

In the Matter of the Arbitration Between:

AMERICAN AIRLINES, INC.

AND

Case No. SS-19-1998-APFA-2

ASSOCIATION OF PROFESSIONAL
FLIGHT ATTENDANTS

Hearing Held November 1-2, 2000
Before the System Board of Adjustment

Richard I. Bloch, Chairman
Tommie Hutto-Blake, Association Appointed Member
Jeff Bott, Association Appointed Member
Robert L. Seredick, Company Appointed Member
Emily Johnston, Company Appointed Member

Appearances

For the Company

Thomas E. Reinert, Esq.

For the Union

Victor C. Thuesen, Esq.

Susan French, Esq.

OPINION

Facts

For many years, the Company has offered travel passes to its employees¹. There are rules governing the conduct of people using the passes, set forth in the TRIP book distributed to all employees. Generally, abuse of travel privileges can lead to various forms of "corrective action" that may include suspension and loss of travel privileges as well as loss of employment.

¹ A "D-1" pass was used by an American employee, his or her spouse, dependent children, or domestic partner for what was at the time a one way or round trip ticket each year on a standby basis. D-2 passes are for standby travel available to the same people on an unlimited basis. D-3 passes, also called "buddy" passes, are limited to twenty-four one-way travel passes annually, and may be given to anyone.

The Company acknowledges that a dismissal case may be grieved and, if necessary, brought before the System Board of Adjustment for resolution. However, the Company has recently rejected Union attempts to grieve other Company pass-related actions, such as suspension of privileges or fines, contending the System Board has no jurisdiction. That is the issue that divides the parties and that has been presented for resolution by the System Board of Adjustment.

Issue

Did the Company violate the Collective Bargaining Agreement by limiting the scope of a flight attendant's right to dispute travel pass-related corrective actions? If so, what should the remedy be?

Company Position

The Company says the matter is outside the jurisdiction of the System Board of Adjustment. An existing company-established Pass Abuse Committee is the exclusive body for handling appeals of corrective actions taken for alleged misuse of travel pass benefits. A substantial body of precedent supports the Company's position that travel privileges are non-negotiated, non-contractual privileges that should not be subjected to the bargained-for grievance procedures. It requests, therefore, that the grievance be denied.

Association Position

The Association contends that the clear language of the labor agreement, providing as it does for the protesting of "any action" of the Company, must be interpreted as permitting a grievance over this issue. Neither bargaining history nor past precedent supports a contrary

conclusion. Indeed, the Company has previously honored such protests. It requests that the Company be ordered to cease and desist from refusing to recognize such grievances.

Relevant Contract Provisions

ARTICLE 28 – DISPUTE RESOLUTION AND GRIEVANCE PROCEDURES

A. DISPUTE RESOLUTION PROCESS

*** 2. Types of Disputes

a. Individual Dispute

An individual dispute (“Individual Dispute”) is defined as a dispute between a flight attendant and the Company involving any action of the Company affecting him/her, except discharge.

3. Notice of Dispute

a. Filing

A flight attendant having such a dispute may file an abbreviated, informal document termed a Notice of Dispute (hereinafter referred to as a NOD) in person or through an APFA representative, within ten (10) days, exclusive of Saturdays and Sundays, after becoming aware of such dispute. Such NOD shall be filed with the Manager of Flight Service, or his/her designee. Any and all documents supporting the claim that are in the possession of the flight attendant or the APFA representative should be attached to NOD form at the time of filing.

*** 5. Dispute Resolution Conference

a. Purpose

Should the initial attempts to reach resolution be unsuccessful, a meeting hereinafter referred to as a Dispute Resolution Conference (“DRC”) shall be scheduled. The purpose of the DRC shall be to attempt to reach an acceptable resolution of the dispute informally.

*** d. Participants at DRC

Except as noted below, participants at the DRC shall be limited to the flight attendant(s) who filed the NOD, his/her APFA representative, a Company representative and a Facilitator. In all matters involving an individual flight attendant's performance or attendance, or a personal matter, the flight attendant shall be present at the DRC. In all other disputes, such as scheduling, contractual or other policy issues, the flight attendant may elect not to attend the DRC and be represented at the DRC by his/her APFA representative.

***** B. DISCHARGE/PRESIDENTIAL GRIEVANCES**

*****. 2. Presidential Grievances**

a. Filing

The President of the APFA may protest, in writing, to the Vice President, Employee Relations, of the Company any action of the Company or any alleged misapplication or misinterpretation of this Agreement within forty-five (45) days after such alleged action, misapplication or misinterpretation has been ascertained.

b. Decision

The Vice President of Employee Relations shall evaluate such grievance and render a decision, in writing, within twenty (20) days after it has been received.

c. Appeal

If the decision of the Vice President, Employee Relations is not satisfactory, an appeal may be made, in writing, within twenty (20) days to the System Board of Adjustment, as provided in Article 29 of this Agreement.

