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American Airlines, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG POULTON, STEPHAN ROBSON, AND PHILIP VALENTE III, on behalf of themselves and all persons similarly situated,

Plaintiffs,

v.

ALLIED PILOTS ASSOCIATION; and AMERICAN AIRLINES, INC.,

Defendants.

Case No. 3:15-cv-03125-RS

DEFENDANT AMERICAN AIRLINES, INC.'S NOTICE OF MOTION AND MOTION TO DISMISS COUNT ONE OF THE SECOND AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6); MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing Date:	March 17, 2016
Time:	1:30 P.M.
Place:	Courtroom 3, 17th Fl.
Judge:	Hon. Richard Seeborg

NOTICE OF MOTION AND MOTION TO DISMISS

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on Thursday, March 17, 2016, at 1:30 P.M., or as soon thereafter as the matter may be heard, defendant American Airlines, Inc., by and through its undersigned counsel of record, will and hereby does move to dismiss with prejudice the only claim that has been asserted against it, Count One of the Second Amended Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6). Said motion will be heard at the United States District Court, 450 Golden Gate Avenue, San Francisco, California.

This motion is based upon this Notice of Motion and Motion to Dismiss, and the Memorandum of Points and Authorities in support thereof, served and filed herewith, all pleadings, papers, and records on file in this action, and any other matter of which the Court may take judicial notice, or which may be presented to the Court at or before the time of the hearing.

Dated: February 8, 2016.

Respectfully submitted,

CHRIS A. HOLLINGER
ROBERT A. SIEGEL
O'MELVENY & MYERS LLP

By: /s/ Chris A. Hollinger
CHRIS A. HOLLINGER

Counsel for Defendant American Airlines, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

PRELIMINARY STATEMENT

On December 17, 2015, this Court granted Defendant American Airlines, Inc.'s ("American" or the "Company") Motion to Dismiss Count One of the First Amended Complaint ("FAC"). (Order Granting Motion to Dismiss, With Leave to Amend [ECF No. 37] ["Order"].) Acknowledging the "detailed allegations" in the FAC regarding the alleged discriminatory treatment by Co-Defendant Allied Pilots Association (the "APA" or "Union") and the Company towards the Flow-Through Pilots ("FTPs"), the Court nonetheless ruled that the FAC failed to contain allegations sufficient to impose liability on an employer for colluding in a ***union's*** alleged breach of its duty of fair representation ("DFR"). (Order at 5-6.)

Plaintiffs have now filed a Second Amended Complaint (ECF No. 38) ("SAC"), adding a handful of new and/or revised allegations with respect to American in Paragraphs 44-48, 52-56, and 79. These three sets of allegations, however, fail to cure the deficiencies which prompted this Court to dismiss Count One in response to American's original motion. ***First,*** in Paragraphs 44-48 of the SAC, Plaintiffs have merely added details to their prior allegation that the APA and American reached a collectively-bargained agreement that negatively impacted the FTPs – but, as this Court previously ruled, such an allegation is insufficient as a matter of law to hold American responsible for the APA's alleged breach of DFR. ***Second,*** in Paragraphs 52-56, Plaintiffs attempt to re-litigate disputes regarding the meaning of collectively-bargained agreements ("minor disputes" under the Railway Labor Act ["RLA"]) which were previously submitted to mandatory and exclusive arbitration and which resulted in arbitration awards in 2007 and 2010. With these allegations, Plaintiffs not only attempt to circumvent the RLA's defined procedures for enforcing or setting aside arbitration awards, but they do so long after the statute of limitations has expired. ***Third***, Plaintiffs' contention in Paragraph 79 that the revised allegations in the SAC demonstrate that American has breached its collective

bargaining agreement with the APA expressly raises a minor dispute, without offering anything approaching the necessary allegations of collusion that would permit Plaintiffs to avoid the mandatory and exclusive grievance/arbitration process for resolving such disputes under the RLA; and, in any event, Plaintiffs' conclusory allegations do not state a claim that American can be held liable for APA's alleged DFR breach.

Because Plaintiffs, in the SAC as in the FAC, have not and cannot allege conduct by American evidencing bad faith, discrimination or hostility towards the FTPs, Count One should be dismissed as to American in its entirety, this time with prejudice.[1]

ARGUMENT

I. THE COURT'S ORDER GRANTING AMERICAN'S MOTION TO DISMISS COUNT ONE OF THE FAC.

In its December 17 Order, the Court noted that the FAC "set[] out in considerable detail the circumstances that plaintiffs contend constituted improper and discriminatory treatment of the [FTPs] in agreements reached between the Union and American." (Order at 3.) The "sole basis advanced for holding American liable" was found in Paragraph 39 of the FAC, which alleged that "[American] has entered into the agreements with [the Union/APA] alleged in paragraphs 23 and 27 ***knowing that these agreements would adversely affect and discriminate against FTPs and knowing that [the Union] intended to discriminate against FTPs in such agreements***." (Order at 3-4 [emphasis in original].) Even after drawing all inferences in Plaintiffs' favor,[2] the Court rejected Plaintiffs' contention that "American can be held liable simply because it entered into agreements

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[1] As was the case with the FAC, Plaintiffs have named American in Count Two only insofar as American might be necessary to secure their requested relief. (*See* SAC ¶ 89.) American is not required to respond to those allegations, and does not seek dismissal of Count Two through the instant motion.

[2] The Court stated that, "[f]or purposes of [the] motion," Plaintiffs "may be given the benefit of the doubt that the facts they have alleged are sufficient to support inferences that: (1) American knew that the agreements the Union was negotiating had discriminatory negative effects on the FTPs; (2) American knew the Union intended those effects, and even; (3) American knew such conduct by the Union was a violation of its duty to the FTPs of fair representation." (Order at 4.)

with that knowledge . . . ." (Order at 4; *id.* at 5 [citing *Rakestraw v. United Airlines, Inc.*, 765 F. Supp. 474 (N.D. Ill. 1991), *aff'd in part, rev'd in part*, 981 F.2d 1524 (7th Cir. 1992), for proposition that "merely agreeing to a union's contractual demands, even with knowledge that the union may not be advocating for all its members fairly, is not a sufficient basis for imposing liability on an employer"].) The Court concluded that, "[a]t least outside contexts such as discrimination against protected classes, the onus should not be on the employer to evaluate and consider whether distinctions a union draws among its members are appropriate." (Order at 5.)

