SYSTEM BOARD OF ADJUSTMENT

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IN THE MATTER OF ARBITRATION **OPINION AND AWARD**

between

AMERICAN AIRLINES, INC. **IAM-TWA-LLC, Case No. SS-31-2002-APIA-13 (Medical Leave Insurance Coverage)**

and

ASSOCIATION OF PROFESSIONAL FLIGHT ATTENDANTS

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BOARD MEMBERS

Gil Vernon, Chair and Neutral Member
Benjamin D. Williams, Company Member
Mark Moscicki, Company Member
Susan French, Union Member
Anne Loew, Union Member

APPEARANCES:

On Behalf of the Union: Sherry Cooper, Esq.

On Behalf of the Company: Kathy Briggs, Counsel – Arbitration Unit

I. BACKGROUND AND FACTS

The issue before the System Board evolved from a broader grievance, dated January 16, 2002, affecting several bargaining units involving broader issues (i.e.

discontinuance of retiree spouse life insurance, reduction of medical/dental and life insurance continuation from one year to 90 days for furloughees). Eventually, the issue submitted to this Board was distilled to this: The Union presently is protesting the Company's application of its insurance premium policy for employees on approved medical leave to employees assumed by American Airlines from TWA-LLC effective January 1, 2002.

The transition of TWA-LLC employees to being in the employ of American Airlines (AA) was as the result of the asset acquisition by AA of the bankrupt Trans World Airlines, Inc. (TWA). In the most general terms, as part of the acquisition: (1) AA established a subsidiary called TWA-LLC to operate the TWA system while it was being integrated into the AA system, and; (2) TWA-LLC signed transition agreements with TWA's unions that modified the labor agreements that had been in effect between TWA and, in this case, the International Association of Machinists (IAM) that represented, among other groups, flight attendants. The April 4, 2001, Memorandum of Agreement read in pertinent part:

> (2) All other provisions of the Agreement and all other related documents that concern employee benefit plans and/or work rules or other benefits, shall be amended to provide that upon the closing contemplated by the Asset Purchase Agreement and the recognition of the IAM by TWA-LLC as the representative of its flight attendants, (subject to any future action by the NMB), TWA-LLC may (i) provide employee benefits which either mirror those provided by current TWA benefits plans or are no less favorable than those applicable to similarly situated AA employees, and (ii) modify work rules and other benefits as necessary to make them compatible with work rules and other benefits at AA.

There is no dispute that proper notice was later given that TWA-LLC was transitioning its employees to AA and that they would be covered by AA benefit policy effective January 1, 2002.

The dispute concerns company paid health insurance premiums while on an approved medical leave. Both TWA and AA had policies on the subject. The Union asserts TWA, pursuant to the IAM collective bargaining agreement, paid health insurance premiums for employees (as if they were active employees) on medical leave for up to five years. Regardless of the source, reason or motivation for the policy, it is true TWA flight attendants on medical leave were granted such benefits. AA's company policy was to have the company pay the company portion of health insurance premiums for two years and then for the next three years employees on medical leave could extend medical coverage by paying their own premium at group rates.

With respect to transitioning, AA communicated with TWA-LLC flight attendants on medical leave, in early December 2001. There are two such communiqués in evidence. The first of these was addressed generally and the second was sent to the specific employee at their home via certified mail. Both letters are quoted in relevant part as they explain the policy application in dispute:

Letter No. 1:

December 2001

Dear Colleague:

TWA records indicate that you are currently on a Personal Medical Leave of Absence, which will convert to a Sick Leave of Absence (SLOA) on January 1, 2002. We have changed the TWA policies to mirror American Airlines' policies and will share them with you in this letter.

An unpaid sick leave may extend for a period of no more than five years, with approval from the AMR Medical Department. For the first two years of your leave (three years for a Pilot) you are eligible for benefits at the same cost as an active employee. At the end of the two years, you will be offered COBRA (continuation of medical coverage at full cost plus 2%) unless you are eligible for the retiree medical plan.

Medical Certification

As stated above, an unpaid sick leave of absence may extend for a period of no more than five years, with approval from the AMR Medical Department. The employee is required to provide periodic medical updates throughout the duration of the leave. Periodic medical updates may be requested by AMR Medical personnel based on the information submitted by your treating physician(s). The attached form should be completed by you and your physician and submitted to the AMR Medical Department no later than 15 days from the date of this letter. Please submit to: AMR Medical Dept., 10701 Lambert International Blvd., Mesz Room C3083, St. Louis, MO 63145. Phone: 314-253-4795/Fax 314-253-4799.

Benefits

During November you may have been solicited for benefits coverage with American Airlines. If you are within two years of the start of the leave (three years for a Pilot), your coverage will become effective January 1, 2002. The company will provide benefits for you at active rates during your leave, however you must pay your portion of the cost. In January, you will receive a personalized leave of absence worksheet, which will itemize the costs of your coverage, as well as Rules and Instructions, pertaining to your benefits and how to pay for the coverage while on this leave. If you have any questions regarding your benefits while on leave after reviewing these rules and instructions, feel free to call PeopleLink at 800-447-2000 and ask for a leave of absence representative.

