

United Airlines/IBT Board of Arbitration

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In the Matter of the Arbitration	:
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Between	:
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International Brotherhood of Teamsters,	:
Local 19, Airline Division	:
	:
- and -	:
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United Airlines, Inc.	:
	:
(HOU-01-06-14-01, Cross-Utilization)	:
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**OPINION
OF THE
CHAIRMAN**

The Board of Arbitration
George Nicolau, Chairman
Chris Moore, Union Member
Dixon McKinzie, Company Member

APPEARANCES

For the Union:

Barkan Meizlish, LLP.
By: Joshua D. McInerney, Esq..
Trent R. Taylor, Esq. (On the Brief)

For the Company:

Justin J. Doane, Esq.

On October 17, 2013, the Union filed a grievance alleging that the Company violated Letter of Agreement 31 (LOA31) by reassigning the employees of one Bid Area to another Bid Area without first exhausting the overtime list in the Bid Area to which those employees were reassigned. After the Company denied the Grievance at Levels One and Two of the Grievance Procedure, the matter was submitted to the four-person Board of Adjustment that deadlocked on the question on April 1, 2014. It was then referred to this Board of Arbitration

The Board held a hearing on the matter in Houston, Texas on June 23, 2015, at which time both Parties were afforded full opportunity

to present, examine and cross-examine witnesses. The Union called Joseph Ferreira, the retired Company Vice President of Technical Operations/Maintenance, as an adverse witness and also called IBT Business Agent Ralph Salzano and Member Channon Williams; the Company's witness was Jeffrey Wall, United's Vice President, Labor Relations. Following the testimony, counsel filed post-hearing briefs that were received on August 25, 2015, after which the Board considered the case.¹

The Issue

The issue, as agreed to by the Parties, is:

Did the Company violate LOA#31 on October 17, 2013 by reassigning Day Shift Bid Area 111 Technicians to Bid Area 110 without first exhausting the Bid Area 110 Day Shift overtime callout process? If so, what shall be the remedy?

The Contract Language

LOA#31, which was agreed to on March 25, 2010 during the negotiations for the 2009-2015 CBA (JX1) reads:

This will confirm our understanding and agreement regarding staffing and utilization of Technical Operations personnel.

The Parties have agreed to establish, on a local basis, committees of Union and Company representatives for the purpose of discussing the staffing and utilization of employees within and across bid areas and work areas. Such committees may confer, among other things, with respect to staffing and personnel assignments for special projects, targeted staffing levels in bid areas and work areas, the creation of relief or utility crews, and other local protocols and practices upon which they may agree. Such local agreements shall not conflict with nor affect the interpretation or application of this Collective Bargaining Agreement unless expressly adopted in writing by authorized representatives of the Company and the Union.

The Parties recognize the Company's maintenance practices differ, on occasion, from the expectations of employees covered by this Agreement. Accordingly, the Parties agree that:

¹Even though the United/Continental merger was approved by the FAA in November 2011, this October 2013 case arose and was filed pursuant to the Continental/IBT CBA because there was yet and is still not a Joint CBA. Even so, the Company and the aforesaid CBA will be referred to as United.

1. The Company will endeavor to utilize personnel in the bid areas and work areas to which they are normally assigned, however, the Company shall have the ability to utilize on-duty personnel during regular hours of work in any bid area or work area to perform any work they are qualified to perform as the needs of the service require.

2. The Company will not assign or reassign employees from one bid area or work area to another to cover known outages- for example, scheduled vacations, leaves of absence, training, OJI, etc., unless and until the overtime call out process for that shift has been exhausted.

3. The assignment or reassignment of personnel from one bid area or work area to another shall not cause or create the need for overtime call-out in the bid area or work area from which personnel were reassigned.

4. The Company is not required to offer overtime on the shift in the bid area from which an employee was reassigned, simply because of the reassignment. When the need for overtime arises in the bid area from which the employee(s) was reassigned, the Company, prior to calling such overtime, shall first return the employee(s) to his original bid area or work area.

5. While recognizing these principles, the Union and its members reserve the right to object and grieve any abuse or misuse in the practice of work assignments and overtime distribution.

6. If any provision of this LOA conflicts with the Collective Bargaining Agreement (CBA) the CBA will govern.

Also relevant are 1-H-1 of the CBA and Paragraph 5 of LOA7.

Article 1-H-1

Except as restricted by the express terms of this Agreement and the practices under any prior Agreement, the Company shall retain all rights to manage and operate its business and work force...

LOA 7, Paragraph 5

Neither Article 17, nor this letter shall be construed to limit management's right to transfer employees between work areas, whether related to outages or otherwise, and neither Article 17, nor this letter shall be construed to require that management call overtime when outages occur.