Accordingly, the Court held that "something more than merely acceding to union demands must be alleged and proven to impose liability on an employer for 'colluding' in a breach of what ultimately remains the union's duty." (Order at 5-6.) Finding that Plaintiffs had failed to satisfy this legal standard, the Court granted American's motion to dismiss the first claim in the FAC as to American and, in the "Conclusion" to its Order, the Court stated:

> The detailed allegations of the First Amended Complaint, and the nature of the arguments they offered in opposition to the present motion, strongly suggests that their attempt to hold American liable in damages under the first claim for relief fails because this order rejects the legal premise of the claim, rather than because there are facts supporting liability that exist, but which they did not plead. Nevertheless, plaintiffs will be given the opportunity to amend the first claim for relief to attempt to state a claim against American Airlines, taking into account the preceding discussion. (Order at 6.)

As demonstrated below, the Court was correct in its prediction that Plaintiffs would be unable to adequately allege a claim against American in their SAC.

II. THE SECOND AMENDED COMPLAINT DOES NOT CURE THE DEFECTS IN COUNT ONE.

In the SAC, filed on January 22, 2016, Plaintiffs added a handful of new and/or revised allegations in an effort (albeit unsuccessful) to address the many shortcomings

cited in the Court's prior Order. In a new Paragraph 79, Plaintiffs summarize their attempt to rectify the deficiencies in the FAC, alleging that:

> AAL has undertaken a pattern of discrimination and collusion with APA in discriminating against FTSs [sic], including the actions alleged in Paragraphs 44 through 48 and Paragraphs 52 through 56. As alleged in Paragraphs 44 through 48 and Paragraphs 52 through 56, AAL's actions have included actions that breached the terms of the Flow-Through Agreement, breached and ignored the decisions of arbitrators and abrogated the rights of FTPs under the AAL/APA collective bargaining agreement and the Flow-Through Agreement that is Supplement W to the AAL/APA collective bargaining agreement, infurther [sic] violated Section 24.T of the collective bargaining agreement between AAL and APA. (SAC ¶ 79.)

The adequacy of Plaintiffs' claim in Count One as to American thus turns on the allegations in Paragraphs 44-48, 52-56, and 79 of the SAC. None of those revised allegations, however, are sufficient to state a claim that American can be held liable for APA's alleged breach of DFR. Accordingly, for the same reasons Count One of the FAC was dismissed, the Court should dismiss Count One of the SAC as to American – this time, with prejudice.

A. Paragraphs 44-48 Of The SAC Do Not Support A Claim Against American.

Each of the material facts in Paragraphs 44-48 of the SAC was previously included in the FAC. In Paragraphs 22-24 of the FAC, Plaintiffs alleged that: (1) in November 2001, American and the APA agreed that Trans World Airlines ("TWA")-LLC pilots would be restricted from flowing-down to American Eagle under the Flow-Through Agreement; (2) in 2003, American and the APA reached a new agreement that allowed TWA-LLC pilots to flow-down to American Eagle more quickly; and (3) the 2003 American-APA agreement resulted in TWA-LLC pilots displacing FTPs from captain positions at American Eagle. In Paragraphs 44-48 of the SAC, Plaintiffs have made no

additions or revisions to their original allegations that are in any way material to their claim against American.

While the SAC adds an assertion that the 2003 agreement between American and APA "abrogated the rights of FTPs" by expanding the flow-down rights of TWA-LLC pilots, this allegation is indistinct from the allegation in the FAC that the 2003 agreement "adversely affected the interests of FTPs" and "allowed TWA-LLC pilots to displace FTPs." (*Compare* FAC ¶ 24 *with* SAC ¶ 47.) As in the FAC, Plaintiffs' "revised" allegations in Paragraphs 44-48 of the SAC allege nothing more than a collectively-bargained agreement between American and APA, and, for the reasons set forth in the Court's prior Order, those allegations do not state a claim against American.

B. Paragraphs 52-56 Of The SAC Do Not Support A Claim Against American.

The new allegations in Paragraphs 52-56 of the SAC focus primarily on arbitration awards that were issued by RLA Boards of Adjustment in 2007 and 2009.[3] Although these arbitration decisions were previously described and relied on by Plaintiffs in the FAC (*see* FAC ¶¶ 27-28), in the SAC Plaintiffs have expanded their discussion of the arbitrators' rulings with the following allegations:

- Following a May 11, 2007 ruling from Arbitrator John LaRocco in Case No. FLO-0903 that TWA-LLC pilots were "new-hire pilots" under the Flow-Through Agreement, "APA allowed [American] to continue to hire TWA-LLC Staplees in preference to FTPs," despite "the rights of FTPs to employment at [American] for new-hire positions." (SAC ¶ 52(b).)
- In connection with the FLO-0108 arbitration before Arbitrator George Nicolau, American and APA, "on or about March 30, 2010," "entered into off-the-record discussions with the arbitrator and the other parties" and "requested Arbitrator

[3] Because they are incorporated by detailed reference in the SAC, the Company has attached the two arbitration awards, including both the liability and remedy opinions for each award. *See* Exhibits A-D. The Court may properly consider these awards in deciding the instant motion. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) ("A court may, however, consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment.") (citation omitted).

> Nicolau to issue a remedy award" that abrogated the rights of FTPs under both the Flow-Through Agreement and the American-APA collective bargaining agreement. (SAC ¶¶ 54-56.)

Not only are these allegations flatly contradicted by the arbitration awards themselves, but even if they were true, they do not state a claim that American can be held liable for APA's alleged breach of its DFR to the Flow-Through Pilots. Instead, Plaintiffs are attempting, through these allegations, to re-litigate disputes regarding the interpretation of collectively-bargained agreements that were adjudicated years ago by labor arbitrators acting pursuant to the mandatory and exclusive dispute-resolution procedures of the RLA. Disagreements over American's compliance with the arbitration awards, or with the substance of the awards themselves, do not provide a basis for holding American liable for APA's alleged DFR breach; and, in any event, the time for Plaintiffs to challenge these arbitration proceedings has long since passed.

