Arbitration

Association of Professional Flight Attendants	Case # SS-46-2001-APFA-6
and	Gr: Family and Medical Leave Policy
American Airlines, Inc.	Remedy: July 28, 2006

Arbitrator:	Roberta Golick, Esq.
APFA Board Members:	Susan M. French Julie Moyer
AA Board Members:	Michael Waldron Benjamin D. Williams
Hearings:	September 19 & 20, 2005; February 16 & 17, 2006
Appearances:	For the Union Professor Carin A. Clauss, Esq. University of Wisconsin Law School Patt A. Gibbs, Esq. Gibbs & French For the Company Gregg M. Formella, Esq. American Airlines, Inc.

Background

On June 30, 2003, the panel[1] issued the following award:

> American Airlines had the right in October 2001 to make changes in its FMLA policy.
>
> The 2001 changes in FML Policy relative to the concurrent burning of sick, vacation and IOD leaves along with FML do not violate the collective bargaining agreement.
>
> The 2001 change in FML Policy relative to administrative eligibility does violate the collective bargaining agreement.
>
> The parties are directed to discuss ways to structure a remedy for the contract breach. The Board will retain jurisdiction over the remedial portion of this award as discussed above.

The panel had commented in its decision:

> The Board does not underestimate the difficulty confronting the Company to "undo" its contractual breach and reassess eighteen months of eligibility issues for flight attendants who were denied FML benefits as a consequence of the 720 on-duty hour requirement. To undertake such a task will require the active participation and cooperation of the APFA. It will also require the supervision and possible intervention by the Board. A starting point will be for the Company and the Union to sit down and discuss ways to structure a remedy.

The parties took seriously the panel's charge, incorporated in the body of the decision, to "meet to consider options for final resolution, including the possibility of arriving at a mutually agreeable administrative eligibility standard for FML." On October 1, 2003, Board Member Susan French reported that "the Company and APFA have reached an agreement in principal on the FMLA eligibility. The new threshold will be 504 paid productive hours. This figure was reached by multiplying the base guarantee (70 hours per month under the restructuring agreement) by 12 months and then taking 60% of that

[1] At the time, the AA Board Members were Emily Johnston and Stephen Howell. Both later left the Company. They were replaced on the panel by Michael Waldron and Benjamin Williams.

number. We are now in the process of working on the remedy and you were right that it would be a daunting task..."

The task proved to be more daunting than imagined, and disagreements between the parties led, finally, to a breakdown in the remedial process. Ultimately, the Board re-convened for hearings in September 2005 and February 2006 to take evidence, hear argument, and provide a final ruling on what the appropriate remedy should be. The parties acknowledge that the Board has jurisdiction to issue a final ruling on remedy.

A few words of explanation are in order. Back in 2003, after the parties arrived at a tentative agreement based on a 504 paid productive hour (PPH) threshold, the Employer, with the Union's participation, embarked on an ambitious program to identify and make whole those bargaining unit members who were entitled to a remedy. It was during this process that conflicts in the parties' respective understandings of their agreement erupted.

While this Board could have simply disregarded the hard work and diligent efforts that went into the parties' earlier efforts by issuing a remedy based strictly on conditions as they existed at the time of the arbitration hearings in 2002, to do so would be impractical and a disservice to the parties. Even back in the fall of 2003, the parties recognized that the restructuring agreement changed the landscape and could not reasonably be ignored. By 2006, given the myriad of intervening considerations in addition to the restructuring agreement (in particular, the passage of time since the original award), the Board agreed

that working to resolve the issues within the framework of the 504 PPH became preferable to sending the parties back to a 2002 "reality" that no longer exists.

The Board notes that the 504 PPH, while not, strictly speaking, an "undoing" of the harm caused by the contract breach, is an appropriate number to adopt as a threshold so long as the tangential issues that are associated with 504 PPH are dealt with and resolved.

The Remedy

The Number

Recognizing that the Board cannot lock the Employer into a contractual "agreement," we accept that the number to be applied going forward as the threshold for FML eligibility is 504 Paid Productive Hours.[2] Paid Productive Hours include all paid hours and all training hours, and exclude all sick, vacation, jury duty, sick make-up, personal emergency, paid withholds, and IOD except for that addressed in Article 26E.

