



NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

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February 22, 2022
49 NMB No. 11

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RE: Case No. R-7567
Lufthansa Technik Puerto Rico

Participants:

This determination addresses the November 30, 2021 appeal filed by Lufthansa Technik Puerto Rico (LTPR) of Investigator Josie G.M. Bautista's November 19, 2021 eligibility ruling. For the reasons discussed below, LTPR's appeal is denied.

PROCEDURAL BACKGROUND

On August 3, 2021, the International Association of Machinists and Aerospace Workers (IAM) filed an application with the National Mediation Board (NMB or Board) alleging a representation dispute among Mechanics and Related Employees at LTPR. The Mechanics and Related Employees are presently unrepresented. On August 17, 2021, LTPR filed a List of Potential Eligible Voters (List) containing the names of 218 employees. LTPR provided the attestation from Waleska Jimenez Martinez, Head of Human Resources at LTPR, certifying the accuracy of the List as of the cut-off date, July 25, 2021.

On August 30, 2021, the IAM challenged the inclusion of three individuals on the List and the exclusion of 10 individuals from the List. Among the individuals IAM challenged were eight “Team Leaders” who the IAM alleged no longer perform “managerial duties” making them eligible to vote and should be added to the List. The Carrier responded that the Team Leaders were management officials and submitted additional information to the Investigator on September 23, 2021. Upon request from the Investigator, the Carrier provided additional information on October 14, 2021. The IAM also filed a Reply to the Carrier’s September 23, 2021 response on October 14, 2021.

On November 19, 2021, the Investigator issued her eligibility ruling and found that while the Team Leaders challenged by the IAM “possess some authority in directing the mechanics in their daily assignments, when all factors are viewed cumulatively, the evidence provided is insufficient to render the Team Leaders ineligible as management officials.” The Investigator added the following eight Team Leaders to the List: **Ricardo Beniquez, Jonathan Diaz, Anagladiedys Garcia, Alec Gonzalez, Luis Gonzalez, Gewan Maisonet, Frank Ortiz, and Jomark Osorio**. The Investigator also retained on the List two Team Leaders (**Joseph Burgos Lopez #20**, and **Victor Hernandez Hernandez #80**) who LTPR asserts were inadvertently included on the List.

On November 30, 2021, LTPR appealed the Investigator’s ruling that the above-identified Team Leaders are not management officials and are eligible to vote.

On December 8, 2021, the IAM responded to LTPR’s appeal and asserted that an additional Team Leader, Santiago Sanchez, should also be added to the List if the Board upholds the Investigator’s ruling regarding the Team Leaders. Sanchez was not part of any previous challenge or objections by the IAM.

On December 9, 2021, LTPR requested leave to file a rebuttal to the IAM’s assertion that Sanchez should be added to the List. The Acting General Counsel granted LTPR’s request and scheduled the due dates of the rebuttal and the IAM’s surrebuttal.

On December 14, 2021, LTPR reasserted its previous positions that Team Leaders are management officials and submitted new evidence in the form of a declaration from Human Resources Business Partner, Cristina Pumarejo, and a payroll report containing the names of the employees who served in the Team Leader/Interim Team Leader position as of the cut-off date of July 25, 2021. The payroll report included the names of 10 additional Team Leaders who were not the subject of any previous challenges and objections. LTPR requested that, to

the extent the Board upholds the Investigator's ruling regarding the Team Leaders, these additional 10 Team Leaders be added to the List for the purpose of calculating the showing of interest and determining voter eligibility.

On December 17, 2021, the IAM filed its surrebuttal and asserted it has never argued against the inclusion of any Team Leader who is no longer performing managerial duties. It asserted further that "LTPR, as the Carrier, has all the information about who is employed in what classification" and has not been forthcoming or complete with its information. The IAM asserted that it only mentioned the name of Santiago Sanchez because it recently learned that Sanchez was a Team Leader and it has the "responsibility to update the NMB when it learns of additional information that the Carrier has neglected to share."

CONTENTIONS

CARRIER

LTPR asserts that Team Leaders are management officials and have been deemed management officials during the prior three elections involving the IAM and LTPR. It asserts that the Investigator erred when she ruled the above mentioned Team Leaders eligible to vote and added them to the List. LTPR contends that it provided significant evidence that even after LTPR's business restructuring in February 2021, the Team Leaders continued to perform managerial duties as they did before the restructure. LTPR asserts that the Team Leaders continue to retain the title and continue to receive the higher rate of pay designated for Team Leaders. As Team Leaders, "they are part of LTPR's leadership team and regularly coordinate and communicate with higher-level managers regarding the operations and performance of the employees in their respective areas that they supervise. As managers, they are held accountable for the operations and employee performance in their areas."

LTPR requests that the Board reverse the Investigator's ruling and find that the identified Team Leaders are management officials under Section 9.211 of the Board's Representational Manual (Manual) and ineligible to vote just as the NMB determined in the previous elections. If appropriate, LTRP requests the Board dismiss the IAM's application for failing to meet the showing of interest.