The RLA requires disputes over the meaning of collective bargaining agreements, such as those which gave rise to the arbitration decisions in Case Nos. FLO-0903 and FLO-0108, to be submitted to a Board of Adjustment for final and binding arbitration. *See* 45 U.S.C. §§ 153, 184. The jurisdiction of the Board of Adjustment over these "minor disputes" is "mandatory, exclusive and comprehensive." *See, e.g., Andrews v. Louisville & N.R.R. Co.*, 406 U.S. 320, 322-24 (1972); *Bhd. of Locomotive Eng'rs v. Louisville & N.R.R. Co.*, 373 U.S. 33, 36-38 (1963). Both the FLO-0903 and FLO-0108 arbitrations identified in the SAC were conducted by a Board of Adjustment in accordance with the mandates of the RLA.

With respect to FLO-0903, Plaintiffs imply that American failed to comply with Arbitrator LaRocco's award. Plaintiffs' suggestion is demonstrably incorrect,[4] but, even if true, Plaintiffs nowhere allege that the reason American failed to comply with the award

[4] Plaintiffs allege only that American made certain hiring decisions "[n]otwithstanding Arbitrator LaRocco's ruling." (SAC ¶ 52(b).) In the FLO-0903 remedy award, however, Arbitrator LaRocco concluded that he did not have jurisdiction to decide the hiring dispute referenced in Paragraph 52(b) of the SAC, and that dispute was ultimately resolved by Arbitrator Nicolau in the FLO-0108 award. *See* Exhibit C at 2-3.

in FLO-0903 involved any sort of animus towards the Flow-Through Pilots – as opposed to, for example, an honest disagreement over the meaning of Arbitrator LaRocco's award. Indeed, Plaintiffs are unable to conjure up any basis to contend that American in any way discriminated against them or even so much as a hint that American acted in bad faith or was hostile towards them. Rather, they allege nothing more than that the Company did not comply with their interpretation of Arbitrator LaRocco's award. Any dispute over the interpretation or application of the award in FLO-0903 had to be submitted to final and binding arbitration under the RLA – which is, of course, exactly what happened in FLO-0108. *See* Exhibit C at 2-3; Exhibit D at 1-3.

With respect to FLO-0108, Plaintiffs imply that Arbitrator Nicolau's award should have been set aside altogether, because American and APA allegedly jointly requested, in "off-the-record discussions," that Arbitrator Nicolau issue an award that had a deleterious effect on the Flow-Through Pilots. (*See* SAC ¶¶ 54-56.) But again, even if true, Plaintiffs nowhere allege that American agreed with the APA to the remedy award in FLO-0108 due to any kind of animus the Company might have had towards the Flow-Through Pilots and, thus, Plaintiffs' allegation does not support a claim for "collusion" against American. Moreover, if the Plaintiffs believed there were improprieties in Arbitrator Nicolau's formulation of the award in FLO-0108, their recourse was to file an action to set aside the award, *see* 45 U.S.C. §§ 153, First (p) & (q), but the time for challenging a 5+ year-old arbitration decision has long since expired.[5]

[5] The RLA does not expressly prescribe the limitations period for judicial review of arbitration decisions in the airline industry. A number of federal appellate courts have adopted the two-year limitations period for review of arbitration decisions in the railroad industry. *See Lekas v. United Airlines, Inc.* 282 F.3d 296, 298 (4th Cir. 2002); *Ass'n of Flight Attendants v. Republic Airlines*, 797 F.2d 352, 356-357 (7th Cir. 1986). Other courts have borrowed the statute of limitations for state-law actions to vacate arbitration awards. *See Granlund v. Northwest Airlines*, 2001 U.S. Dist. LEXIS 21148, at *6 (D. Minn. Dec. 12, 2001); *Vaughter v. E. Air Lines*, 619 F. Supp. 463, 472-73 (S.D. Fla. 1985), *aff'd*, 817 F.2d 685 (11th Cir. 1987). The statute of limitations for an action to vacate an arbitration award under California law is 100 days. Cal. Civ. Proc. Code § 1288.

Accordingly, the details concerning the arbitrators' rulings in FLO-0903 and FLO-0108 that have been added to the allegations in the SAC are insufficient to state a viable claim against American. While the Plaintiffs may not like those rulings, they cannot challenge them in this action.

C. Paragraph 79 Of The SAC Does Not Support A Claim Against American.

Although Paragraph 79 includes a new conclusory assertion that "[American] has undertaken a pattern of discrimination and collusion with APA in discriminating against [FTPs]," an allegation which is insufficient in and of itself to state a cognizable claim against American,[6] the sole factual support cited by Plaintiffs for the conclusion in Paragraph 79 consists of the allegations in Paragraphs 44-48 and 52-56 of the SAC. Because, as demonstrated in Sections II.A and B, above, Paragraphs 44-48 and 52-56 do not allege conduct by American evidencing bad faith, discrimination, or hostility towards the Flow-Through Pilots, they fail to state a claim against American. *See Rakestraw*, 765 F. Supp. at 493-94; Order at 5.

