

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

DISH NETWORK, LLC)	
)	
)	
Petitioner/Cross-Respondent)	
)	
v.)	No. 17-60368
)	
NATIONAL LABOR RELATIONS BOARD)	
)	
)	
Respondent/Cross-Petitioner)	

**JOINT MOTION TO DISMISS DISH NETWORK’S PETITION FOR
REVIEW IN PART AND THE BOARD’S CROSS-APPLICATION FOR
ENFORCEMENT IN PART, AND TO SEVER AND REMAND TO THE
BOARD THE REMAINDER OF THE CASE**

To the Honorable, the Judges of the United States Court
of Appeals for the Fifth Circuit:

DISH Network, LLC, by its counsel, and the National Labor Relations Board, by its Deputy Associate General Counsel, pursuant to Federal Rule of Appellate Procedure 42(b), respectfully move the Court to dismiss DISH’s petition for review in part and the Board’s cross-application for enforcement in part, and to sever and remand to the Board the remainder of the case for reconsideration in light of the Board’s decision in *The Boeing Company*, 365 NLRB No. 154, 2017 WL 6403495 (Dec. 14, 2017). In support thereof, the parties show as follows:

1. In the Board’s Decision and Order under review, the Board found that DISH violated the National Labor Relations Act, 29 U.S.C. § 151, et seq.

(“the Act”) by maintaining an arbitration agreement that restricts employees’ access to the Board’s processes and that requires confidentiality in all arbitration proceedings. *Dish Network, LLC*, 365 NLRB No. 47, 2017 WL 1406206 *2-3 (April 13, 2017). The Board also found that DISH violated the Act by orally instructing an employee not to discuss his discipline pending investigation. *Id.* at *3-4.

2. On February 12, 2018, after briefing was completed, the Board filed a motion asking the Court to sever and remand to the Board its findings that DISH’s maintenance of its arbitration agreement, both with respect to the Board-process restriction and confidentiality provision, violated the Act, explaining that both of those issues were impacted by the Board’s subsequent decision in *The Boeing Company*, 365 NLRB No. 154, 2017 WL 6403495 (Dec. 14, 2017). The Board also asked the Court to continue its proceedings regarding the Board’s finding that DISH unlawfully told an employee not to discuss with others his discipline pending investigation.

The Company filed a response explaining that it does not oppose remanding the entirety of the Board’s Order for reconsideration in light of *Boeing*, but opposes the motion to the extent that it seeks to sever the Board’s findings and proceed on two separate tracks. The Board filed a reply.

The Court issued an Order on March 1 carrying with the case the Board's motion to dismiss and remand the two violations affected by *Boeing*. On June 29, the Court issued an order canceling the oral argument scheduled for July 11, 2018, explaining that oral argument was not required in this case.

3. The parties have engaged in settlement discussions and have reached a resolution of the Board's finding that DISH unlawfully told an employee not to discuss discipline with others. In light of that agreement, and consistent with its opposition to the Board's earlier motion in which it did not object to remanding the violations impacted by *Boeing*, DISH affirms that it no longer objects to the Court severing and remanding the remaining violations for reconsideration in light of *Boeing*. Accordingly, the parties request that, pursuant to Federal Rule of Appellate Procedure 42(b), the Court dismiss DISH's petition for review and the Board's cross-application for enforcement with respect to the unlawful-instruction violation, and sever and remand to the Board the other violations impacted by *Boeing*.

4. David M. Noll, counsel for DISH, has given the Board permission to sign this motion on his behalf.

WHEREFORE, the parties respectfully request that the Court grant this motion, dismiss the Company's petition for review in part and dismiss the Board's cross-application for enforcement in part pursuant to Federal Rule of Appellate Procedure 42(b), and sever and remand to the Board the remainder of the case as discussed above.

For the Board:

s/ Linda Dreeben
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Dated: July9, 2018

For DISH Network, LLC:

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Dated: July 9, 2018

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 719 words of proportionally spaced, 14-point type, and that the word processing system used was Microsoft Word 2010.

s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
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CERTIFICATE OF SERVICE

I certify that on July 9, 2018, the foregoing motion was filed with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system, and that all counsel are registered CM/ECF users.

s/ Linda Dreeben
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