ARBITRATION PROCEEDINGS
AMERICAN AIRLINES, INC./TWU-IAM ASSOCIATION
SYSTEM BOARD OF ADJUSTMENT

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In the Matter of the Arbitration Between

AMERICAN AIRLINES, INC.

- and -

THE TWU-IAM ASSOCIATION

****

Subject: CBA Article 22 Holiday Pay--Various Grievances

SYSTEM BOARD OF ADJUSTMENT

Jonathan Oliff, Company Board Member
Sean Ryan, Association Board Member
Dana Edward Eischen, Impartial Board Member/Chairman

APPEARANCES

For the Association: PHILLIPS RICHARD & RIND, PA
By: Holly Olivia-Van Horston, Esq.

For the Company: O'MELVENY & MYERS LLP
By: Robert Siegel, Esq.
Charles Mahoney, Esq.

ALSO PRESENT

For the Association: Gary Peterson, TWU Executive Director
Thomas Regan, IAMAW Airline Coordinator

For the Company: Tim Conlon, USAir Sr. Mngr./Maintenance Admin. (ret)
Jerrold Glass, President--F&H Solutions Group.
Ron Harbinson, USAir Managing Dir. LR/Ground (ret)
James Weel, AA Managing Dir. LR/Tech Ops

PROCEEDINGS

The TWU-IAM Airline Mechanic & Related Employee/Store Employee/Fleet Service Employee Associations ("Association" or "Union") and American Airlines, Inc. (“AA” or "Company"), collectively "the Parties", are signatories to a triad of similarly worded March 20, 2020 system-wide Joint Collective Bargaining Agreements ("the JCBAs") that govern terms of employment of AA ground service employees in the Mechanic & Related Employees[1] (JX-1), Material Logistics Specialist & Planners (JX-2), and Fleet Service Employees (JX-3) crafts or classes.[2]

The grievances consolidated for merits determination in Phase I of this bifurcated arbitration proceeding present a deadlocked dispute over the contractual meaning and application of the holiday pay benefit qualification provisions in Article 22 of those AA/Association JCBAs.[3] Joint Exhibits 1-12 are the three referenced JCBAs (JX-1, 2, 3), plus nine (9) Article 22 Holiday pay grievances (JX-4-JX-12). JX-14, a joint stipulation of undisputed facts and circumstances (Attachment 1), establishes the record with respect to five (5) submitted "individual grievances" (JX-4, 5, 9, 11, 12).[4]

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[1] The M&R craft or class includes MCT and MTS employees but MCT and MTS each have separate JCBAs negotiated in tandem with the M&R JCBA.

[2] *See* APPENDIX A for the AA/Association JCBA provisions, APPENDIX B for the Legacy USAir/IAM and APPENDIX C for Legacy AA/TWA predecessor CBA provisions most pertinent in this case.

[3] The Board finds no material difference in the allegedly violated Article 22-Holiday "counted as" language in JX-1, JX-2 and JX-3.

[4] JX-14 does not address the facts around the other two (2) submitted "individual grievances": Stephen Gukelberger–Grievance #:20210910-JFK-T MLS 0046 (JX-8) and Frank Ricci–Grievance #:20210910-JFK-T AMT 0053 (JX-10)]. Prior to the Phase I hearing, without prejudice to the disputes over JX-4, 5, 9, 11, 12, the Company conceded JX-8 and JX-10 should not have been denied and the Union declined to withdraw those two individual Holiday pay claims from the Board’s Phase I docket.

BACKGROUND

Following the merger between American Airlines and US Airways East/West, the Legacy US Airways ("LUS") employees in the crafts and classes of Maintenance and Fleet (then represented by the IAM) and the Legacy American Airlines ("LAA") employees in the crafts and classes of M&R , MLS, and Fleet TWU (then represented by the TWU), formed The TWU-IAM Association. In December 2015, American and the Association began negotiating the interrelated series of JCBAs covering the merged employee groups.

On June 22, 2016, American made the following Article 22 holiday pay qualification proposal, the second sentence of which parrots the following qualifying benefit language, which the Parties had previously negotiated and initialed as tentatively agreed for Article 24-Sick Leave:

> In order to be paid for holidays that fall during the month, employees must be in an active pay status (all hours paid) for eighty (80) hours in the month. **For purposes of this paragraph, time spent on unpaid FMLA leave shall count towards the eighty (80) hour requirement.** (Emphasis added).

At the behest of the Association, the Parties eventually agreed to also include unpaid military and OJI leaves of absence, in addition to FMLA, in each of the "shall count towards" provisions of Article 22 Holidays, Article 23 Vacations and Article 24 Sick Leave in all the AA/Association JCBAs. In January 2020, American and the Association reached tentative agreement on all of the new M&R, MLS and Fleet JCBAs--all of which were ratified by the Association membership and effective March 26, 2020. (*See* JX-1; JX-2; JX-3).

In Phase I of this consolidated bifurcated arbitration case, the SBA addresses unresolved grievance disputes over the Company's subsequent interpretation and application of that two-sentence benefit qualification language, *supra*, in Article 22–

Holidays of those JCBAs. Specifically, American applied the new "counts toward all days paid" provision of the JCBAs Article(s) 22 in the same way it had applied holiday pay provisions of the previous LUS/IAM M&R CBA prior to the new JCBA language, *i.e.,* employees who were on unpaid FMLA, Military or OJI leave of absence on the day of the holiday did not receive JCBA Article(s) 22 holiday pay.