ARTICLE 29 – SYSTEM BOARD OF ADJUSTMENT

A. STATEMENT OF PURPOSE

In compliance with Section 204, Title II, of Railway Labor Act, as amended, there is hereby established a System Board of Adjustment for the purpose of adjusting and deciding disputes which may arise under the terms of this Agreement and which are properly submitted to it, which Board shall be known as the "American Airlines Flight Attendant System Board of Adjustment", hereinafter referred to as the "System Board."

B. JURISDICTION OF THE SYSTEM BOARD

1. General

a. Scope

The System Board as constituted in accordance with the provisions of this Article shall have jurisdiction over disputes between any employee covered by this Agreement and the Company growing out of grievances or out of interpretation or application of any of the terms of this Agreement. The jurisdiction of the System Board shall not extend to proposed changes in hours of employment, rates of compensation, or working conditions covered by existing agreements between the parties hereto.

***** 2. System Board Consideration of a Dispute**

a. Individual, Group and Base Disputes

The System Board shall consider and have jurisdiction over any Individual, Group or Base dispute, as defined in Article 28 of this Agreement, properly submitted to it by the President of the APFA in accordance with the terms provided for in this Agreement. Regular sessions of the System Board shall be scheduled once each quarter for the purpose of considering all individual, Group and Base disputes properly submitted to the System Board when such disputes have not been previously settled in accordance with the terms provided for in this Agreement. Such regularly scheduled sessions, hereinafter referred to as the "Quarterly System Board," shall take place once each quarter provided that there are such disputes filed with the System Board for consideration. The Quarterly System Board shall continue in session until all such disputes before it have been considered unless otherwise mutually agreed upon.

b. Other Disputes

The System Board shall consider any other dispute properly submitted to it by the President of the APFA or by the Company when such dispute has not been previously settled in accordance with the terms provided for in this Agreement.

Analysis

The jurisdiction of the System Board of Adjustment is defined in Article 29. Subsection B(1)(a)² specifies that the System Board shall have jurisdiction over "disputes" growing out of grievances or out of interpretation or application of the terms of the collective bargaining agreement. In Article 28, the parties have defined, among other things, "Types of Disputes". Subsection (A)(2)(a)³ defines an "Individual Dispute" as "a dispute between a flight attendant and the Company involving *any action of the Company affecting him/her,...*" (Emphasis added.)

Absent more, this clear and broadly-drawn language would readily accommodate a protest over the loss of pass privileges or other corrective action taken by the Company. Surely, corrective action which, according to the TRIP book, "may include loss of travel privileges, legal action (including criminal prosecution), and/or dismissal from the Company"⁴ is an "action." Given the breadth of the parties bargained definition of "disputes", the sole question for resolution is whether the parties jointly intended to exclude these types of corrective actions from the existing grievance procedure.

² See full text, page 6, *supra*.

³ *Supra*, p.3.

⁴ TRIP book, section 3, page 3. Abuse of travel privileges such as excess use of the pass bank, can lead to lengthy suspension of all travel privileges or permanent revocation. And, employees are charged a penalty for unauthorized use.

The Company says the non-negotiated nature of the travel pass system, taken together with the existence of an internal appeal process, requires the conclusion that the System Board is without jurisdiction. We conclude, however, that neither of these contentions is persuasive, for the reasons that follow. At the outset, we note there is no evidence from negotiated history of an intent to carve out or otherwise limit pass abuse issues. To the contrary, the Company attempted, during the 1985-87 negotiations, and again in the 1992-95 negotiations, to remove the "any action" language. These efforts were unavailing. And, several cases have proceeded to arbitration without protest by the Company on the jurisdictional issue.⁵

It is true that the travel pass program has been implemented by Company fiat, rather than through collective bargaining. But there are many policies and related work rules that are established by the Company alone, without negotiation. This fact alone does not require the conclusion that "corrective action" is somehow exempt from the "any action" language that was jointly agreed to.

Nor does the nature of the internal appeal process change this conclusion. In denying the grievance on jurisdictional grounds, the Company stated, in relevant part:

... where the Company has established an exclusive, internal appeal process available to all employees, the AA-APFA System Board of Adjustment is without jurisdiction to hear and resolve and employee's appeal.⁶

That the Company unilaterally establishes an appeal process, however, in no way devitalizes the bargained agreement of the parties in Articles 28 and 29 to process disputes to final resolution before a System Board of Adjustment.

