

December 11, 2012

U.S. OFFICE OF
SPECIAL COUNSEL
WASHINGTON, D.C.
2012 DEC 14 AM 7:54

Carol Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW – Suite 218
Washington, DC 20036

Subject: Sean Dunleavy – FAA-AAE Report
Re: OSC File No. DI-12-1960

Dear Ms. Lerner:

Before going into my detailed comments on the FAA –AAE report I would like to summarize my thoughts after reading the report. (Detailed Report attached)

As you know, I made a choice to possibly risk my career and personal safety in order to disclose various public safety violations committed by FAA-AAE personnel in the Westchester tower.

It appears that these violations and actions will never be voluntarily corrected by the FAA report. This opinion is based upon the fact that the FAA-AAE report found that the serious violations that were reported and that were taped never really happened.

The report contains numerous pretextual explanations why the tapes are not credible such as Forensic evidence show that some of the tapes were from years ago and although the tapes show a controller on duty with a book open the desk the angel does not show that her eyes are looking at the book. Naturally a controller to be guilty does not have to be reading a personal book continuously.

The report accepts ridiculous “explanations” offered by the controllers such as sleeping only occurred in a break room (which never existed) or in the tower while on a break. The rule is one cannot sleep while on breach.

In any event these pretexts were all accepted by the FAA to negate the tapes and all of my personal examples of safety violations which I was personally involved in.

Therefore it would appear that the FAA has concluded that no one was sleeping, no one was improperly watching TV, no one was reading a book, no supervisor created safety violations and if anyone was texting it was such a forgivable action it only justified a Letter of Reprimand of course, the supervisor could not be blamed for “not seeing” any violations since it is impossible to watch controllers actions while reading your Kindle.

All of the controllers were disciplined by being given Letters of Reprimand for improper use of electronic equipment in the Tower. I was also disciplined for the same violation which occurred while I was recording the safety violations.

Although the controllers involved have all received their discipline, I have been ordered to report to the Tower this Friday to be questioned in an investigation in which I am a principal.

Sincerely,

Sean Dunleavy

This is my review of the Department of Transportation's Report of Investigation into the Westchester control tower. The investigation by the Office of Audit and Evaluation (AAE) was never intended to address the safety concerns I raised in my disclosure. Rather it was designed to cover up the disclosure by attacking the credibility of my evidence.

Along with my comments, I have included as supporting evidence of this cover up Affidavits from Westchester controllers made prior to the Fox 5 broadcast, and various E-mails to the AAE investigators, as well as your office and statements from controllers who were interviewed by the AAE investigators. From the very beginning the AAE investigators compromised their investigation by telling the controllers they were not in any trouble and that they were not going to ask questions about sleeping, which they did not. When I found out what they were doing I arranged to have Fox5 news release the complete video tapes to the AAE and they still did not go back and re interview the sleeping controllers. One of the AAE investigators went as far as to offer and assist a controller help with a transfer to a higher paying facility attempting to gain his cooperation.

The following are findings taken directly from the ROI and the reasons I can make these statements.

- 1.) WE DID NOT SUBSTANTIATE THE ALLEGATION THAT CONTROLLERS SLEPT IN THE TOWER CAB EITHER ON OR WHILE DUTY OR WELL ON BREAK OR IN ANY LOCATION IN THE TOWER.

Who is determining what is or is not sleep. AAE investigators are neither trained nor qualified to make this statement that the controllers were not sleeping. If they believe the video tapes were not clear enough proof, they should have gotten an expert opinion as they did so with the points they wish to prove. When AAE states that they cannot confirm the controller was in position, they did not take me up on my offer for me to review the tapes and explain the facts that the controllers were in position. Any controller other than those controllers being charged with violations would easily demonstrate how the tape proves that the controllers were in position.

See Video Tapes

2.) AAE WAS TASKED WITH INVESTIGATING THE SAFETY ISSUES RAISED IN MY IN MY DISCLOSURE AND INSTEAD FOCUSED THEIR INVESTIGATION DISCREDITING MY COMPLAINANT

In the DOT ROI there are countless instances of the AAE investigators questioning my actions instead of the issues raised by my disclosures.

3.) THE TOWER CAB WAS CLEARLY SET UP TO ACCOMMODATE EMPLOYEES TAKING BREAKS.THERE IS A COFFEE MAKER TOASTER OVEN AND MICRO WAVE.

This cannot be further from the truth, the tower cabs are never designed for controllers to take breaks, and it is in fact discouraged because of the distractions caused by controllers on break in the tower cab. The sinks are for sanitary purposes, the coffeemaker, toaster and microwave are for when controller staffing prevents the employees from leaving the tower cab, example snow storms, weather events, equipment outages etc. The television set should have never been in the tower cab to begin with.