IAM

The IAM asserts that the Investigator conducted a thorough factual investigation, taking into account multiple position statements and evidentiary

submissions by the participants, and made detailed requests for additional information to clarify and confirm the evidence submitted. The IAM asserts that LTPR cannot meet its burden of proof required to overrule the Investigator's ruling in this case, and instead asks the Board to ignore numerous employee declarations in favor of the declaration of one LTPR executive. The IAM asserts further that the employment circumstances of the Team Leaders identified in this appeal have changed due to the Carrier's business restructuring in February 2021, which created supervisory positions that took over the above Team Leaders' managerial responsibilities. A number of the Team Leaders gave sworn declarations about the changes in managerial responsibilities and confirmed that they have not issued discipline, evaluated employees, scheduled or granted overtime, or approved leave of absence requests or time and attendance discrepancies since around February 2021. The IAM asserts that LTPR offered no evidence showing the Team Leaders performing managerial responsibilities closer to the July 25, 2021 cut-off date and requests the Board deny LTPR's appeal in all respects.

DISCUSSION

The Investigator properly considered whether **Ricardo Beniquez, Jonathan Diaz, Anagladiedys Garcia, Alec Gonzalez, Luis Gonzalez, Gewan Maisonet, Frank Ortiz, Jomark Osorio, Joseph Burgos Lopez, and Victor Hernandez Hernandez** are management officials pursuant to Section 9.211 of the Manual. That section 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. *Allegiant Air, Inc.* 45 NMB 43 (2018). "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, Inc.*, 24 NMB 38, 40 (1996) (citing *Pan Am. World Airways, Inc.*, 5 NMB 112, 115 (1973)).

There is no dispute between LTPR and the IAM that in prior elections, Team Leaders were excluded from the eligibility list because they possessed managerial responsibilities that rendered them ineligible to vote. However, it is also undisputed that the Carrier went through a business restructuring in February of 2021, which led to the creation of the Aircraft Maintenance Supervisor position. According to the evidence submitted by the IAM, as a result of the new organizational structure, the managerial duties that were previously performed by the Team Leaders who are the subject of this appeal are now being performed by the Aircraft Maintenance Supervisors. These duties include issuing discipline; performing employee evaluations; granting and approving overtime; and approving leave of absence requests or time and attendance discrepancies. The sworn declarations from a number of the above mentioned Team Leaders also state that they stopped performing those managerial duties in February of 2021.

The evidence also demonstrates that LTPR's implementation of its new organizational structure is not complete. The declaration of LTPR's Chief Executive Officer, Patrick Foley, confirms that the restructuring process "is not fully in place and has not been completed." LTPR is still recruiting both internally and externally for some vacant Aircraft Maintenance Supervisor positions and is utilizing some of its Team Leaders to perform managerial duties until its reorganization is completed. A review of the record shows that the Investigator took this fact into consideration in her eligibility ruling and only addressed the eight Team Leaders the IAM claimed should be added to the List and the two Team Leaders who were already on the List. The Investigator requested information about those 10 individuals – who are the subject of this appeal – and based her ruling on the evidence provided pertaining to them.

The evidence provided to the Investigator established that Team Leaders **Ricardo Beniquez, Jonathan Diaz, Anagladiedys Garcia, Alec Gonzalez, Luis Gonzalez, Gewan Maisonet, Frank Ortiz, Jomark Osorio, Joseph Burgos Lopez and Victor Hernandez Hernandez** no longer perform the managerial

duties that rendered them ineligible to vote in the past elections. Here, the Investigator gave LTPR ample time to provide sufficient evidence to the contrary; and although the Carrier provided documents demonstrating some of the Team Leaders approved leave requests in February and March of 2021, the record is devoid of any evidence that any of the Team Leaders disciplined employees, evaluated employees' performance, granted or approved overtime or leave, or approved time and attendance discrepancies at any time after March of 2021 and as of the cut-off date, evidence which was specifically requested by the Investigator.

While the evidence provided to the Investigator demonstrates the above-named Team Leaders directing the work of the Mechanics, ordering parts, and coordinating with higher-level managers, cumulatively, those authorities are insufficient to render these Team Leaders ineligible as management officials. The evidence establishes that Team Leaders who are the subject of this appeal are lead mechanics and at most, first level supervisors, not management officials. *Airtran Airways, Inc.* 29 NMB 76 (2011). *USAir, Inc.*, 24 NMB 38 (1996); *Comair*, 22 NMB 175 (1995); *USAir*, 17 NMB 117 (1990); *Tower Air, Inc.*, 16 NMB 338 (1989).

LTPR relied on the following cases to support its position that Team Leaders are management officials: *American Airlines, Inc.* 24 NMB 521 (1997); *British Airways, Inc.*, 7 NMB 369 (1980); *United Airlines, Inc.*, 30 NMB 9 (2002). The Board finds these cases distinguishable. In *American Airlines, Inc.*, the Board found that the "Maintenance Supervisors" were management officials because they possessed the authority to assign work and discipline employees. They also played a key role in the investigation of incidents which led to disciplinary action, made recommendations on hiring decisions, evaluated the work of the Crew Chiefs, and authorized and granted overtime within the budget limitations. The Board noted that the Maintenance Supervisors also served as the first step representative in the grievance process and can immediately grant or deny a grievance. Additionally, the Maintenance Supervisor regularly participated in the budget process through discussions regarding manpower and capital expenditure needs with other members of management. Here, in contrast, while the above named Team Leaders at LTPR assign work to the mechanics they lead, they do not exercise any of the other authorities exercised by the Maintenance Supervisors at American.