From October 8, 2020 to February 8, 2022, the Association filed a series of such grievances claiming that American's interpretation/administration violated Article 22 in the applicable JCBAs. Eventually, several inter-related grievances were consolidated for final and binding determination by this Board in a bifurcated Phase I (Merits)/Phase II (Remedy) arbitration.

PHASE I MERITS ISSUE

Did American Airlines violate Article 22 of its JCBAs with the TWU-IAM Association (JX 1-3) when it did not provide holiday pay to named Grievants, each of whom was on an unpaid FMLA, military leave, or occupational injury (OJI) leave of absence on the day of the holiday, as claimed in the "individual grievances"?

NOTE:

The docket of JCBA Article 22 Holiday Pay grievances submitted for determination in this consolidated/bifurcated SBA arbitration included *Bradley F/S Employees, et al - Grievance #: BDL-1004-* (JX-6) and *Charlotte F/S Employees, et al - Grievance #:CLT-083121* (JX-7), each of which alleges violations of Article 22 A(12) in JX-3, the Fleet Service Agreement.

By stipulation of the Parties, the SBA's Phase I Merits determination of the grievances involving Article 22 (A)(10) in JX-1 and Article 22(A)(11) in JX-2 will be mutually recognized, going forward, as the correct interpretation of Article 22 A(12) in JX-3. However, this Phase I arbitration did not address and our Phase I decision neither expresses nor implies determination of any other issues presented by "fleet grievances" JX-6 or JX-7, *per se.*

POSITIONS OF THE PARTIES

Association

The Company's breach of the JCBA is revealed by a careful and close examination of the plain specific language of the qualification subsection at issue, which undermines contains the Company's so-called "two-pronged" test or qualifier that an employee must meet to receive straight-time holiday pay for the holidays that fall during a given month. Indeed, the specific subsection at issue reveals that the Company's interpretation of the language directly conflicts the plain language therein. To employ the Company's interpretation, one must add language that simply does not exist in that subsection or anywhere in Article 22, for that matter. In sum, the Company's interpretation of the relevant provision in Article 22(A) violates, and is contrary to, the clear and unambiguous plain language of the JCBAs.

If the Board determines that it is necessary to go beyond the plain language, the bargaining history and application of the exact same language in Article 24–Sick Leave of all three (3) JCBAs provide this Board with the necessary interpretative guidance.

Accordingly, the Board must uphold the Grievances at issue and decide for the Association on the merits. As previously acknowledged, in terms of the remedy, the Board has bifurcated this matter and any determination in regard to a remedy will take place subsequent to a determination of the merits.

Company

Arbitrators have routinely upheld holiday pay eligibility requirements established through past practice and have denied grievances seeking holiday pay for employees who failed to meet those requirements. *See, e.g.*, Curved Glass Distributors., 102 BNA LA 33 (1993) (Eischen, Arb.). It is undisputed that such a binding past practice was established at US Airways and American of not paying holiday pay to employees on an unpaid leave of absence on the date of the holiday. This carried over to the JCBA when the parties adopted the pre-merger US Airways-IAM mechanics CBA holiday pay eligibility language without modifying or addressing the past practice. That holiday pay eligibility language must therefore be understood to have incorporated the past practice of requiring that employees be on active pay status on the date of the holiday to receive holiday pay.

The only correct reading of the JCBA Article 22 language, placed into context of the relevant bargaining history and longstanding past practice, is that the parties intended to continue the *status quo*, including the second prong of the US Airways holiday pay requirement mandating that employees must be on active pay status on the date of the holiday. If the Association wanted to change past practice, it needed to clearly state its intention in negotiations so American could evaluate that change. But the Association stayed silent. It should not now be permitted to obtain a benefit in arbitration that was never discussed or agreed to in negotiations.

American did not violate the JCBA by continuing its longstanding practice of only paying employees holiday pay if they were on the active payroll the date of the holiday. For all of the foregoing reasons, American respectfully requests that the Board deny the individual grievances in their entirety.

BASIC PRINCIPLES

Parties to labor-management contracts setting terms and conditions of employment often find themselves at loggerheads concerning what their negotiated and agreed contract language means when it comes down to administration and application. The contract arbitrator's proper goal is to determine the meaning of and to direct compliance with mutually agreed legally binding contract language. In reviewing the record evidence and analyzing the countervailing positions of the Parties, the System Board of Adjustment applied the following generally accepted principles for interpreting disputed contract language in labor-management collective bargaining agreements:

Burden of Persuasion/ Standard of Proof

As the party alleging a contractual misinterpretation/misapplication of Article 22, the Association must carry the burdens of establishing a *prima facie* case and the overall persuasion that the Company violated the controlling JCBAs. The universally recognized standard of proof benchmark in contract interpretation disputes is the civil litigation standard: "preponderance of the relevant and material record evidence", *i.e.,* proof that the claimed contract violation probably or more than likely did occur. Preponderance of the record evidence does not mean the greater number of witnesses or the greater length of time taken by either side but rather the probative or convincing quality of the evidence; *i.e.*, the weight and the effect that it has on the mind of a neutral decision maker.[5]

