

IN THE MATTER OF THE ARBITRATION BETWEEN

American Airlines, Inc.

and

Prefunding Arbitration

Transport Workers Union of America, AFL-CIO

Hearing held February 15, 2017
Before Richard I. Bloch, Esq.

APPEARANCES

For the Company:

Robert A. Siegel, Esq.

Chris A. Hollinger, Esq.

For the Union:

Richard S. Edelman, Esq.

David Rosen, Esq.

OPINION

FACTS

Following a 2011 Bankruptcy declaration by American Airlines (hereinafter "American" or "Company"), the parties to this matter, American and the Transport Workers Union ("TWU" or "Union") executed a Sept. 12, 2012 Side Letter that became

part of the 2012 collective bargaining agreement.¹ Among other things, the Side Letter provided that active employees would be refunded monies deposited by them in “Pre-funding” medical benefits account and that the Company’s matching pre-funding contributions, (together with investment earnings attributable to those contributions) would also be distributed. However, the obligation to distribute the Company’s portion of the prefunding monies was subject to a significant contingency that is central to the current dispute. As set forth in the second paragraph of the Side Letter:

In addition, the parties agreed that *contingent on the successful resolution of the Section 1114 process*, as soon as practicable after termination of the trust agreement ... the Company prefunding contributions for each participating active employee, and investment earnings attributable thereto, will be distributed to the employee The refund will be made to the employee no later than 120 days following September 12, 2012.²

The “Section 1114 process” referred to above was the legal vehicle to be utilized by American as part the Company’s general cost cutting plans, which included proposed elimination of Company health care subsidies for both active employees and then-current retirees.³ As to post-November 1, 2012 retirees who had participated in the pre-funding, Bankruptcy Code §1114(g)⁴ required that the Company seek and obtain judicial approval for any proposed modification. Instead, based on its belief that even a successful §1114(g) Motion would likely not relieve the Company of continuing subsidy obligations, American opted to attempt to secure the Bankruptcy Court’s endorsement,

¹ The Side Letter is Attachment “A” to this Opinion.

² Co. Ex. 6. Italics supplied.

³ American and the TWU had agreed, during §1113 negotiations, to eliminate both Company subsidized medical benefits and an existing pre-funding program for post 10/31/12 retirees. See Jt. Ex.14.

⁴ 11 U.S.C. § 1114(g).

by means of a Declaratory Judgment, of the premise that these medical benefits had not vested with the affected employees and could, therefore, be discontinued unilaterally. The Company also submitted a Motion for Partial Summary Judgment on the vesting question. However, the Bankruptcy Court declined to issue the Declaratory Judgment, the Summary Judgment Motion was denied in April of 2014⁵ and, as of September, 2014, the matter was still before the Court.

On September 11, 2015, the TWU grieved, claiming American had violated the existing TWU-American CBA by not distributing to active employees or post-October 31, 2012 retirees the amounts contributed by American to the Trust as Matching Contributions and alternatively by not allowing retirees to use the Company Matching contributions to pay a portion of the cost for their health insurance premiums."⁶ In October 2015, the Union submitted an Amended Grievance⁷ containing, among other things, the issue discussed herein.

The System Board of Adjustment ("Board" or "System Board") met in November, 2015 to consider the Amended Grievance's third paragraph.⁸ In a February 29, 2016 Opinion, the Board concluded the TWU's claim — that the unexpected continued existence of the Trust required a partial distribution by means of a fractional drawdown — should be denied.⁹

⁵ Jt. Ex. 64.

⁶ Jt. Stip. of Fact, ¶23, executed in November, 2015, submitted as Co. Ex.3 in the February 15, 2017 hearing.

⁷ The original grievance was filed September 11, 2015 and amended by subsequent email. The October 16 letter combined the texts, which ultimately constituted the pre-funding Amended Grievance. The full text of that grievance is attached as Attachment "B".

