NOT FOR PUBLICATION

FILED

NOV 22 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT S. MAWHINNEY, Petitioner, v. TRANSPORT WORKERS UNION, LOCAL 591; U.S. DEPARTMENT OF LABOR, Respondents.	No. 21-70039 ARB Case No. 2019-0018 MEMORANDUM[*]

ROBERT S. MAWHINNEY, Petitioner, v. U.S. DEPARTMENT OF LABOR; AMERICAN AIRLINES, INC., Respondents.	No. 21-70283 ARB Case No. 2020-0067

On Petitions for Review of Orders of the
Department of Labor

Submitted November 15, 2022[**]

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Robert S. Mawhinney petitions pro se for review of the Department of Labor's Administrative Review Board's ("ARB") decisions and orders dismissing his whistleblower complaint under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR21"). We have jurisdiction under 49 U.S.C. § 42121(b)(4)(A). We review the ARB's decisions in accordance with the Administrative Procedure Act ("APA"), "under which the ARB's legal conclusions must be sustained unless they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and its findings of fact must be sustained unless they are unsupported by substantial evidence in the record as a whole." *Calmat Co. v. U.S. Dep't of Labor*, 364 F.3d 1117, 1121 (9th Cir. 2004). We deny the petitions.

The ARB properly granted summary decision against Mawhinney on his AIR21 claim against American Airlines, Inc. ("Airline") because this court has already affirmed the arbitrator's award in favor of the Airline on this claim. *See Am. Airlines, Inc. v. Mawhinney*, No. 19-55566, 807 F. App'x 720 (9th Cir. June 2, 2020). Mawhinney's challenge to the propriety of the decision to compel arbitration of his AIR21 claim against the Airline likewise fails because this court has already affirmed the order compelling arbitration of this claim. *See Am. Airlines, Inc. v. Mawhinney*, 904 F.3d 1114 (9th Cir. 2018).

The ARB properly granted summary decision against Mawhinney on his AIR21 claim against Transport Workers Union, Local 591 ("Union") because the Union was not an air carrier, or a contractor or subcontractor of an air carrier, under AIR21. *See* 49 U.S.C. § 42121(a) (2020) (providing that AIR21 bars retaliation by an "air carrier or contractor or subcontractor of an air carrier"); *id.* § 42121(e) (defining a "contractor" as "a company that performs safety-sensitive functions by contract for an air carrier"); *Nat'l Mining Ass'n v. Zinke*, 877 F.3d 845, 866 (9th Cir. 2017) (noting that the standard of review under the APA is "highly deferential, presuming the agency action to be valid and affirming the agency action if a reasonable basis exists for its decision" (citation and internal quotation marks omitted)).

We reject as without merit Mawhinney's contention that his due process rights were violated.

PETITIONS FOR REVIEW DENIED.