[5] *See* U.S. Dept. of Agriculture 120 LA 1560, 1566 (Briggs, 2005). ["Movant must present evidence that is more credible and convincing than that presented by the other party, or which shows that the fact to be proven is more probable than not."]; Philips Consumer Electronics, 91 LA 1040, 1043 (Nolan, 1989): ("[T]o win the case [on its merits] the Union must prove its charges; the Company is not obliged to prove its innocence."); Occidental Chemical Corp., 114 LA, (Brunner, 2000): "[T]he moving party meets its burden (of persuasion) by showing that its ***own*** view is correct, not that the other side's is wrong."] (emphasis and parenthetical in original). *See also* School District No. 1, County of Denver 120 LA 816, 825 (Gaba, 2004); Certainteed Corp., 88 L.A. 995, 998 (Nicholas, 1987); Entex, Inc., 73 L.A. 330, 333 (Fox, 1979); Portec, Inc., 73 L.A. 56, 58 (Jason,1979); City of Cincinnati, 69 L.A. 682, 685 (Bell, 1977).

Plain Language Usually Prevails

Whenever possible, arbitral determination of subsequently disputed wording is best accomplished by reading the literal language the Parties used to memorialize their agreement. Simply stated, under the "Plain Meaning/Fair Reading" rule, an arbitrator who finds disputed contract language to be clear and unambiguous must conclude that the plain everyday meaning of the words is the "mutually intended" meaning of the words. This principle is seen as both practical and equitable because: a) it discourages disputes over plain words mutually adopted by bargainers in their contractual agreements; and, b) experienced arm's-length bargainers are expected to know and understand how they are bound when they agree to use such words and execute such contractual provisions.

A legion of similarly decided reported arbitration decisions all turn on this most fundamental canon of contract interpretation.[6] Hecla Mining Co., 81 LA 193,194 (LaCugna, 1983) succinctly summarizes this seminal arbitral common law principle, as established by thousands of such reported decisions:

> It is axiomatic in labor arbitration that clear and unambiguous language, decidedly superior to bargaining history, to past practice, to probable intent, and to putative intent, always governs. Clear language is the arbitrator's lodestar and guiding light. He can neither ignore it, nor modify it; on the contrary, he must give it full force and effect.

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[6] *See, e.g.,* Parker White Metal Company, 86 LA 512, 516 (Ipavec, 1985); Anaheim Union School District, 84 LA 101, 104 (Chance, 1984); Arco Pipe Line Company, 84 LA 907, 901 (Nicholas, 1985) and Tri-County Metropolitan Transportation District, 68 LA 1369, 1370 (Tilbury, 1977); National Linen Service 95 LA 820, 824 (Abrams 1990), Down River Forest Products 94 LA 141, 146-147 (Gangle 1989), General Telephone of the Southwest 86 LA 293, 295 (Ipavec 1985), Safeway Stores, 85 LA 472, 476 (1985) (Thorp); Metropolitan Warehouse, 76 LA 14, 17-18 (1981) (Darrow).

Parole Evidence

When different understandings of what certain negotiated words mean are asserted, it generally is recognized that the party whose understanding is in accord with common usage and ordinary vernacular should prevail in the absence of misrepresentation, fraud or mistake. Bureau of Engraving, 114 LA 598, 670–71 (Bard, 2000); Cardinal Foods, 90 LA 521, 525 (Dworkin, 1988); Stewart Hall Company, 86 LA 370, 372 (Madden, 1985); Hanon & Wilson Company, (Katz 1967), 67-2 Arb ¶ 8583. A minority of arbitrators even bar consideration of compelling undisputed extrinsic evidence of a contrary mutually intended contrary or special meaning of ostensibly clear wording *See, e.g.,* Mohawk Rubber Company, 83 LA 814, 816 (Flannagan, 1984).

In my opinion, such knee-jerk application of the Plain Meaning Rule, without any regard for preponderant evidence of contrary intent, is not realistic or appropriate in the interpretation and application of a collective bargaining agreement. The better reasoned corollary, which this Board applies, holds that words used by the Parties in a contract provision should be given their ordinary and popular meaning "unless the record evidence, taken as a whole, persuasively shows a mutual intent to convey some contrary, specialized or technical meaning". *See* D. Nolan, Arbitration Law and Practice (1979), N.8 at 168; Walter Jaeger, Williston on Contracts, § 618 at 705 (4th Ed. 1961).[7]

[7] The Restatement (Second) of Contracts is in accord: "In the absence of contrary indication, therefore, English words are read as having the meaning given them by general usage, if there is one. This rule is a rule of interpretation in the absence of contrary evidence, not a rule excluding contrary evidence." (Note 13 at § 202, comment e.).

Silence or Ambiguity

Contract language is considered vague or ambiguous "when plausible contentions can be made for conflicting interpretations." *See* Armstrong Rubber Co., 17 LA 741 (Gorder, 1952); Schnuck Markets, Inc., 107 LA 739, at 743 (Cipolla,1996). Given the power dynamics, time constraints and pressures of collective bargaining negotiations, it is understandable that provisions of labor-management contracts are not always couched in clear language. Sometimes that lack of clarity is unintentionally due to time pressure or inattention. But, often enough, closure on a final agreement is achievable only by a compromise on artfully crafted wording intentionally vague or ambiguous enough to allow each side reasonable latitude for advocacy when a dispute over meaning erupts.