⁸ By agreement of the parties, only the third paragraph of the Amended Grievance was litigated in the November 17-18 hearings. Remaining issues, contained in the second and fourth paragraphs of the Amended Grievance were, by stipulation of the parties, deferred for possible consideration at a later time. The agreement of the parties to that effect is attached as Attachment "C".

⁹ Opinion, Co. Ex. 3.

Following the initial arbitration decision, and in light of certain court developments in the context of the §1114 process, to be discussed in greater detail below, the Company determined to voluntarily dismiss the Adversary Proceeding, based on its conclusion that, (contrary to its initial assessments), medical benefits rights *were* vested in those TWU-represented employees who retired before November 1, 2012. American sought the Union's agreement that a voluntary dismissal would constitute neither a "successful resolution of the Section 1114 process" nor an obligation to distribute Company matching contributions to eligible employees. The Union would not concur on these points, however, and, as a result, the Company submitted the matter to this System Board¹⁰ to decide the question of whether such dismissal would amount to a "successful resolution of the Section 1114 process," thereby triggering the promised return of Company contributions.

A hearing was held in the matter on February 15, 2017 in Washington, D.C. There, witnesses were presented and made available for examination and cross-examination. A verbatim transcript was maintained. The parties have filed both pre- and post-hearing briefs in this matter.¹¹

¹⁰ Originally, the Company submitted two issues that, by agreement, the parties had held in abeyance for resolution by this Board: (1) Whether ... the collective bargaining agreements require that the Company must 'distribute to each TWU represented individual ... those associated employer contributions that were made ... by [American] as contractually required'; and (2) "Whether ... the Company should be 'ordered not to use the Employee contributions' which matched employee contributions by TWU participants who retired on or after November 1, 2012 'for any purpose other than providing health benefits to these individuals...' (Co. Ex.2). Subsequently, the TWU withdrew the second issue.

¹¹ Following the hearing, the TWU moved to reopen the evidentiary portions of the case, concerning an account alleged to reflect the balance of Company matching contributions corresponding to individual workers' own prefunding contributions. The transmission has provoked a dispute as to the nature of the "ownership" of, and consequent accounting for, the Company matching contributions. The Board finds this dispute unrelated to the Issue posed herein and, accordingly, holds that the record in this case will not be reopened, nor will that question be addressed in this Opinion.

Issue

The parties stipulate the following issue: If American were to seek and obtain a voluntary dismissal of the Adversary Proceeding without further prosecution, would doing so trigger an obligation under the American-TWU collective bargaining agreements for American to distribute the matching contributions at issue in this case to any of the active TWU-represented employees and/or post-October 31, 2012 TWU retirees who previously participated in the prefunding program?

Positions of the Parties

Company Position

The Company contends its obligation to distribute matching contributions turns on the question of whether it will, in fact, be able to achieve a “successful resolution” of the §1114 process it initiated in the Bankruptcy Court. “Successful resolution,” says the Company, must be interpreted as meaning American would be granted relief from the continuing obligation to fund the medical benefits at issue. No such resolution, it says, has been achieved thus far, and, it contends, dismissing the Adversary process should not be seen as constituting “successful resolution”.

Union Position

The Union, for its part, maintains continuing the §1114 process to a conclusion is mandatory. Contending that American has done nothing since the February 29, 2016 Award to achieve a “successful” result, the Company must continue and complete the

§1114 process.¹² And, says the TWU, the question is hypothetical, constituting what amounts to an "advisory opinion." The decision on the issue, it says, lies with the Bankruptcy Court, not this Board:

All that can reasonably be said at this time is that American has not yet been successful, but not that it has been ultimately unsuccessful. American merely received an adverse ruling on its request for a summary judgment, not an adverse judgment on the ultimate merits that would determine American's obligations under the Side Letter. There is still the possibility that American will decide — perhaps in reaction to a change in applicable law, either legislative or judicial, or in reaction to changed financial circumstances, a possibility which can hardly be written off in light of current circumstances — to press the litigation forward, and then American will prevail. Until that possibility is entirely eliminated by termination with prejudice of American's Section 1114 action, that action remains unresolved. In such circumstances, American has no basis for arguing that the continued pendency of its Section 1114 action is a mere technicality that can be ignored by the Arbitrator in order to resolve the issue which American here seeks to press forward.

