, correct?

17 A I don't know exactly what Mr. Puckett was trying to
18 do.

19 Q Well, if you can see the first line of Chris
20 Puckett's e-mail, which reads:

21 "Was thinking about the best way to address

22 Number 3 in your e-mail."

23 Do you see that?

24 A Yeah, I do.

25 Q Okay. And if you go to the third page, which

1 reads: --

2 JUDGE MORRIS: Third page of what?

3 MR. SEHAM: Third page of the same document,
4 CX-78-003.

5 JUDGE MORRIS: Okay. Thank you.

6 BY MR. SEHAM:

7 Q With respect to Item 3:

8 "Regarding the document Tab F ASS.DAL Flight
9 Operations Safety Culture, page 6, lack
10 of information sharing, why is there not
11 a formal system with processes in place
12 to answer these questions?"

13 Close quote.

14 "If her assertion is incorrect, is it possible
15 to provide me documentation of the
16 existence of a formal system? If yes,
17 has/did she use it for these four items?

18 Has she ever used it?"

19 And so I'm going to ask, with having perhaps
20 refreshed your recollection with these references, would you
21 agree with me that Mr. Puckett, with this correspondence, was
22 providing understanding to counter Ms. Petitt's concerns that
23 the pilots at Delta did not have access to sufficient
24 information relating to aircraft operational issues?

25 MS. BROWN: Objection. He already testified he

1 didn't know why Mr. Puckett was providing the information.

2 MR. SEHAM: And then I provided him the references
3 to Item 3 in the cover e-mail, and what Item 3 was referring
4 to, and the underlying e-mail.

5 MS. BROWN: It's an e-mail written by Dr. Altman,
6 and an e-mail written by Chris Puckett.

7 MR. SEHAM: Which he received. But if he doesn't
8 -- if he can't, with that refreshing of recollection, if he
9 cannot answer the question, then his answer is: "I can't,"
10 and I'll live with that.

11 JUDGE MORRIS: Can you answer the question?

12 THE WITNESS: No. I don't know what Chris Puckett
13 was saying.

14 MR. SEHAM: Okay.

15 BY MR. SEHAM:

16 Q And you were asked to -- the second sentence says:

17 "I will let Phil chime in, if I'm
18 off, but every fleet has a page that has
19 a immense amount of information regarding
20 safety and operational issues unique to
21 that particular aircraft, as well as
22 issues that cross all the fleets."

23 Do you recall if you ever chimed in on these
24 issues?

25 A I don't.

1 Q And if you can turn to document 79, CX-79?

2 A Okay. I'm here.

3 Q You -- well, if you can take a moment, if you can,
4 to review the e-mail and let me know when you've had that
5 opportunity?

6 A Okay. I've read the e-mail.

7 Q Would you agree with me that you were providing Dr.
8 Altman information related to Ms. Pettitt's blog, relating to
9 an Air France fatal crash?

10 A I would agree with you that he is asking me to look
11 it over.

12 Q Well, the first line reads: "Dear Phil, Thank you
13 for obtaining all the information." Do you recall what --

14 A I see that. I'm not 100 percent sure what
15 information he's referring to.

16 Q Okay.

17 A But I'm not trying to be -- I'm just not really
18 sure what the information was that you're asking me about.

19 Q Okay. So, he did request -- you did provide him
20 information relating to A330 operations, correct?

21 A I don't recall if I did or not, actually.

22 Q Okay. And but you would agree, in this e-mail,
23 he's making inquiries concerning the Air France accident?

24 A Yes, he is.

25 Q And that concerned an MA330 aircraft?

1 A That's correct.

2 Q And it also references her Air France blog in this
3 e-mail, correct?

4 A Yes, it does.

5 Q Okay. So, if you could turn to CX-8

6 A Eight?

7 Q Yes.

8 A Zero-eight?

9 Q Yes.

10 A Okay.

11 Q This is an e-mail from Barry Wilbur to Steven
12 Dickson and it's a short e-mail, at least that portion that
13 I'm referring to, which reads:

14 "This is actually the second time her
15 name came across my desk yesterday, OC
16 forwarded the following blog to me,
17 asking about the legality about copying a
18 page of the A330 QRH on her blog.
19 Actually seems to be a very professional
20 post that doesn't paint Delta in a bad
21 light, but posting a page from the QRH is
22 probably something she shouldn't have
23 done. I'm asking for verification on
24 that. I will get with OC on this
25 letter."

