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**In the matter between**

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS and**

**UNITED AIRLINES, INC.  
(IAHQC-020317-01 & 02)**

**OPINION AND AWARD**

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**Before System Board of Adjustment**

**Gayle A. Gavin, Neutral Member  
David Saucedo, Union Member  
Eric Mennel, Company Member**

**For the Union – Nicolas M. Manicone, Esq.  
IBT Staff Counsel**

**For the Employer – W. Chris Harrison, Esq.  
Ogletree Deakins**

## **INTRODUCTION**

Pursuant to the parties' 2016 Joint Collective Bargaining Agreement ("2016 JCBA" or "Agreement") between the International Brotherhood of Teamsters ("Union") and United Airlines, Inc. ("Company"), the undersigned System Board of Adjustment ("System Board") was designated by the parties to hear the above referenced dispute and render a determination pursuant to the Agreement. A hearing was held via videoconference on September 21, 2021. Both parties had representation and the opportunity to submit documentary evidence, to present

and cross examine witnesses, and to present argument in support of their respective positions. Following receipt of the stenographic transcript and submission of post-hearing briefs, the record was closed.

## **RELEVANT CONTRACT PROVISIONS**

### Article 7

#### 7(G)

Starting and ending times of each shift, whether eight (8) or ten (10) hours, will be posted at each Shift Bid and will under ordinary circumstances remain unchanged until the next shift bid.

#### 7(H)

Day shift shall be considered the first shift of the day, and is any shift which begins on or after 0500 and up to 1000. The swing shift will be considered the second shift of the day, and shall start no earlier than 1001 nor later than 1600. Graveyard shift shall be considered as the third shift of the day, and is any shift which begins at or after 1601 and prior to 0500.

#### 7(I)

Duty Limitations – Except in emergencies, as defined in Article 2, an employee shall not work more than twenty (20) work hours, exclusive of lunch, in any twenty-four (24) hour period, nor more than thirty-six (36) work hours, exclusive of lunch, in any two (2) consecutive twenty-four (24) hour periods.

### Article 17

#### 17(A)(2)

Eligible – An employee who has indicated in the Call Book of his/her desire to be offered any authorized overtime shall be considered eligible for purposes of this Article.

17(A)(4)

Call Out – An offer of overtime for a specific period of time on a specific day within the Bid Area. Call Outs will be made to the eligible employee(s) who have the lowest number of accumulated overtime hours and who is off and available to work the overtime.

17(H)(5)

The following procedures will be followed in the administration of overtime: (5) If for continuity purposes it is deemed by management that an employee should stay and complete his assigned job, and the job can be anticipated to be completed within three (3) hours, and the employee performing that job may be requested to do so without regard to seniority or overtime hours charged. This will be known as "job continuation." Whenever the Company has a need to utilize this provision a "Job Continuation" request shall be made available for review by the Local Union. The Company shall keep an electronic record of all "Job Continuation" worked at all stations and make such record available for review, by the Union, for a minimum of eighteen (18) months from the date of each "Job Continuation" occurrence.

17(H)(6)

(6) If the need for overtime not requiring continuity arises in a particular Bid Area in conjunction with a shift in progress, and the need is for four (4) hours, the overtime will be offered to those employees who are then working on the shift in question and who have signed the call book. The person with the least amount of overtime hours will be offered first, and the remaining need will be met by offering the overtime to the employees in the Bid Area on shift in ascending order of their overtime hours. If two or more employees have the same number of overtime hours charged the offering will be made in Craft seniority order.

Except as provided in paragraph 6 above, all other overtime will be offered to employees using the call sheet. In making an overtime callout, the Company will contact the employee on the overtime call sheet who can cover the shift and has the least amount of overtime first, next least second, etc. Employees will be considered able to cover the shift, as stated above, so long as the period between their normal shift starting/ending time and the start/ending time of the requested overtime does not exceed one hundred and fifty (150) minutes, provided that the employee must report to the work area of the normal shift at the start time of the normal shift rather than remaining in the work area of the overtime shift.

## ISSUE

The parties were unable to agree upon an issue. Therefore, the System Board finds the issue before the System Board to be as follows:

Did the Company violate the Collective Bargaining Agreement by not allowing mechanics to bid on overtime shifts that would take them beyond their duty time limits? If so, what shall be the appropriate remedy?