Because there has been no resolution of the Section 1114 process yet, the decision on the condition precedent for American's obligation under the Side Letter has to be made by the Bankruptcy Court, and the Board cannot decide the question of American's obligation to its pre-bankruptcy right retirees that is a necessary predicate for the Board to decide the remaining issue in TWU's grievance that has been held in abeyance. The Board therefore lacks jurisdiction at this time to decide the remaining issue in TWU's grievance. Accordingly, request for a ruling on TWU's grievance is still premature and should therefore be denied.¹³

¹² The Company, says TWU, "seeks a decision on the Union's grievance, even though the §1114 proceeding remains live at the Bankruptcy Court. Thus, American seeks a decision from this Board in the absence of an ultimate decision by the Bankruptcy Court in the §1114 case that would determine the contingency on which the grievance depends.

¹³ Un. Pre-Hearing Brief, at 10-11.

Thus, argues the Union, there can be no "successful" resolution because there has been no "resolution." From a procedural standpoint, then, the matter must be considered premature. Even if the Board concludes otherwise, however, it is argued, American should be found obligated to distribute the matching contributions if the Company voluntarily dismisses its complaint because that action, says the TWU, should be considered a "successful resolution."¹⁴

ANALYSIS

Arbitrability

Following the Company's submission of the "voluntary dismissal" question to this Board, the Union requested a determination of whether the matter was ripe for decision and, indeed, whether it is even properly before this Board at all. One turns first to those questions. For the reasons that follow, the finding is that the question here posed is both properly before the System Board forum and that it is ripe.¹⁵

As to the forum: Preparatory to the November 17-18, 2015 hearing, the parties to this dispute executed a Stipulated Statement of Issues¹⁶ designating the issue to be addressed in that proceeding – "Whether the TWU's claim in the third paragraph of the Amended Grievance should be sustained" – but also directing themselves to two additional issues that would not be dealt with at that time but, rather, held for later.

¹⁴ *Id.*, at 2.

¹⁵ In a January 4, 2017 letter to counsel, the Arbitrator announced his finding that the matter was properly before the System Board, advising that a full discussion of the rationale for the decision would be provided in this, the full Opinion.

¹⁶ Co. Ex. 2. See Attachment C.

Their agreement was recorded in a “Statement of Issues Held in Abeyance, Which May be Raised for Resolution by Either Party in a Subsequent Hearing Over Which Arbitrator Bloch Will Retain Jurisdiction...” The statement is specific and comprehensive. It expressly identifies the issues to be “Held in Abeyance”¹⁷ as well as the forum in which they are to be resolved – “a Subsequent Hearing Over Which Arbitrator Bloch Will Retain Jurisdiction...” And, it expressly provides that “Either Party” can raise the deferred issues “for Resolution... in a Subsequent Hearing”. In this case, the Company has submitted the issue of whether, under the facts of this case, it will be required to distribute contractually required employer contributions. That inquiry squares fully with the first of the two reserved issues. While the parties differ, procedurally and substantively, as to whether the matter is *currently* arbitrable and whether, if so, it has merit, there is no question the issue itself has been properly reserved, *via* the Stipulated Statement of Issues, for presentation to, and decision by, this Board.

The Union also claims, however, that the issue is “hypothetical,” “abstract,” and “not ripe.”¹⁸ “Under the Side Letter,” it says, “there has to be a resolution of the Section 1114 process for there to be a decision on AA’s obligations - in order to determine

¹⁷ The first of the two Issues is dealt with in this Opinion. It states as follows:

Whether, as alleged by the TWU in the second paragraph of the Amended Grievance, the collective bargaining agreements require that the Company must “distribute to each TWU represented individual who received the return of certain employee contributions to the Pre-funding Plan, those associated employer contributions that were made to their Pre-Funding VEBA Trust by AA as contractually required matching distributions.