1 Do you know if this document -- first of all --
2 Barry Wilbur, do you know who he is?

3 A Yes, I do.

4 Q Okay. And what was his job title at the time in
5 2010?

6 A I believe at that time Barry was the director of
7 Flight Operations.

8 Q Okay. And do you know if this e-mail, describing
9 the professionalism of Ms. Petitt's blog, was ever provided
10 to Dr. Altman?

11 A I don't know.

12 Q And if you can turn to Exhibit CX-82?

13 A I'm there.

14 Q Okay. And starting with the second or third --
15 well -- second from the fifth page, can you describe what
16 this information relates to?

17 A It's a summary and a comparison document of Ms.
18 Petitt's flying and her flying as compared to other Seattle
19 first officer.

20 Q Okay. And in the first page he asks -- he appears
21 to be asking you to review that data. Did he ask you to
22 review this data?

23 A I think I did, I don't recall specifically.

24 Q Okay. Did you ever tell Dr. Altman that Ms. Petitt
25 worked in a simulator for 80 hours per month, on an average

1 of seven to eight months per year, for a 12-year period?

2 A No, I don't believe I did.

3 Q Okay. If you can turn to CX-84?

4 A I'm there.

5 Q Well, I'm going to pass over this, based on the
6 Tribunal's instructions.

7 If you could turn to CX-85?

8 A I'm there.

9 Q Okay. Did you receive this e-mail from Dr. Altman
10 on or about October 20th, 2016?

11 A Yes, I did.

12 Q And you see that Chris Puckett is not copied on
13 this e-mail, correct?

14 A That is correct.

15 Q Did you have a telephone call with Dr. Altman,
16 concerning the last details of First Officer Petitt's work
17 history?

18 A I don't recall.

19 Q Did you ever tell Dr. Altman that you had a good
20 professional relationship with Ms. Petitt?

21 A I don't know if I used those words, but I did
22 indicate that I felt we had a cordial and certainly some
23 professional conversations.

24 Q And did you tell him that she was a reliable pilot,
25 in terms of her attendance?

1 A I don't recall.

2 Q Did you tell him that you felt appreciation for her
3 efforts to move the industry forward, with respect to safe
4 operations?

5 A I think I did, because I think he asked me about
6 the e-mail in which I did that.

7 Q Okay.

8 MR. SEHAM: No further questions.

9 JUDGE MORRIS: Anything else?

10 MS. BROWN: Yes.

11 REDIRECT EXAMINATION

12 BY MS. BROWN:

13 Q Would you turn to Complainant's Exhibit 20, for me,
14 Captain Davis?

15 A Twenty. I'm there.

16 Q And earlier there were some questions about your
17 deposition testimony, where you said it threw you that Chris
18 Puckett was on the first line of this e-mail. Having this
19 e-mail in front of you, do you recall maybe why it threw you
20 that he was the first person listed?

21 A I'm sorry, but no, it doesn't.

22 Q Could it be that the "To" and "From" fields are
23 swapped?

24 A Oh --

25 MR. SEHAM: This is really leading from the get go.

1 JUDGE MORRIS: Overruled.

2 THE WITNESS: Yeah -- yes.

3 MS. BROWN: Okay.

4 BY MS. BROWN:

5 Q And then looking at CX-20, the second paragraph
6 down where it says: "Phil and OC," did Captain Graham ask you
7 and OC Miller to prepare a chain of events, in anticipation
8 of his January 28th, 2017, meeting with Karlene Petitt?

9 A I don't know that Captain Graham did, but I think
10 OC asked me to put one together. Maybe he got it from
11 Captain Graham, I don't know.

12 Q Well, if you'd turn to CX-21, you were asked about
13 this document earlier on your cross-examination, specifically
14 the e-mail from you to OC Miller that starts halfway down the
15 first page?

16 A Yes.

17 Q Would this e-mail to OC Miller have been put
18 together in anticipation of Captain Graham's meeting with Ms.
19 Petitt?