Plaintiffs' only new allegation in Paragraph 79 of the SAC, a contention that the actions described in Paragraphs 44-48 and 52-56 also constitute a breach of Section 24.T of the American-APA collective bargaining agreement in addition to the Flow-Through Agreement, adds nothing to their claim. Plaintiffs have not asserted a cause of action against American for breach of the collective bargaining agreement, and, if they tried to do so, they would fail. Under the RLA's mandatory and exclusive grievance/arbitration procedures, a breach-of-contract claim against a carrier can be joined with a DFR claim against a union, and adjudicated by a district court, only "where a union acts 'in concert'

[6] Conclusory and vague allegations of collusion are insufficient as a matter of law to state a claim against an employer. *Crusos v. United Transp. Union, Local 1201,* 786 F.2d 970, 973 (9th Cir. 1986); *Kozy v. Wings W. Airline, Inc.*, No. C-94-1678 FMS, 1995 WL 32915, at *2 (N.D. Cal. Jan. 25, 1995), *aff'd and remanded sub nom. Kozy v. Wings W. Airlines, Inc.*, 89 F.3d 635 (9th Cir. 1996).

with the carrier-employer, setting up 'schemes and contrivances' to stymie aggrieved employees." *Addington v. US Airline Pilots Ass'n*, 588 F. Supp. 2d 1051, 1063 (D. Ariz. 2008), *rev'd on other grounds*, 606 F.3d 1174 (9th Cir. 2010). Without establishing the requisite level of collusion that was missing from the FAC, and is still missing in the SAC, Plaintiffs cannot state a judicially-cognizable breach-of-contract claim against American. *See Croston v. Burlington N.R.R. Co.*, 999 F.2d 381, 387 (9th Cir. 1993) (holding, in hybrid action, that "[c]onclusory allegations that do not demonstrate any act of collusion between the union and the railroad will not establish jurisdiction"), *overruled on other grounds by Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994). And, even if they could, any such breach-of-contract claim against American would be barred by the applicable six-month statute of limitations. *See Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Aloha Airlines, Inc.*, 790 F.2d 727, 735 (9th Cir. 1986).

CONCLUSION

For the foregoing reasons, Defendant American Airlines, Inc. respectfully requests that Count One of the Second Amended Complaint be dismissed as to American with prejudice.

Dated: February 8, 2016.

Respectfully submitted,

CHRIS A. HOLLINGER
ROBERT A. SIEGEL
O'MELVENY & MYERS LLP

By: /s/ Chris A. Hollinger
CHRIS A. HOLLINGER

Counsel for Defendant American Airlines, Inc.

EXHIBIT A

In the Matter of the Arbitration Between:	)	
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,	)	Grievance Under Letter Three/Supplement W
and	)	
AMERICAN EAGLE AIRLINES, INC.,	)	Case No. FLO-0903 (Former TWA Pilots)
and	)	
ALLIED PILOTS ASSOCIATION,	)	**OPINION AND AWARD**
and	)	
AMERICAN AIRLINES, INC.	)	

Hearing Date: June 28, 2006
Hearing Location: Sacramento, CA
Date of Award: May 11, 2007

JOHN B. LaROCCO
Arbitrator
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ALPA, AE, APA, AA

Grievance Under Letter 3/Supplement W

Case No. FLO 0903
(Former TWA Pilots)

OPINION

I. INTRODUCTION

On November 26, 2003, the Air Line Pilots Association, International (ALPA) filed a grievance invoking the dispute resolution procedures in Section VI of Letter 3/Supplement W, an agreement between four parties: ALPA, American Eagle Airlines, Inc. (AE), Allied Pilots Association (APA) and American Airlines, Inc. (AA). On January 15, 2004, ALPA properly progressed the grievance to the undersigned Arbitrator for a decision on its merits. [ALPA Exhibit 2]

At the June 28, 2006 hearing, the four parties stipulated that the first issue is whether former Trans World Airlines (TWA) pilots placed on the AA seniority list filled or may fill "new hire positions" in "new hire classes" within the meaning of Section III.A of Letter 3/Supplement W. The second issue is what is the appropriate seniority number remedy for AE CJ (Commuter Jet) Captains covered by Letter 3/Supplement W, Section III? If the answer to the first issue is affirmative, the parties stipulated that the Arbitrator shall remand the second issue back to the parties for a possible resolution with the Arbitrator retaining jurisdiction over the case. [TR 9]

At the hearing, the parties also stipulated that all evidence, including testimonial evidence, of prior arbitrations adjudicated under Letter 3/Supplement W is admitted into the record herein. The parties specifically alluded to two prior arbitration awards. *American Airlines, American Eagle Airlines, Allied Pilots Association and Air Line Pilots Association, FLO-0203 (Bloch, 2004)* and *Air Line Pilots Association, Allied Pilots*

Association, American Airlines and American Eagle Airlines, Nos. FLO-0201, FLO-0301, FLO-0401, and FLO-0501 (Kasher, 2003).[1]

At the conclusion of the hearing, the parties reserved the rights to: 1) submit additional documentation to clarify or augment evidence submitted during the hearing, and; 2) move to reopen the evidentiary record. ALPA submitted additional documents to complete certain exhibits that it had proffered during the hearing. The Arbitrator granted APA's motion to reopen the record to admit the declaration of Ralph Hunter but denied a motion to supplement the record with an AE brief from a prior arbitration. The three other parties, ALPA, AE and AA, waived the opportunity to cross-examine Hunter.

Subsequent to the hearing, the parties filed opening and reply post-hearing briefs. The Arbitrator received the reply post-hearing briefs on or about March 12, 2007 and the matter was deemed submitted.

II. PERTINENT AGREEMENT PROVISIONS AND FAA ORDERS

Letter 3/Supplement W became effective in 1997.[2] Sections III and IV of Letter 3/Supplement W established pilot mobility between AE and AA. AE pilots may flow through or up to AA while AA pilots may flow back or down to AE. AA pilot hiring triggers the flow through process while an AA pilot furlough triggers the flow down process. The dispute in this case centers on the first trigger, that is, what precisely constitutes AA pilot hiring.

Section III of Letter 3/Supplement W sets forth AA employment opportunities for AE pilots. The gravamen of this case rests on the proper interpretation of the phrases

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[1] **The Arbitrator will respectively cite these two Awards as the *Bloch Decision* and the *Kasher Decision*.**
[2] **The four party agreement is labeled "Letter 3" to the Basic Agreement between ALPA and AE and it is labeled "Supplement W" to the Basic Agreement between APA and AA. [Joint Exhibits 1 and 2]**

"new hire positions" and "new hire class" that appear in Letter 3/Supplement W, Section III.A, which is quoted below.