If you have been on the leave of absence for over two years (three years for a Pilot), you may have been solicited for benefits coverage; however, you are not eligible for active coverage. If you were covered by TWA benefits, CompLink, the American Airlines' COBRA Administrator will solicit you for COBRA in January. CompLink can be reached at 877/902-9027.

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Sincerely,

Letter No. 2:

December 10, 2001

[Name and Address Omitted Intentionally]

Dear Ms. _____:

According to our records you are on a Sick/Injury on Duty Leave of Absence which commenced January 20, 2000.

During a Sick or Injury-on-Duty Leave of Absence, the Company continues your Group Life and Health benefits for the first two years of your leave. After this two-year period, you are no longer eligible for coverage under the active plan.

PURCHASE OF HEALTH COVERAGE

Effective January 20, 2002, your coverage under the active plan will cease. However, you may elect to purchase a temporary continuation of active group health coverage for you and your eligible dependents. You will receive a COBRA package from CompLink. If you do not receive a package within two weeks from the date of this letter, please call CompLink at 1-877-902-9207. This package will explain your COBRA rights and will include all necessary information for you to make a decision regarding continuation of coverage.

You are eligible to purchase this coverage for a period of 36 months. Individuals who receive a Social Security Award due to a disability are entitled to Medicare coverage for two years from the date the award is effective.

Certificate of Coverage

The COBRA package will also contain a Certificate of Group Health Plan Coverage. This certificate outlines the type of health coverage in which you and your dependents (if applicable) were enrolled at AMR and the length of time you were covered. If you become enrolled in another group health plan that requires a waiting period for coverage of pre-existing conditions (by Federal Law not to exceed 18 months), you may present this certificate to your new plan in order to offset some or all of the waiting period.

The issue before the Board relates to the fact that the Company "looked back" at an employee's leave status at TWA-LLC and TWA for purposes of calculating the time limit for two years of Company paid health insurance

contributions which dictates when an employee would have to completely pay for their health insurance pursuant to policy and COBRA.

For example, if a TWA-LLC flight attendant began an approved medical leave while a TWA (IAM represented) employee on January 1, 2001, AA made the decision that upon becoming an AA employee, effective January 1, 2002, the employee would still be considered on medical leave but the Company would only pay its portion of the health premium for another year.

II. ARGUMENTS OF THE PARTIES (SUMMARY)

The Union argues that AA does not have the right to retroactively apply its policy before January 1, 2002, to when Grievants were employees of another company. It is their position that the clock for AA's two-year period for Company-paid medical premiums should start January 1, 2002, and run two years before the employee has to start paying the whole premium. For the Company to unilaterally reach back across the fence and to retroactively implement its policy to change the terms of the transition agreement and to change the negotiated agreement between IAM and TWA, is absurd says the Union. The AA policy was to be implemented on a prospective basis.

The Company argues that its actions are in compliance with the Transition Agreement. The agreement recognized the Company looked at each TWA-LLC employee and treated them as if they had been at AA for the same period of time.

They also applied other benefits in this way. For instance, for purposes of travel privileges, pension eligibility and pay progression, if a TWA-LLC employee had five years at TWA, the employee was treated as if she or he had five years at AA. So, in applying the term "similarly situated", it was appropriate to make all employees equal based on their entire employment history. To grant the Union's request would be to disadvantage similarly situated employees at AA as the TWA employee would be treated more favorably.

III. OPINION AND DISCUSSION

First, the Board disagrees with the Union that there is an expressed or implied prohibition in the interim agreement against the Company "looking back" at an employee's tenure at TWA-LLC or TWA prior to January 1, 2002, to determine benefit eligibility and/or for purposes of benefit accruals. There is no such language in the Interim Agreement. Nor is there any reason, in logic or contract law, that, generally speaking, an employer can't, in the process of hiring employees of an acquired company, recognize prior service. Additionally, the Company's action does not retroactively change the TWA-IAM or TWA-LLC CBA with regards to benefits because with the transition (after appropriate notice) the Interim Agreement became controlling. The sole restriction or requirement with respect to new benefits was that they "mirror" (be equal to) TWA benefits or if they

did not that TWA-LLC employees absorbed by AA have benefits "no less favorable" (be as good) as "similarly situated AA employees." Any obligation TWA-LLC had to provide paid health insurance for employees on medical leave dissipated from a five-year specific promise under the TWA-IAM Agreement into the broad commitment to be treated the same as similarly situated AA employees under the Interim Agreement.

Notably, the Interim Agreement is ambiguous as to a time or point-in-time reference. It does not say that when employees are transitioned they will be treated the same as similarly situated AA employees, as of December 31, 2001, or January 1, 2002, or April 10, 2001. This could have been done, but wasn't. The parties chose not to insert a date for comparison purposes. Perhaps one reason was the enormous complexity in integrating two vastly different benefit systems. Choosing not to insert a date and relying on the broad concept that benefits should be no less favorable suggests an overall intent that the transition have on balance a fair and reasonable outcome.