⁵ See Stiles, SS-200-82 (1985), Born, SS-35-36 (1987), Asberry, SS-162-83 (1986), Gibbs, ss-146-85

⁶ Letter of Sue Oliver, Vice President of Employee Relations to Denise Hedges, dated July 2, 1998, in answer to the instant grievance. See Joint Exhibit 2.

The Company also claims that suspension of travel privileges and charging for overages should not be considered discipline under the collective bargaining agreement.⁷ Whether characterized as disciplined or not, however, these responses-- deemed "corrective action" in the TRIP book-- are unquestionably "action."

The Company also directs the Board attention to a May 7, 1993 four-member System Board award in the Steven Hill grievance.⁸ In that case, the System Board remanded the grievance to the Pass Committee. The Company characterizes that decision as significant for several reasons.⁹ Among other things, it says the Board's action suggests it recognized the limit of its jurisdiction over pass abuse issues. Several responses are in order. First, the decision itself was made on a non-precedential basis; we are disinclined, therefore, to attribute to it the precedential impact here suggested by the Company. Moreover, the decision arguably stands for precisely the contrary proposition: the System Board may well be seen as having exercised jurisdiction over the matter by ordering it remanded to the Pass Committee. Nothing in this Opinion should be read as somehow devitalizing the actions of the Pass Committee. The collective bargaining agreement in no way forecloses the Company from establishing this type of review operation. Nor does this opinion in any way diminish the potential gravity of abusing the pass privilege. The question dividing the parties is whether management may create for itself the sole decision-making role on issues presented. The collective bargaining agreement is abundantly clear, however; the parties have vested the System Board of Adjustment with final decision-making authority, the Company cannot, by unilaterally constructing an alternative route, divest the Board of its bargained jurisdiction.

⁷ Company brief, pages 13 *et seq.*

⁸ See Company exhibit 5.

⁹ See Company brief, page 19 *et seq.*

The Company maintains, however, that "any action" simply doesn't mean that. It notes, for example, that an attempt to bring a long-term disability benefits question to the System Board was rejected in a prior arbitration case. In a 1986 case involving grievant Dena Stiles, the Board concluded that a claim concerning long-term disability benefits should properly be raised before the six-member Pension Benefits Administration Committee. In holding that the Collective Bargaining Agreement contained no provisions addressing calculation and distribution of LTD benefits, the Board also noted that the funding and administration of the LTD plan was not regulated by the terms of the Agreement, but rather subject to the extensive regulatory scheme of ERISA. Under that scenario, a denial by the PBAC left the employee with sole recourse to federal district court. The same cannot be said of the instant case. The grievance in that case was not contesting "corrective action" by the Company. Instead, the grievant there was challenging a benefit level that had been set and wholly administered by the PBAC. Nor is there in this current case a comprehensive statutory overlay that includes a variety of due process-related administrative procedures and fiduciary status for the PBAC. These factors were evidently significant to the System Board in the context of the long-term disability issue. Most compelling, however, is the fact that nothing in this record provides any support for the conclusion that the parties intended to exempt the pass-related "corrective actions" from the comprehensive "any actions" language of the labor agreement.

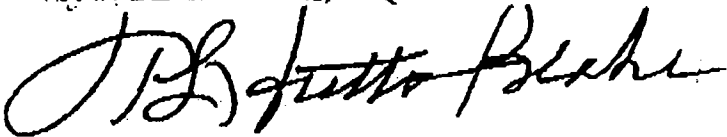
Finally, while it is true that arbitrations over pass issues have been infrequent, they have occurred, as indicated above. The Company dismisses these as anomalies but, in the overall, there is simply no evidence that the parties have jointly understood this area to be off limits to the System Board.

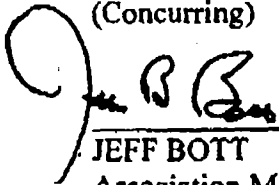
In sum, the language concerning the ability of a flight attendant to grieve is broad and unqualified. Nothing in evidence compels the finding that the drafting parties jointly intended to exclude protests over pass-related corrective actions and we find, therefore, that the Company erred in concluding the System Board is without jurisdiction to hear such a complaint. For these reasons, the grievance will be granted.


AWARD


The grievance is granted. The Company is ordered to cease and desist. Outstanding grievances on this issue are remanded to the parties for processing in accordance with this decision.


RICHARD I. BLOCH, ESQ.


TOMMIE HUTTO BLAKE
(Concurring)


JEFF BOTT
Association Member
(Concurring)


ROBERT L. SEREDICK
Company Member
(Dissenting)


EMILY JOHNSTON
Company Member
(Dissenting)

DATED: April 23, 2001