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NATIONAL MEDIATION BOARD
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RE: **NMB Case No. R-7557**
American Airlines/TWU/IAM Association and AMFA

Participants:

This determination addresses the Motion for Reconsideration filed by the Aircraft Mechanics Fraternal Association (AMFA) on September 7, 2021. AMFA seeks reconsideration of the National Mediation Board's (NMB or Board) September 2, 2021 dismissal of AMFA's application due to an insufficient showing of interest. *American Airlines, Inc.*, 48 NMB 93 (2021).

For the reasons set forth below, AMFA's Motion for Reconsideration is denied.

AMFA'S CONTENTIONS

AMFA requests the Board to reconsider its decision in dismissing its application and contends that: (1) the Board erred in calculating AMFA's showing of interest because it alleges that it submitted a total number of 7,228 valid authorization cards; (2) the Board erred in its determination that Donnie Gullledge and Larry Swimmer were eligible to vote because AMFA alleges that both employees died before the cut-off date of November 6, 2020; (3) the Board erred in its determination that the Flight Simulator

Engineers belong to the craft or class of Mechanics and Related Employees; (4) the Board erred in its determination that Fleet Service Employees engaged in deicing work were eligible to vote; and, (5) the Board erred in counting what AMFA alleges to be duplicate entries for one employee, Jean Pierre Toussaint.

DISCUSSION

The Board's Representation Manual (Manual) Section 11.0 states:

Reconsideration may not be sought from the NMB's certification or dismissal. Any motions for reconsideration of Board determinations must be received by the General Counsel within two (2) business days of the decision's date of issuance....The motion must state the points of law or fact which the participant believes the NMB has overlooked or misapplied and the grounds for the relief sought. Absent a demonstration of material error of law or fact or circumstances in which the NMB's exercise of discretion to modify the decision is important to the public interest, the NMB will not grant the relief sought. The mere reassertion of factual and legal arguments previously presented to the NMB is insufficient to obtain relief.

The Board recognizes the vital importance of the consistency and stability of the law and grants relief on Motions for Reconsideration in limited circumstances where, in its view, the prior decision is fundamentally inconsistent with the proper execution of the NMB's responsibilities under the Railway Labor Act. *Norwegian Air Shuttle*, 42 NMB 152 (2016); *Port Auth. Trans-Hudson Corp.*, 34 NMB 114 (2007); *Virgin Atl. Airways*, 21 NMB 183, 186 (1994).

A. Showing of Interest

AMFA contends that it met its showing of interest and submitted a confidential list containing the names of 7,228 employees whom AMFA alleges submitted cards as part of its application. It contends that the NMB made errors in calculating its showing of interest and requests that the NMB provide AMFA with the authorization cards that were "removed by the Investigator" as well as the corresponding signature samples from American Airlines. It requests further that it be "provided with copies of any specific signature samples . . . for any authorization cards that may have been removed as invalid" so that AMFA can "independently confirm any alleged invalidity." As a remedy, AMFA requests that the NMB authorize an election as required by its rules.

The Board's rules at 29 C.F.R. §1208.4 (b) provides, in part, that "the NMB will treat as confidential evidence submitted in connection with the showing of interest in a representation dispute, including authorization cards and signature samples, and other personally identifying information received during an investigation." Section 3.0 of the Manual also requires "the NMB keep all authorizations confidential. This includes the names of individuals who have signed authorizations and the number of authorizations submitted. The carrier or opposing party or parties should not be privy to the number

of percentage of authorizations furnished.”

An examination of the record in this matter, including each authorization card submitted by AMFA to the Board, reveals a significant discrepancy between what AMFA believes to be the total number of valid authorization cards submitted with its application and the actual number of valid authorization cards received by the Board. The authorization cards submitted with AMFA’s application were secured in a locked file cabinet in the NMB office since AMFA filed its application on November 13, 2020. The authorization cards were processed pursuant to the Board’s Rules at 29 C.F.R. §1206.3 and Section 3.1 of the Manual. Further, all authorization cards were thoroughly reviewed by five (5) attorneys, including the Acting General Counsel as well as the Investigator. The review of the authorization cards by NMB attorneys resulted in the Board’s dismissal of AMFA’s application for insufficient showing of interest as required by 29 C.F.R. §1206.2(a). Accordingly, AMFA has failed to demonstrate a material error in law or fact or circumstance that would require the Board to modify its decision and grant AMFA’s requested relief.

B. Deceased Individuals

AMFA contends that Board erred in its determination that Donnie Gulledge and Larry Swimmer were eligible to vote. It asserts that the Memoriam publication dated September 2020 that it submitted to the Investigator is uncontested evidence that Donnie Gulledge and Larry Swimmer died before the November 6, 2020 cut-off date. AMFA asserts that the Memorial publication is more recent and should take priority over what American Airlines submitted to the Investigator through the declaration of James B. Weel, Managing Director, Labor Relations dated April 1, 2021. As a remedy, AMFA requests that the names of both individuals be removed from the List of potential eligible voters (List).