20 A Yes. I believe this is what I put together at
21 Captain Miller's request. I don't think that's that he was using
22 it for, yes.

23 MS. BROWN: Okay. No further questions.

24 MR. SEHAM: No further questions.

25 JUDGE MORRIS: All right. I've got a couple of

1 questions, Captain Davis.

2 EXAMINATION

3 BY JUDGE MORRIS:

4 Q You mentioned that the reaction that First Officer
5 Petitt had when she received the Section 15 is though she was
6 shocked or concerned. Did she cry?

7 A No.

8 Q Have you ever seen her cry?

9 A No.

10 Q Now, you've sat for eight days in these hearings,
11 when did you first see Ms. Nabors' rendition of her
12 interaction with her in that hotel back in March of 2016?

13 A Right here.

14 Q Okay. Was her observations about First Officer
15 Petitt's demeanor different than what you have ever seen her
16 react in the past?

17 A Yes, Your Honor, in that I've never seen her cry.

18 Q Okay. Did anyone ask you, in this entire process,
19 about your interactions with Ms. Petitt, prior to the Section
20 15 letter being issued?

21 A No.

22 Q Okay. You said that the gravity of the situation,
23 when she was receiving the Section 15 letter warranted ALPA
24 representation, is that correct?

25 A That was my belief, yes, sir.

1 Q Your call. Well, tell me what's the gravity of the
2 situation, when you decided to have an ALPA rep -- why?

3 A I just felt like it was a very serious issuance.
4 And to be really honest with you, it never crossed my mind to
5 do it without ALPA representation there for her. Part of
6 that might have been rested or vested in the fact that I had
7 a solid relationship with the union rep there and I just
8 thought it was best for everybody involved that she be
9 represented. Quite frankly, I didn't know how Ms. Petitt
10 might react, either.

11 Q Prior to this Section 15, had you ever been
12 involved in a Section 15?

13 A Yes.

14 Q And did that involvement include presenting that
15 pilot with a Section 15 letter?

16 A I don't recall if I presented it or not. It was a
17 significantly different set of circumstances and I just don't
18 recall if I presented it to him or not.

19 Q Did you understand, at the time that you were
20 presenting this Section 15 letter to First Officer Petitt,
21 that this had the potential to be career ending?

22 A Yes, Your Honor.

23 Q Based on your observations and the demeanor of
24 First Officer Petitt at the time she was presented this
25 letter, were you left with the impression she understood the

1 gravamen of this letter?

2 A My impression -- and that is clearly what you're
3 asking me -- is yes, she did.

4 Q All right. Has all leave and annual leave, once
5 the NME said there was no medical deficiency that was
6 disqualifying and she was returned to duty, was all of her
7 leave that she had to use -- both annual and sick leave --
8 replaced or replenished in full?

9 A I don't know, Your Honor. In fact, if you recall,
10 I left my position on the 2nd of September, so that would be
11 my replacement's purview to review that.

12 Q Now, I'm a realist, okay, and I understand that
13 what happens in this process was just not limited to the
14 actors. Would it be a fair observation or concern that the
15 word on the street for any pilot who has gone through a 15
16 for -- Section 15 -- for mental health reasons, someone is
17 going to question them down the road if they want to fly with
18 them?

19 A I'm a realist, too. I just don't know how to
20 answer that, because, you know, I can't -- I don't know of
21 any word on the street. Nobody has ever come to me and said
22 word on the street is do you really want to fly with Ms.
23 Pettitt -- no one has ever said that, I've never heard that.

24 Q Let's change the question then. Does Delta have a
25 "Do Not Fly" list?

1 A They have a "Do Not Fly" list that first officers
2 can put they don't want to fly with a certain captain. The
3 opposite is not true.

4 Q The opposite is not true. Okay.

5 JUDGE MORRIS: Questions based on mine?

6 MS. BROWN: I have one.

7 FURTHER REDIRECT EXAMINATION

8 BY MS. BROWN:

9 Q Did Dr. Altman ever ask you about your
10 communications and interactions with Karlene Petitt?

11 A Yes.

12 MS. BROWN: No other questions.

13 MR. SEHAM: No further questions.

14 JUDGE MORRIS: All right, sir, you may step down.

15 THE WITNESS: Thank you, Your Honor.

16 (Witness excused.)