The second issue was withdrawn by the Union.

¹⁸ Un. Post-hearing Brief, at 2.

whether there is a successful resolution, there must be a resolution – so the obligations cannot be determined until there is a resolution.”¹⁹

The Union directs the arbitrator's attention to *Pacific Southwest Airlines and Teamsters Local 2707*²⁰, in which the arbitrator declined to rule on the proffered issue of "reasonableness" of a unilaterally promulgated absenteeism program. In that case, the arbitrator ruled, in the course of the hearing, that he could not "in the abstract and without evidence of specific applications" categorize the company's program as "unreasonable," and thus violative of the collective bargaining agreement. Stated the arbitrator,

"... the reasoning that prompted [his decision], dismissing the proffered issue of the 'reasonableness' of the absenteeism policy, proceeds from the realization, borne of years of observation, that the reasonableness or unreasonableness of a promulgated absenteeism policy – or most any kind of detailed written policy, for that matter – cannot realistically be determined until those charged with its implementation have had a chance to translate its abstract expressions into specific applications. The intent which lies inchoate within the words only emerges when the concepts are drawn down to function, which is when the contractual propriety may most realistically – and fairly – be assessed.”²¹

In this case, on the other hand, there is no uncertainty as to the "specific applications" or "function" at issue. The precise, and clear event that divides the parties in their application of the promise to distribute funds is the Company's proposed

¹⁹ *Id.* See also Un. Post Hearing brief, at 12, where the Union argues that the Company is seeking "a ruling on a collective bargaining agreement question that is contingent on a condition precedent in a judicial proceeding that has not yet occurred, a contingency that American is in position to bring about."

²⁰ 1978 Lab. Arb. Lexis 185.

²¹ *Id.*, at 6.

voluntary dismissal of the §1114 action, a discreet, defined procedure requiring neither managerial discretion nor interpretation for its implementation.

*In re Trans World Airlines Inc. and Airline Stewards and Stewardess' Association*²² requires no contrary conclusion, for similar reasons. There, the company published a rule requiring "hostesses" (a job title reflecting the age of the case) to resign their employment in the event they adopt a child. The arbitrator declined to issue a requested declaratory judgment, finding the question posed to be abstract, one not resting on "existing facts or rights". Said the arbitrator:

I am constrained to conclude that where, as here, consideration of the scope and reasonableness of a rule, in advance of its immediate adverse effect in the context of a concrete case, involves inquiry into hypothetical and abstract situations and necessitates rendering a declaratory judgment thereon, the issue, in our judgment, is not a proper one for the exercise of the System Board's arbitral function. The reason for that is a practical one. Grievance determination, in order to be effective, should rest on facts or conclusions drawn from facts and not on speculative and hypothetical situations. Especially in cases like this, factual difference weigh heavily. The question of whether a rule is fair and reasonable cannot be confidently determined except in the context of a concrete case and upon consideration of the specific circumstances of a particular case in which the rule is invoked and applied.²³

It is not necessary, for purposes of this opinion, to debate the question of whether, in fact, the question in that case was as "abstract" as suggested by the arbitrator. It suffices to note that, in this case, the question is in no sense abstract: The facts surrounding the potential voluntary withdrawal of the legal action are straightforward and subject to no identifiable nuance. The question is whether the

²² 1967 Lab. Arb. Lexis 4.

²³ *Id.*, at 10.

Company's withdrawal of its legal action is to be considered a "successful resolution." The event has not yet occurred, but its nature and shape are hardly open to speculation.

*Monarch Machine Tool Company and International Association of Machinists*²⁴ is similarly unsupportive of the Union's claim in this case. There, the arbitrator declined to answer a hypothetical question on the application of absenteeism rules to overtime provisions, in the absence of any existing case.

