



Robert MacLean &lt;rjmaclean@gmail.com&gt;

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**Fwd: RE: MacLean - Agency Position on Reinstatement**

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**Thad Guyer** <thad@guyeyayers.com>

Thu, Apr 23, 2015 at 10:18 PM

To: Robert MacLean &lt;rjmaclean@gmail.com&gt;

Cc: Tom Devine &lt;TomD@whistleblower.org&gt;, Karen Gray &lt;kareng@whistleblower.org&gt;

Robert, attached is the Agency's statement of its continuing position that it will reinstate you only to your former position. Once again the Agency states it is [prepared to](#) do this unilaterally and soon. The agency wants to effectuate that pro forma reinstatement and just get our numbers on attorneys fees and back pay. Thad

----- Forwarded message -----

From: "Calaguas, Eileen &lt;TSA OCC&gt;" <[Eileen.Calaguas@tsa.dhs.gov](mailto:Eileen.Calaguas@tsa.dhs.gov)>

Date: Apr 24, 2015 9:04 AM

Subject: RE: MacLean - Reschedule Telecon

To: "Thad Guyer" <[thad@guyeyayers.com](mailto:thad@guyeyayers.com)>Cc: "Tom Devine" <[TomD@whistleblower.org](mailto:TomD@whistleblower.org)>

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Settlement Discussions

Thad,

By now, I trust that you've communicated to Mr. MacLean that it would be inappropriate for me to respond to his emails, text, and phone message. Likewise, he should avoid contacting me directly again, so long as he has a designated representative.

While I certainly understand how Mr. MacLean would welcome some type of "interim relief" prematurely, the continued delay in calculating and paying his back pay is a result of the fact that he has not yet been reinstated. Again, the Agency is prepared to reinstate him and, at this point, even as early as May 1, 2015, and unilaterally so. But, for his part, Mr. MacLean eventually must provide the required information regarding his other income and deductions, all of which offsets the back pay amount – as a matter of law. In light of your use of an economist, there should be no further delay in disclosing and considering this type of information now, as a means of resolving this case.

As to your suggestion for the types of positions to which Mr. MacLean could be reinstated, Mr. MacLean would be entitled to return only to his former position, Federal Air Marshal at the I-band, should the MSPB ultimately find in his favor. Therefore, he should not expect reinstatement into another position, let alone one that does not currently exist. As a Federal Air Marshal, his job duties would be to fly missions, and I see no reason to negotiate further on this point. Rather, we must return to our initial discussions, which, if you recall, focused on ascertaining dollar figures without further litigation. To include Tom in such settlement discussions, let's talk on Monday, April 27 at 6 PM (PST). As an alternate, I can also be available on Wednesday, April 29 at 6 pm (PST). Please provide the breakdown in requested attorney fees prior to our telecon. Thank you. Eileen.

**From:** Thad Guyer [mailto:[thad@guyeyayers.com](mailto:thad@guyeyayers.com)]**Sent:** Thursday, April 23, 2015 9:19 AM**To:** Calaguas, Eileen <TSA OCC>**Cc:** Tom Devine**Subject:** Re: MacLean - Reschedule Telecon

Eileen, I will be unable to have the followup telecon with you refernced in your email below. Tom Devine or I will get back with you to reschedule. Thanks. Thad

On Apr 22, 2015 3:57 AM, "Calaguas, Eileen &lt;TSA OCC&gt;" <[Eileen.Calaguas@tsa.dhs.gov](mailto:Eileen.Calaguas@tsa.dhs.gov)> wrote:

Privileged and Confidential  
Settlement Discussions

Thad,  
Attached hereto is a draft joint motion. Please revise as you see fit and return the signature page with your signature via email. I will sign and file it upon receipt.

Also attached hereto is the Agency's guidance for administering back pay. I'm specifically including the checklist that will be applied in Mr. MacLean's case.