17 JUDGE MORRIS: Anything else?

18 MR. ROSENSTEIN: Just in terms of our case, I just
19 wanted to clarify that all the documents that are in the
20 binders are admitted and available for the Court, and to use
21 in the briefing and the transcript, as well, of the
22 depositions.

23 JUDGE MORRIS: Well, we're going to talk about
24 that.

25 MR. ROSENSTEIN: I think that we -- I thought that

1 we agreed -- I just can't remember -- in the first week that
2 that would be the case, and that we would be able to use the
3 documents without putting in, you know, a witness to like,
4 you know, talk about the document.

5 JUDGE MORRIS: Certain witnesses. I recall Captain
6 -- Mr. Dickson and Captain Graham.

7 MR. ROSENSTEIN: Oh, I apologize, I wasn't clear in
8 my question. I'm talking about documents, not the deposition
9 transcripts. I apologize.

10 JUDGE MORRIS: The documents are in.

11 MR. ROSENSTEIN: Okay. That was my first question.

12 And the deposition transcripts, to the extent that they've
13 been presented to you, Captain Dickson's, Captain Graham's
14 and Ed Bastian's, are in --

15 JUDGE MORRIS: Substantively.

16 MR. ROSENSTEIN: -- substantively.

17 JUDGE MORRIS: Yes.

18 MR. ROSENSTEIN: The other witnesses are -- you
19 have them as exhibits in the case, but are you limited in
20 what you can read in those depositions to only the pages --

21 JUDGE MORRIS: No, I'm going to limit them to what
22 was presented in the case, because they're for identification
23 purposes only, unless there's a motion or an offer with a
24 good rationale why they should be admitted substantively.

25 MR. ROSENSTEIN: Okay.

1 JUDGE MORRIS: Okay. So, do you have anything
2 else?

3 MR. ROSENSTEIN: No. I just wanted -- I couldn't
4 remember what we had agreed up on there. I thank you for
5 that.

6 JUDGE MORRIS: Mr. Seham, do you have anything else
7 to present?

8 MR. SEHAM: No.

9 JUDGE MORRIS: All right. So, I want to put this
10 on the record so that we have the exact same story.

11 JX-A through JX-N are in evidence.

12 (Joint Exhibits A through
13 N were received in evidence.)

14 JUDGE MORRIS: Let's turn to Complainant's Exhibits
15 first. Complainant's Exhibits 1 through at least 197 are in.

16 (Complainant's Exhibit Nos.
17 1 through 197 were received
18 in evidence.)

19 JUDGE MORRIS: I'm looking for CX-198 -- as to what
20 CX-198 is.

21 MR. SEHAM: I'm not sure -- there's 198, 199 and
22 200 would be Bastian, Dickson, Graham.

23 JUDGE MORRIS: Okay. All right, Dickson is 199.

24 MR. SEHAM: Okay. Then Bastian must be 198.

25 JUDGE MORRIS: Bastian is 198.

1 MR. SEHAM: And then Graham would be 200.

2 JUDGE MORRIS: No.

3 MR. SEHAM: No? I'm sorry.

4 JUDGE MORRIS: I have Ms. Pettitt's deposition as
5 CX-200.

6 MR. SEHAM: That should be an RX.

7 JUDGE MORRIS: No, it's not an RX, it's a CX, or at
8 least I have it identified as CX.

9 MR. ROSENSTEIN: I don't have a list,
10 unfortunately, from week one.

11 MR. SEHAM: We certainly -- our side did not put
12 that in. I think that was -- she was cross-examined --
13 you're talking about her deposition?

14 JUDGE MORRIS: Her deposition.

15 MR. SEHAM: Well, we didn't use it and I think
16 Respondent used it for one question.

17 JUDGE MORRIS: Well, I'm telling you it's a lot
18 more than one question, because -- oh -- you know what --

19 MR. ROSENSTEIN: You're reading the first -- wrong
20 caption.

21 JUDGE MORRIS: I'm reading the wrong caption.

22 MR. ROSENSTEIN: Yeah.

23 JUDGE MORRIS: This is Captain Graham's deposition,
24 so CX-200 is in. I stand corrected.

25 MR. SEHAM: Okay.

1 (Complainant Exhibit Nos.
2 198, 199 and 200 were
3 received in evidence.)

