



**NATIONAL MEDIATION BOARD**

WASHINGTON, DC 20572

(202) 692-5000

31 NMB No. 32  
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Dan McKinnon, President  
Joan Kraft, Director Human  
Resources  
North American Airlines  
Suite 250, Building 75  
N. Hangar Road  
JFK International Airport  
Jamaica, NY 11430

Robert F. Milman  
Counsel for North American  
Airlines  
Marshall M. Miller  
Associates, Inc.  
3000 Marcus Avenue  
Suite 3W3  
Lake Success, NY 11042

Don Treichler  
Director, Airline Division  
International Brotherhood of  
Teamsters  
6242 Westchester Parkway  
Suite 250  
Los Angeles, CA 90045

Roland P. Wilder, Jr., Esq.  
Baptiste & Wilder, P.C.  
1150 Connecticut Ave. N.W.  
Suite 500  
Washington, DC 20036

E.E. Gene Sowell  
Secretary-Treasurer  
Teamsters Local 747  
1419 FM 1960 Road  
Houston, TX 77073

Re: NMB Case No. R-6980  
North American Airlines/IBT

Gentlemen and Ms. Kraft:

This determination addresses the December 31, 2003 appeal filed by North American Airlines (North American or Carrier) of Investigator Cristina A. Bonaca's eligibility rulings. For the reasons discussed below, the appeal is denied.

## I.

Procedural Background

On November 17, 2003, the International Brotherhood of Teamsters, Airline Division (IBT or Organization) filed an application pursuant to the Railway Labor Act<sup>1</sup> (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), seeking to represent the craft or class of Pilots on North American. On November 25, 2003, North American provided a List of Potential Eligible Voters (List). The Board found that a dispute existed and authorized an election on December 4, 2003, with a tally set for 2 p.m. ET on January 15, 2004. On December 4, 2003, a letter was sent to the Carrier and IBT setting a schedule for challenges, objections and the election period.

On December 11, 2003, the IBT filed challenges to the List. The Organization first asserted that Alan Brandon was a management official, and thus was not eligible to vote. The IBT also requested that Robert Stringfellow, a pilot currently on military duty in Iraq, be removed from the List unless his APO military address could be provided in time for him to receive his Instructions and vote in the election.

The Carrier responded on December 16, 2003, arguing that Alan Brandon was not a management official and should be eligible to vote. North American also agreed to locate and provide Robert Stringfellow's APO military address by December 22, 2003.

On December 29, 2003, the Investigator ruled on the challenges, finding that Alan Brandon was a management official and should be removed from the List. Additionally, as the Carrier had not provided the military APO address by December 22, 2003, the Investigator ruled that Robert Stringfellow's Instructions were undeliverable and that his name should be removed from the List.

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<sup>1</sup> 45 U.S.C. § 151, *et. seq.*

The Carrier responded to the Investigator's ruling on December 31, 2003, providing Robert Stringfellow's APO military address and stating that it would provide an affidavit in support of its position that Alan Brandon was not a management official. The Investigator never received an affidavit from the Carrier.

II.

Investigator's Ruling

A. Alan Brandon

The IBT challenged the inclusion of Alan Brandon, purportedly a management official, on the List. In support of its position, IBT provided an affidavit from a North American pilot, stating that Alan Brandon: 1) is responsible for ensuring Carrier compliance with FAA regulations and specifications; 2) oversees and directs the flight operations aspects of the Carrier and reports directly to the Vice President of Operations; 3) supervises the Chief Pilot and retains ultimate supervisory authority over all pilots; 4) possesses and exercises the authority to hire, fire and discipline pilots and other employees, and; 5) sets Carrier policy with respect to flight operations and has the authority to transfer and establish assignments for pilots.

In North American's December 16, 2003 response, the Carrier argued that Alan Brandon was in fact eligible to vote in the election. The Carrier argued he is not a management official because: 1) he was hired as a pilot and is registered as a Captain on the Carrier's pilot seniority list; 2) he spends almost half of his time flying and not managing; 3) his authority is circumscribed by operating and policy manuals and is subject to the approval of the Vice President of Flight Operations; 4) he does not have final authority at North American and has "never solely hired or fired a pilot," and; 5) when Alan Brandon is flying, other employees perform his non-pilot duties. However, the Carrier did not provide any evidence,

either in the form of an affidavit or job description, to support its contentions.

