

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LOCAL 501, AIR TRANSPORT DIVISION,
TRANSPORT WORKERS UNION OF
AMERICA, AFL-CIO,

Plaintiffs,

-against-

AMERICAN AIRLINES, INC.,

Defendant.
-----X

MELBOURNE HYRE, KEVIN DA CRUZ,
EDWIN DE LA CRUZ, CYRIL ADAMS,
FRANK GALANTI,

Plaintiffs,

-against-

AMERICAN AIRLINES, INC.,

Defendant.
-----X

AMON, UNITED STATES DISTRICT JUDGE:

MEMORANDUM & ORDER

02-CV-5453 (CBA)

FILED
IN CLERKS OFFICE
U.S. DISTRICT COURT ED. N.Y.
★ MAR 31 2004 ★

P.M. _____
TIME A.M. _____

03-CV-4268 (CBA)

INTRODUCTION

Before this Court are dispositive motions relating to the above-captioned cases. Because the actions arise out of the same facts, the motions raise similar issues, and counsel representing the parties are the same, this Court consolidates the cases for the purpose of ruling on the pending motions.

In Local 501 v. American Airlines, Inc., Plaintiff Local 501, Air Transport Division, Transport Workers Union of American, AFL-CIO ("Local 501") requests that this Court set aside

the supplemental arbitration award issued by Arbitrator Richard R. Kasher, dated August 30, 2002, and direct American Airlines (“American”) to cease and desist from its implementation. In Hyre et al. v. American Airlines, Inc., the same arbitration award is being challenged by individual plaintiffs. Defendant American has filed motions to dismiss in both cases. In Hyre, American has moved, in the alternative, for summary judgment, pursuant to Rule 56(c). American maintains that the plaintiffs in both actions lack standing to bring their respective actions and that this Court lacks jurisdiction to upset the award. It also claims that the Hyre action is barred by the statute of limitations. The Hyre plaintiffs have cross-moved for summary judgment.

For the reasons set forth below, defendant’s motions to dismiss both cases are granted, and plaintiffs’ motion for summary judgment in the Hyre action is denied.

BACKGROUND

Plaintiff Local 501 is a chartered local of the Transport Workers Union of America, AFL-CIO (“TWU”). TWU—not Local 501—and defendant American are parties to a collective bargaining agreement, dated March 1, 2001, which governs the terms and conditions of employment of certain American employees (“CBA”). (Local 501 Compl. (“Compl.”) ¶ 5.) Article 1(e)(1) of the CBA provides that in the event that American completes a merger, acquisition, or purchase of another company, following the integration of seniority lists of the new company, “no employee on the master seniority list will be adversely impacted in rates of pay, hours, or working conditions by the integration.” (Kazanjian Aff., Ex. 2, at 4.)

On or about March 2001, TWU became aware that American was considering purchasing

the assets of Trans World Airlines, Inc. ("TWA"). Later that year, American completed the acquisition through a pre-packaged deal in U.S. Bankruptcy Court, pursuant to which TWA's assets were transferred to TWA, LLC, an entity created by American. In September 2001, disagreements emerged between American and TWU, as representative of American's employees, and the International Association of Machinists ("IAM"), as representative of TWA's employees, concerning the integration of employees following American's acquisition of TWA. (Compl. ¶¶ 7-8.)

On February 27 and 28, and March 1 and 11, 2002, the TWU, American, and the IAM participated in arbitration hearings concerning a single question at issue: "How the system seniority lists of each respective group shall be integrated for purposes of occupational seniority in light of the applicable provisions of the AA-TWU collective bargaining agreement." (*Id.* ¶ 9.) These arbitration proceedings were conducted pursuant to Article 1(e) of the CBA and an Arbitration Agreement entered into by the parties. On April 29, 2002, Arbitrator Richard R. Kasher issued his Arbitration Opinion and Award ("Original Award") in which, *inter alia*, he recognized, in accord with a provision in the CBA, "no TWU-represented American employee will be adversely impacted in rates of pay, hours or working conditions by this seniority integration." (Kazanjian Aff., Ex. 1, at 56.) He also established a formula to be used in awarding former TWA employees seniority. Following the implementation of this April Award, the TWU, the IAM, and American agreed that going forward the IAM would not be a party to any proceedings regarding the merger/integration because it no longer represented any employees. (Compl. ¶ 13.)