4.) EVIDENCE SUGGESTS THE TELEVISION WAS FACING THE BACK OF THE TOWER CAB (BREAK ROOM) AND NOT THE OPERATIONAL AREA.

This is virtually impossible, the tower cab is 5 sided and approximately 18 feet in diameter, it is all glass and there is no back of the tower cab. When planes land in Westchester tower, they come from the 360 degree radius; the reason for a five sided room is all glass. If this was true then the supervisors were watching TV from where they sit on the back

5.) ALL 3 FLMS HAD SEEN TV BUT DENIED TV WAS KEPT IN THE TOWER.

All 18 controllers said that the TV was kept in the tower and 7 admitted watching it. If the AAE statement is true then why prior to the investigation was the TV removed. TV had been in the tower since its purchase 2 years earlier by the previous union president Ted Bye.

6.) WE FOUND NO EVIDENCE THAT ITEMS (ITEMS LEFT OR PLACED IN MY LOCKER OR PERSONAL SPACE) CONVEYED A SPECIFIC THREAT TO THE PERSONAL SAFETY OF MR. DUNLEAVY.

A book about assassination and murder left in my personal space while a supervisor was on duty I consider 'a specific threat to my personal safety.' On March 28 2012, on instructions from Ms. Tracy Biggs investigator for OSC, I contacted the manager of Westchester tower Mr. Dwight Lemelle about the investigations involving harassment and retaliation against myself. I received no response.

AAE investigators admit postings in the internet contain threats such as pushing me down a staircase, giving me a blanket party.

The most disturbing posting was by Pete66, the information contained in it could only have come from a Westchester controller. The Posting states it was a Patco Controller and the union has already decoded his voice. Note 'In the DOT ROI, Controller Joseph Morin admits that he decoded the Fox 5 broadcast voice and distributed to all the controllers at Westchester Tower. Furthermore, the posting states, the plan is to set him up with a deal, only a Westchester Controller would know this, and if that doesn't work, he better watch his back because he will be pushed down the stairs.' It goes on to say the sups are also in trouble, they said they are with the controllers when he gets attack, this is further proof that this could have only have been written by a Westchester Controller.

While the AAE investigators were interviewing me, one of the controllers in the tower while FLM Degenarro was present stated 'I was reported by two people for using my kindle fire while on position when I find out who they are I am gone go to their homes and take care of them.' I told the AAE investigator of what just took place and requested an immediate investigation and requested that she immediately interview the controllers present, as well as supervisor Degenarro. The AAE investigator not only did not act on my request, I was put on 2 weeks of administrative leave and sent home. This is further proof that, the AAE investigators were never interested in the truth but rather were there to cover up the entire incident.

The AAE investigator and Manager Lemelle took the threat seriously enough to immediately put me on 2 weeks of administrative leave and send me home but did not interview

or investigate any of the controllers or the supervisor that was present. This confirms what was said by Pete66 in Stuckmike.

7.) FAA REQUESTED ACCESS TO UNEDITED VIDEO EVIDENCE.

FAA was told by me that Fox 5 News was the owner and custodian of the unedited original video tapes. FAA was told that Fox 5 News would immediately hand the tapes over if subpoenaed. I didn't have the tapes but in June when I realized the AAE investigation was nothing but a cover-up and a fraud, I arranged for Fox 5 News to transfer the copies of the tapes to FAA Security, Senator Gellibrand, OSC and FAA Office of Audit and Evaluation. The FAA could have obtained the tapes at any time but chose not to. The AAE investigators were aware of this and could have obtained the tapes at any time.

8.) AAE STATES THEY WERE UNABLE TO DETERMINE WHETHER CONTROLLERS IN VIDEOS WERE ON POSITION.

I repeatedly offered to assist the AAE investigators in interpreting the tapes. I explained to them why in fact the controllers were in position and went as far as to offer to visit their office in Washington to help with their investigation.

9.) ON MAY 8, 2011 (MOTHERS DAY) MR.DUNLEAVY WAS REQUIRED TO WORK SEVEN AND A HALF HOURS WITHOUT RELIEF. (ALLEGATION #2) UNSUBSATNCIATED

Both Thomas Kanzler and Dan Lyons in sworn affidavits made prior to the Fox 5 News broadcast explained how Nicole Labate refuses to call in overtime when Mr. Dunleavy is working a shift. Dan Lyons states in his affidavit that he has heard Ms. Labate State that she will not call in overtime when Mr. Dunleavy is working. (See Kanzler and Lyons affidavit). Because overtime was not assigned, it was inevitable that one person was going to spend seven and a half hours on position, as it turns out even the controllers who got breaks, were unusually short and limited.

10.) ON JULY 5, 2011 MR. DUNLEAVY AND COWORKERS REQUESTED ASSISTANCE FROM FLM DEGENNARO AND FLM DEGENNARO FAILED TO RRIIVE. (ALLEGATION #3)

Unsubstantiated, Both controllers Lyons and Kanzler confirmed that emergency request were made downstairs to both FLM Degenarro and Manager Lemelle that we needed immediate assistance due to the unexpected volume of traffic and the short staffing that was caused by not assigning overtime on a holiday weekend.

