



NATIONAL MEDIATION BOARD

WASHINGTON, DC 20572

(202) 692-5000

35 NMB No. 40

April 30, 2008

James M. Walters
Counsel for Amerijet Int'l, Inc.
Fisher & Phillips LLP
945 E. Paces Ferry Road, #1500
Atlanta, GA 303026

Isis Suria
Vice President, Human Resources
Amerijet International, Inc.
2800 South Andrews Avenue
Ft. Lauderdale, FL 33316

Derry S. Huff, Director of Operations
Amerijet International, Inc.
6145 N.W. 18th Street, Bldg. 716B
Miami, FL 33126

Donald Treichler
Director Airline Division
IBT
25 Louisiana Avenue, N.W.
Washington, DC 20001

Daisy Gonzalez, Bus. Rep.
Teamsters Local 769
8000 S. Orange Avenue
Orlando, FL 33150

Re: NMB Case No. R-7149
Amerijet International, Inc.

Joshua D. McInerney
Counsel for IBT
Baptiste & Wilder, P.C.
1150 Connecticut Ave., N.W.
Suite 500
Washington, DC 20036

Capt. Nader Daily
Amerijet Pilot Group
1615 Harrison Street
Hollywood, FL 33020

Capt. William Layne
Amerijet Pilot Group
7536 Sea Breeze Drive
Lakeworth, FL 33467

FO Romulo Toledo
Amerijet Pilot Group
7702 SW 4th Place
N. Lauderdale, FL 33068

Participants:

This determination addresses the April 18, 2008 appeal filed by Amerijet International, Inc. (Amerijet or Carrier) of Investigator Sarah Halpin's eligibility rulings. For the reasons discussed below, the appeal is denied.

I.

Procedural Background

On February 29, 2008, the Amerijet Pilot Group (APG) filed an application pursuant to the Railway Labor Act (RLA or Act), 45 U.S.C. § 152, Ninth (Section 2, Ninth), alleging a representation dispute involving the Pilots of Amerijet. The employees are currently represented by the International Brotherhood of Teamsters (IBT). The Carrier provided a Potential List of Eligible Voters (List) on March 14, 2008. On March 19, 2008, an election was authorized by the National Mediation Board (Board), and a schedule for filing challenges and objections to the List was set on March 26, 2008. On March 31, 2008, the investigator granted the IBT's request for a two-day extension to file challenges. The IBT submitted its challenges to the List on April 4, 2008. The Carrier submitted its response on April 9, 2008. The IBT submitted a response to the Carrier's response on April 15, 2008.

The Investigator issued her rulings on April 16, 2008. The Carrier submitted an additional response on April 16, 2008, after the rulings were issued, which will be considered as part of the Carrier's appeal. The Carrier appealed the Investigator's ruling regarding employee **Rosario Alaimo** on April 18, 2008. The IBT submitted a response to the Carrier's appeal on April 22, 2008.

II.

Challenges and Objections

In its challenges and objections to the List, the IBT alleged, *inter alia*, that employee **Rosario Alaimo** had been terminated, but had a pending grievance regarding his termination and therefore should be added to the List. The grievance was not final, according to the IBT, because Alaimo had made a demand for arbitration to Amerijet, and had requested an arbitration panel from the Federal Mediation and Conciliation Services (FMCS). Amerijet responded that Alaimo's grievance was final under the Interim Grievance Procedure entered into in November 2004 by IBT and the Carrier because the IBT had missed two of the three deadlines for appealing the grievance.

The investigator ruled that Alaimo should be added to the List because his grievance is "being appealed through an applicable grievance procedure" under Section 9.203 of the Board's Representation Manual (Manual).

III.

Appeal

On appeal, the Carrier reiterates its contention that Alaimo's grievance is final. The Carrier alleges that Alaimo's appeals were improper under the Interim Grievance Procedure in that they were untimely and in that the Interim Grievance Procedure requires the FMCS to appoint a panel of arbitrators "each a member of the National Academy of Arbitrators," but the panel appointed for Alaimo contains six members who are not members of the National Academy of Arbitrators. The IBT responds that "the question of whether the IBT did in fact fail to comply with the procedural requirements of the grievance process will be decided by an arbitrator, not by [the Carrier] or the Board. See *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557-58 (1964) (holding that questions of procedural arbitrability are for arbitrators to decide)." Thus, according to the IBT, "the status of Alaimo's grievance is that it is pending arbitration."

IV.

DISCUSSION

The burden of persuasion in an appeal from an Investigator's eligibility ruling rests with the participant appealing the determination. *American Airlines*, 31 NMB 539, 553 (2004); *Northwest Airlines, Inc.*, 26 NMB 77, 80 (1998).

Manual Section 9.203 provides:

Dismissed employees are ineligible to vote unless the dismissal is being appealed through an applicable grievance procedure or an action for reinstatement has been filed before a court or a government agency of competent jurisdiction. If the grievance or court action is final, and the dismissal has been upheld prior to the count of ballots, the individual is ineligible to vote.

Similarly, NMB Rule § 1206.6, 29 C.F.R. § 1206.6 provides:

Dismissed employees whose requests for reinstatement account of wrongful dismissal are pending before proper authorities . . . are eligible to participate in elections among the craft or class of employees in which they are employed at time of dismissal.

The Board has construed these rules liberally "to effectuate the purposes and provisions of the [Railway Labor] Act." *America West Airlines, Inc.*, 23 NMB 174, 185 (1996) (quoting NMB Rule § 1206.7, 29 C.F.R. § 1206.7). In applying these rules, "the Board does not consider the merits of the discharge or appeal,

nor does the Board speculate on the outcome.” *Buffalo & Pittsburgh R.R.*, 18 NMB 87, 89 (1990) (finding employees whose positions were abolished were eligible to vote because they had actions pending with the EEOC and the New York State Division of Human Rights). Thus, if there are “allegations of wrongful dismissal which are not on the face of the complaint frivolous” pending, “the Board’s rules and precedent provide for the eligibility of those employees alleged to have been wrongfully terminated.” *America West, above*, at 186 (finding employees who executed releases were eligible to vote because they were appealing their discharge.)

Based on the record evidence, Alaimo’s grievance is pending arbitration. It is not the Board’s province to inquire further into the merits of the grievance. *See also John Wiley & Sons, above*, (whether a grievance is arbitrable is for an arbitrator to decide.) Therefore, **Rosario Alaimo** will remain added to the List of Potential Eligible Voters.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Mary L. Johnson".

Mary L. Johnson
General Counsel