In July 2002, questions arose concerning the April 2002 Award. The TWU, the IAM, and

American discussed these issues, and these disputes were submitted by the parties to the arbitrator for resolution. (Id. ¶ 14.) On August 30, 2002, Arbitrator Kasher handed down a Supplemental Award (“Supplemental Award”), which provided, in relevant part, that former TWA employees could use the occupational seniority previously awarded during the seniority integration in layoff, recall, and furlough situations. (Id. ¶ 16.)

On October 7, 2002, Local 501 filed a complaint and asked that this Court set aside the supplemental arbitration award. Local 501 alleges that the supplemental award is contrary to the express language of the CBA, that the Arbitrator exceeded his authority and contractual jurisdiction, that he substituted his own interpretations and ignored the express language of the contract, and that he did not conform to the stipulated terms of the arbitration or the procedural requirements of the Railway Labor Act. (Id. ¶¶ 17-24.)

On March 31, 2003, the TWU and American entered into a tentative restructuring agreement covering the Flight Services Clerk employees in an effort to avoid American’s filing for bankruptcy. As a result of this restructuring agreement, the system protection covering plaintiffs with respect to a reduction in force was removed on or about June 14, 2003.

On August 28, 2003, the Hyre plaintiffs filed their individual lawsuit against American challenging the supplemental arbitration award. They also allege that their seniority guarantee has been violated by their being moved from full-time to part-time employment. (Hyre Compl. ¶¶ 20-25.)

DISCUSSION

I. Motion to Dismiss Standard

In deciding a Rule 12(b)(6) motion, the court's function is to determine whether the complaint is legally sufficient. See Festa v. Local 3 Int'l Bhd. of Elec. Workers, 905 F.2d 35, 37 (2d Cir. 1990). A motion to dismiss must be denied "unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); accord Tarshis v. Riese Org., 211 F.3d 30, 35 (2d Cir. 2000). In reviewing plaintiffs' complaint, the court must accept as true the plaintiffs' factual allegations, drawing all reasonable inferences in their favor. See Bolt Elec., Inc. v. City of New York, 53 F.3d 465, 469 (2d Cir. 1995). In ruling on a motion to dismiss, "the complaint is deemed to include any written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference." Cortec Indus., Inc. v. Sum Holding L.P., 949 F.2d 42, 47 (2d Cir. 1991).

II. Railway Labor Act

The Railway Labor Act ("RLA" or the "Act"), 45 U.S.C. § 151 et seq., provides the district court with limited jurisdiction to review arbitration awards issued under the Act. See 45 U.S.C. § 153 First (q). In relevant part, § 153 First (q) provides:

If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court . . . a petition for review of the division's order. . . . On such review, the findings and order of the division

shall be conclusive on the parties, except that the order of the division *may set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.*

Id. (emphasis added). When the RLA was made applicable to the airline industry in 1936, Congress excluded from applicability § 153, which covers the resolution of disputes through arbitration before the National Railroad Adjustment Board. Nonetheless, courts have generally applied this narrow standard governing court review of arbitration awards in the airline context. See, e.g., Shafi v. PLC British Airways, 22 F.3d 59, 61-62, 64 (2d Cir. 1994) (applying § 153 First (q) in airline context on due process grounds), aff'd, 71 F.3d 404 (2d Cir. 1995), cert. denied, 517 U.S. 1161 (1996); Henry v. Delta Airlines, 759 F.2d 870, 873 (11th Cir. 1985) (applying § 153 First (q) to review arbitration in airline case). Pursuant to § 153 First (q), plaintiffs have filed suit seeking the vacatur of the supplemental award.

