



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

45 NMB No. 13

March 1, 2018

Re: NMB Case No. R-7507
Allegiant Air, Inc. /IBT

Participants:

This determination addresses the January 24, 2018 appeal filed by Allegiant Air, Inc. (Carrier) of Investigator Norman L. Graber's January 19, 2018 eligibility rulings. For the reasons discussed below, the Carrier's appeal is denied.

PROCEDURAL BACKGROUND

On December 17, 2018, the International Brotherhood of Teamsters (IBT) filed an application with the National Mediation Board (NMB or Board) alleging a representation dispute involving the Mechanics and Related Employees of the Carrier. The employees in question are currently unrepresented. On December 28, 2018, the Board authorized an election in this matter. The Investigator sent a letter to the parties on December 28, 2018, setting a schedule for filing challenges and objections.

On January 4, 2017, IBT challenged the exclusion of three classifications of employees from the List of Potential Eligible Voters (List). The classifications in question, as termed by the Carrier, are Maintenance Control Supervisors (MCSs); Quality Control Representatives, Heavy Maintenance (QC Reps, Heavy MX); and Heavy Maintenance/Induction Representatives. The IBT provided declarations, Carrier job postings, and a Carrier "Maintenance Seniority List." On January 11, 2018, the Carrier filed its opposition to the inclusion of the three classifications of employees on the List, asserting that all the employees in question are management officials. The Carrier provided declarations, Carrier job descriptions, two Southwest Airlines job descriptions for work similar to that in question, and a power of attorney granting an employee to act on the Carrier's behalf in presenting new aircraft to the FAA for aircraft conformity to Type Design Certificate.

The Investigator's January 19, 2018 eligibility ruling included all employees in the three classifications on the List. The Carrier has appealed the Investigator's ruling.

CONTENTIONS

CARRIER

The Carrier's initial objection to the inclusion of the classifications in question were that: MCSs have the authority to dismiss and/or discipline employees or to effectively recommend the same, authority to supervise, authority to grant overtime or change assignments, and responsibility for the department in the absence of a Manger or Director; and that QC Reps, Heavy MX and Heavy Maintenance/Induction Representatives represent the Carriers interests when dealing with Maintenance, Repair and Overhaul (MRO) providers working on Carrier equipment. In addition to arguing that QC Reps, Heavy MX and Heavy Maintenance/Induction Representatives supervise the work being performed at the MROs, the Carrier claimed that these employees have the authority to commit Carrier funds.

The Investigator ruled that the Carrier provided evidence of paper authority for the employees in question, but no evidence of the actual exercise of that authority. On appeal, the Carrier presents addenda to two of the declarations submitted to the Investigator, as well as an email from one of the MCSs regarding scheduling, portions of a sample contract with an MRO, a fixed-bid quote with an MRO, and other documents relating to the authorization of work billed to the Carrier by the employees in question. The Carrier states that "[t]his appeal is submitted with the intention of providing more detailed information regarding the scope of these positions to demonstrate . . . that these positions should not be included in craft or class of Mechanics and Related Employees."

IBT

The IBT states that the Carrier failed to provide sufficient evidence to the Investigator to establish that the employees in question are management officials; and that any new evidence should not be considered on appeal.

DISCUSSION

The Investigator properly considered the inclusion of the three classifications of employees pursuant to the Board's Representation Manual (Manual) Section 9.211, which provides:

Management officials are ineligible to vote. Management officials include individuals with:

- (1) the authority to dismiss and/or discipline employees or to effectively recommend the same;
- (2) the authority to supervise;
- (3) the ability to authorize and grant overtime;
- (4) the authority to transfer and/or establish assignments;
- (5) the authority to create carrier policy; and,
- (6) the authority to commit carrier funds.

The Investigator also considers:

- (1) whether the authority exercised is circumscribed by operating and policy manuals;
- (2) the placement of the individual in the organizational hierarchy of the carrier; and,
- (3) any other relevant factors regarding the individual's duties and responsibilities.

When evaluating managerial authority, the Board evaluates the above factors cumulatively. See *USAir Inc.*, 24 NMB 38, 40 (1996) (citing *Pan Am. World Airways, Inc.*, 5 NMB 112, 115 (1973)). "In many cases, the Board finds that while there are certain factors indicating some level of authority, when all the factors are viewed cumulatively the individuals at issue generally are first-line supervisors, not management officials." *USAir, above*, at 41.