The Background

Under the CBA, Technicians are assigned to particular bid areas based on their qualifications. Those in Bid Area 111 are Trim Technicians while those in Bid Area 110 are known as Interior Repair Technicians. Overtime is awarded in specific bid areas under Article 17. To be eligible, a Technician must sign what is known as a Call Book.

Under the prior CBA, there were no limitations on the Company's right to temporarily move Technicians from one bid area to another. LOA 31, agreed to on March 25, 2010, placed a limit on that right. The question, as stated above, is whether the October 17, 2013 movement of Technicians from Bid Area 111 to Bid Area 110 violated that provision.

On that day, 30 Bid Area 111 Hobby Maintenance Base Technicians were working on the Day Shift. Their job was to refurbish a ship set of seats.² Those Technicians did have work to perform in connection with their normal assignments. However, as Former Vice President of Technical Operations/Maintenance Ferreira testified, there was an excess of Bid Area 111 Technicians that day because the staffing model in the Hobby Trim Shop supported three sets of ship seats at any given time, not just one (Tr.47). On the same day, Bid Area 110 had an aircraft that required work on its seats so it could continue through maintenance. As a consequence, the Company moved 20 Technicians from Bid Area 111 to Bid Area 110. They completed the necessary work without overtime being called in either their reassigned Bid Area or their own.

The Union contends that none of those Technicians should have been reassigned until the 5 Technicians who were on the Bid Area 110 overtime call-out list were called for overtime. The Company maintains that such an assertion is completely contradictory to the plain language of LOA 31.

² A ship set of seats is the number of passenger seats installed by the manufacturer or when the airline decides to install seats.

Before setting forth their respective arguments, a word about the Article 3 and LOA31 negotiations. Everyone agrees that when the Article 3 negotiations began in December 2008, the Union, asserting that the Company was moving Technicians back and forth, and in that process, unfairly manipulating overtime, sought to forbid virtually all cross-utilization. The only exceptions, which did not include "usual sudden, urgent and unexpected occurrences requiring immediate attention," were emergency situations, defined as "Acts of War, Acts of God and the protecting of Company property against the elements of weather" (CX1, Tap 1, p.3-5). The Company flatly rejected that proposal. In late August 2009, the Union modified its position, so as to permit, in addition to emergency situations, the cross-utilization of Technicians, "to perform maintenance during the wash, open and close stages of heavy check work provided there is no work to perform in their own Bid and/or Work Area." (CX1, Tab 6, p.3-4). Again, the Company refused to consider any limitation.

Ultimately, the Parties agreed on Article 3 without any limits on cross-utilization. Well before that occurred in March 2010, the Company, mindful of the Union's concern about unequal distribution of overtime and the desire of most Technicians to stay in their own Bid Area, decided to address those matters in an LOA, proposing an LOA on September 23, 2009 (CX2, Tab 1, Tr. 98-102, Wall). That first proposal, as well as the final LOA, prohibited the reassignment of employees to cover known outages unless the overtime call-out process had been exhausted and also stipulated that a reassignment would not cause or create overtime in the Bid Area from which Technicians had been assigned. Also unchanged from the Company's first proposal to the final agreement, was Paragraph 1, i.e., :

1. The Company will endeavor to utilize personnel in the bid areas and work areas to which they are normally assigned, however, the Company shall have the ability to utilize all on-duty personnel during regular hours of work in any bid area or work area to perform any work they are qualified to perform as the needs of the service require.

.There were some changes from the original proposal, none of which are relevant here, with the LOA finally agreed to on March 25, 2010. It is this final meeting upon which much of the Union's position rests. It is the Union's position that Ferreira "guaranteed to the Union" that the Company would not transfer Technicians from a Bid Area if there was still work to be done in that area and that he and Wall also said at the table that "the 'needs of the service' exception would only apply to the opening and closing of a check or to situations in which employees in another work area had no work to perform." This, Business Agent Slazano testified, plus the limited ability to move people in a "hair on fire" situation, is what he heard (Tr. 64-66,77).

The Contentions in Brief

In its post-hearing brief, in which it characterizes the Company's use of the word "endeavor" in Paragraph 1 of its initial proposal as the "parties' selection," the Union contends that the "plain language" of that paragraph "requires the Company to endeavor to utilize Technicians on the Overtime List specific to the Bid Area in question before transferring Technicians from outside Bid Areas to perform the same work." Since, the Union says, the Company did not "endeavor" to use Bid Area 110 Technicians on overtime before calling in Bid Area 111 Technicians on straight time, it violated Paragraph 1.