There can be no question that an arbitrator may rightly consider persuasively proven parole evidence to resolve a dispute over the meaning of collectively bargained contract language that really is ambiguous and unclear. *See* Brigham Apparel Corp., 52 LA 430 (1969); Milk Producers Assoc., 95 LA 1184 (Kanner, 1990). In such cases, the most frequently invoked collateral indicia of mutually agreed meaning are "bargaining history" (statements made and proposals presented or withdrawn during negotiations of the language) and "binding past practice" (a long-standing, openly-acknowledged, consistent and mutually-accepted custom, practice or tradition of interpreting and applying the language).

If persuasively proven, weight may properly be accorded such inferential evidence of meaning in the interpretation of general or ambiguous wording in the written contract or to demonstrate mutual agreement upon a term or condition of employment about which the written contract is silent. That said, such parole evidence of implied meaning rarely trumps, overrides or nullifies clear and unambiguous contrary literal language.

OPINION OF THE IMPARTIAL ARBITRATOR

Analysis

By including the parenthetical definition "(**all *hours* paid**)", AA and the Association expressly set forth the meaning of the term of art "active pay status" in their Articles 22 Holiday pay qualification provision. That single stated requirement specifically looks at qualifying ***hours*** in the month in which the holiday falls and says nothing about an additional requirement that the employee on unpaid FMLA, military and occupational injury leave time to also be in "active pay status" on the ***date*** of the paid holiday. In the next sentence, the Parties literally and specifically stated that unpaid FMLA, military and occupational injury leave time "counts towards" the **all *hours* paid** requirement. Nothing in the plain language at issue nor in Article 22 in its entirety states that an employee also must be in "active pay status" on the ***date*** of the paid holiday.

In my considered opinion the stipulated facts and circumstances as set forth in JX-14 and/or established by undisputed assertions in JX-8/JX-10, establish a *prima facie* showing by the Association that AA violated that plain benefit qualification language in JCBA Article 22 of the respective JCBA provisions. The Company's primary rejoinder is that the bargaining history of those Article 22 provisions proves implicit mutual agreement to "continue" utilizing under the new AA/Association JCBAs a so-called "second-prong" holiday pay qualification test of active employment on the date of the holiday that was utilized under Article 6 of the pre-merger Legacy USAir/IAM M&R agreements.

As the proponent of dispositive bargaining history, the Company must prove persuasively an inferential mutual understanding of the Parties to accord that meaning to their agreed-upon JCBA Article 22 language. A preponderance of collateral statements,

documents and/or course of conduct, substantial and unequivocal enough to allow the reasonable inference of such an unstated but implied meaning, is the essential but elusive evidentiary requirement in such cases.

The Company's Chief JCBA Negotiator, a recognized expert in airline labor-management relations, testified: "[W]hen we were bringing forward language from a prior agreement, the past practice associated with that language was coming forward as well, unless the parties mutually agreed to change it to something different." [Tr. Vol. I, 76:15-19]. Among other supporting authorities for that proposition, the Company cites *Elkouri & Elkouri,* How Arbitration Works (Bloomberg BNA 8th ed.), 13, at § 12.8:

> "*Where practice has established a meaning for language contained in past contracts and continued by the parties in a new agreement, the language will be presumed to have the meaning given it by that practice.*"

The Board has no reason to question the sincerity or good faith of the Company's invocation of an assumed implicit joint commitment to "continuation of the past practice". In the facts of this case record, however, reliance on that logical syllogism founders on a faulty major premise that the past wording was "continued" in the JCBAs. In fact, the language in the past LUS/IAM CBAs **was not** "continued by the parties in a new agreement". Aside from some colorable generic similarity in the first dozen words of the precatory phrase, those JCBA Article 22 provisions are materially and significantly different from the Article 6 language of the predecessor LUS/IAM agreements.[8] Indeed, the emphasized second sentence in the Article 22 JCBAs is brand new language that introduced a novel specifically targeted preferential treatment concept for which those prior legacy USAir CBAs made no provision. (Emphasis added):

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[8] *See* all of those respective contract provisions in **Appendices A and B**).

M&R JCBA Art. 22.A.10/MLS JCBA Art. 22.A.11) (J-1 at 139; J-2 at 80)

. . . In order to be paid for holidays that fall during a given month, **employees must be in an active pay status (all hours paid) for eighty (80) hours** in such month. **For purposes of this paragraph, time spent on unpaid FMLA, military, occupational injury leaves shall count towards the eighty (80) hour requirement**. . .

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LUS/IAM MECHANICS & RELATED CBA Article 6 (CX-1/UX-3 at 26 **)**
(D)
* * *
In order to be paid for holidays that fall during the month, **non-active employees must have been in an active pay status for ten (10) or more work days in a month** if regularly scheduled to work five (5) days a week, **or eight (8) or more work days in a month** if regularly scheduled to work four (4) days a week.