4 JUDGE MORRIS: Ms. Petitt's is identified as a
5 Respondent's Exhibit for identification, but I'm not at
6 Respondent's Exhibits, yet. I've just got to put these in
7 order.

8 I have the deposition of Dr. Faulkner as 201 for
9 identification, Ms. Nabors 202 for identification, Mr.
10 Puckett 203 for identification, his errata sheet is 204 for
11 identification, and Captain Davis' 205 for identification.
12 Those are not admitted into evidence. So, 201 through 205
13 are not admitted for identification.

14 (Complainant Exhibit Nos.
15 201 through 205 were
16 rejected.)

17 JUDGE MORRIS: Turning to Respondent's Exhibits, I
18 have Respondent's Exhibits 1 through 138 admitted into
19 evidence.

20 (Respondent Exhibit Nos.
21 1 through 138 were received
22 in evidence.)

23 JUDGE MORRIS: And I have the deposition of Ms.
24 Petitt, 139 for identification, is not admitted. Is that
25 correct?

1 MR. ROSENSTEIN: That's accurate.

2 (Respondent Exhibit No.

3 139 was rejected.)

4 JUDGE MORRIS: All right. So, we've addressed all
5 the documents.

6 I want to talk about a couple of things. I want to
7 note for the record I paid close attention during these nine
8 days, particularly I want to talk about the demeanor of the
9 Complainant. My observation is that -- my impression was
10 that she was alert, bright, engaging, confident, in some
11 cases one could even perceive as being cocky. However, I, at
12 no time, saw any type of emotion that would indicate anything
13 consistent with what Ms. Nabors observed. Now, I want to
14 state that specifically for the record, because this is one
15 point that bothers me in this case. Everything I've seen in
16 this file, with the exception of Ms. Nabors' report is not
17 what was being reported by Ms. Nabors. I don't know how to
18 resolve that, but it is diametrically opposed to everything
19 I've heard from witnesses and my observations of the
20 Complainant during these proceedings.

21 I'm going to notify the parties that pursuant to
22 the authority under -- if I can find it here -- 29 CFR
23 1979.108(b), I am seriously considering issuing an order or a
24 notice to the Federal Aviation Administration asking them to
25 separately file an Amicus brief in this matter. I am gravely

1 concerned from the testimony that I've heard about the
2 Section 15 and medical evidence not being turned over, upon
3 receiving information that a pilot has a medical deficiency
4 that results in a disqualifying for being entitled to
5 continuing operating of any aircraft. Now, their input, I
6 would ask would be limited to that. I'm not going to have
7 them read the volumes and volumes and volumes associated with
8 this, but I am concerned that this information is not -- at
9 least the understanding of at least the Respondent in this
10 case, does not have an affirmative duty to notify the FAA
11 upon having affirmative information of a potential medically
12 disqualifying factor. I am specifically concerned because
13 while -- and the parties may disagree with me on this, and I
14 understand that -- but as I'm understanding this process, it
15 only precludes an otherwise disqualified pilot from operating
16 its aircraft as opposed to another aircraft. What
17 immediately jumps in my mind is 91 subpart (k) with
18 fractional ownership, which occurred post the development of
19 the Section 15 process, as I understand this, and if this
20 pilot has a First or a Second Class Medical Certificate,
21 there's nothing to preclude them, absent not having the type
22 rating, from getting in that plane and flying other
23 passengers or getting into a general aviation aircraft. That
24 is inconsistent in my understanding and I'm willing to be
25 persuaded otherwise, that that is consistent with the highest

1 level of safety in air commerce, which is our obligations in
2 the aviation community and it is specifically and statutorily
3 required for a 121 carrier. And I don't know how or whether
4 it's even -- like I say, I understand ALPA and the Pilots
5 Union want to protect its pilots, I understand that the air
6 carrier wants to protect it from liability, but our
7 obligation under the Act is to the flying public, and that's
8 just not the passengers flying on the Respondent's aircraft.