## BACKGROUND

The instant dispute involves the application of overtime provisions agreed to between the Company and the Union, the provisions of which are recited in the parties' 2016 JCBA. Important to the analysis of the current 2016 JCBA language is the background and prior agreements made between the parties beginning with the preceding contract, or the 2002 IBT and Continental Agreement ("2002 CBA").<sup>1</sup> During the 2002 round of bargaining, the Union and Continental agreed to certain duty time limitations for mechanics, which restricted a mechanic from working more than twenty (20) hours in a twenty-four (24) hour day, or more than thirty-six (36) hours in two (2) consecutive twenty-four (24) hour days. The reason for the duty time limitations was the potential safety

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<sup>1</sup> Continental and United Airlines merged following execution of the 2002 collective bargaining agreement and prior to reaching the 2016 JCBA.

risk associated with mechanics, who are considered safety sensitive employees, working too many consecutive hours without sufficient time for rest. During this same 2002 round of bargaining, the Union sought overtime "equalization", or the proportionate award of overtime among employees volunteering for overtime. The outcome was the establishment of a manual system, along with the use of existing payroll software, to track overtime equalization. This manual process was later replaced with an automated system, called "eTA", that was implemented upon ratification of the 2002 CBA. The new eTA system incorporated the CBA requirements, including equalization and duty time limitations on overtime bids, and would automatically rule employees ineligible for overtime if they had reached or would exceed the duty time limitations in the CBA.

For the 2016 round of bargaining following the merger of Continental, Continental Micronesia and United, the parties agreed upon a change to how the duty time limitation was calculated and applied, although the duty time limitations remained in effect. The change consisted of modifying the existing forward-looking perspective of calculating the duty limitations which began at the start of an employee's shift, to a forward *and* backward-looking perspective. In other words, the parties agreed to address the situation where mechanics worked additional overtime on the front end of their shifts, which time was not captured in calculating the duty time limitations. Once this so-called "loophole" was addressed, the eTA system worked the same way it had since its inception in

2003 by flagging employees ineligible for an overtime shift if working such shift would cause the employees to exceed their duty limitations. The system specifically categorized mechanics as ineligible for overtime if they could not work the entire shift without exceeding the duty time limitations.

On February 3, 2017, the Union filed a grievance on behalf of employees who were deemed ineligible for overtime and not allowed to work up to the 20<sup>th</sup> hour in a 24-hour period, claiming these employees were bypassed for overtime. The parties were unsuccessful in resolving the dispute and the matter was brought to the System Board for adjudication.

## **POSITIONS OF THE PARTIES**

### UNION

It is the Union's contention that language of the 2016 JCBA defines which employees are "eligible" for overtime and defines which employees are considered "able to cover a shift". To be eligible for overtime, the Union points to the language of Article 17(A)(2) which states that employees are eligible for overtime if they have indicated in the Call Book their desire to be offered any authorized overtime. No other limitations are listed in this definition of eligibility for overtime, states the Union. Likewise, the Union submits, under Article 17(H)(6)(a), the contractual definition of being considered "able to cover a shift" for purposes of the assignment of overtime states that "Employees will be considered able to cover the shift, as stated above, so long as the period between their normal shift

starting/ending time and the start/end time of the requested overtime does not exceed one hundred and fifty (150) minutes[.]” Despite this contractual language, the Union submits, the Company has deemed ineligible for overtime those employees who are unable to complete a full shift before their twenty (20) hour duty limitation. The Union contends that this limitation is not part of the 2016 JCBA. Had it been the parties’ intention to include this limitation, it would have been incorporated in the Agreement, but it was not. By way of example, the Union refers to the agreement between the parties to modify the contract language to restrict mechanics from working more than twenty (20) hours out of *any* twenty-four (24) hour period, as opposed to just the period beginning with the start of their scheduled shift, in order to ensure sufficient rest. According to the Union, this provision was agreed upon during negotiations after receiving assurances from the Company that the new language would not preclude a technician from working up to their twenty (20) hour limit even if they could not complete the shift because of the duty time limitation. The Union presented testimony from Union Shop Steward Jack Harran who explained that on or about October 22, 2015, he and fellow Union negotiating committee member Steve Olsen met with Joe Ferreira, a consultant and former Senior Vice President for Maintenance and Don Wright, Director of Maintenance or Vice President, to discuss the Hours of Service Article and their concern that it would limit the amount of overtime mechanics could work. According to Mr. Harran, the parties discussed several scenarios, including the effect of the provision on a mechanic