The question before this Board is neither abstract nor hypothetical. Nor is it an advisory opinion, generally understood to be a non-binding opinion issued in the absence of a justiciable case or controversy. It is, instead, a response in the nature of a declaratory judgment that, under all the circumstances of this particular case, is fully warranted. The facts in this case, beyond being sufficiently clear, are also characterized by a timing element worthy of consideration. Through a confluence of factors, including the wholesale absence of any judicial response for an extended period of time, the notion of moving the Bankruptcy matter forward by dismissing the Adversary process makes sense. Moreover, the question posed is important to all concerned. The employees, for their part, have an understandable interest in knowing whether they will now receive the funds represented by the Company contributions and their earnings. The employer, on the other hand, is interested in knowing whether, as the Union suggests, dismissal of the adversary case must necessarily be regarded as a "successful resolution" of the ¶1114 matter. Learning, after the fact, that the disbursal had been triggered would result in the Company's being required to continue the underwriting medical benefits of pre-November 1, 2012 TWU retirees while, at the same time,

²⁴ 1956 Lab. Arb. Lexis 455

distributing the matching contributions that constitute, in part, the fund from which the benefits are to be paid. Finding that the matter is properly before the Board and ripe, for the reasons set forth above, we turn to the question itself.

Merits

The Union claims voluntary dismissal of the Company's complaint will constitute a "successful resolution":

American's voluntary decision to dismiss its own complaint would constitute successful resolution of the Section 1114 process under the Side Letter. The Section 1114 proceeding initiated by American would be resolved by dismissal.²⁵

True it is that dismissal would "resolve" (by its termination) the Section 1114 proceeding. It is not the case, however, that the process would thereby be resolved "*successfully*", an adverb and a standard that, in this context, clearly reflects the Company's goal to be relieved of continuing responsibility for funding retiree medical benefits. The Union says "success" would have been achieved because, while the Company would have admittedly failed to shed the continuing coverage obligation by dismissing the §1114 Adversary Proceeding, it would have done no better by proceeding under §1114(g). Under that Code section, the Bankruptcy Court would likely have rejected a Company motion to modify, based on American's relatively strong prospects of a successful exit from Bankruptcy and the overall equities of the matter. During Bankruptcy negotiations with the Company, the Union anticipated American would be

²⁵ Un. Post-hearing Brief (March 24, 2017), at 2-3.

proceeding under §1114(g), the traditional method for debtors seeking relief from retiree related obligations. But, TWU observes:

American changed course from the original plan only after its financial advisors informed the Company that a Section 1114(g) filing would be a financial disaster for the Company; that such a motion would no longer be viable because a merger with US Airways was becoming more probable; and the Bankruptcy was likely to be so successful that prevailing on a Section 1114(g) motion would create claims for the retirees that would be paid 100 cents on the dollar, so American would be better off not filing such a motion because it would not ultimately reduce its liabilities.²⁶

Thus, the Union concludes, since both approaches would have yielded no relief, (1) the Company has no choice but to complete the §1114 Adversary process and (2) American's voluntary decision to dismiss its own complaint must therefore be considered a "successful resolution" of the §1114 process under the Side Letter:

It was the highly favorable result of the bankruptcy that dictated the outcome of the Section 1114 process no matter which course American pursued in this context, using the yardstick of the result of a Section 1114(g) motion (if American filed one). American's choice to dismiss its own complaint because of its overall great success in bankruptcy would constitute successful resolution of the Section 1114 process within the meaning of the Side Letter because the Section 1114 process would be resolved by a dismissal, the Section 1114 proceeding would be successfully brought to conclusion (a major step forward to completion of the bankruptcy case), and the result would be the same as if American had prevailed in a 1114(g) motion. The granting of such an 1114(g) motion is the successful resolution contemplated by the Side Letter; having achieved that same result by the (hypothetical) voluntary dismissal of its pending action, American is obligated to distribute the Company Pre-Funding Matching Contributions to employees who participated in the program.²⁷

²⁶ Un. Post Hearing Br., at 5.