III. Standing

Defendant challenges the standing of both Local 501 and the individual plaintiffs to bring suit under § 153 First (q). The Court assumes, without deciding, that the Local and the individuals have standing since resolution of the standing issue is not determinative of the pending motions.

IV. Statute of Limitations Under the RLA

Although conceding the timeliness of Local 501's action, American argues that the Hyre plaintiffs' action is time-barred.

The RLA does not expressly set forth a statute of limitations for actions based on an arbitration award. The timeliness of this suit to set aside the arbitration award is therefore determined by looking to analogous state or federal law for the appropriate limitations period. See United Parcel Serv. v. Mitchell, 451 U.S. 56, 60 (1981).

American contends that a ninety-day statute of limitations should be applied because § 7511(a) of New York's C.P.L.R. provides: "An application to vacate or modify an award may be made by a party within ninety days after its delivery to him." In support of this position, American cites to cases where the ninety-day statute of limitation has been applied in suits not brought pursuant to the RLA. See, e.g., Mitchell, 451 U.S. at 64 (borrowing New York's 90-day limitation period for the bringing of an action to vacate an arbitration award pursuant to § 301(a) of the LMRA); Barbarino v. Anchor Motor Freight, Inc., 421 F. Supp. 1003, 1006-07 (W.D.N.Y. 1976) (same). American also emphasizes that the 90-day period is preferable because it avoids leaving arbitration awards in limbo for prolonged periods.

Plaintiffs counter that the applicable provision is a two-year statute of limitations, as provided by the RLA at 45 U.S.C. § 153 First (r). Subsection (r) states: "All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after." 45 U.S.C. § 153 First (r). As previously noted, when the RLA was made applicable to the airline industry in 1936, Congress excluded 29 U.S.C. § 153. Nonetheless, courts have applied other subparts of this provision to the airline industry – for example, the narrow standard governing court review of arbitration awards, § 153 First (q). See, e.g., Shafi, 22 F.3d at 61-62; Henry, 759 F.2d at 873. The Second Circuit has not had occasion to address the applicable limitations

period, but a district court decision recognizes, in dicta, that the two-year statute should govern.

See Trans World Airlines, Inc. v. Indep. Fed'n of Flight Attendants, 563 F. Supp. 1197, 1200

(S.D.N.Y. 1983). In TWA, the district court observed:

Section 153 on its face applies to awards of a public Adjustment Board empowered under the Railway Labor Act to hear "minor" railway labor disputes. Given the similarity between the Adjustment Board and the private system boards created by the same Act to hear "minor" airline labor disputes, *there is every reason to believe that the two year statute of limitations should apply to actions based on awards of airline system boards.*

Id. at 1200 (emphasis added). The Seventh Circuit has adopted this two-year statute of limitations in the airline context. See Ass'n of Flight Attendants v. Rep. Airlines, 797 F.2d 352, 356 (7th Cir. 1986) ("Congress' decision not to apply section 153 to the airlines, then, does not reflect any belief that that statute's limitations period was inappropriate for the airline industry. On the contrary, other courts have found section 153's limitations period a suitable analogy for challenges to rulings of system boards of adjustment." (citing TWA)); see also Steward v. Airtran Airways, Inc., 221 F. Supp. 2d 1307, 1311-12 (S.D. Fla. 2002) ("Given the two-year statute of limitations specifically governing RLA disputes, the Court concludes that the limitation period of two years as stated in Section 153 First (r) applies to the instant petition" to review an arbitration award.).

This Court finds the reasoning of these cases persuasive and concludes that the proper limitations period to be applied in the airline context when an arbitration award is challenged under § 153 First (q) is the two-year period set forth in § 153 First (r). Since the challenged supplemental award was issued on August 30, 2002 and the action seeking vacatur was filed on August 28, 2003, it is timely.