In further contradiction of the Company's assertions, the evidentiary record persuasively establishes that the genesis/evolution foundation of that disputed JCBA Article 22 Holiday Pay qualification subsection was not the Holiday provisions of those former LUS/IAM CBAs. Rather, the source of the now-disputed Article 22 subsection is found in identical "counts toward" language upon which the Parties had already reached tentative agreement in Article 24-Sick Leave of the AA/Association JCBAs. That second sentence of the previously negotiated benefit qualification provisions of Article 24–Sick Leave initially referenced only unpaid FMLA. Subsequently, at the behest of the Association, the scope of that previously agreed preferential FMLA "counts toward" language was extended to include military leave and occupational injury leaves in Article 24-Sick Leave, Article 23-Vacation and Article 22-Holiday of each of the respective JCBAs.

It also is undisputed in our case record that, contrary to its disputed administration of the Holiday pay qualification provision, the Company has been implementing the identical "counts toward" Article 24 language without invoking or requiring the "two-pronged" benefit qualification test it urges this Board to endorse in the implementation

and administration of Article 22. [Tr. Vol. II, 103:16-19; 105:19-24]. That record evidence shows that employees on unpaid FMLA, Military and Occupational injury leaves have been granted Article 24 Sick Leave entitlements based only on the single "all hours paid" qualifier--irrespective of whether the individual is present or absent on those leave dates. There is no material variation in the literal language of those benefit provisions indicative of a variation in meaning. Thus, the canon of consistent usage posits a natural presumption that identical words used in different parts of the same written legal document are intended to have the same meaning throughout the text, *See* Atlantic Cleaners & Dryers, Inc. v. United States, 286 US 427,433 (1932, Sutherland , J.).

CONCLUSIONS OF THE IMPARTIAL ARBITRATOR

1) The literal language of Article 22(A)(10) of the M&R JCBA, Article 22(A)(11) of MLS JCBA and Article 22(A)(12) of the Fleet Service JCBA gives meaning to what is contractually binding in those provisions, not anyone's expectations, hopes or undisclosed intentions.

2) The bargaining history evidence in this case does not support the Company's thesis that experienced expert drafters of Article 22(A)(10) of the M&R JCBA, Article 22(A)(11) of MLS JCBA and Article 22(A)(12) of the Fleet Service JCBA implicitly agreed, or should be determined by this Board to have meant, that a past practice under different language in predecessor contracts, which was neither mentioned nor discussed by either Party in negotiations, should prevail over those plain words.

3) Neither the literal common wording of Article 22 in the applicable JCBAs, nor any applicable canon of contract interpretation, nor bargaining history facts of record, nor any mutually binding past practice support the interpretation advanced by AA in this case.

4) An arbitrator who ignores the clear-cut contractual language of those JCBA Article 22 provisions or legislates different language under the guise of arbitral interpretation would improperly usurp the role of the labor organization and employer negotiators.

THE AMERICAN AIRLINES, INC./TWU-IAM ASSOCIATIONS' SYSTEM BOARD OF ADJUSTMENT

PHASE I MERITS AWARD

1). The Association persuasively proved that American Airlines violated Article 22(A)(10) of the M&R JCBA and Article 22(A)(11) of the MLS JCBA with the TWU-IAM Association, as claimed in the seven (7) "individual grievances" (JX-4, 5, 9, 8, 10, 11 and 12), when it did not provide holiday pay to those named Grievants, each of whom was on an unpaid FMLA, military leave, or occupational injury (OJI) leave of absence on the day of the holiday.

2). By stipulation of the Parties, this Phase I Merits determination of the grievances involving Article 22 (A)(10) in JX-1 and Article 22(A)(11) in JX-2 will be recognized, going forward, as the correct interpretation of Article 22 A(12) in JX-3.

3). This Phase I arbitration did not address and our Phase I decision neither expresses nor implies any determination of the disputed issues appropriately presented by JX-6 or JX-7, *per se*.

4). Unresolved issues appropriately presented by the "fleet services grievances" identified as JX-6 and JX-7, as well as any unresolved disputes over the appropriate remedy for the "individual grievance" violations determined in ¶2, *supra*, will be heard and decided by this Board in Phase II of these bifurcated arbitration proceedings.

Dana Edward Eischen

Dana Edward Eischen
Impartial Arbitrator/SBA Chairman

STATE OF NEW YORK
COUNTY OF TOMPKINS SS:

On this 28th day of July, 2023, upon my oath as Arbitrator, I, DANA E. EISCHEN, do affirm and certify, pursuant to Section 7507 of the Civil Practice Law and Rules of the State of New York, that I have executed and issued the foregoing instrument, which I hereby acknowledge to be my Opinion and Phase I Merits Award in the above matter: CBA Article 22 Holiday Pay--Various Grievances.

Sean Ryan

Sean Ryan, Union Member
Concur
Date: 07/28/23

Jonathon Oliff

Jonathan Oliff, Carrier Member
Dissent
Date: 07/28/23

APPENDIX A

PERTINENT 2020 AA/ASSOCIATION JCBA PROVISIONS

* * * * * *

ARTICLE 22 - HOLIDAYS

M&R/MLS/Fleet Service JCBAs Art. 22(A) (J-1 at 138; J-2 at 79; J-3 at 85).

A. Employees will observe the following holidays each year: New Year's Day, Martin Luther King Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving, and Christmas Day. The actual day on which the holiday falls will be observed as the holiday.