²⁷ Union Post-Hearing Brief, at 13.

But the TWU's conclusion ignores both the point of the §1114 process itself and the bilateral Side Letter deal struck by these parties. It is undeniably true that (1) "the Section 1114 process would be resolved by the dismissal" and that (2) by the dismissal, the Section 1114 process would be "successfully brought to a conclusion".

It does not follow, however, that dismissal would therefore amount to a "successful resolution" of the Section 1114 process. The bargain struck in the Side Letter was not to bring the proceedings to a "conclusion" but to achieve a "successful resolution."

Concluding, as the Union does, that "the granting of such an 1114(g) motion is the successful resolution contemplated by the Side Letter" overlooks the bargained expectation of the Company's gaining relief from a continuing obligation to subsidize retiree benefits. That, it is reasonable to conclude, would not have been achieved, for the reasons referenced by both parties to this dispute. That either path under §1114, - dismissal of the Adversary Process or §1114(g)- would have led to essentially similar outcomes (both of which included American's retaining the medical coverage expense while distributing funds that would otherwise have remained available to fund the coverage) cannot reasonably be regarded as a "successful" resolution: Instead, either result would have been demonstrably unsuccessful.

The Side Letter reflects both parties' anticipation that the Company would attempt, in good faith, to secure judicial relief via the §1114 route. As concerns the proposed voluntary dismissal, however, nothing in the agreement precludes the Company's rendering a rational judgment, during the litigation process, that things would turn out unexpectedly badly, to the extent that further pursuit of the 1114 action would be inadvisable. The Company's motion for Summary Judgment, was premised on

its belief that, under applicable law and a recent Supreme Court decision in *CIGNA Corp. v. Amara*²⁸, the Bankruptcy Court would base its consideration of whether retiree medical benefits were vested solely on the terms of the ERISA plan document. Under that approach, the terms of the negotiated CBAs in effect during the course of a retiree's employment would not be considered.²⁹ But the Bankruptcy Court rejected that argument, finding the terms of the TWU contracts contained language similar to the Second Circuit decision in *Devlin v. Empire Blue Cross & Blue Shield*,³⁰ which held that the contract language could support a finding of vested benefits.³¹ In all, the Company concluded the Supreme Court's decision supported the Bankruptcy Court's ruling against the Company's Motion for Summary Judgment and that an appeal would be fruitless.³²

²⁸ 343 Fed. Appx. 627 (2d).

²⁹ See Jones Decl. ¶5.

³⁰ 274 F.3d 76.

³¹ The Bankruptcy Court's conclusion as to the potential relevancy of a collective bargaining agreement was underscored by the Supreme Court's subsequent decision in *M&G Polymers USA, LLC v. Tackett* 135 S. Ct. 926 (2015).

³² The Bankruptcy court's observations on the potential import of applicable labor agreements to the vesting question was particularly persuasive to the Company; its principal negotiator testified that his reading of the TWU contracts included the understandings that

- The CBA in effect at the time of an active employee's retirement will determine that employee's entitlement to retiree medical benefits. (See Weil Decl. Depo. at 46, 191,225, cited by American as support for its conclusion to dismiss the matter. See also Offer of Proof of Paul D. Jones.
- American is prohibited from changing the retiree medical benefits provided for in the TWU CBAs unless the TWU has agreed to the change. (See Weil Depo. 51,109).
- The American-TWU CBAs prohibited American from modifying or terminating retiree medical benefits unilaterally. (See Weil Depo. 75-76, 109.)

These conclusions by the Company constituted reasonable foundations for the decision not to pursue the 1114 process. (See Paul D. Jones Offer of Proof.)

Under the circumstances, American could reasonably consider dismissal. The Company could properly factor in the substantial risk that, by receiving a negative judgment at the conclusion of the litigation, they would not only fail to be relieved of the continuing liability to retirees but could also face the possibility of full, and immediate, distribution liability.

