



NATIONAL MEDIATION BOARD
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41 NMB No. 48

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Re: NMB Case No. R-7399
Kalitta Charters II, LLC

Participants:

This determination addresses the August 27, 2014 appeal filed by Kalitta Charters II, LLC (Carrier) of Investigator Norman L. Graber's August 25, 2014 eligibility rulings. For the reasons discussed below, the Carrier's appeal is denied.

PROCEDURAL BACKGROUND

On July 22, 2014, the International Brotherhood of Teamsters (IBT) filed an application with the National Mediation Board (NMB or Board) alleging a representation dispute involving the Flight Deck Crewmembers of the Carrier. The employees in question are currently unrepresented. On July 29, 2014, the Board authorized an election in this matter. The Investigator sent a letter to the parties on July 30, 2014, setting a schedule for filing challenges and objections.

On August 6, 2014, IBT challenged the inclusion of two employees, Glenn Ingle and Douglas Welko, on the List of Potential Eligible Voters (List). IBT provided a declaration in support of its objection. Also on August 6, 2014, the Carrier objected to the inclusion of two other employees, Michael Taylor and Thomas Bellisario, on the List. The Carrier provided information regarding these employees. All four employees were challenged as being management

officials of the Carrier. On August 13, 2014, IBT filed a response to the Carrier's challenges, a declaration, and information disputing the managerial status of Taylor and Bellisario. On August 13, 2014, the Carrier filed a response to IBT's challenges, containing four declarations and information disputing the managerial status of Ingle and Welko. On August 20, 2014, IBT filed further information regarding employee Ingle. Pursuant to the Investigator's requests, on August 20 and 22, 2014, the Carrier filed five declarations and other information. On August 22, 2014, the Carrier also filed a response to IBT's August 20, 2014 filing.

The Investigator's August 25, 2014 eligibility ruling retained all four employees on the List. The Carrier has appealed only the Investigator's ruling that Thomas Bellasario should remain on the List.

CONTENTIONS

CARRIER

The Carrier's initial objection to Bellasario alleged that he is the employee representative on the Aviation Safety Action Program (ASAP) Event Review Committee (ERC). The ASAP ERC reviews reports by flight crewmembers regarding possible safety and/or regulatory violations. Bellasario casts votes on how to handle reports of violations. The Carrier asserted that a unanimous vote by the ASAP ERC could result in training, counseling, or punishment. Thus, the Carrier claimed that Bellasario participates in a process that can remove an employee from line duty for training, or counseling, or reporting them to the Federal Aviation Administration (FAA) aeromedical authorities. Accordingly, the Carrier argues that Bellasario has the authority to effectively discipline employees and to transfer and/or establish assignments by participating in decisions that can result in removal from line duty.

On appeal, the Carrier alleges that the ASAP ERC can take corrective action, which it characterizes as disciplinary. The Carrier argues that any managerial authority, no matter how rarely exercised, qualifies an employee as a management official. The Carrier also presents "new information [that] has come to light." This information is a statement from the Carrier's Director of Training (DOT), Darrell Coleman, who is the management official on the ASAP ERC. Based on this new information, the Carrier alleges that the Investigator wrongly concluded that Bellasario never participated in a decision that resulted in disciplinary action against an employee.

IBT

On appeal, IBT argues that DOT Coleman's declaration should be excluded because it was not submitted as evidence to the Investigator prior to his eligibility ruling. IBT further contends that Bellasario has been "afforded"

authority rather than exercised it; and that his authority relates only to work on a non-disciplinary committee.

DISCUSSION

The Investigator properly considered Bellasario's eligibility pursuant to the Board's Representation Manual (Manual) Section 9.21, 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.

As noted by the Investigator, when evaluating managerial authority, the Board evaluates the above factors cumulatively. *See USAir*, 24 NMB 38, 40 (1996) *citing Pan American World Airways*, 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 ASAP ERC is comprised of three voting members: a management representative; a representative from the employee labor association, if there is one; and an FAA inspector. In the absence of a labor organization, a representative may be chosen from the employee group. Bellasario is the employee group representative at the Carrier. ASAP ERC recommended action occurs only when there is a unanimous vote of the ERC.

In its appeal, the Carrier references the Memorandum of Understanding (MOU) establishing the ASAP ERC that was submitted to the Investigator as part of the challenge and objection process. The MOU makes clear that the ASAP ERC is utilized to evaluate only safety events, or medical qualifications or certifications, involving the Carrier's flight crewmembers. Section 10(d) of the MOU provides that non-safety reports will be forwarded to Carrier department

heads for appropriate internal resolution. Section 10 (g) further provides that any corrective action recommended by the ERC under the ASAP must be completed to the satisfaction of the ERC, or the event will be referred to the FAA for further appropriate action.

It is also clear that an ASAP ERC recommendation can result in retraining or counseling which has the effect of removing the employee from line duty. This appears to be the basis for the Carrier's contention that the ASAP ERC, including Bellasario, can discipline employees. Section 10(h) of the MOU, however, specifically provides that "[n]either the written ASAP report nor the content of the written ASAP report will be used to initiate or support any company disciplinary action" And Section 11(f) states that failure to complete the recommended corrective action of the ERC to the satisfaction of the ERC may result in a reopening of the case and referral of the matter for appropriate action. These sections of the MOU establish that the ERC corrective recommendations, which focus on maintaining safety, are not considered internal Carrier discipline, and that failure to complete recommended corrective action is referred elsewhere for further action. Thus, Bellasario, as a voting member of the ERC, can effectively recommend corrective safety action affecting Carrier Flight Deck Crewmembers, but cannot recommend internal Carrier discipline regarding those employees.

The Carrier also provides "new" information regarding Bellasario's declaration that during his time on the ASAP ERC, no one has been disciplined or discharged "based on an issue that was also submitted to the ASAP program." On appeal, the Carrier has submitted a declaration from DOT Coleman stating that, in September 2013, the ERC made recommendations in a case that resulted in two Carrier employees being required to complete remedial training as a result of a safety incident.

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." In its appeal, the Carrier asserts that it recently "became aware" of the new evidence. On August 22, 2014, the Carrier submitted a declaration from DOT Coleman in support of its position that employee Glenn Ingle is not a management official. Inasmuch as Coleman was available to provide information on that issue, we find that the information provided on appeal was or should have been available to the Carrier during the challenge and objection process. Accordingly, the Board finds no extraordinary circumstances justifying its consideration of the evidence not previously submitted to the Investigator.¹

¹ The Board notes, however, that the action referred to in Coleman's declaration on appeal demonstrates corrective safety action rather than discipline, as discussed above.

Based on Bellasario's duties as discussed above, and considering the managerial factors cumulatively, the Board finds that Bellasario is not a management official. Accordingly, the Investigator's ruling is upheld and Bellasario is eligible to vote.

CONCLUSION

The Carrier's appeal regarding Bellasario is denied, and Bellasario remains eligible to vote.

By direction of the NATIONAL MEDIATION BOARD

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

Mary L. Johnson
General Counsel