V. Review of the Supplemental Award

Under § 153 First (q), an arbitration award may only be overturned for three reasons: (1) it fails to comply with the RLA; (2) the arbitrator exceeded his jurisdiction; or (3) the arbitrator engaged in fraud or corruption. 45 U.S.C. § 153 First (q); Union Pac. R. Co. v. Sheehan, 439 U.S. 89, 93 (1978). The Supreme Court has characterized review of arbitral awards as “among the narrowest known to the law,” Sheehan, 439 U.S. at 91, and has cautioned that “that this statutory language means just what it says,” id. at 93. The Second Circuit has commented: “Indeed, ‘perhaps “review” is a misnomer;’ where fraud is not an issue, we ask only ‘whether the arbitrators did the job they were told to do – not whether they did it well, or correctly, or reasonably, but simply whether they did it.’” CSX Transp., Inc. v. United Transp. Union, 950 F.2d 872, 878 (2d Cir. 1991) (quoting Bhd. of Locomotive Eng’rs v. Atchison, Topeka & Santa Fe Ry. Co., 768 F.2d 914, 921 (7th Cir. 1985); citing Skidmore v. Consol. Rail Corp., 619 F.2d 157, 159 (2d Cir. 1979), cert. denied, 449 U.S. 854 (1980)). Plaintiffs contend both that the arbitrator failed to comply with the RLA and that he exceeded his jurisdiction. They do not allege fraud or corruption.

This Court concludes that the arbitrator neither violated the RLA nor exceeded his jurisdiction.

A. The Arbitrator Complied with the RLA

1. The Supplemental Award Interpreted and Applied the Original Award

The RLA and the relevant agreements at issue in these cases empowered the arbitrator to interpret and apply the arbitration agreement. Section 153 First (m) states that an arbitrator can

interpret an award to resolve disputes:

The awards of the [arbitrator] shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be *final and binding* upon both parties to the dispute. In case a dispute arises involving an *interpretation* of the award, the [arbitrator] upon request of either party shall interpret the award in the light of the dispute.

45 U.S.C. §153 First (m) (emphasis added). Moreover, the parties here agreed in their Seniority Integration Arbitration Agreement that the arbitrator would have the power to resolve disputes as to the “meaning or application” of the award. (Cox Aff., Ex. 4 ¶ 17.) In addition, after Arbitrator Kasher issued his first award, he directed the parties to establish a Dispute Resolution Committee to resolve “any disputes regarding the proper interpretation and implementation of this Award;” the parties elected to have Kasher serve as the Dispute Resolution Committee. (*Id.*, Ex. 3, at 56.)

The Seventh Circuit has explained the extent to which an arbitrator may supplement an award:

Subdivision (m) provides the Board with only the authority to *interpret* its award and then only upon a request by either party. The Board has not been granted authority to *alter or in any way modify* its award. Once an award is handed down there is no longer a continuing dispute between the parties. The Board may be called upon only to *clarify* its previously issued award.

See Transp. Communications Int’l Union v. CSX Transp., 30 F.3d 903, 906 (7th Cir. 1994)

(emphasis added); see also United Transp. Union v. Soo Line R.R. Co., 457 F.2d 285, 287 (7th Cir. 1972). Plaintiffs allege that the supplemental award went beyond mere clarification of the award and involved the resolution of a continuing dispute over seniority and new fact finding. They maintain that the supplemental opinion constitutes more than “interpretations and clarifications” of the original award. (See Supp. Award at 2.)

Plaintiffs cite some of the decisions in the supplemental award that they allege constitute factual findings and resolve new issues. The original award did not specifically address whether prior seniority could be exercised for furloughs or recalls because American had not been furloughing employees at the time of the original award. Plaintiffs style the application of the decision to furloughed employees as a new finding and new award. In their papers and at oral argument, they focus largely on Decision No. 5, which addressed the question "For what purposes may a TWA employee exercise his occupational seniority whether it be 25% or 100%?"