if a field trip was called (a very lucrative opportunity that allowed mechanics away from home to work as many hours as possible in a few days) and the mechanic was nearing the twenty (20) hour duty time limitation. Specifically, would this employee be bypassed, or would they be selected for the opportunity and permitted to work up to the twenty (20) hour duty time limit regardless of how close the employee was to reaching the twenty (20) hour limit. Mr. Harran testified that the discussions concluded with the understanding that there would be no such impact on any type of trades if a mechanic was in such a scenario as they would be permitted to work up to the twenty (20) hour limit. Mr. Harran further testified that this outcome is anticipated under the contract - to permit a mechanic to accept a third shift even if it ends early - given that the collective bargaining agreement provides for overlaps in assignments. Specifically, Article 17(H)(6)(a) considers employees eligible for overtime shifts "so long as the period between their normal shift starting/ending time and the start/end time of the requested overtime does not exceed one hundred and fifty (150) minutes[.]" The Union explains that in early 2017, after learning that employees were being denied overtime if they could not complete the overtime shift within the twenty (20) hour duty time limitation, Mr. Harran and Local 19 Business Agent Angel Cantu asked Mr. Ferreira about the matter. According to the Union, Mr. Ferreira confirmed that the parties' agreement was to allow mechanics to work overtime up to their twenty (20) hour duty time limitation even if they could not complete the full shift. In other words, the ability to complete a shift was never a criterion for overtime

eligibility. The Union maintains that it did not agree to this limitation and it does not understand the language agreed upon to provide such a limitation. The Union argues that the Company unilaterally imposed the limitation on overtime eligibility for those employees who did not exceed the duty time limit and did so after reassuring the Union otherwise. Accordingly, the Union asks the System Board to grant the Union's grievance, order that the affected employees be made whole, and order the Company to cease and desist its denial of overtime opportunities to employees under the twenty (20) hour duty time limit.

### Company

The Company maintains that the Union has failed to meet its burden of proof to establish a violation of the 2016 JCBA – a requirement that the grieving party must meet in a contract interpretation case. Here, the Company argues that the language of the 2016 JCBA is clear and thus its plain meaning must be applied. Pointing to the language of Article 7(l) the Company emphasizes that mechanics are prohibited from working more than twenty (20) hours in *any* twenty-four (24) hour period, as well as more than thirty-six (36) hours in *any* two consecutive twenty-four (24) hour periods. Under Article 17(A)(4), a call out to a mechanic who has signed up for overtime will be made to the mechanic with “the lowest number of accumulated overtime hours and who is off and **available to work the overtime.**” (*emphasis added*) In other words, the Company avers, the mechanic must be available to work the overtime, and not a lesser amount than

the full shift being called. Therefore, if a mechanic would exceed the duty time limitations by working an additional shift, they are not *available* under the plain language of the contract – language that has been unchanged since the 2002 Union and Continental agreement. The Company has fully complied with this clear language, it argues, and the Union has provided no evidence to establish a breach of such language.

While the Company strongly denies the existence of any ambiguity in the language of the 2016 JCBA, it maintains that bargaining history and past practice support its position. The Company explains that duty time limitations have been in effect since the 2002 CBA and the eTA system has excluded mechanics unavailable to work a complete overtime shift since its inception in 2003. In fact, the Company adds, following ratification of the 2002 CBA, the Union and Continental jointly agreed that mechanics would be ineligible for overtime if the overtime shift would carry an employee beyond the duty time limits. Specifically, the Company provides that in a jointly authored document between the Union and Continental entitled “Overtime Policy for HOU Base” dated April 8, 2003, the parties set forth local policy guidelines for the administration of overtime at the HOU base. In this document, the Company submits, it states that one purpose of the document is to “provide mutually agreed upon interpretations of existing contract language.” Further, the Company points to the section labeled “Eligibility”, which provides “An employee will be ineligible for a given overtime period if duty limitations would prevent him from being able to work to entire

callout period. The administrator is not required to notify the employee of his ineligibility at the time of the call-out." This practice, the Company avers, continued even following the United/Continental merger and through to the present time.

Additionally, the Company submits that the Union never proposed during negotiations that a mechanic be allowed to work a partial overtime shift and only first raised the matter following ratification of the 2016 JCBA. Further, the Company argues that the hearsay testimony of Mr. Harran must be discredited, as he admitted during the hearing that his conversation with Mr. Ferreira took place in 2017 and Mr. Ferreira had retired from the Company well before the contract negotiations concluded. In any event, the Company argued, Mr. Ferreira was never the primary negotiator, the alleged conversation took place off Company property when he was a non-employee, and thus he was not in a position to bind the Company to an alternate reading of the CBA.