AWARD

Voluntary dismissal of the §1114 process will not, in this case, trigger an obligation under the AA/TWU collective bargaining agreement to distribute the matching contributions at issue in this case to any of the active TWU-represented employees and/or post-October 31, 2012 TWU retirees who previously participated in the prefunding program.



December 27, 2017

RICHARD I. BLOCH

APPENDIX "A"

ATTACHMENT 41.1 PREFUNDING

September 12, 2012

Mr. Robert F. Gless
Deputy Director - ATD
AA System Coordinator
Transport Workers Union of America, AFL-CIO
1791 Hurstview Drive
Hurst, TX 76054

"Employee and Company Prefunding Contributions"

Dear Robert,

During the restructuring agreement negotiations, the parties agreed that upon implementation of the changes to the Retiree medical plan program an active employee who currently prefunds for retiree medical will be refunded the employee's prefunding account (which reflects investment experience), excluding employees who have already received employee prefunding refunds.

In addition, the parties agreed that contingent on the successful resolution of the Section 1114 process, as soon as practicable after termination of the Trust Agreement for the Group Life and Health Benefits Plan for Employees of Participating AMR Corporation Subsidiaries (Union Employees), the Company prefunding contributions for each participating active employee, and investment earnings attributable thereto, will be distributed to the employee (subject to applicable tax withholdings and/or excise tax), excluding employees who have already received refunds of their employee prefunding accounts. The refund will be made to the employee no later than 120 days following September 12, 2012.

If this letter accurately reflects the agreement of the parties, please indicate by signing below.

Sincerely,
{Original Signed on File}

Agreed to:
{Original Signed on File}

James B. Weel
Managing Director
Employee Relations
American Airlines, Inc.

Robert F. Gless
Deputy Director
Air Transport Division
Transport Workers Union of American, AFL-CIO

APPENDIX "B"

Transport Workers Union of America, AFL-CIO



"We Move America"

Harry Lombardo
International President

John Samuelson
International Executive Vice President

Alex Garcia
International Secretary-Treasurer

John Bland
Administrative Vice President

Gary E. Maslanka
Administrative Vice President

Executive Council

Vice Presidents

Denise Brown
Charles Cerr
Michael Conigliaro
Dale Danker
Sean Doyle
Gary Drummond
Jerome Larragola
Tom Lenane
Carl Martin
Inom McDaniel
Curtis Tate
Tony Utano
James Whalen

Council Members

Joe Carbon
John Chiarello
Brian Clarke
LaTonya Crisp-Sauray
John Feitz
Horace Marves
Gary Shults
Kevin Smith
Audrey Stone

Executive Board

Matthew Ahern
Bedennia Barnes
Richard Boehm
Jon Bradford
Willie Brown
Ralph Darnell
Richard Davis
Denck Echevarria
Fred Fink
Todd Gage
Angel Giboyeaux
Amy Griffin
Jim Guido
Debra Hagan
Kevin Harrington
Maurice Jenkins
Don May
Mike Mayes
John Mershon
Benyoel Morgan
Thomas Murray
J.P. Pataño
Daniel Rivera
Richard Roxco
Dane Smcoff
Robert Taylor
Luis Ventura
David Virella
Clarence Washington
Eric Williams

RE: 29(d) Grievance: Pre-funding Amended Grievance

In accordance with the collective bargaining agreements now in effect, the Transport Workers Union of America, AFL-CIO ("TWU"), pursuant to the 29D procedures, hereby submits the following International grievance.