In reviewing this decision, this Court concludes that it is appropriate to view the supplemental award as an interpretation or application of the original award. The Arbitration Agreement charged the arbitrator with resolving one broad question: "How the system seniority lists of each respective group shall be integrated for purposes of occupational seniority in light of the applicable provisions of the AA-TWU collective bargaining agreement." (Cox. Aff., Ex. 4, at 3.) In the initial award, the arbitrator established a formula that granted former TWA employees the use of some seniority once a certain threshold was passed. This formula was not contested at the time it was made in the original award, nor is it now challenged. In resolving Dispute No. 5, it is clear to this Court that the arbitrator was simply applying the calculus established in the original award to the furlough question presented to him. This decision did not modify or alter the original award; it merely required him to interpret the original award and apply it. Moreover, this decision plainly fell within the broad question presented to him in the Arbitration Agreement.

2. The Arbitrator Was Vested With the Authority to Resolve the Disputes Considered in the Supplemental Award

Plaintiffs have also challenged the authority of the arbitrator to make such supplemental awards on grounds similar to those discussed in the preceding section. They assert that a separate arbitration agreement was necessary for the arbitrator to have properly considered the disputes decided by him in the supplemental award. This Court disagrees. As noted, the supplemental award constituted an application of the original award.

However, even if the supplemental award went beyond an application, making such an award was within the authority conferred upon the arbitrator. The Arbitration Agreement provided that the arbitrator was empowered to answer the question of “[h]ow the system seniority lists of each of the respective employee groups shall be integrated for purposes of occupational seniority in light of the applicable provisions of the AA-TWU collective bargaining agreements.” (Cox Aff., Ex. 4 ¶ 6.) Paragraph 17 of the Arbitration Award also recognized that, in the future, disputes regarding the application or interpretation of the award would be referred back to him. (*Id.* ¶ 17.) Moreover, after the original award was issued, the parties agreed to have Kasher serve as the Dispute Resolution Committee. Thus, the parties contemplated on a number of occasions that he would resolve the disputes that arose from the integration of the TWA and American employees.

In July 2002, disagreements surfaced concerning the interpretation and application of the original award. The parties, therefore, voluntarily decided to submit the sixteen disputes to Kasher for him to make “clarifications, interpretations, and supplemental awards.” Neither American nor the TWU objected to Kasher’s resolving these disputes at the time. Thus, by presenting the

disputes to the arbitrator for his resolution, they vested him with the authority to resolve them and consented to this authority. The adverse parties expressly continued the relationship and grant of authority flowing from both the Arbitration Agreement and Kasher's selection as the Dispute Resolution Committee.

In summary, this Court finds that the supplemental award constituted an application and interpretation of the original arbitration award. However, even if the resolution of the disputes went beyond this interpretation, the arbitrator was plainly vested by both parties with the authority to resolve these disputes.

3. No Evidentiary Hearing Was Required

Plaintiffs also raise procedural challenges to the supplemental arbitration award. Citing Jones v. St. Louis-San Francisco Railway Co., 728 F.2d 257, 263-64 (6th Cir. 1984), they state that § 153 First (j)¹ requires an arbitration board that renders a supplemental award to conduct hearings and engage in decision making based on the evidence presented at that hearing. In Jones, the Sixth Circuit held, in a railroad case, that subsection (j) requires that "a majority of the board must hear the parties and participate in the decisionmaking process before rendering an award." Thus, where the members making the decision were not presented with evidence, the decision was vacated.

The applicability of Jones to the case at hand is strained at best. In this airline dispute, there was only one arbitrator, and no allegation has been made that Kasher did not have

¹45 U.S.C. § 153 First (j) provides: "Parties may be heard either in person, by counsel, or by other representatives . . . and [arbitration boards] shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them."

knowledge of the evidence presented. Moreover, the cases cited by plaintiff do not require that the arbitrator conduct an evidentiary hearing prior to rendering a supplemental opinion. In Transportation-Communication Employees Union v. Union Pacific Railroad Co., 385 U.S. 157, 162-65 (1967), the Supreme Court observed that all parties to an arbitration hearing “are entitled to have a fair, expeditious hearing” and that the unions of all involved employees should be parties to the arbitration. In this case, the unions, as certified representatives of plaintiffs, were present at the discussions between the parties that resulted in the submission of the disputes considered in the supplemental award. This is sufficient.