9 I feel an obligation to at least get the input from the FAA
10 on that issue.

11 So, I just tell you that, it's gnawed at me since I
12 heard the position that the onus goes on the pilot who might
13 have a mental health issue. And I just want you to think
14 about that. We're relying on a pilot who -- and I'm not
15 saying whether or not, you know, Ms. Petitt is going to win
16 or lose, totally separate issue, but let's assume that this
17 bipolar was in fact the case -- we're asking a person with a
18 mental impairment to make the determination about their
19 mental deficiency, when we have someone outside of that who
20 has affirmative knowledge of that, who is responsible for the
21 protection of our public in our air space. Whether it
22 requires -- maybe that's the way the law is -- maybe that's
23 just it and there's nothing to be done about it. Somebody
24 needs to know about that. If that, in fact, is the status of
25 the law -- and we've had testimony here about the ARAC, maybe

1 the rule making committee needs to take a second look at
2 that, whether or not -- it just seems to me the high priority
3 that we place the burden on the pilot to self-report, but we
4 don't place the burden on the air carrier who has actual
5 knowledge to report that to the FAA.

6 Let's talk about briefs. My understanding, at this
7 point in time, that the issues of person -- that the employee
8 and the employer being subject to the ACT has been resolved.

9 It's my understanding that the company has conceded that she
10 engaged in protected activity with the filing of the report
11 in January of 2016, the 42-page report, that has been
12 resolved.

13 You may not agree with me, but I believe I've
14 already resolved the issue of adverse action referral to the
15 Section 15 being an adverse action. It's not a disciplinary
16 action. I don't disagree, it's not a disciplinary action,
17 per se, but it has adverse consequences. There's lots of
18 case law that talks about the adverse consequences associated
19 with that.

20 So, I want you to take the page time and talk about
21 causation. I remind you of the criteria under Palmer, a
22 contributing factor is all that the Complainant has to
23 establish. And then the company is going to have to show, by
24 clear and convincing evidence, that but for that protected
25 activity, they would have taken the same action.

1 MR. ROSENSTEIN: "But for," did you say that, "but
2 for the protected activity"?

3 JUDGE MORRIS: But for the protected activity.

4 MR. ROSENSTEIN: Right.

5 JUDGE MORRIS: Therefore, I am going to limit the
6 briefs in this case to 60 pages on each side, of which no
7 more than 50 pages shall be substantive. The last 10 pages
8 -- or you can use more out of the 60, however you want -- but
9 10 of those are going to be reserved to the issue of damages.
10 Now, it's going to take awhile to get this
11 transcript, so I'm going to set these dates out.

12 MS. BROWN: Will the FAA Amicus brief impact the
13 briefing schedule, at all?

14 JUDGE MORRIS: No.

15 MS. BROWN: Okay.

16 JUDGE MORRIS: Because they're under no obligation.
17 I don't -- they have the right to participate, but I'm not
18 going to hold up the train on this.

19 MR. SEHAM: Pardon me.

20 JUDGE MORRIS: Yes.

21 MR. SEHAM: Did I understand correctly, a minimum
22 of 10 pages on damages?

23 JUDGE MORRIS: At least -- if you go 50 pages
24 substantive, you can devote an additional 10 pages only on
25 damages. You can do 40 and 20, you can do 30 and 30, however

1 you want.

2 MR. SEHAM: But you don't want more than 50 pages
3 of substance.

4 JUDGE MORRIS: Correct.

5 MR. SEHAM: Okay.

6 JUDGE MORRIS: You can do three pages of damages,
7 for all I care.

8 MR. SEHAM: Very good.

9 JUDGE MORRIS: Given the length of this transcript,
10 I'm going to have Complainant's brief is going to be due
11 September 6th. And again, I put this on the record because
12 I've been snookered -- one-inch margins, double spaced, not,
13 you know, 1.9, not 1.8 inches, one-inch margins, double
14 spaced, 12 font Times New Roman. Footnotes can be -- I ask
15 the footnotes be Time New Roman 11.

16 MR. ROSENSTEIN: Perfect.

17 JUDGE MORRIS: I ask that when you send them, the
18 official copy is the one that you mail, but I also ask that
19 you send, to the Tribunal, both a Word version and a PDF
20 version to expedite my process. I'm not going to turn to
21 this until I have the briefs in-hand. That just makes it
22 more timely for me to do this.

