

NOTE: This order is nonprecedential.

# **United States Court of Appeals for the Federal Circuit**

2009-3111

CHRISTOPHER D. ROCHE,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent,

and

DEPARTMENT OF TRANSPORTATION,

Intervenor.

Petition for review of the Merit Systems Protection Board in NY0752070359-I-1.

ON MOTION

Before NEWMAN, Circuit Judge.

## **ORDER**

The Department of Transportation (DOT) moves to reform the official caption to designate the Merit Systems Protection Board as respondent. The DOT also moves for leave to intervene.

Christopher D. Roche filed an appeal challenging his termination from his position as an air traffic control specialist. The Board concluded that because Roche was removed from the excepted service, was not preference eligible, and had less than two

years of current continuous service, he was not an employee pursuant to 5 U.S.C. § 7511 and therefore had no appeal rights before the Board. The Board thus dismissed the appeal for lack of jurisdiction.

Pursuant to 5 U.S.C. § 7703(a)(2), the Board is designated as the respondent when the Board's decision concerns the procedure or jurisdiction of the Board. In this case, the Board dismissed the appeal for lack of jurisdiction. Thus, the Board is the proper respondent in this petition for review.

Accordingly,

IT IS ORDERED THAT:

The motions are granted. The revised official caption is reflected above.

FOR THE COURT

**JUN - 2 2009**

\_\_\_\_\_  
Date

\_\_\_\_\_  
/s/ Jan Horbaly

Jan Horbaly  
Clerk

cc: Marguerite L. Graf, Esq.  
Michael J. Dierberg, Esq.  
Joyce Friedman, Esq.

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**FILED**  
**U.S. COURT OF APPEALS FOR**  
**THE FEDERAL CIRCUIT**

**JUN 02 2009**

**JAN HORBALY**  
**CLERK**