Finally, to try to move this along quicker, I'm including the preliminary calculation that I referenced in our telephone discussion. The amount reflected therein (\$891,709.20) is a ceiling, from which employment wages and other factors must be deducted. As you can see, our numbers are far apart, and it appears to me that your economist's calculation (\$1,260,000.00) does not include any such mandatory deductions, but I trust that we will work together towards reconciling this difference.

Please promptly forward a breakdown of the \$1.6 million in attorney fees requested, which you indicated was an accumulation of work performed by five different law firms. Let's talk on April 23, at 6 pm (PST) - call me at [415-503-4602](tel:415-503-4602), as I will remain in my office until I hear from you. Thank you.

Eileen Dizon Calaguas  
TSA Attorney Advisor  
San Francisco Mission Support Center  
450 Golden Gate Avenue, Suite 1-5246  
P.O. Box 36018  
San Francisco, CA 94102  
[415-503-4602](tel:415-503-4602) (desk)  
[415-554-9501](tel:415-554-9501) (fax)

**RE: 5 USC § 3352 RE: Meeting with FAMS Director Allison**

Hollock, Nicole

**Sent:**Friday, November 20, 2015 10:38 AM

**To:** MacLean, Robert

**Cc:** rjmaclean@gmail.com

**This message has been archived.**

Robert-

Your email has been forwarded. Have a nice weekend.

Respectfully,

- Nicole

From: MacLean, Robert

Sent: Thursday, November 19, 2015 1:40 PM

To: Hollock, Nicole

Cc: rjmaclean@gmail.com

Subject: 5 USC § 3352 RE: Meeting with FAMS Director Allison

Hi Nicole,

Can you please forward this law text to Director Allison pursuant to our first global resolution meeting held this morning?

5 USC § 3352. Preference in transfers for employees ma



**Transportation  
Security  
Administration**

**MEMORANDUM FOR:** Robert J. MacLean  
Federal Air Marshal

**FROM:** Eric Sarandrea   
Acting Deputy Assistant Administrator/Deputy  
Director

**SUBJECT:** Response to Request Regarding J Band Assessment and Hiring  
Preference

**DATE:** December 17, 2015

This memorandum is in response to your request addressed to Administrator Neffinger dated November 27, 2015. Your memorandum was referred to me to provide a response to your inquiry. For the reasons discussed herein, your request for a transfer to a Supervisory J Band position is denied.

In your request to Mr. Neffinger, you indicate that you should be given priority placement into the J Band Supervisory Federal Air Marshal position advertised under FAM-15-957211. In your memorandum, you cite to 5 U.S.C. § 3352 as the basis for the Agency to grant your request.

The statute that you cite to does not apply to TSA under the Aviation Transportation and Security Act (49 U.S.C. § 114(n)). However, even assuming that it does apply, the plain reading of the law indicates that you are not eligible for placement in a higher band position solely because of the MSPB decision. The law allows for a one time transfer to a position of the same status and tenure as the employee's position on the date of applying for a transfer. Therefore, the law does not require the Agency to promote you, which is what you are requesting. In addition, the law also states that an employee is only entitled to one transfer. You have already been granted a one-time lateral transfer at your request from your former duty location at the Los Angeles Field Office to the Washington Field Office.

*Permanent Internal Assignments*, TSA MD 1100.30-4, and TSA Handbook to TSA MD 1100.30-4, *Permanent Internal Assignments Handbook*, Section C.1 states that an employee cannot advance from the non-supervisory level to the supervisory level without formal competition. As you are aware, the Agency has allowed you to enter the J Band Promotion assessment process which began in June 2015. As part of the process, you will receive assessment score following completion of the assessment process. Once you receive a score, you

will be able to apply for available Job Opportunity Announcements. This is being done outside the normal promotion process (as opposed to making you wait until the 2016 J Band promotion process) so as to give you earlier access to promotion opportunities.

As discussed above, the Agency must respectfully deny your request for priority placement into a supervisory position.