* * *

M&R JCBA Art. 22.A.10/MLS JCBA Art. 22.A.11) (J-1 at 139; J-2 at 80)

. . . In order to be paid for holidays that fall during a given month, employees must be in an active pay status (all hours paid) for eighty (80) hours in such month. **For purposes of this paragraph, time spent on unpaid FMLA, military, occupational injury leaves shall count towards the eighty (80) hour requirement**. . . (Emphasis added)..

* * *

Fleet JCBA Art. 22.A.12 (J-3 at 86)

. . .In order to be paid for holidays that fall during a given month, employees must be in an active pay status (all hours paid) for eighty (80) hours (full time employees) or forty (40) hours (part time employees) in such month. **For purposes of this paragraph, time spent on unpaid FMLA, military, occupational injury leaves shall count towards the eighty (80) or forty (40) hour requirement.** . . (Emphasis added).

* * * * * *

ARTICLE 23 – VACATION

MLS & M&R JCBAs Art. 23.B (JX-1 at 139; JX-2 at 82)

. . . Employees must be in an active pay status (all hours paid) for eighty (80) hours in a month to accrue vacation for the month. **For purposes of this paragraph, time spent on unpaid FMLA, Military, and Occupational Injury leaves shall count towards the eighty (80) hour requirement.** . .. (Emphasis added).

* * *

Fleet JCBA Art. 23.G (JX-3 at 91)

A full time employee must have eighty (80) paid hours (All Paid Hours) in a month to accrue Future Vacation Days for the month. A part time employee must have forty (40) paid hours (All Paid Hours) in a month to accrue Future Vacation Days for the month. **Time spent on unpaid FMLA, Military, Union and Occupational injury leaves shall count towards the eighty (80) hour or forty (40) hour requirement.** (Emphasis added). . . .

* * * * * *

ARTICLE 24 – SICK LEAVE

MLS/M&R JCBAs Art. 24.A (JX-1 at 145; JX-2 at 87)

….Employees must be in an active pay status (All hours paid) for eighty (80) hours in a month to accrue sick leave for the month. **For purposes of this paragraph, time spent on Military, Occupational Injury leaves, or unpaid FMLA leaves shall count towards the eighty (80) hour requirement.** (Emphasis added).

* * *

Fleet JCBA Art. 24.A (JX-3 at 95)

A. Employees earn sick leave hours per calendar month up to a maximum of eighty (80) sick leave hours per year for full time employees and fifty (50) sick leave hours per year for part time employees. There will be a maximum accrual cap of one thousand six hundred (1,600) hours in an employee's sick leave bank. A full time employee must have eighty (80) paid hours (All Hours Paid) in a month to accrue sick leave for the month. A part time employee must have forty (40) paid hours (All Hours Paid) in a month to accrue sick leave for the month. **For purposes of this paragraph, time spent on Military, Occupational Injury leaves, or unpaid FMLA leaves shall count towards the eighty (80) hour requirement for full time employees and forty (40) hour requirement for part time employees.** (Emphasis added).

* * * * * *

ARTICLE 34- SYSTEM BOARD OF ADJUSTMENT/ARBITRATION

A. In compliance with Section 204, Title 2 of the Railway Labor Act, as amended, there is hereby established a System Board of Adjustment/Arbitration ("System Board") for the purpose of adjusting and deciding disputes or grievances which may arise under the terms of this Agreement, and which are properly submitted to it after exhausting the procedure for settling disputes as set forth under Article 33. However, by mutual agreement, any cases properly referable to the System Board may be submitted to it in the first instance.

B. The System Board shall consist of three (3) members; one (1) selected by the Company, one (1) selected by the Union and one (1) selected for each dispute from a panel of eleven (11) Arbitrators established by mutual agreement between the Union and the Company. After a panel member has served for a period of two (2) years, either party may request that such member be removed from the panel. However, a member of the panel may be removed during the term of this Agreement by mutual agreement between the parties. When a change is made, the parties will select the new panel member(s) by the same method used to select the original panel members.

C. Hearings of the System Board for discipline and discharge cases will be held in the city of the Company's operating bases where the grievant is located. Hearings of the System Board for contractual interpretation cases will be held in the city of the Company's corporate headquarters unless otherwise mutually agreed to between the parties.

D. The System Board 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 Board shall not extend to proposed changes in hours of employment, basic rates of compensation or working conditions covered by this Agreement or any of its amendments**.**

E. The Board shall consider any dispute within the System Board's jurisdiction submitted to it by the Union or by the Company's Chief Operating Officer or his authorized representative, when such dispute has not been previously settled in accordance with the terms of this Agreement.

F. All disputes properly referred to the Board for consideration shall be addressed to the Board Members.

Each case submitted shall show:

1. Question or questions at issue;
2. Statement of facts;
3. Position of employee or employees;
4. Position of Company.

G. When possible, joint submissions will be made, but if the parties are unable to agree upon a joint submission, then either party may submit the dispute and its position to the Board. No matter shall be considered by the Board, which has not first been handled in accordance with the appeal provisions of this Agreement, including the rendering of a decision thereon by the Chief Operating Officer of the Division or his duly designated representatives.