The Carrier asserted, in response to the IBT's challenges, that the employees in these classifications possess managerial authority sufficient to find them to be management officials. It did not, however, provide the Investigator evidence, beyond bare assertions and job descriptions, of either the exercise of such authority or the exercise of that authority at a significant level. No evidence was provided of occasions where MCSs actually engaged in disciplining or supervising employees. Likewise, no evidence, beyond assertions and job descriptions, was provided regarding the level of funds that QC Reps, Heavy MX or Heavy Maintenance/Induction Representatives committed independently on behalf of the Carrier.¹ As the Board has held, "[t]he paper authority granted by a position description is insufficient to establish that an individual is a management official without evidence that the individual actually exercises that authority." *Pan Am Railways*, 37 NMB 270, 278 (2010). See, also, *Metroflight, Inc.*, 18 NMB 103, 107 (1990); *Buffalo & Pittsburgh Railroad*, 17 NMB 14, 18 (1989); *Southern Jersey Airways, Inc.*, 13 NMB 404, 406 (1986); *British Airways, Inc.*, 7 NMB 369, 389 (19880); *Allegheny Airlines, Inc.*, 6 NMB 332, 335 (1977).

The Carrier now presents additional information that it asserts provides specific detail and incidents regarding the exercise of managerial authority by the employees in question. Manual Section 10.2 provides: "Absent extraordinary

¹ As noted by the Investigator, the Carrier's argument that Heavy Maintenance/Induction Representatives control Carrier assets worth between \$30 million and \$60 million is not evidence of committing Carrier funds at any particular level.

circumstances, evidence submitted on appeal will not be considered by the NMB unless it was submitted to the Investigator.” In its appeal, the Carrier makes no claim of the prior unavailability of the newly furnished information or any other circumstance that might permit consideration of the information under Manual Section 10.2. Accordingly, the Board will not consider the newly offered evidence in making its decision.

The Carrier contends, as it did in its arguments to the Investigator, that *American Airlines, Inc.*, 24 NMB 521 (1997); and *Pan Am. World Airways, Inc.*, 4 NMB 90 (1965) (*Pan Am*) support its conclusion that QC Reps, Heavy MX and Heavy Maintenance/Induction Representatives are management officials. The Carrier cites *Pan Am, above*, for the statement that the quality of an employee’s decision as it relates to the management function is important in determining the managerial status of an employee. Although the Board agrees with that principle as a general matter, the Carrier’s evidence in this case does not demonstrate the actual exercise of authority at the level of a management official as described in Manual Section 9.211. Further, although the Inspection Supervisors found to be management officials in *American Airlines, Inc., above*, had some duties in common with the QC Reps, Heavy MX and Heavy Maintenance/Induction Representatives, the Inspection Supervisors also disciplined carrier employees; resolved employee grievances; exercised discretion in hiring and evaluating new employees and determining if they successfully completed their probationary period; and administered vacation time, holidays, and other leave for carrier employees pursuant to a collective bargaining agreement.² Accordingly, *American Airlines, Inc., above*, will not support a finding of management official status in this proceeding.

Based on the evidence presented to the Investigator during the challenge and objection process, the Board finds that MCSs; QC Reps, Heavy MX; and Heavy Maintenance/Induction Representatives are not management officials.³ Accordingly, the Investigator’s ruling is upheld and these employees are eligible to vote.

² Any employees supervised by QC Reps, Heavy MX and Heavy Maintenance/Induction Representatives are employees of the MRO, not the Carrier.

³ Even if the Board were to consider the new evidence submitted on appeal, there still would be an insufficient showing that these employees possess and exercise sufficient authority to be deemed management officials.

CONCLUSION

The Carrier's appeal regarding the inclusion of MCSs; QC Reps, Heavy MX; and Heavy Maintenance/Induction Representatives is denied, and employees working in these classifications remain eligible to vote.⁴

By direction of the NATIONAL MEDIATION BOARD



Mary L. Johnson
General Counsel

⁴ We note that two of the 23 employees working in these classifications have been ruled ineligible to vote because they have left the Carrier's employ.