

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-1470

September Term, 2002
Filed On: September 11,

2002 [701126]

Edward J. Young,

Petitioner

v.

Department of Transportation and Federal Aviation
Administration,

Respondents

On Petition for Review of an Order of the
Federal Aviation Administration
(No. FAA 99-C6-02)

Before: GINSBURG, *Chief Judge*, and SENTELLE and RANDOLPH, *Circuit Judges*

J U D G M E N T

This appeal was considered on the record from the Federal Aviation Administration and on the briefs of the parties. This court has determined that the issues presented occasion no need for oral argument. *See* D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that Young's petition for review and motion to supplement the record be denied and that the FAA's order be affirmed.

Young petitions for review of an arbitration opinion and award made pursuant to the Federal Aviation Administration Guaranteed Fair Treatment (GFT) appeal procedure. The panel of arbitrators found that Young had properly been terminated from his position as a special agent in the FAA's St. Louis, Missouri Civil Aviation Security field office for attempting to pick a locked drawer at a Continental Airlines ticket counter with lock picking tools while on duty.

In an order dated December 10, 2001, a motions panel of this Court ordered “that the motion to supplement record be referred to the merits panel to which this petition for review is assigned. The parties are directed to address in their briefs the issues presented in the motion to supplement record rather than incorporate those arguments by reference.” In his initial brief, however, Young failed to address the issues presented in the motion to supplement. Therefore, we shall not address those issues. *See Cronin v. FAA*, 73 F.3d 1126, 1134 (D.C. Cir. 1996) (“It is well established that this court will not entertain arguments raised for the first time in a party’s reply brief.”).

Young also challenges on due process grounds several aspects of the proceedings before the agency. Young never raised these objections before the agency, however; nor does Young maintain that his neglect is excusable. Therefore, under 49 U.S.C. § 46110(d), this Court does not have jurisdiction to hear Young’s due process claims. (“In reviewing an order under this section, the court may consider an objection to an order of the Secretary, Under Secretary, or Administrator only if the objection was made in the proceeding conducted by the Secretary, Under Secretary, or Administrator or if there was a reasonable ground for not making the objection in the proceeding”). Even if this Court did have jurisdiction, Young’s mere “assertion[s] of violation of due process of law” would fail; he does not provide any “discussion of case law supporting that proposition.” *Carducci v. Regan*, 714 F.2d 171, 177 (D.C. Cir. 1983). He cites no relevant precedent for how to analyze a claim of violation of due process. *See* FED. R. APP. P. 28(a)(9)(A) (brief must contain “appellant’s contentions and reasons for them, with citations to the authorities and parts of the record on which the appellant relies”). Nor does he distinguish *Kropat v. FAA*, 162 F.3d 129 (D.C. Cir. 1998), in which this Court upheld the GFT appeals procedure against a challenge on due process grounds. *Id.* at 133-34.

Finally, we reject Young’s argument that the arbitration panel did not properly weigh the various factors it must consider in its decision. The panel properly considered and weighed the evidence relevant to each factor. We cannot say, therefore, that the panel’s decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See Public Citizen, Inc. v. FAA*, 988 F.2d 186, 196-97 (D.C. Cir. 1993).

The clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. Cir. Rule 41.

Per curiam
FOR THE COURT:
Mark J. Langer, Clerk

By:
Deputy Clerk