In his supplemental opinion, the arbitrator also indicated: “Several of the pending ‘disputes / issues’ involve factual findings. Accordingly, unless there are disputed facts, the Committee will accept the facts proffered as being ‘reliable representations of fact’, and will base its decisions / resolutions upon such representations.” (Supp. Award at 2.) Plaintiffs complain that the arbitrator could not consider evidence in this way, arguing a hearing was necessary. However, they again cite no case law or statutory support that indicates the arbitrator was forbidden from making such findings. Indeed, the arbitrator adopted a position similar to that taken by a district court when it considers the facts proffered as true on summary judgment, unless they are disputed.

Hence, in making the supplemental award, the arbitrator was not required, under the RLA or the Arbitration Agreement, to hold an evidentiary hearing. Moreover, there is no indication that the record was deficient.

4. The Notice Requirement Was Satisfied

Plaintiffs additionally complain that the arbitrator's supplemental award was inconsistent with the RLA because the arbitrator did not give them individual notice, pursuant to § 153 First (j). That section states: "Parties may be heard either in person, by counsel, or by other representatives . . . and [arbitration boards] shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them." 45 U.S.C. § 153 First (j). The individual plaintiffs argue that they never received notice of the supplemental hearing, although – as in the case of the evidentiary hearing – they do not challenge the fact that the unions representing them were present at the discussions and that the resulting disputes were submitted to the arbitrator.

Plaintiffs rest their argument principally on an Eleventh Circuit opinion, which is distinguishable. In Steward v. Mann, 351 F.3d 1338, 1346 (11th Cir. 2003), five individual pilots prevailed in a grievance arbitration, but a different group of seven pilots brought suit in the district court to have the award set aside. Plaintiffs claimed their seniority rights were adversely affected by the outcome of an arbitration hearing. Both plaintiffs and defendants had worked together as pilots at a small airline, which was subsequently purchased by AirTran Airways. Although these pilots had entered into an agreement concerning their seniority at the previous airline, the structure of the AirTran acquisition resulted in the defendants' receiving greater seniority than the plaintiffs, notwithstanding their agreement. Thus, a grievance was filed, and an arbitration took place. Neither group was represented at the arbitration by the union with which they were both affiliated. In their suit, plaintiffs alleged, inter alia, that they did not receive proper notice of the hearing. The Circuit held that the due notice provision of subsection (j)

applies to the airline industry. It also explained that “due notice is a flexible standard which takes into account the realities of the relationships between the employer, the union, and the employee.” Id. (internal citations omitted). It continued that in the usual case, where the union represents the employees and the board gives the union notice, “courts will not automatically set aside the board’s award for failure to give due notice to the employee.” Id. Steward involved the “unusual case in which the union does not represent the involved employees before the board.” The employees there were “a relatively small group of specifically-identified employees.” Id. at 1347.

The situation presented in the instant matter is the usual case – not an exceptional one, as in Steward, where a small number of individuals had grievances before the arbitrator. Here, the TWU represented the plaintiffs in discussions with the other parties and in presenting the disputes to the arbitrator; there is no allegation that the union did not receive proper notice. Plaintiffs also allege that they were “involved” in the dispute because their seniority rights were affected, and, therefore, that they should have been individually noticed. However, the union specifically represented them as union members in front of the arbitrator on this issue. This is not a case of individual grievances that require individual notice, as Steward requires.

B. The Supplemental Award is Not Contrary to the Express Terms of the Collective Bargaining Agreement

Plaintiffs further contend that the supplemental award is contrary to the express terms of the collective bargaining agreement. (Hyre Pl.’s Mem. of Law at 23-24 (citing Norfolk & Western Ry. Co. v. Transp. Communications Int’l Union, 17 F.3d 696, 700 (4th Cir. 1994))

(indicating that the district court “may reverse an arbitral decision as in excess of a board’s jurisdiction only when the arbitration board’s order ‘does not draw its essence from the collective bargaining agreement’” (internal citations and quotation marks omitted))). First, plaintiffs posit that the arbitrator substituted his own notions of fairness for the operative provisions of the collective bargaining agreement, allegedly ignoring the “plain and unambiguous” language of the CBA’s “no adverse impact” requirement. In particular, they challenge the arbitrator’s resolution of Dispute No. 5. Second, plaintiffs assert that, despite American’s contention that Arbitrator Kasher reasonably interpreted the phrase “no adverse impact,” it is clear that plaintiffs suffered an adverse impact because they were moved from full-time to part-time status.

