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September 30, 2014

MEMORANDUM

TO: AA Locals 501 – 591

FROM: Garry Drummond, Director Air Transport Division

RE: **FEDERAL DISTRICT COURT DECISION RE. EQUITY DISTRIBUTION LAWSUIT**

Federal District Court Judge Vince Chhabria has issued his decision on the TWU motion to dismiss the complaint in the Equity Distribution lawsuit and on its motion for summary judgment in the case.

The motion for summary judgment argued that plaintiff early-outs and stand-insteads had failed to exhaust their internal union remedies prior to filing suit. The Judge ruled that, in the circumstances presented by the case, exhaustion of remedies—either by appeal to the Equity Appeals Committee or to the International Executive Council—was not required as a condition for filing suit.

The Motion to Dismiss was based on plaintiffs' failure to allege facts in their complaint that could adequately support their claim that the exclusion of early-outs and stand-insteads from the equity distribution was arbitrary, discriminatory or in bad faith, and thus a violation of the union's duty of fair representation. The Judge ruled that "The allegations in the first amended complaint are too conclusory to support a claim that the union's decision to deny separated workers any portion of the equity share was arbitrary, discriminatory or in bad faith. This is primarily because the complaint does not permit the Court to assess the degree to which the separated workers were situated differently from the remaining workers with respect to the concessions for the equity share.... Without more detailed allegations [regarding the impact of contract concessions on separated workers] it is impossible to assess just how unfairly (assuming the truth of the allegations) the separated workers were treated, and therefore it is impossible to assess whether the union's decision crossed the line from unfair to arbitrary."

The Judge dismissed the complaint, but gave the plaintiffs 21 days to file a second amended complaint that would correct the problems which his decision found required dismissal of the first amended complaint.

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ATD Staff

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