The grievance is occasioned by AA's failure or refusal to take steps to distribute to each TWU represented individual who received the return of certain employee contributions to the Pre-funding Plan, those associated employer contributions that were made to the Pre-funding VEBA Trust by AA as contractually required matching contributions to the employee's own contributions. It is TWU's position that this distribution is now required both by the September 12, 2012 letter to Robert Gless from James Weel that is Attachment 41.1 to the current CBA, and by the terms of the VEBA Trust, which create, as per Article 41 of the CBA, individual accounts for each contributing participant/employee. The September 12, 2012 letter, which provided for immediate distribution to the participants covered by the grievance of their own contributions, also required that Company contributions "and investment earnings attributed thereto" be distributed to these employees "contingent on the successful resolution of the Section 1114 process...." This contingency provision was based upon the mutual understanding that the 1114 process would be initiated promptly, and that it would similarly be resolved promptly as well. The contingency provision cannot be used by the Company to indefinitely delay its obligation to appropriately distribute the matching contributions to those active and retired employees entitled to the return of those funds. AA has an affirmative obligation to take the steps required under the Trust Agreement for the Group Life and Health Benefits Plan for Employees of Participating AMR Corporation Subsidiaries to distribute the Company contribution plus their earnings to affected individuals.

Alternatively, TWU contends that the expected continued existence of the Trust for a period of more than two years, with the trust continuing to retain the matching contributions made on behalf of each contributing participant in the Prefunding Program, despite the mutual understanding that the Section 1114 process would be promptly initiated and resolved, requires that all contributing participants who retired or retire after November 1, 2012 and who are covered by the retiree medical plan, be allowed to draw down the Company's matching contributions made on their behalf as provided in former section (n)(7) of Article 41. This means that the account of each Participant-Retiree may be drawn down by 10% each year, and the amount thus drawn down be applied as a subsidy to the individual's retiree health insurance expenses. In

connection with and in justification of the claim, TWU asserts that nothing in the agreements reached during the Section 1113 process warrant the elimination of Article 41 provisions related to the Prefunding Program, except for the requirement for continuing Company contributions until termination of the Trust or resolution of the Section 1114 process described in the September 12, 2012 letter to Robert Gless from James Weel, that is attachment 41.1 to the current CBA.

Finally, pending final resolution of all obligations related to the Pre-funding Trust and its assets, TWU asks that the Company be ordered not to use the Employer contributions made on behalf of those covered by this grievance for any purpose other than providing health benefits to these individuals as required by the Pre-funding Trust. The TWU understands that the Company asserts its right to use these contributions for other purposes. Pending resolution of this grievance, TWU asks for the temporary relief specified here.

APPENDIX "C"

BEFORE THE AMERICAN AIRLINES-TRANSPORT WORKERS UNION SYSTEM BOARD OF ADJUSTMENT

RICHARD BLOCH, ARBITRATOR

In the Matter of Dispute Between:	
AMERICAN AIRLINES, INC., and TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO.	Prefunding – Attachment 41.1

STIPULATED STATEMENT OF ISSUES

Statement of Issue for Hearing November 17-18, 2015:

Whether the TWU's claim in the third paragraph of the Amended Grievance should be sustained.

Statement of Issues Held in Abeyance, Which May Be Raised for Resolution by Either Party in a Subsequent Hearing Over Which Arbitrator Bloch Will Retain Jurisdiction:

(1) Whether, as alleged by the TWU in the second paragraph of the Amended Grievance, the collective bargaining agreements require that the Company must "distribute to each TWU represented individual who received the return of certain employee contributions to the Pre-funding Plan, those associated employer contributions that were made to the Pre-Funding VEBA Trust by AA as contractually required matching distributions."

(2) Whether, as alleged by the TWU in the fourth paragraph of the Amended Grievance, the Company should be "ordered not to use the Employer contributions" which matched employee contributions by TWU participants who retired on or after November 1, 2012 "for any purpose other than providing health benefits to these individuals...."

So stipulated this 11th day of November, 2015


Richard Edelman
Mooney, Green, Saindon, Murphy and Welch
PC Attorneys for Transport Workers Union of
America, AFL-CIO


Robert A. Siegel
O'Melveny & Myers LLP
Attorneys for American Airlines, Inc.