Defendants respond by arguing that the plaintiffs are simply unhappy with the arbitration award. As they point out, a district court does not have the authority to review an award merely because the plaintiffs are dissatisfied with the award. See Segal v. TWA, 63 F. Supp. 2d 373, 380 (S.D.N.Y. 1999) (dismissing plaintiff’s motion to vacate arbitration award based on plaintiff’s “dissatisfaction” with the award because permitting such a claim would “defeat Congress’s clear intent to keep such disputes ‘within the Adjustment Board and out of the courts’” (quoting Sheehan, 439 U.S. at 94)). They also explain that the term “adverse impact” is itself subject to interpretation, and the arbitrator interpreted the term in the original award and supplemental award, observing, among other things, that TWA brought work to American that would not otherwise have been available. Finally, they contend that, because the original award was not challenged, it became part of the collective bargaining agreement.

In issuing the original award, Arbitrator Kasher interpreted the “no adverse impact” clause of the collective bargaining agreement and adopted a methodology for assigning seniority,

which resulted from considering various features of American and TWA. Initially, he indicated that his jurisdiction was limited by the bargaining agreement provisions that state: “[N]o [American] employee on the master seniority list[s] will be *adversely impacted* in rates of pay, hours, or working conditions by the [seniority] integration[s].” (Cox Aff., Ex. 3, at 42 (emphasis added) (alteration in original).) He then went on to add that this limitation, in conjunction with Allegheny-Mohawk, dictated that the integration be effected in a “‘fair and equitable’ manner.” (Id. at 43–44.) In addition, the arbitrator noted that there are certain “equities” that the competing groups bring to the transaction, including “the financial condition, assets, route structures and other characteristics possessed by the carriers.” (Id. at 44.) Kasher also commented that American’s acquisition of TWA’s assets had, in effect, saved the careers of TWA’s employees. (Id. at 45.) He recognized that TWA brought two significant assets to the table – the St. Louis hub and the Kansas City maintenance base – which he believed would provide substantial benefit to American. Kasher then went on to indicate that it would be inequitable for any TWA employee to displace an existing American employee.

Factoring in these different considerations in the original award, the arbitrator made a number of findings in determining former TWA employees’ seniority. First, because American had no presence in Kansas City and only a limited presence in St. Louis, the arbitrator judged that it was appropriate to fully honor the seniority of those TWA employees; he also concluded that no American employee would be adversely affected by this decision. Second, Kasher adopted a calculus for awarding seniority to the rest of TWA’s former employees that took into account a carrier’s contribution to a given city or station. At those locations where TWA’s ASM (available seat miles) contribution was 10% or greater, when compared to the combined American and

TWA ASMs, former TWA employees were awarded 25% of their acquired seniority for the purposes of bidding and advancement. Third, Kasher, in interpreting the adverse impact clause, specifically underscored and found that this methodology for seniority integration did not adversely impact the rates of pay, hours, or working conditions of American employees.

In resolving the supplemental disputes, the arbitrator applied the same formula and rationale in the original award. Indeed, Kasher explained in ruling on Dispute No. 5 in the supplemental award that the integration of TWA employees resulted in the creation of more jobs and that American employees may have been laid off, were it not for the merger:

The Seniority Integration Opinion and Award stated that the enabling language in the TWU/AA contract was intended to “. . . ensure that the acquisition and seniority integration process did not deprive American’s TWU-represented employees of work opportunities they would legitimately expect . . .” but did not “guarantee for [such employees] that there would be additional work opportunities . . . nor does the language dictate that American’s TWU-represented employees would benefit at the expense of former TWA LLC employees. Former TWA LLC employees would be among the first to be bumped out of a station, in lieu of more junior AA employees notwithstanding that, *in the absence of the additional jobs brought by the integration, such employees may well have suffered layoffs in the contraction. This result is clearly inequitable and not required by the contract. For this reason, the occupational seniority integration awarded former TWA LLC employees by virtue of the seniority integration Award does apply in the layoff situation.*

(Supp. Award at 4 (emphasis added).)