III. Employment Opportunities at AA for AMR Eagle, Inc. Pilots

A. At least one (1) out of every two (2) new hire positions per new hire class at AA will be offered to CJ Captains who are line pilots and who have completed their IOE at AMR Eagle, Inc. Such positions will be offered to the CJ Captains who are line pilots in order of their AMR Eagle, Inc. seniority. [Joint Exhibits 1 and 2]

Other subsections of Section III are relevant to this case. The remainder of Section III reads:

B. If a CJ Captain is unable to fill a new hire position at AA in accordance with Paragraph III.A above, due to a training freeze or other operation constraint, (see Paragraph III.J. below), such CJ Captain will be placed on the AA pilots Seniority List and will count toward the number of new hire positions. The pilot's AA occupational seniority date and number will be established as if he were able to fill such new hire position at AA and had attended the new hire training class referenced in Paragraph III.A above. Such pilot's length of service for pay purposes, date of hire for pension purposes, and length of service for vacation accrual will be established in accordance with III.C. below. The number of such CJ Captains will not exceed the difference between the number of CJ Captains who are able to fill new hire positions at AA and the number of new hire positions which must be offered to CJ Captains in accordance with Paragraph III.A above.

C. A CJ Captain's (1) placement on the AA Pilots Seniority List (except as provided in Paragraph III.B. above which is only applicable for placement on the AA Pilots Seniority List in order to establish an AA occupational seniority date and number), (2) length of service for pay purposes, and (3) "date of hire" for pension purposes will be based on the date such pilot is entered on the AA payroll. Such pilot's length of service for vacation accrual will be based on the cumulative total of the pilot's service at AMR Eagle, Inc. and AA

D. If a CJ Captain is placed on the AA Pilots Seniority List per III.B. above, such CJ Captain will receive priority based on his AA seniority in filling a new hire position in the next new hire class, following release from a training freeze or other AMR Eagle, Inc. imposed operational constraint. Such CJ Captains will not count toward the number of new

hire positions offered to CJ Captains at AMR Eagle, Inc., under Paragraph III.A above.

E. Each of the first 125 AMR Eagle, Inc. pilots who successfully complete transition training as a CJ Captain must fulfill a training freeze for a period of eighteen (18) months from the date said pilot completes IOE. All other pilots who successfully complete transition training as CJ Captains must fulfill a training freeze for a period of two (2) years from the date each pilot completes IOE, unless released from such training freeze by AMR Eagle, Inc.

F. An AMR Eagle, Inc. pilot may, not later than the completion of IOE for a CJ Captain position or at such time as the pilot is able to demonstrate hardship, elect to forfeit the opportunity to secure a position on the AA Pilots Seniority List as provided by this Supplemental Agreement. Such pilot will hereinafter be referred to as an "Eagle Rights CJ Captain," and will not be eligible for a future new hire position at AA which may otherwise become available under Paragraph III of this Supplemental Agreement. The existence of a hardship for this purpose shall be approved by the ALPA AMR Eagle MEC Chairman and the appropriate management official(s).

G. A CJ Captain who is awarded a new hire position at AA will be issued the lowest seniority number at AA in the applicable new hire class, subject to AA's policy concerning the assignment of seniority numbers to new hire pilots who have previous service in other employee classifications. AMR Eagle, Inc. pilots will receive their AA seniority number in order of their seniority at AMR Eagle, Inc.

H. A CJ Captain who accepts a new hire position at AA may bid and will be awarded a bid status vacancy based upon such pilot's AA seniority at the time of this transfer to AA. Such pilot must fulfill a one year lock-in, in the bid status which is awarded or assigned. Such pilot will not be required to serve a probationary period at AA.

I. A CJ Captain who accepts a new hire position at AA must qualify for the initial bid status position which such pilot is awarded or assigned at AA. A pilot who meets the physical requirements at his AMR Eagle, Inc. carrier will be deemed to have met the physical requirements at AA, provided that a pilot who accepts a new hire position at AA must have an FAA First Class Medical Certificate, and must not be on the disability list or the long term sick list. In addition, at the time such pilot accepts a position at AA, he must meet AA's then current criteria for future promotion to Captain at AA.

J. A CJ Captain who accepts a new hire position at AA may be withheld from such position for operational reasons, provided the pilot is paid the greater of the rate of pay for the CJ Captain flying being performed at the applicable AMR Eagle, Inc. pay rates, or the highest equipment rate of pay for the AA bid status from which withheld up to the applicable AA monthly maximum. Such withholding will be limited to a maximum of six (6) months. [Joint Exhibits 1 and 2]

Section IV of Letter 3/Supplement W governs the rights of pilots furloughed from AA to displace to AE CJ Captain positions. Sections IV.A, IV.B and IV.D provide:

IV. Furlough Protection at AMR Eagle, Inc. for Pilots Furloughed from AA

A. A pilot furloughed from AA may displace a CJ Captain at an AMR Eagle, Inc. carrier provided that the number of CJ Captain positions available to furloughed AA pilots will be limited to the total number of CJ Captain positions at AMR Eagle, Inc. less the number of Eagle Rights CJ Captains.

B. A furloughed AA pilot may displace

1. A CJ Captain, other than an Eagle Rights CJ Captain, who has not been awarded a seniority number at AA, in reverse order of AMR Eagle, Inc. seniority; and then

2. A CJ Captain who has accepted a position on the AA Pilots Seniority List pursuant to Paragraph III.B. above, or a CJ Captain who was previously furloughed from AA, in reverse order of AA seniority.