23 Respondent's brief, same thing, 60 pages, 50
24 substantive. Your brief is due October 11th.

25 The Complainant has the burden, or at least the

1 initial burden, therefore, I'm giving her a second bite of
2 the apple. You will be limited, on your reply brief, to 25
3 pages. That will be due November 8th.

4 I will tell you what will greatly assist me in your
5 briefs, and it's clear to me that one of the things is a
6 timeline, when things happened seems to be really important
7 in this case, the order that things happened.

8 The other thing that I will tell you, I'll just be
9 up front, you are not going to like my findings, factually.
10 If you really want this out there, I would think long and
11 hard about this. You can settle at any point you want to,
12 but the facts in this case -- I'm going to lay it out -- I'm
13 going to lay it out -- and from what I'm hearing it's not
14 pretty. You've got some -- you have a pilot that was
15 identified, went through, I'll call it a "gauntlet," get
16 reinstated. And I understand the company is torn, the
17 company has a hard decision to make, given the Germanwings
18 scenario, but there's more to that than just the Germanwings
19 scenario. And I am really troubled by some of these
20 exhibits, about how this referral came to fruition. And I
21 think that that's really -- it troubles me a great deal, I'll
22 just tell you that. That does not mean -- please, do not
23 take this as, you know, Ms. Petitt -- they're a long way from
24 saying, yes, you win. I would tell you, flat out, if I could
25 do a decision on the record -- although it has to be a

1 written decision, it doesn't mean I couldn't do it and use
2 the transcript -- but you all have to make a business
3 decision if you want all this laundry out there.

4 As far as the exhibits itself, if I noticed -- I
5 will note for the record I've got "Confidential" all over the
6 place in these documents, these are public records. I am not
7 going to seal this stuff, unless you've got some compelling
8 reason. This is information that needs to get out there
9 about how this process has done with these documents. So,
10 you can ask, but this is a public hearing.

11 I have given both parties great latitude on
12 hearsay. Now, one of the things that you need to know of is
13 I'm not going to give hearsay the same weight that I'm going
14 to give direct evidence. And there might have been a whole
15 bunch of other stuff there, but I don't pick what witnesses
16 are called and stuff like that. So, you know, be forewarned
17 that if it's hearsay it's going to get less weight,
18 generally, than direct evidence. And multiple hearsay is
19 going to get less weight than just simple hearsay. And while
20 the rules of evidence do not apply, per se, I'm going to use
21 that as a guide in assessing what weight I give this
22 information.

23 The long and the short of it, frankly, is no matter
24 how I rule, this is a sad case. It really is. It's a sad
25 case. And I would encourage the parties to think long and

1 hard about settling this, before I write this decision,
2 because you can't un-ring that bell.

3 Any questions?

4 MR. ROSENSTEIN: I have a question on the briefing.
5 You said that you were going to give the Complainant a reply
6 brief, because they had the burden, if I understood?

7 JUDGE MORRIS: Yes.

8 MR. ROSENSTEIN: Their burden is only on the first
9 prong, correct?

10 JUDGE MORRIS: Right.

11 MR. ROSENSTEIN: So, is there an opportunity either
12 for Respondent to have a reply on the part of the case for
13 which Respondent has the burden on the second one?

14 JUDGE MORRIS: No.

15 MR. ROSENSTEIN: That doesn't seem fair and I'll
16 state that for the record.

17 JUDGE MORRIS: It's noted, preserved for appeal.

18 MR. ROSENSTEIN: You can count on it.

19 JUDGE MORRIS: It's your prerogative. Anything
20 else?

21 (No verbal response.)

22 JUDGE MORRIS: All right. This hearing is closed.

23 (Whereupon, the proceedings concluded at 1:49
24 o'clock p.m.)

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REPORTER'S CERTIFICATE

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TITLE: Petitt vs. DELTA AIR LINES, INC.,
CASE NUMBER: 2018-AIR-00041
OWCP NUMBER: n/a
DATE: May 1, 2019
LOCATION: Des Moines, WA

This is to certify that the attached proceedings before the United States Department of Labor, were held according to the record and that this is the original, complete, true and accurate transcript which has been compared to the reporting or recording accomplished at the hearing.

SIGNATURE OF REPORTER DATE