A review of the record show that AMFA’s contention in its Motion for Reconsideration is a mere reassertion of arguments previously presented to the Board as it relates to these two individuals. Accordingly, AMFA’s arguments regarding Donnie Gulledge and Larry Swimmer are insufficient to warrant reconsideration and relief.¹

C. Flight Simulator Engineers

AMFA contends that the Board erred when it did not consider the substantive evidence AMFA provided in its Appeal demonstrating what it alleges to be a change in circumstances that warrants a departure from the Board’s 2015 determination regarding the Flight Simulator Engineers. That evidence consisted of a “copy of the 3rd Shift Equipment Assignments for the Flight Simulator Engineers, dated March 1, 2021, which indicates that Group 3, Repair and Test, perform the repairing and testing of the flight simulators” and listed as exhibit Q2. AMFA asserts that Exhibit Q2 shows that only five (5) Flight Simulator Engineers possess the skills to make repairs and perform hardware

¹ Even if the Board considers AMFA’s arguments and grants its requested remedy, the removal of Donnie Gulledge and Larry Swimmer will have no impact on the Board’s dismissal of AMFA’s application. The removal of two names will still require the Board to dismiss AMFA’s application due to insufficient showing of interest pursuant to 29 C.F.R. §1206.2(a).

maintenance. AMFA asserts further that the other “125 Flight Simulator Engineers do not perform such hardware maintenance and do not possess the skills to perform such hardware maintenance.” Thus, AMFA requests that the Board remove all Flight Simulator Engineers from the List with the exception of Mike Attaway, Christopher Vaughn, Robert Shull, and James Palmer.

The Board considered all evidence submitted by all participants and determined that the Flight Simulator Engineers will remain in the craft of class of Mechanics and Related Employees. AMFA’s arguments that Flight Simulator Engineers do not perform hardware maintenance and do not possess the skills to perform hardware maintenance are mere reassertions of the arguments previously presented to the Board. AMFA’s reassertions are insufficient to warrant reconsideration and obtain the relief requested.

D. Fleet Service Employees Engaged in Deicing

AMFA contends that the Board erred in its determination that the Fleet Service Employees engaged in deicing were eligible to vote. AMFA reasserts the same arguments previously presented to the Board and insist that “it is error to ignore the patently obvious, namely that notwithstanding that a Fleet Service Employee has successfully bid to perform deicing work, if the weather doesn’t create ice on the planes and no deicing is required, deicing is not performed.”

In its determination, the Board considered the evidence and arguments submitted by the participants and found that the Fleet Service Employees, who bid for and were awarded the deicing positions in the locations where deicing is performed exclusively for the time period that includes the cutoff date, were eligible to vote. The Board relied on the following undisputed facts in its determination: the declarations made by the employees who performed deicing work exclusively pursuant to the TWU/IAM Fleet Association agreement; the declarations of Lynn Vaughn, Managing Director, Labor Relations, who confirmed the locations where deicing functions are to be performed by Fleet Service employees who bid for and are awarded positions devoted exclusively to deicing; the confirmation by Lynn Vaughn of the names of the employees who bid for and were awarded the deicing assignments for a specific period that includes the cut-off date of November 6, 2020; and AMFA’s concession that deicing is in fact work that belongs to the Mechanics and Related Employees craft or class. The lack of deicing work, which AMFA argues is the error in this case, does not obliterate the contractual rights of those employees who bid for and were awarded those deicing positions. AMFA may disagree with the Board’s assessment of the evidence, however, AMFA’s reassertions are insufficient to obtain the relief requested.

E. Duplicate Entries for Jean-Pierre Toussaint

AMFA contends that the employee on page 17 of the Investigator’s ruling engaged in aircraft movement at the Carrier’s Boston station from September 28, 2020 through November 8, 2020 and the employee on page 10 of the Investigator’s ruling engaged in lavatory services at the Carrier’s Dallas Forth-Worth station from October 5, 2020 through November 22, 2020 is the same person. AMFA requests that at least one duplicate entry for the employee be removed from the eligibility list for the purpose of

calculating the showing of interest.

A review of the evidence presented to the Investigator reveals that the Investigator made a typographical error in her ruling, however, the error did not result in counting the employee twice when determining the number of potential eligible voters as alleged by AMFA. The Carrier's evidence through the second declaration of Lynn Vaughn confirmed that there are in fact two employees covered by the Investigator's ruling. Jeanne Pierre Picado 1292 L3 was engaged in lavatory services and Jean Pierre Toussaint 1297 L3 was engaged in aircraft movement. Thus, the Investigator was correct in counting both employees and the Investigator's typographical error did not impact the number of potential eligible voters as determined by the Investigator and affirmed by the Board. Accordingly, AMFA has failed to demonstrate a material error of fact made by the Board in its determination and AMFA's request for reconsideration is denied.

CONCLUSION

AMFA has failed to demonstrate a material error of law or fact or circumstances on which the Board's exercise of its discretion to modify the decision is important to the public interest. Furthermore, the Board finds that AMFA has failed to show the prior decision is fundamentally inconsistent with the proper execution of the Board's responsibilities under the Railway Labor Act, 45 U.S.C. §151, et seq. Accordingly, any relief upon reconsideration is denied.

By direction of the NATIONAL MEDIATION BOARD.



Maria-Kate Dowling
Acting General Counsel