As stated above, the Union also relies on bargaining history, saying in this argument that statements made by either party in reference to "otherwise uncertain contractual language" may be "determinative as to "the parties mutual understanding." Here, it contends that in agreeing to the LOA, it relied on the statements of Ferreira and Wall as to its meaning and intent.

For both reasons, the Union maintains that the Company's violation is clear. It therefore asks that the grievance be sustained; that those Technicians who were bypassed for overtime be made whole and

that the Company be ordered to cease and desist from such violations of LOA31 in the future.

Though acknowledging that Ferreira and Wall spoke of the stages of checks as well as situations where there were non-productive employees, the Company contends that it was obvious that those were only examples and were never considered as the sole bases upon which Technicians could be moved (Tr. 55-60).

Not only are such limitations contrary to the plain meaning of Paragraph 1, they are the very limitations the Union had been seeking all along, limitations which the Company had consistently rejected.

What the Union is seeking here are the very limitations it could not attain in negotiations. Since it cannot properly achieve that goal in this forum, the Company asks that the grievance be denied.

Discussion and Analysis

As stated above, the Union argues that the use of the word "endeavor" in Paragraph 1 requires that employees on a call-out list in a particular Bid Area be called in on overtime before Technicians from another Bid Area can be reassigned.

Such a reading of one part of the single sentence of Paragraph 1, which makes no mention of overtime, would render the rest of the LOA meaningless. Paragraph 1 states that the Company will try to keep Technicians in their own Bid Areas, an objective the Union sought. Nevertheless, if the "needs of the service require," it can move on-duty Technicians to other bid areas to perform work they are qualified to perform. The whole thrust of Paragraph 1 is the Company's movement of personnel, nothing else.

What follows are limitations on that Company right; its inability to reassign employees to cover known outages in another bid area; the requirement that a reassignment not cause or create overtime in the bid

area from which employees were reassigned and, if it does, the requirement that said employees be returned to their bid area "prior to calling such overtime" in that bid area.

If the first part of Paragraph 1's first sentence meant that overtime would have to be used before Technicians could be reassigned, the rest of LOA31 would be unnecessary.

I am similarly unpersuaded by the Union's other arguments. Essentially, the Union contends, despite the language of LOA31, that the LOA's intention was to limit the reassignment of personnel to those situations where employees in a Bid Area had no work to perform and the opening or close of a check. Those situations were mentioned, but both Ferreira and Wall testified that they were only examples and that there was never any intention to so limit the use of the LOA (Tr. 49-51, Ferreira, 119-121, Wall).

However one might interpret the conversation that took place on March 25, 2010, it cannot, in any way, serve to annul or modify the language of the LOA. That language is not "uncertain," as the Union now contends. It is crystal clear. Nowhere does it say that there must be no work to perform in a bid area before employees may be assigned to another. Neither does it say that reassignments are limited to the opening and close of checks or "all hands on deck" or "hair on fire" circumstances. If the Union thought that the "needs of the service" were so limited, the LOA should not have been left as it is; the Union should have insisted that it be changed so that all reading it knew what it meant. Particularly is this so when the Company had consistently and flatly rejected the Union's proposals limiting the reassignment of Technicians without calling out overtime to "Acts of War, Acts of God and the protecting of Company property against the elements of weather" or the cross-utilization of Technicians, "to perform maintenance during the wash, open and close stages of heavy check

work provided there is no work to perform in their own Bid and/or Work Area."

On this Record, the Union has not demonstrated that such limitations were the purpose of LOA31 or the Parties' mutual intent and understanding of its provisions.

On October 17th, 2013, Bid Area 110 had an aircraft whose seats needed to be worked on so it could get through maintenance and get back on the line. In Bid Area 111, there was, as the Company acknowledged, work to perform, but there were more Technicians than needed to finish what had to be done that day. This was fully collaborated by Union witness Channon Williams, who was the Bid Area 111 Lead on the 17th,. He conceded, even though two-thirds of the Bid Area 111 Technicians had been reassigned to Bid Area 110, that no overtime was needed to complete the work in Bid Area 111 on October 17th, 2013, and, even with that reassignment, the Company was able to finish what needed to be done during the three day period it normally took to finish a single ship set of seats (Tr. 85-89).

In such circumstances, given the demonstrated need for their services, it was clearly appropriate to temporarily reassign those 20 Bid Area 111 Technicians to Bid Area 110 on October 17th without calling those on the Bid Area 110 overtime list for overtime before doing so.

As a consequence, the Grievance, which contends otherwise, must be denied. The Award that follows so provides.

Dated: September , 2015

George Nicolau, Chairman