The bargaining history also does not, to our satisfaction, shed any convincing light on precisely how "similarly situated" was to be defined. There was specific discussion and recognition that AA employees had the medical leave benefit, but to a lesser extent, and that there would be continued Company paid health insurance

for employees on medical leave for TWA-LLC employees. However, no words were exchanged across the table as to when the AA clock would start ticking or toll or how long the benefit would last for any particular employee. The parties, apparently, walked away from the table with different understandings.

The Union's understanding is not unreasonable. However, neither is the Company's especially when considering its decision to count TWA status toward AA benefit eligibility worked mostly in favor of the employee.

What is clear is that a medical benefit, while on a sick leave of absence, is not a contractually mandated benefit at AA. It is provided by virtue of Company policy and it was not the result of collective bargaining between AA and APFA. Recognizing the AA/APFA Collective Bargaining Agreement did not require this benefit and that it was extended by Company discretion, the Union, in agreeing to the transition language, agreed to accept Company policy. In agreeing to this, the Union, absent any language to the contrary, also agreed to accept management's application or interpretation as to its policy.

However, the Company doesn't have an unlimited free hand to set or apply its policy regarding benefits for TWA-LLC employees. First, in agreeing to the transition language, it obligated itself to do no less for former TWA-IAM employees than it does for AA-APFA employees. Second, in addition, it is well

recognized, in arbitration, that management policy can not be arbitrary or capricious. Its discretion can not be exercised in a similarly arbitrary, capricious, discriminatory or wholly unreasonable manner. This is the appropriate analytical framework for this case.

The Union does not challenge the reasonableness of the Company's policy, i.e. that it provides two years instead of five years. They also don't argue its application after January 1, 2002. What the Union is saying is that there can be no comparative situation or situational evaluation until January 1, 2002. In effect, they claim, the grievants started new leaves of absences effective January 1, 2002, and just like an AA employee who went on leave January 1, 2002, she or he is entitled, under the policy, to two years of Company paid medical insurance.

Besides, the fact the language isn't date specific, the greater the weight of the evidence that demonstrates the grievants were treated more like their leaves were extended than as if they had started new leaves. The Union contends employees had to apply for leaves. They direct attention to the first letter sent in early December. However, the greater weight of the evidence supports the Company's view that this wasn't a new application that lead to a new leave.

Ultimately, the Company's view is more convincing on this point. It is more believable that the application form was just a certification to establish, for AA

records, why an employee was on leave. It is more believable that the Company was extending old leaves rather than granting new ones because (as actions speak louder than words) there was no approval or disapproval process. There is no evidence to show that any TWA-LLC leave was not continued or in any sense disapproved. The continuation was automatic upon submission of the form and done without regard to any medical evaluation, examination or application of AA's medical standards. Moreover, the Company's intent was made perfectly clear in the next letter.

Besides agreeing that TWA flight attendants didn't start new leaves, the Board's majority does not believe that counting service at TWA for paid insurance medical leave eligibility is arbitrary or unreasonable. This decision wasn't made on a whim. It was the result of conscious consideration and was part of an overall policy decision upon migration to AA, to treat former TWA-LLC employees, for purposes of benefits, as if she or he had been hired and been employed at AA. In this respect and on this basis, it is difficult to say that grievants were not treated as similarly situated AA employees.

The Company, of course, also treated the employee as if their leave had started while working at AA for tolling purposes. This worked against the employee with respect to this benefit. However, the Company applied the same

policy (looking back) to employee's advantage. Moreover, the Company's overall policy is consistent with the parties' behavior. They agreed, in certain respects, to treat TWA employees as if they had been hired at the same time as an AA employee. Examples of the Company and/or the parties treating TWA employees who transitioned on the basis of their tenure at TWA for pay and benefit purposes include the following: (1) time based pay rate progression; (2) travel benefits, and; (3) pension vesting and eligibility. In each case, a TWA employee hired, for instance, on January 1, 1995, was treated as an AA employee who had been hired on January 1, 1995.

In summary, the transition agreement contained no absolute prohibition on "looking back" at TWA service for benefit eligibility purposes. The language required the Company to do no less for TWA employees than "similarly situated" AA employees. The Company has some discretion in making this approximate situational equalization since the benefit in question is a Company benefit.

The Board can not say the Company exercised its discretion or applied its policy in an arbitrary, capricious or wholly unreasonable way.

AWARD

The grievance is denied.

Gil Vernon, Chairman and Neutral Member

Benjamin D. Williams
Company Board Member 6.30.06

Mark Moscicki concur 7-5-06
Company Board Member

Susan French
Union Board Member 7/10/06

Anne Loew 6/7/06
Union Board Member

Dated this 22 day of June, 2006.