H. Upon receipt of notice of the submission of a dispute, the parties shall agree on a date for the hearing, or if at least two (2) members of the Board consider the matter of sufficient urgency and importance then at such earlier date and at such place as the parties shall agree upon, but not more than thirty (30) days after such request for meeting is made.

I. An employee covered by this Agreement may be represented at System Board hearings by a person(s) designated by him and the Company may be represented by a person(s) designated by it. Evidence may be presented both orally and in writing. Individual members of the System Board may, summon any witnesses who are employed by the Company and who may be deemed necessary by the parties to the dispute**.**

J. The decision of the System Board shall be rendered within thirty (30) days after the close of the hearing. A majority vote of the members of the System Board shall be necessary to make a decision. The decisions will be final and binding upon the Company, the Union and the grievant(s).

K. The time limits specified in this Article may be extended by mutual agreement between the parties to this Agreement.

L. Nothing contained in this Article will be construed to limit, restrict, or abridge the rights or privileges accorded either to the employees, the Company, or their duly accredited representatives under the provisions of the Railway Labor Act, as amended.

M. The System Board shall maintain a complete record of all matters submitted to it for consideration, and of all findings and decisions made by it.

N. Each of the parties will assume the compensation, travel expense and other expenses of the System Board members selected by them.

O. Each of the parties will assume the compensation, travel expense and other expenses of the witnesses called or summoned by them. A witness who is an employee of the Company shall receive free round trip transportation over the Company system, so far as space is available from the point of duty or assignment to the point at which he must appear as a witness, to the extent permitted by law.

P. The designated Company member and Union members, acting jointly, shall have the authority to incur such other expenses as, in their judgment, may be deemed necessary for the proper conduct of the business of the System Board, and such expenses shall be borne one-half (1/2) by each of the parties. Company and Union members will be granted necessary leaves of absence for the performance of their duties as System Board members. Board members shall be furnished free round trip transportation over the Company system so far as space is available for the purpose of attending meetings of the System Board, to the extent permitted by law.

Q. A System Board member shall be free to discharge his duty in his capacity as a System Board member in an independent manner without fear that his individual relations with the Company or with the Union may be affected in any manner by any action taken by him in good faith.

* * * * * *

APPENDIX B

PERTINENT PRE-MERGER CBA PROVISIONS

LEGACY US AIRWAYS, INC./IAM MECHANICS & RELATED CBA

(CX-1/UX-3 at 26 **)**

* * * * * *

Article 6. Overtime and Holidays

(D) Employees will observe the following holidays each year on the dates established by Federal law, and the holiday pay will be equal to the number of regularly scheduled hours: New Year's Day, Martin Luther King Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day, the day after Thanksgiving, and Christmas Day. The actual day on which the holiday falls will be observed as the holiday. . . . .

* * *

In order to be paid for holidays that fall during the month, non-active employees must have been in an active pay status for ten (10) or more work days in a month if regularly scheduled to work five (5) days a week, or eight (8) or more work days in a month if regularly scheduled to work four (4) days a week.

LEGACY US AIRWAYS, INC./IAM FLEET SERVICES CBA

(CX-2/UX-4 at 74**)**

* * * * * *

Article 14 - Holidays

The following days are designated paid holidays: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. The holidays affected by the Federal Holiday Act are observed on the date established by Federal Law. Employees receiving furlough will not be eligible for holidays.

* * *

D. An employee on active pay status who is scheduled to work on a holiday and fails to work due to illness or injury shall receive holiday pay computed at his straight time rate (excluding shift premium) for that day. There shall be no charge to his accrued sick leave. The unscheduled absence will be an attendance occurrence.

E. If a holiday falls within an employee's vacation period, he will receive holiday pay as outlined in paragraph F. below in addition to vacation pay.

F. Employees will receive straight-time pay for regularly scheduled hours worked on a holiday. In addition each employee on active pay status will receive holiday pay for holidays at his regular rate of pay or such employee may elect to receive compensatory time as provided for below and in Paragraph G. of this Article. . . .

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APPENDIX C

LEGACY AMERICAN AIRLINES-TWU CBAS

AA-TWA M&R/MLS/Fleet Service CBA Article 7 - Holidays

(CX-25 at 48-49/CX-26 at 29-30/CX-27 at 33-34)

* * * * * *

(a) The following holidays with pay will be granted:

Holiday	Observance
New Year's Day	January
Independence Day	July 4
Labor Day	First Monday in September
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

* * * * * *

* * *

Payment for a holiday will not be made to an employee on a leave of absence or to an employee scheduled to work on the holiday who is not excused from work and who fails to report to work as scheduled.

(1) If an employee has been absent because of illness or injury for a continuous period immediately preceding the holiday that does not exceed thirty (30) calendar days, exclusive of any vacation time, he is entitled to holiday off pay [HO] in accordance with this Article.

(2) If an employee has been absent because of illness or injury for a continuous period immediately preceding the holiday for more than thirty (30) calendar days, exclusive of any vacation time, he is deemed to be on a leave of absence and is not entitled to any holiday pay. Any pay due will be in accordance with Article 34.

(3) If an employee is scheduled to work on a holiday and is absent on the holiday, he is not entitled to any holiday pay, unless he was "excused" from working on the holiday by the Supervisor. "Excusable" reasons for not working as scheduled on the holiday include such compelling reasons as jury duty, a death in the family, a critical illness in the family requiring the attention of the employee, and bona fide union business. If the employee is excused in accordance with this paragraph, he is entitled to holiday off pay [HO].

