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December 28, 2011

Jennifer Pennington
Attorney, Disclosure Unit
U.S. Office of Special Counsel
1730 M. Street, N.W., Suite 218
Washington, D.C. 20036-4505

Re: OSC File No: DI-11-1353 (Report of Investigation and Supplemental Response)

Dear Ms. Pennington:

Thank you for forwarding the FAA's supplemental response dated November 4, 2011 and giving my client an opportunity to reply to the FAA Report of Investigation. Our general comments are set out below. An allegation-specific commentary follows on attached pages along with an executed copy of the Consent to Public Release of Written Comments on Agency Report.

We are disappointed in the FAA's supplemental response, which focuses on non-specific allegations of managerial misconduct and yet more internal investigations prior to undertaking any definitive disciplinary action.

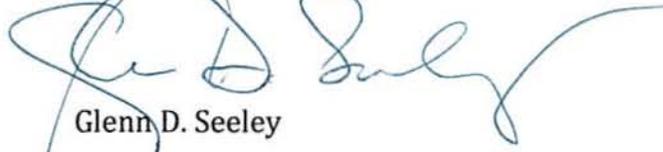
Unstated are the names of the ZNY managers pending disciplinary action in this matter.

The ATC who has admitted to taking unlawful job actions has apparently not been disciplined and there is no indication that he ever will be.

Unacknowledged and unaddressed in the entire FAA response is the role of NATCA in the systemic problems at ZNY. The failure of the FAA to recognize NATCA's role in the dysfunctional management of ZNY guarantees that this unfortunate experience will be repeated. It speaks volumes that the majority of interviewees chose to be interviewed off-site for fear of retaliation from other workers at the facility. The FAA Investigative Report substantiates all allegations regarding management misconduct, but, embarrassingly, fails to substantiate claims implicating NATCA

membership and demonstrates a noticeable lack of vigor in investigating those allegations.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Glenn D. Seeley". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Glenn D. Seeley

Enclosures:

Cc: Client

Complainant's Responses to FAA Report of Investigation

Substantiated Allegations (1, 2, 3, 7, 8, 12, 13, 14)

Complainant has no additional comments to make regarding these established facts.

Non-Substantiated Allegations (9, 10, 11)

Allegation 9: WIFI Routers

The investigative team found no wireless routers to be physically present in the operations area, however, the physical presence of a router within the operations area is not needed to allow for signal reception. The presence of these WIFI signals was a contributing factor to the blatant violations of the FAA's personal electronics policy on the midnight shift. After the team verified the violations of the personal electronics policy, the Agency should have immediately removed WIFI routers from the facility. We are unimpressed with the explanation that NATCA has permission to use routers in its assigned office space. The presence of the routers is compromising public air safety. Allowing these routers to stay active encourages future violations and opens the Agency to liability should an accident occur because a controller was engrossed in a streaming movie or an online poker game. To protect the flying public, these routers should have been removed immediately.

Allegation 10: Violations of the Eight-Hour Rest Period between Shifts

This allegation became a national issue after multiple controllers fell asleep while on duty. It is complainant's belief ZNY management and NATCA focused on minimizing this violation after complainant's departure and before the investigative team arrived. Had the investigative team conducted a more thorough investigation into this practice prior to February 2011, this allegation would have been fully substantiated.

Allegation 11: Time and Attendance Fraud by Controllers

A random sampling over thirty-two hours may not have been enough time to verify this allegation. Further, complainant would argue that Allegation 12 (leaving early), which was verified and constitutes irrefutable evidence of time and attendance fraud.

Partially Substantiated (4, 5, 6, 15)

Allegation 4: Failure to issue WX Advisories

The investigative team found controllers at ZNY were failing to issue precipitation advisories to aircraft but did not find conclusive evidence that such behavior was pervasive.

The team interviewed FLMs and the Quality Control Manager who proceeded to give reasons why FAA JO 7110.65 2-6-4(a) did not apply to ZNY. This is at the heart of why there is such a large problem at ZNY. Management and controllers alike believes the same safety standards that apply to every other air traffic facility in America, somehow, do not apply to ZNY.

The investigative team did, however, find ZNY was consistently disseminating AIRMETs and SIGMETs. Simply issuing AIRMETs and SIGMETs does not adequately advise pilots as to convective activity.

Example:

A small high performance twin-engine aircraft is in instrument meteorological conditions and climbing through seventeen thousand feet on his way two twenty-two thousand feet. This aircraft is moving at two hundred and thirty miles an hour towards a large area of extreme precipitation. The pilot is not aware of the precipitation because he has no on-board weather radar. Twenty miles before approaching the leading edge of this precipitation, the pilot hears the ZNY controller state:

“Attention all aircraft, hazardous weather information, convective SIGMET one eastern for portions of NY, PA, and CT valid until 2100Z available all HIWAS, flight-watch and flight service frequencies.”

No further information about the precipitation is given from the ZNY controller.

The pilot is too busy flying the plane to check the weather report. Five minutes later the aircraft slams into the leading edge of that extreme precipitation and the right wing of the aircraft is ripped off by severe convective activity. From nearly twenty thousand feet, the pilot and three passengers plummet to the ground.

The ZNY controller who felt he was “too busy” to issue chaff advisories is negligent. Thus the FAA is liable and will be held accountable.

Allegation 5: Functional Training

ZNY has discontinued functional training and, thus, has fixed some of the problem.

Allegation 6: Improper Work Slow Downs/ Stoppages

Certain controllers in Area B would regularly make threats to shut off New York Approach Control unless miles in trail were given. ZNY management would then give in to the controllers' demands and the threat was never carried out. Hopefully, if these threats are made again, ZNY management will recognize this kind of threat as illegal and take immediate disciplinary action.

The investigative team interviewed ZNY staff and found them able to recite the procedure for procuring miles in trail. However, like many other rules and procedures, this one was not always followed.

The investigative team confirmed complainant's allegation that work stoppages would regularly occur with regards to On the Job Training Instruction (OJTI). We can now view this allegation as an established fact. Incredibly, the Agency seems to be taking no action against NATCA for encouraging this behavior or against the offending ATCs.

The Executive Summary lists incorrectly lists "job actions such as refusal to provide OJT" and "improper slowdowns" under partially substantiated, yet the Report of Investigation goes on to confirm these allegations.

Allegation 15: Supervisor Fraud

The investigative team found FLM Thumser to be defrauding the FAA. As a result of his fraudulent sick leave use, complainants schedule was changed regularly to cover FLM Thumser's shifts.