In *British Airways, Inc.*, above, the Board found the "Purchasing Stores Supervisor" was a management official with the authority to assign work, authorize overtime, determine the number of employees who can take vacation at any given time, approve invoices up to \$250,000 per year, interview job applicants for hiring, and initiate disciplinary actions against the employees under them. In this case, the above named Team Leaders no longer authorize overtime or issue discipline, and there is no evidence that the Team Leaders

interview job applicants, have any say in the number of employees who can take vacation at any given time, or exercise any of the other authorities exercise by British Airways' Purchasing Store Supervisor.

In *United Airlines, Inc., above*, the Board determined that the Lead Engineers at United were ineligible as management officials because they directed work, participated in the hiring process, evaluated employee performance, effectively recommended promotions, played a role in employee disciplinary proceedings, including issuing letters of warning, approved overtime, and to varying degrees committed carrier funds. While the above named Team Leaders at LTPR exercised similar authorities prior to the Carrier's reorganization in February 2021, no evidence was provided to establish that they continue to exercise those authorities. Rather, the record evidence establishes that those authorities are now performed by the Aircraft Maintenance Supervisor.

LTPR argues "[t]hat the above Team Leaders did not actually exercise their authority to discipline/discharge or grant overtime or effectively recommend the same (which authority they still possess) since the February 2021 restructure does not diminish the determination that they are management officials, as the cumulative evidence demonstrates the Team Leaders have the authority to exercise and actually do exercise the other elements and factors required to be a management official." The Board disagrees. In determining whether an individual is a management official, what matters is the authority actually possessed and the work actually performed. The mere description of the authorities of Team Leaders in the job description provided by LTPR is insufficient to establish that they actually exercise that authority. *See Allegiant Air*, 45 NMB 43 (2018); *Pan Am Airways*, 37 NMB 270, 278 (2010). Further, the exercise of that authority must be more than sporadic or intermittent. *Id.* at 278. Here, the Carrier provided only unsupported assertions that the above named Team Leaders disciplined employees and granted overtime after February 2021. This lack of evidence in the face of sworn declarations from a number of Team Leaders confirming that they no longer discipline employees and grant overtime requires the conclusion that these Team Leaders are not management officials.

LTPR further argues that in citing *Aerovias De Mexico*, 20 NMB 584 (1993), the Board found the employees to be "management officials because they granted overtime and evaluated the performance of lower-level employees they supervised." Here, however, the Team Leaders no longer grant overtime or evaluate employee performance. Notably, in *Aerovias*, the Board also concluded that the Aerovias Assistant Aircraft Maintenance Supervisors (AAMCS) were not management officials and determined that the AAMCS, who are all licensed mechanics, perform functions which are essentially similar to those of lead mechanics at other airlines. *Id.* at 598. The functions performed by the AAMCS in *Aerovias* are very similar to the lead functions performed by the Team Leaders

at issue in this case, e.g., the authority to purchase aircraft parts as needed. While the AAMCS (unlike the Team Leaders here) had the authority to grant overtime, that authority was not sufficient for the Board to render the AAMCS ineligible as management officials.

Based on the evidence presented to the Investigator, when viewed cumulatively, the Board finds, consistent with the Investigator's findings, that the above named Team Leaders are not management officials.

NEW EVIDENCE NOT PREVIOUSLY SUBMITTED TO THE INVESTIGATOR

On December 14, LTPR filed a rebuttal to the IAM's response and submitted new evidence consisting of a declaration from Pumarejo and a payroll report that "shows the employees who served in the Team Leader/Interim Team Leader position as of July 25, 2021." The new evidence identified the names of 10 additional Team Leaders and was not submitted to the Investigator during the investigation. Manual Section 10.2 states that "[a]bsent extraordinary circumstances, evidence submitted on appeal which was not submitted to the Investigator during the investigation will not be considered by the NMB." LTPR's submission of new evidence that identifies the names of 10 additional Team Leaders after the investigation has been completed does not constitute extraordinary circumstances. Therefore, this evidence will not be considered.

Accordingly, for the reasons stated above, the Board will not consider the new evidence submitted by the Carrier.

CONCLUSION

LTPR's appeal of the Investigator's ruling that the Team Leaders are not management officials is denied. The Board upholds the Investigator's ruling that Team Leaders **Ricardo Beniquez, Jonathan Diaz, Anagladiedys Garcia, Alec Gonzalez, Luis Gonzalez, Gewan Maisonet, Frank Ortiz, Jomark Osorio, Joseph Burgos Lopez and Victor Hernandez Hernandez** are eligible to vote.

By direction of the NATIONAL MEDIATION BOARD.



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