The Investigator ruled that Alan Brandon was a management official within the meaning of the RLA. Using the criteria set out in Section 9.211 of the Board's Representation Manual (Manual), the Investigator determined that Alan Brandon has the ability to hire, fire, supervise, and discipline pilots, and set Carrier policy. Accordingly, Alan Brandon was ruled ineligible to vote.

B. Robert Stringfellow

The IBT requested that Robert Stringfellow be removed from the List if his APO military address was not provided in time for him to participate in the election. The Carrier responded, agreeing to provide Robert Stringfellow's APO military address "no later than December 22, 2003, the day prior to the mailing of the voting instructions." As the Carrier did not provide the APO military address by December 22, 2003, the Investigator ruled that Robert Stringfellow's Instructions were undeliverable and Robert Stringfellow was ruled ineligible.

III.

North American's Appeal

In its December 31, 2003 appeal, North American provided Robert Stringfellow's military APO address. The Carrier stated that it was prevented by the onset of the holiday season in furnishing Robert Stringfellow's address prior to December 23, 2003.

Additionally, the Carrier stated: "[T]he fact that we did not furnish an affidavit in support of our position that [Alan Brandon] should be eligible to vote should have been of no consequence as we are duty bound to provide accurate information. Nevertheless . . . we will supply the affidavit forthwith." The Carrier never submitted an affidavit in support

of its position that Alan Brandon was not a management official.

IV.

Discussion

A. Management Official

The evidence establishes that Alan Brandon is a management official.

Manual Section 9.211 details factors to be considered in determining whether an individual is a management official. These factors include:

- (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 Board 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.

*See also Pan American World Airways, Inc.*, 5 NMB 112 (1973) (the factors the Board examines are considered cumulatively).

In *American Int'l Airways, Inc.*, 20 NMB 94, 97-98 (1992), the Board found that two pilots were not management officials because the evidence established that they were line pilots who

did not have the authority to hire, discipline, or discharge employees, or to commit carrier funds or enter into contracts on the carrier's behalf. *See also Precision Airlines/Northeast Express Regional Airlines*, 20 NMB 742 (1993) (two chief pilots found not to be management officials as they: flew often and met all line pilots' requirements; had no authority to hire, fire, supervise or discipline pilots, and; had no authority to commit carrier funds or enter into contracts on behalf of the carrier).

The Carrier failed to supply an affidavit, as indicated in its December 31, 2003 appeal, to support its position that Alan Brandon is not a management official. Even if the Carrier had submitted an affidavit on appeal and *after its initial response*, its affidavit would not have been considered, absent extraordinary circumstances. Manual Section 10.2 provides: "Absent extraordinary circumstances, evidence submitted on appeal will not be considered by the NMB unless it was submitted to the Investigator."

The cumulative evidence in the case establishes that Alan Brandon is a management official. Alan Brandon is near the top of the organizational hierarchy at North American -- reporting directly to the Vice President of Operations. His responsibilities include compliance with FAA regulations and oversight of flight operations. Additionally, Alan Brandon has the ability to hire, fire, supervise, and discipline pilots, and to set Carrier policy. Therefore, the Board finds that Alan Brandon is a management official.

B. Employee on Active Military Duty

The record establishes that Robert Stringfellow's Instructions are undeliverable.

Robert Stringfellow is currently on military duty in Iraq. Manual Section 9.205 provides that: "Employees on authorized leaves of absence including military leave . . . are eligible" to vote in an NMB representation election. While not challenging Robert Stringfellow's eligibility, IBT requested that he be removed from the List if his APO military address was not

provided in sufficient time for him to receive his Instructions and cast his vote.

The Carrier did not provide the APO military address by December 22, 2003. Accordingly, when the voting Instructions were mailed as scheduled on December 23, 2003, Robert Stringfellow was not sent voting materials.

The Carrier provided Robert Stringfellow's APO military address in the late afternoon<sup>2</sup> of December 31, 2003 -- eight days after the voting period had commenced. Under the circumstances, and because of the lengthy and inexact delivery time when using APO military addresses, the Board finds that Robert Stringfellow's Instructions were undeliverable and he was properly ruled ineligible.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson  
General Counsel

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<sup>2</sup> The NMB's office was closed mid-afternoon on December 31, 2003, and did not reopen until January 2, 2004.