The Make Whole/Reconsideration Process

The Employer is commended for its assiduous and time-consuming efforts devoted to identifying individuals who are entitled to a remedy. A majority of the Board finds, however, that the results in two areas are not sufficiently reliable to put the reconsideration process to rest.

[2] The Union agreed at the remedy hearings that for purposes of making employees whole, the 504 PPH that the Employer had implemented previously was correct and the only question was what the number should be prospectively.

In the maternity area, a majority of the Board agrees that it would not be feasible at this point to identify those employees who were harmed either as a result of being denied FML in connection with their maternity status or by refraining, because of the Employer's stated position on the matter, from applying for FML which would have been granted but for the breach.

Accordingly, the group eligible for a remedy is as follows: 1) anyone who was on M status from 6/1/01 through 7/31/02 (Group I); and/or b) anyone who was on M status between 8/1/02 and 12/24/03 whose Paid Productive Hours fall between 504 and 720 (Group II). Excluded from the eligibility class is anyone who has already otherwise been remedied in the reconsideration process. In lieu of payment to those individuals in the eligibility class entitled to a remedy, a majority of the Board directs the Employer to provide one unattached vacation day, the vacation day to be taken within the fiscal year. The vacation day will be plotted by the Company in accordance with the collective bargaining agreement.

Employees in the eligibility class who have left the Company are entitled to the following:

Employees who did not return to active employment at the end of M status:	$0
Employees in Group I who left the Company 8/1/02 - 12/31/03:	$100.00
Employees in Group II who left the Company 12/25/03 - 12/31/04:	$100.00
Employees in Group I who left the Company 1/1/04 - 12/31/04:	$150.00
Employees in Group II who left the Company 1/1/05 – 12/31/05	$150.00
Employees in Group I who left the Company 1/1/05 – 7/28/06:	$200.00
Employees in Group II who left the Company 1/1/06 – 7/28/06:	$200.00

Eligible employees who fall into both Group I and Group II are entitled to one remedy only.

In the Attendance area, the Board agrees that to ensure that eligible employees are remedied, the Employer is directed to recode as "FML" absences of people who were named on Company Exhibit #12 and to note same in the discussion record. The only absences in question are those that occurred between 10-1001 (date) and 12-31-03 (date). The eligibility group for this remedy excludes individuals who have already otherwise been remedied as a result of the reconsideration process.

Other Issues

At the remedy hearings, the Union sought further relief in two areas. The Union claimed that the Company's concurrent burn policy might in some instances violate or diminish one or more of the parties' other contractual agreements and asked that relief be granted relative to the burning of FML and PVD's in the context of intermittent leaves. The Union also argued that the Company's treatment of employees who are eligible for the Federal FML benefit (by meeting the 1250 hours test) is different (and better) than its treatment of employees who are not eligible for the Federal FML benefit, and asked that the Board entertain its claim of disparate treatment.

The Board finds that these claims are not properly before it at this time. Accordingly, we hold that the Union still possesses whatever rights it had to challenge what it perceives as

conduct violative of the collective bargaining agreement; its rights are not diminished (or increased) as a result of waiting for the Board's final order in this case, and nothing in this award should be construed as precluding the Union from pursuing its claims in another forum.

Award

> The administrative eligibility standard for FML going forward shall be 504 Paid Productive Hours, as defined and conditioned in the discussion above.
>
> Employees who meet the criteria discussed above (relative to maternity) shall receive one unattached vacation day, the vacation day to be taken within the fiscal year.
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> Employees who meet the criteria discussed above (relative to attendance) shall have their absences recoded as "FML" and the same shall be noted in their discussion record.

By the Board:

Roberta Golick, Esq. (7/28/06)
Chair

Susan M. French, Esq.
APFA
(concurring)

Michael Waldron
American Airlines
(dissenting)

Julie Moyer
APFA
(concurring)

Benjamin D. Williams
American Airlines
(dissenting)