(4) If an employee has a one (1) day absence for illness or injury on a holiday he is scheduled to work, he is not entitled to any holiday pay. Any pay due will be in accordance with Article 34.

(5) If an employee's absence for illness or injury commenced on a holiday that the employee was scheduled to work and then continues through one (1) or more workdays following the holiday, he is entitled to holiday off pay [HO] for the holiday. Subsequent absences will be paid in accordance with Article 34.

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ATTACHMENT 1

PARTIES' JOINT STIPULATION OF FACT (JX-14)

1. The facts and exhibits in this stipulation are to be admitted into evidence for all purposes as if they were presented at the arbitration hearing on February 2 and 3, 2023. The parties agree that if witnesses were called, they would testify to the matters contained in this stipulation. Each party may rely on the facts set forth in this stipulation and contained in the exhibits to this stipulation as undisputed facts without the necessity of further testimony.[9]

Mr. Lonnie Cleveland, Jr. – Grievance #: 20210923-STL-T-AMT-0012 (JX-9)

2. Mr. Lonnie Cleveland, Jr. (Employee # 684417), is and was, at all times relevant hereto employed by American Airlines as an Airline Maintenance Technician.
3. Mr. Cleveland was on an unpaid medical leave from May 22, 2021 to August 5, 2021.
4. During the month of May 2021, Mr. Cleveland was on active pay status for at least 80 hours.
5. Mr. Cleveland was on an unpaid leave of absence on Memorial Day, May 31, 2021.
6. Mr. Cleveland did not receive any hours of holiday pay for Memorial Day, May 31, 2021.

Ms. Tigist Ryals – Grievance #: 20220208-MIA-T-AMT-0036 (JX-12)

7. Ms. Tigist Ryals (Employee # 352931), is and was, at all times relevant hereto employed by American Airlines as an Airline Maintenance Technician.
8. Ms. Ryals was on an unpaid OJI leave of absence from November 17, 2021 to December 10, 2021.
9. During the month of November 2021, Ms. Ryals was on active pay status, unpaid FMLA, military, and/or OJI leave of absence for at least 80 hours.
10. Ms. Ryals was on active payroll on Veterans Day, November 11, 2021, but she was on an unpaid leave of absence on Thanksgiving Day, November 25, 2021, and the day after Thanksgiving, November 26, 2021.
11. Ms. Ryals was not initially paid any hours of holiday pay for Veterans Day, November 11, 2021, but was later paid eight (8) hours of holiday pay for Veterans Day, November 11, 2021, upon filing the instant grievance.
12. Ms. Ryals did not receive any hours of holiday pay for Thanksgiving Day, November 25, 2021, and the day after Thanksgiving, November 26, 2021.

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[9] No contractual right or benefit, no legal right or privilege, no argument, no position, no issue, and no evidence – proffered by or from either party – is waived or forfeited by this Stipulation unless it is herein expressly waived or agreed.

Ms. Cheryle Eckhardt – Grievance #: 2201159 (JX-11)

13. Ms. Cheryle Eckhardt (Employee # 177015), is and was, at all times relevant hereto employed by American Airlines as a Material Logistics Specialist.
14. Ms. Eckhardt was on an unpaid FMLA leave of absence from August 4, 2021 to October 30, 2021.
15. During the month of September 2021, Ms. Eckhardt was on active pay status, unpaid FMLA, military, and/or OJI leave of absence for at least 80 hours.
16. Ms. Eckhardt was on an unpaid leave of absence on Labor Day, September 6, 2021.
17. Ms. Eckhardt was not paid any hours of holiday pay for Labor Day, September 6, 2021.

Lou Battisti–Grievance #2020-40354/PIT-11-18-20-GSE-11:00am-001 (JX-5)

18. Lou Battisti (Employee # 270718) is and was, at all times relevant hereto employed by American Airlines as an Airline Maintenance Technician.
19. Mr. Battisti was on an unpaid OJI leave of absence from July 30, 2020 to November 13, 2020.
20. In the month of November 2020, Mr. Battisti was on active pay status, unpaid FMLA, military, and/or OJI leave of absence for at least 80 hours.
21. Mr. Battisti was on an unpaid leave of absence on Veterans Day, November 11, 2020.
22. Mr. Battisti was not paid any hours of holiday pay for Veterans Day, November 11, 2020.

Dennis Hubler – Grievance #2020-40348 (JX-4)

23. Dennis Hubler (Employee # 279805) is and was, at all times relevant hereto employed by American Airlines as an Airline Maintenance Technician.
24. Mr. Hubler was on an unpaid OJI leave of absence from March 27, 2020 to February 1, 2021.
25. In the months of May, July, and September 2020, Mr. Hubler was on active pay status, unpaid FMLA, military and/or OJI leave of absence for at least 80 hours in the month.
26. Mr. Hubler was on an unpaid leave of absence during Memorial Day, May 25, 2020; Independence Day, July 4, 2020, and Labor Day, September 7, 2020.
27. Mr. Hubler was not paid any hours of holiday pay for Memorial Day, May 25, 2020; Independence Day, July 4, 2020, nor Labor Day, September 7, 2020.