* * * *

D. Eagle Rights CJ Captains are not subject to displacement by furloughed AA pilots, or any pilot who has been awarded an AA seniority number pursuant to Paragraph III.B. above. [Joint Exhibits 1 and 2]

The terms and conditions of the parties' Basic Collective Bargaining Agreements continue to apply except that provisions of Letter 3/Supplement W supersede provisions of the Basic Agreements if the former conflicts with the latter. Section I.C of Letter 3/Supplement W states:

C. This Supplemental Agreement supplements and makes certain exceptions to the Basic Agreements between the parties. The provisions of the Basic Agreements will continue to apply, except as modified herein and, in the event of a conflict, the provisions herein shall apply. [Joint Exhibits 1 and 2]

Besides Letter 3/Supplement W, the parties also rely on certain provisions from their Basic Agreements. ALPA cited Section 13.A of the APA/AA Basic Agreement which reads:

A. Service with Company

Seniority as a pilot shall be based upon the length of service as a flight deck operating crew member with the Company except as otherwise provided in Sections 11 and 12 of this Agreement. [Joint Exhibit 3]

APA cited and contrasted Section 13.B.2 with Sections 1.C.1 and 1.C.2 of the ALPA/AE Basic Agreement. Sections 1.C.1 and 1.C.2 of the ALPA/AE Basic Agreement state:

C. MERGER PROTECTION

1. Merger with an ALPA represented carrier

In the event the Company acquires a carrier (or part thereof) whose pilots are represented by the Association, the pilots of the Company and the pilots of the acquired carrier will each operate pursuant to their own collective bargaining agreement, with their respective seniority lists, without transfer of aircraft between the Company and the acquired carrier, until:

a. Conclusion of negotiation of only such provisions, if any, as may be necessary to cover such acquired carrier's flying under this Agreement, and

b. Integration of seniority lists of the respective pilot groups. Such seniority integration will be governed by the Association's Merger Policies. There will be no "system flush" as the result of seniority integration.

2. Merger with a non-ALPA represented carrier

a. In the event the Company acquires a carrier (or part thereof) whose pilots are not represented by the Association, the pilots of the acquired carrier will operate pursuant to the terms and conditions of employment (whether collectively bargained or otherwise established) applicable at the acquired carrier until:

1.) conclusion of negotiation of only such provisions, if any, as may be necessary to cover such acquired carrier's flying under this Agreement, and

2.) integration of seniority lists of the respective pilot groups. Such seniority integration will be accomplished in a fair and equitable manner, including negotiations between the carriers and the representatives of the pilot group affected. There will be no "system flush" as a result of seniority integration.

b. In the event of failure to reach a negotiated resolution, the seniority integration dispute will be resolved in accordance with Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions. Pending such resolution, there will be no transfer of aircraft between the Company and the acquired carrier. [Joint Exhibit 1]

Section 13.B.2 of the ALPA/AE Basic Agreement provides:

B. SENIORITY DATE AND LIST

2. Newly hired pilots will be placed on the Seniority List in order of date of hire. When two (2) or more pilots are employed on the same date, they will be placed on the Seniority List according to their age; i.e. the older pilot will be given the lower number. [Joint Exhibit 1]

On November 8, 2001, which was after AA entered into a contract to purchase the assets of TWA, a debtor in bankruptcy, the APA and AA entered into an agreement, memorialized as Supplement CC, to govern the seniority consolidation of former TWA

pilots with existing AA pilots once the National Mediation Board (MMB) designated AA as a single carrier. Section II of Supplement CC, which is entitled "Construction of Modified System Seniority Lists", provides:

> The modified System Seniority List will be constructed by integrating the April 10, 2001 AA Pilot Seniority List (i.e., adjusted for hiring and attrition through April 10, 2001) and the TWA Pilot Seniority List as of April 10, 2001 (i.e., adjusted for hiring and attrition through April 10, 2001(in the following manner.
>
> A. TWA Pilots J.G. Upp, DOH 12/2/63 through Raymond Camus, DOH 3/20/89 will be inserted in the AA Pilot Seniority List on a ratio of approximately one TWA Pilot to 8.1762556 AA Pilots, commencing immediately following AA Pilot W.H. Elder, DOH 10/8/85 and ending immediately following AA Pilot B.D. White, DOH 4/9/01.[3]
>
> B. The remaining TWA Pilots commencing with TWA Pilot Theron Clark, DOH 3/23/89, will be placed in seniority order immediately following TWA Pilot Raymond Camus, DOH 3/20/89.
>
> C. All pilots hired by American after April 10, 2001 who had been assigned to air line flying duty as of October 1, 2001 will be placed on the modified System Seniority List following pilots referred to in Section II.B above in accordance with their length of service as flight deck crew members at American, in accordance with Section 13 of the Green Book.
>
> D. After furloughed pilots (if any) have been recalled and new pilot positions become available, American will offer employment, in seniority order, to all pilots who were hired by American after April 10, 2001 but who had not been assigned to air line flying duty as of October 1, 2001. Each such pilot will be placed on the modified System Seniority List on the date he is first assigned to air line flying duty with American in accordance with Section 13 of the Green Book, following all pilots then on the modified System Seniority List. [Joint Exhibit 3]

[3] **The ratio of 1 to 8.1762556 specified in Section II.A of Supplement CC will henceforth be referred to as the 1:8 ratio.**

The first sentence of Supplement CC, Section III.B provided that the modified seniority list would apply beginning on the "implementation date". Supplement CC Section I.G defined "implementation date" as follows:

> G. For purposes of this Supplement CC, the term "Implementation Date" means the date on which the National Mediation Board issues a decision finding that American and TWA LLC are or have become a single carrier. [Joint Exhibit 3]

Section IV of Supplement CC built a fence enclosing the former TWA pilots by vesting them with paramount (or prior) rights to cockpit positions at St. Louis. [Joint Exhibit 3]

Section V.A of Supplement CC barred former TWA pilots from access to Section IV of Letter 3/Supplement W subject to a condition precedent. Supplement CC, Section V.A reads:

> A. Furloughs
>
> Furloughs will be administered in inverse system seniority order, and recalls from furlough will be administered in system seniority order, in accordance with the Green Book as modified by the Transition Agreement and Supplement CC. The parties agree that the TWA Pilots will be covered by Section IV. of Supplement W of the Green Book when pilot J.K. Viele, DOH 8/20/01, is given notice of recall from furlough. [Joint Exhibit 3]

In the May 1, 2003 APA/AA Basic Agreement (sometimes called the "Restructuring Agreement"), APA and AA modified Section V.A of Supplement CC. Paragraph 10 of Letter OO, attached to the 2003 APA/AA Basic Agreement, states:

> 10. Pilots with No Job Available will be those identified for furlough, with the earliest furlough date being July 2003. Such pilots will not be trained to another bid status at American Airlines. These pilots will also have access to Supplement W implementation as described in the "Small Jets Letter of Agreement". [Joint Exhibit 3]

The above paragraph gave former TWA pilots, who were furloughed from AA subsequent to May 2003, access to Section IV of Letter 3/Supplement W. Thus, Paragraph 10 lifted the ban contained in Supplement CC, Section V.A.