The Company places great emphasis on the fact that the mechanic position is a safety-sensitive one and the Company's primary concern is not only over the safety and accuracy of the work performed, but also to ensure employees do not risk injuring themselves or cause harm to others due to fatigue. It argues that the testimony of Mr. Robert Worrell, currently the Senior Manager of Human Resources and Employee Relations, supports this contention, testifying

that safety was part of the reason for making the change to Article (7)(l).<sup>2</sup> The Company stresses the complexity of the work mechanics perform, stating any error could be devastating and even deadly. The Company points out that even Mr. Harran testified that there should be duty time limitations to prevent mechanics from working too many hours and the parties agreed to such limitations in the contract. Were the System Board to rule in the Union's favor, the Company avers, it would lead to substantial and costly operational disruptions, generate cascading absences and violations of contractually required rest periods, system outages, and create safety risks. The Company elicited testimony from Mr. Benny King, retired former Director of Maintenance, who described in detail the negative impact such a ruling would have on safety and operations, explaining past instances of employees working too many hours, falling asleep on breaks, and bringing RVs onto the property for rest between shifts. It is also critical that the Company be able to efficiently staff its work locations and ensure work is completed in a timely manner while planes are grounded, the Company emphasized.

The Company describes that the eTA system and call-out procedures are meant to address "known outages", such as coverage for employees out on leave, out for illness, on vacation, or in training, and known outages anticipate

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<sup>2</sup> The Company highlighted that Mr. Worrell worked for Continental and was integrally involved with the establishment of the eTA system.

requiring coverage for a full shift. Further, the Company argues, its use of the contractual four-early and four-late shifts is only permitted in rare circumstances, which supports its position that it should not be required to offer partial shifts to enable mechanics to work up to the duty limitation. Based on the foregoing arguments, the Company requests that the Union's grievance be denied.

### **OPINION**

The essence of the instant dispute before this System Board comes down to whether or not mechanics are eligible to work overtime up to their duty time limitations in some increment less than the full overtime shift called for under the language of the 2016 JCBA. Said differently, are mechanics eligible for overtime if they can only work a partial shift due to their duty time limitations? Based on a careful review of the entire record, including documentary evidence, witness testimony and argument presented, the System Board finds that mechanics are not eligible to be called for overtime if they are unable to cover the full shift based on the language of the 2016 JCBA. The reasons for this conclusion are several. When presented with an issue of contract interpretation, the first and often sole place arbitrators look is at the language of the parties' collective bargaining agreement itself. If the language of the agreement is clear and unambiguous, the plain meaning of the language must be applied. If, however, the language is not clear, only then can the arbitrator look to the parties' bargaining history and past practice to decipher the intended meaning of the language negotiated by

the parties. In the instant matter, there are several contractual provisions that address the assignment of and eligibility for overtime. The first of such provisions is Article 17(A)(4), which defines an overtime "Call Out". The language specifically states that overtime offers are for a "specific period of time" and will be made to employees "available to work the overtime". The second provision is Article 17(H)(6) which states that the Company will contact the employee "who can cover the shift..." The two full provisions read:

17(A)(4)

Call Out – An offer of overtime for a *specific period of time* on a specific day within the Bid Area. Call Outs will be made to the eligible employee(s) who have the lowest number of accumulated overtime hours and who is off and *available to work the overtime*. (emphasis added)

17(H)(6)

In making an overtime callout, the Company will contact the employee on the overtime call sheet *who can cover the shift* and has the least amount of overtime first, next least second, etc. Employees will be considered able to cover the shift, as stated above, so long as the period between their normal shift starting/ending time and the start/ending time of the requested overtime does not exceed one hundred and fifty (150) minutes, provided that the employee must report to the work area of the normal shift at the start time of the normal shift rather than remaining in the work area of the overtime shift. (emphasis added)

A straightforward reading of the language indicates that the Company determines the specific period of time of the overtime offer, that the employee must be available to work the overtime, and they must be able to cover the shift. In other words, there is a need for a set amount of overtime and if an employee

is not available to work this set amount, or "cover" this set amount, they are not eligible to be called. By using the language "who can cover the shift", it is difficult to formulate an interpretation to suggest employees are eligible if they can only work one hour of the "shift", or three hours of the "shift", or however many partial hours of the shift up to their duty time limitations. The ability to cover a shift suggests the ability to *cover* the span of the shift, not just support coverage of a shift in smaller increments. Also, a commonplace and plain reading of the term "shift" suggests to the Board a set starting and ending time. The parties, themselves, refer to the term "shift" in Article 7(G) by stating:

Starting and ending times of each shift, whether eight (8) or ten (10) hours, will be posted at each Shift Bid and will under ordinary circumstances remain unchanged until the next shift bid.