11.) ON AUGUST 7, 2011 MR.DUNLEAVY WAS TRAINING DAN LYONS ON THE LOCAL CONTROL POSITION AND ASKED CIC NICOLE LABATE TO REQUEST MORE SEPARATION BETWEEN ARRIVALS. (ALLEGATION #4)

Ms. Labate refused a direct request from Certified Professional Controller Dunleavy to increase separation for safety reasons. This was not her decision to make and was an obvious act of retaliation on her part. When I reported to my supervisor and manager they took no action. It was at this point that I reported to David Weingart, chief of staff of FAA. When he took no action, I felt I had no choice but to take the course of action that I did to protect the safety of the flying public at Westchester airport. Furthermore I warned the AAE investigators that both Thomas Kanzler and Dan Lyons would probably change their sworn testimony and lie under pressure from the union.

See Email David Weingart, email dated august 16th 2011 Appendix K DOT ROI

12.) ON MARCH 19TH 2012 MR. DUNLEAVY RECEIVED ANOTHER CONTROLLER ON GROUND CONTROL POSITION, MR WALCOTT. MR. DUNLEAVY REQUESTED CLARIFICATION ON THE NORTHBOUND RESTRICTION, MR. WALCOTT REFUSED AND ABRUPTLY UNPLUGGED AND LEFT THE TOWER CAB. (ALLEGATION #5)

The AAE investigators state, Dan Lyons who was working Local control at that time stated 'you told Mr. Walcott, you had the SIA and Flow, and Mr. Lyons insisted that the safety was not compromised. This conversation never took place; it is another example of a controller being influenced by the AAE investigator who at this point in time was using their influence to obtain a transfer to a higher paying facility. There was in fact a serious safety issue that I had uncovered during the briefing that no one else would have been aware of. When Mr. Wycliffe was explaining his traffic, I saw that his flight progress strips for this northbound aircraft were

marked with restrictions that did not match the flow board. This meant that either the flow board was incorrect or Mr. Wycliffe had mismarked his departure strips which could lead to a separation error, near midair or worse.

13.) ALLEGATION #6

After the Fox 5 News broadcast the controllers at Westchester Tower at the direction of the Union ceased to have any interaction with myself whether professionally or personally. It is a direct safety violation when you make a request of a fellow controller working on your team and they do not answer you. An example of this was the Wycliffe incident where I had to assume the ground control position without a complete briefing.

14.) IN FEBRUARY, 2012 THE UNION HAS FUND RAISING EVENT ATTENDED BY OVER THREE HUNDRED PEOPLE IN N.Y. CITY MR. DUNLEAVY WAS NOT DISCUSSED. (PAGE 28)

15.) MR. DUNLEAVY COULD PROVIDE NO SPECIFIC EVIDENCE OR EXAMPLES WHERE HIS COWORKERS ATTEMPTED TO "SET HIM UP" WITH A SAFETY EVENT. (PAGE 30)

Dan Lyons and Thomas Kanzler and other controllers state that Nicole Labate has a regular practice harassed and tried to get me in trouble. The way she would do this was trying to set me up with separation error putting the safety of flying public at risk and trying to cost me my job. One example of this is her refusal to call in overtime when I was working a shift that required overtime.

This is my review and opinion of the Office of Audit and Evaluations (AAE) Report of Investigation of Westchester Control Tower. I filed a disclosure with the Office of Special Council (OSC) because the air traffic controllers at Westchester tower were endangering the lives of the flying public through their in attention and such safety violations as sleeping, reading, texting, personal phones calls and playing video games all while on position. I took the actions because Westchester and FAA management as high as David Wiengard, FAA Chief of Staff, were made aware of the violations and took no actions. The Office of Audit and

Evaluation was tasked with investigating and recommending corrective action. AAE's investigation was less than honest and completely not true. AAE investigators told the controllers they were not here to investigate sleeping and did not.

The AAE investigator stalled the investigation as long as they could and then filed for a sixty day extension. In that sixty days a near miss between two aircraft coming within one hundred feet of each other occurred at Westchester airport.

Within recent time of the investigation in Teterboro, N.J., a controller possibly on a personal phone call caused eleven people to be killed in Lexington, K.Y. Even with all of this the AAE investigators recommended no corrective actions because they claim "We did not substantiate the allegation that controllers slept in the tower cab either on duty or on break in any location in the tower".

Based upon the above FAA actions, I respectfully request that you disregard the FAA-AAE Report and continue to take the steps necessary to compel the FAA to correct the actions that I have disclosed.

Dated: December 11, 2012

Sean Dunleavy