Plaintiffs did not challenge the 10%/25% formula or the “no adverse impact” construction presented in the initial award or its application there. In handing down the supplemental award, the arbitrator simply applied the same seniority calculus to the furlough/recall context.

This Court notes that the Arbitration Agreement that vested Kasher with the authority to

arbitrate the seniority integration specifically indicated that “[t]he Arbitration shall be organized pursuant to Article 1(h) of the MR CBA, Article 1(e) of the FS CBA, Article 1(h) of the SC CBA, and Article 1(e) of the FST CBA” (Cox. Aff., Ex. 4 ¶ 5.) These provisions are identical and specifically contain the “no adverse impact” provision at issue. Thus, determination of the broad question of how to integrate the seniority lists of American and TWA necessarily depended upon the interpretation of the term “no adverse impact.” Inherent in the question of seniority integration is the interpretation of what “no adverse impact” itself means. Kasher interpreted the term and established a seniority calculus that he found to be consistent with this construction. Because the parties to the Arbitration Agreement specifically empowered Kasher to integrate the two groups of employees – and, therefore, to interpret the meaning of the collective bargaining agreement’s provisions – this Court finds that it cannot disturb this bargained for construction of the term “no adverse impact” and the seniority calculus. See Eastern Associated Coal Corp. v. United Mine Workers of America, Dist. 17, 531 U.S. 57, 62-63 (2000) (“[A]n arbitrator’s award ‘must draw its essence from the contract and cannot simply reflect the arbitrator’s own notions of industrial justice. But as long as [an honest] arbitrator is even arguably construing or applying the contract and acting within the scope of his authority,’ the fact that ‘a court is convinced he committed serious error does not suffice to overturn his decision.’ (quoting United Paperworkers Int’l Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 38 (1987)) (alteration in original)).

Moreover, even if this Court did not accord the arbitrator’s interpretation the deference it deserves under the RLA’s narrow band of district court review, the Court finds that the interpretation of the no adverse impact provision was itself reasonable. Indeed, the Court is

strained to understand how the plaintiffs can challenge the consistent application of this formula in the furlough/recall context when the same detailed, unchallenged rationale for this calculus set out in the original award also plainly applies here. Kasher explained that the contributions of the carriers were considered and that he attempted to construct a formula that took these tangible contributions into account, while respecting the no adverse impact clause. It was clearly reasonable to construe the provision in recognition of the fact that the merger likely created jobs that would otherwise not have been available.

The process of integrating employees from two airlines is a difficult one. In this case, it was further complicated by the removal of system protection once American itself faced bankruptcy. The integration procedure can obviously lead to dissatisfaction on all sides with the result. This inevitable problem, however, does not allow the Court to intervene and disturb a carefully crafted award, which the Court notes is not being challenged by either the bargaining representative or American. As the CBA guarantee was not violated, plaintiffs' complaint does not provide this Court with jurisdiction to review the award.

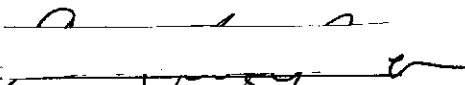
CONCLUSION

For the reasons stated above, the defendant's motions to dismiss plaintiffs' actions are granted, and plaintiffs' motion for summary judgment is denied. This Court concludes that supplemental award issued by the arbitrator violated neither the RLA nor the CBA, and that it was within the arbitrator's authority to resolve the disputes presented to him. Thus, this Court is without jurisdiction to review the awards. The Clerk of the Court is directed to enter judgment in

accordance with this Order and to close both cases.

SO ORDERED.

Dated: Brooklyn, New York
March 31, 2004



Carol Bagley Amon
United States District Judge