Under the parties' own language, there are set starting and ending times for either eight (8) or ten (10) hours for purposes of Shift Bids. This language adds credence to the Company's position that an employee's availability to cover a shift means availability to cover an entire shift.

The Union argues that the language in Article 17(H)(6) defines what "able to cover a shift" means and contains no exclusion to support the Company's position that employees must be able to work a full shift to be eligible for overtime. The language reads: "Employees will be considered able to cover the shift, as stated above, so long as the period between their normal shift starting/ending time and the start/ending time of the requested overtime does not exceed one

hundred and fifty (150) minutes...” However, the requirement that an employee be able to cover the shift remains a requirement so long as the one hundred fifty (150) minute gap is not exceeded. The reading the Union suggests – that this gap parameter is the sole criterion for eligibility – fails to take into account the plain meaning of the phrase “cover the shift” and is a proviso versus a definition. The language simply cannot be read in a vacuum. Such a reading would discount all the other provisions that address employee overtime eligibility, such as duty time limitations, overtime in conjunction with a shift in progress, and continuity overtime. Said differently, the 150-minute gap condition is not the sole criteria for eligibility as the employee still must be able to cover the shift. The requirements simply aren’t mutually exclusive.

This Board finds that the contractual language is clear and supports the Company’s position. While an analysis of the parties’ bargaining history and practice is unnecessary to arrive at this conclusion, the Board finds it useful and supportive of its findings to briefly touch upon the bargaining history of the parties. A review of the bargaining history demonstrates that the Union and Continental agreed to duty time limits beginning with the 2002 CBA – language that continued between United and the Union in the 2016 JCBA. In 2003, the eTA system was implemented and since its inception to the present day, it has only identified as overtime eligible those employees who can work a complete shift without exceeding the duty time limitations. The Company introduced a document created that same year entitled “Overtime Policy for HOU Base”, a *jointly*

authored document between the Union and Continental, which states the intention of the document is to provide mutually agreed upon interpretations of existing contract language. In this document under the section entitled "Eligibility", it provides that "An employee will be ineligible for a given overtime period if duty limitations would prevent him from being able to work [to] entire call-out period." Significantly, the duty time limitation language included in the 2002 CBA remained unchanged in the 2016 JCBA, but for the one addition limiting employees to working no more than twenty (20) hours in *any* twenty-four (24) hour period.

It was not until after the 2016 JCBA was ratified that the Union raised the concern that employees should be eligible to work a partial shift for overtime purposes. While the parties negotiated a change to the 2016 JCBA with regard to how duty time limitations are calculated and applied (the rolling 24-hour period), the parties did not address the subject of employees working partial overtime shifts. While the Company maintains that the Union never raised the issue of working partial shifts during negotiations, the Union submits that in 2017, Mr. Ferreira assured the Union that employees could pick up overtime up to their 20<sup>th</sup> hour of duty time even if they could not complete the overtime shift under the duty time limitations. However, the record establishes that Mr. Ferreira retired from the Company prior to the conclusion of negotiations for the 2016 round. Moreover, he was not the lead negotiator, and the alleged conversation took

place off Company property. It simply cannot be concluded that the parties' bargaining history alters the findings in this matter.

Similarly, the parties' conduct, including the conduct between Continental and the Union dating back to the 2002 CBA, supports the fact that mechanics are ineligible for working partial overtime shifts under the language at issue herein. The Company has used the eTA system – the same system established by Continental - since 2003 and it was only after ratification of the 2016 JCBA that the Union raised the concern that mechanics were being bypassed for overtime if they could not work an entire shift within the duty time limits. Based on the record evidence, nothing changed between 2003 and the 2016 JCBA that would provide a basis for an alternate reading of the contract.

In sum, the majority of the Board finds that the Company did not violate the 2016 JCBA by requiring that mechanics be able to cover the full overtime shift called and denying overtime to those employees who could only work a portion of a shift based on the duty time limitations.

### **AWARD**

The Grievance is denied. The Company did not violate the parties' collective bargaining agreement by not allowing mechanics to bid on overtime shifts that would take them beyond their duty time limits.

Dated: February 1, 2022

  
Gayle A. Gavin

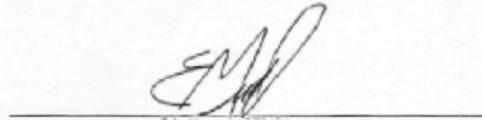
Neutral Member

\_\_\_\_\_ | concur     | dissent

  
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David Saucedo, Union Member

| concur    \_\_\_\_\_ | dissent

  
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Eric Mennel, Company Member