ALPA and AE cited and relied on *Federal Aviation Administration Order 8400.10* which covers pilot training and qualifications.

FAR 8400.10, Chapter 2, Section 1, Paragraph 283 delineates categories of training as follows:

> *Categories of Training:* The classification of instructional programs by the regulatory requirement the training fulfills. Categories of training consist of one or more curriculums. The categories of training are initial new-hire, initial equipment, transition, upgrade, recurrent, and requalification.

The category classified as Initial New Hire is covered in great detail in *Paragraph 289* of the same section. *FAR 8400.10, Chapter 2, Section 1, Paragraph 289(A)* reads:

> *Initial New-Hire Training:* This training category is for personnel who have not had previous experience with the operator (newly-hired personnel). It also applies however, to personnel employed by the operator who have not previously held a crewmember or dispatcher duty position with that operator. Initial new-hire training includes basic indoctrination training and training for a specific duty position and aircraft type. Except for a basic indoctrination curriculum segment, the regulatory requirements for "initial new-hire" and "initial equipment" training are the same. Since initial new-hire training is usually the employee's first exposure to specific company methods, systems, and procedures, it must be the most comprehensive of the six categories of training. For this reason, initial new-hire training is a distinct separate category of training and should not be confused with initial equipment training. As defined by this handbook, initial equipment training is a separate category of training. [Emphasis added]

Later, *Subsection G (1) of Paragraph 289* states:

> G. *Summary of Categories of Training*. The categories of training are summarized in general terms as follows:

(1) All personal not previously employed by the operator must complete *initial new-hire training.*

Paragraphs 361, 363 and 365 of FAR 8400.10, Chapter 2, Section III, read:[4]

361. GENERAL. This section specifies the objectives and content of basic indoctrination curriculum segments. This training is required for all flight crewmembers who are enrolled in an initial new-hire category of training. Basic indoctrination is normally the first curriculum segment of instruction conducted for newly-hired flight crewmembers. It serves as the initial introduction for the new-hire employee to the operator and, in many cases, to the operational requirements of Part 121 and/or Part 135.

363. OBJECTIVE OF BASIC INDOCTRINATION. The objective of basic indoctrination training is to introduce the new-hire flight crewmember to the operator and its manner of conducting operations in air transportation. It specifically acquaints the student with the operator's policies, procedures, forms, organizational and administrative practices, and ensures the student has acquired basic airman knowledge. The flight crewmember basic indoctrination curriculum segment consists of training modules which contain information applicable to the student's specific duty position. Two general subject areas are required during basic indoctrination training. These subject areas are "operator-specific" and "airman-specific" training. These two areas serve to acquaint the student with the operator's means of regulatory compliance and to ensure that basic knowledge has been acquired by the student before entering aircraft ground and flight training. These two areas are not always mutually exclusive and in many cases may be covered in the same training module.

365. OPERATOR-SPECIFIC INDOCTRINATION TRAINING.

A. The first subject area, "operator-specific," must include training modules in at least the following:

- Duties and responsibilities of flight crewmembers.
- Appropriate provisions of the Federal Aviation Regulations.
- Contents of the certificate holder's operating certificate and operations specifications.

[4] **These three paragraphs appear consecutively in Section III.**

B. Operator-specific training modules should also include information about the company which the student needs in order to properly perform his duties as an employee of the operator. This information may include such items as the operator's history, organization, policies, scope of operation, administrative procedures, employee rules of conduct, compensation, benefits, and contracts.

FAR 8400.10, Chapter 2, Section III, Paragraph 371(A) reads:

371. TRAINING HOURS

A. FAR 121.415 specifies a minimum of 40 programmed hours of instruction for basic indoctrination training. Normally, 40 hours should be the minimum number of training hours for basic indoctrination for Part 121 operators who employ personnel with little or no previous Part 121 experience. Reductions to the programmed hours in certain situations, however, may be appropriate for several reasons. One example would be a merger or acquisition situation where flight crewmembers new to the surviving certificate holder may only require "operator-specific" training modules. Another example would be the operator's enrollment prerequisites requiring a high level of Part 121 experience.

III. BACKGROUND AND SUMMARY OF FACTS

A. AA Purchases TWA's Assets

On January 9, 2001, AA entered into an agreement with TWA to purchase its assets. [ALPA Exhibit 15] Inasmuch as the asset purchase arrangement contemplated that AA would acquire TWA's assets while TWA was a debtor in bankruptcy, TWA filed for bankruptcy on January 10, 2001. [AA Exhibit 1; ALPA Exhibit 15] On February 15, 2001, TWA LLC was established to operate the debtor airline under a separate air carrier operating certificate. [TR 163; AA Exhibit 1]

AA purchased the assets of the debtor on April 10, 2001. [TR 161-162] Jim Anderson, an AA Employee Relations Principal, related that subsequent to April 10, 2001, some TWA LLC aircraft moved to AA while others were retired.[5] [TR 163]

Article 10 of the Asset Purchase Agreement is entitled "Employee Matters". Sections 10.1, 10.2 and 10.5 of Article 10 provided:

> 10.1 Hiring Obligations. Upon the occurrence of the Closing, Purchaser shall (i) offer all of Sellers' U.S.-based union employees (other than personnel who (A) have previously been terminated by Purchaser or an entity controlled by Purchaser or (B) would not be qualified for employment under Purchaser's general hiring policies as in effect at Closing) employment by Purchaser or one or more entities controlled by Purchaser at compensation levels substantially equivalent to those currently enjoyed by similarly situated employees of Purchaser or such controlled entity, (ii) offer employment to certain members of TWA's executive management and non-union employees on a case-by-case basis at Purchaser's sole discretion and (iii) provide employment benefits and post-retirement benefits to all employees actually hired by Purchaser pursuant to (i) and (ii) above at levels substantially no less favorable than those benefits provided to Purchaser's similarly situated employees. Any Seller employees to be hired by Purchaser or an entity controlled by Purchaser in accordance with this Section 10.1 will be hired in accordance with terms and conditions established by Purchaser or such entity (and, where applicable, in accordance with and pursuant to collective bargaining agreements relating to employees of Purchaser or such controlled entity).
>
> 10.2 Union Matters. All offers of employment made by Purchaser in accordance with Section 10.1(i) above and all benefits to be provided pursuant to Section 10.1 (iii) above will be conditioned on acceptance by all such employees of Purchaser's work rules then in effect and in effect after the Closing Date from time to time that are generally applicable to similarly situated employees of Purchaser. Purchaser and Sellers agree to encourage their respective unions to negotiate in good faith to resolve fair and equitable seniority integration. Prior to Closing, TWA shall amend all existing Collective Bargaining Agreements relating to any present or former employee of TWA to provide that (i) scope, successorship, and benefits provisions of the Collective Bargaining Agreements are not applicable to or being assumed by Purchaser as part of or as the result of the transactions contemplated by this Agreement, and (ii) consummation of the transactions contemplated by this Article X will

[5] **Anderson stated that the TWA LLC operating certificate was formally retired in August, 2004. [TR 163]**

not violate or breach in any manner any provision of any Collective Bargaining Agreement (collectively, the "CBA Amendments").

* * * *

10.5 Tax Reporting. If requested by Purchasers, Purchaser, TWA and each other Seller agree that, pursuant to the "Alternative Procedure" provided in Section 5 of the Revenue Procedure 96-60, 1996-2 C.B. 399, (i) Purchaser, TWA and each other Seller will report on a predecessor-successor basis as set forth therein, (ii) TWA and each other Seller will be relieved from filing a Form W-2 with respect to any employee of TWA and each other Seller who accepts employment with Purchaser, and (iii) Purchaser will file (or cause to be filed) a Form W-2 for each such employee for the year that includes the Closing Date (including the portion of such year that such employee was employed by TWA or any other Seller). TWA agrees to provide Purchaser with all payroll and employment-related information reasonably requested by Purchaser with respect of each employee of TWA and each other Seller who commences employment with Purchaser. [ALPA Exhibit 15]

Pursuant to Article 10.1 of the Asset Purchase Agreement, AA rejected a handful of TWA pilots for AA employment. For example, AA refused to employ former TWA pilot Susan Smith because she had previously been terminated from AA.[6] Smith did not prevail in a suit she brought against AA challenging AA's decision to refrain from employing her subsequent to AA's purchase of TWA's assets. *Smith v. American Airlines, Nos. 04-1405 and 04-1757 (8th Cir. 2005)* [ALPA Exhibit 5]

B. The Addition of Former TWA Pilots to the AA Seniority Roster

On November 8, 2001, AA and APA entered into Supplement CC in anticipation of integrating the former TWA pilots into the AA seniority list. Anderson declared that in late 2002 and early 2003, TWA LLC pilots were either furloughed or transferred to AA. [TR 163-164] Anderson elaborated that both groups of former TWA pilots were

[6] **Apparently, AA deemed Smith and six other former TWA pilots ineligible for AA employment pursuant to the first sentence of Article 10.1. [ALPA Exhibit 3]**

integrated into the AA seniority list per Supplement CC which also established a protected cell at St. Louis for the former TWA pilots. [TR 165]

On March 5, 2002, the NMB adjudged that AA and TWA LLC operated as a single carrier for purposes of Union representation. *45 U.S.C. §152, Ninth, Section 2.* On April 3, 2002, the NMB certified APA as the exclusive bargaining representative for the class and craft of cockpit crew members on AA. [AA Exhibit 1] Consequently, April 3, 2002 became the implementation date specified in Section I.G of Supplement CC. [Joint Exhibit 3; AA Exhibit 1]

APA and AA constructed a modified (post acquisition) AA pilot seniority list. As described in Supplement CC, Section II.A, the former TWA pilots were integrated into the AA seniority list according to the 1:8 ratio between the specified hire dates. Camus was the last former TWA pilot incorporated into the seniority roster as a product of the 1:8 ratio. Pursuant to Supplement CC, Section II.B, the remaining former TWA pilots, commencing with Clark, were consecutively appended to the bottom of the AA seniority roster in the order of their TWA seniority. These pilots became known as the "Staplees". [TR 130; ALPA Exhibit 11] David Ryter, ALPA MEC Vice Chair at AE, counted 167 former TWA pilots integrated into the AA seniority list pursuant to the 1:8 ratio and 1,225 former TWA pilots stapled to the bottom of the AA seniority list. [7] [TR 126] Ryter also pointed out that five flow through AE CJ Captains appear on the seniority list immediately below former TWA Pilot Stremler and another group of fifteen AE flow through pilots with AA seniority numbers appear in the midst of the staplees. [ALPA Exhibit 11; TR 127] The staplees plus several junior former TWA pilots integrated into

[7] Ryter deduced, and the AA seniority roster demonstrates, that the date in the column "date of hire" lists the particular pilot's date of hire with TWA. [ALPA Exhibit 11; TR 145]. According to Ryter, 13,992 pilots are listed on the AA seniority roster. [TR 130; ALPA Exhibit 11]

the AA seniority list according to the 1:8 ratio were furloughed directly from TWA LLC and thus, they did not perform any training or active service at AA. [ALPA Exhibit 11] Ryter explained that former TWA Pilot Stremler, who was one of the pilots integrated into the AA roster by the 1:8 ratio, was the most junior former TWA pilot that AA trained. [TR 116] Ryter further explained that every former TWA pilot junior to Stremler was furloughed directly from TWA LLC and never worked at AA. [TR 118-119]

Brian Sweep, ALPA MEC Grievance Chair at AE, declared that the integration of former TWA pilots into the AA roster did not generate AA seniority numbers for any AE CJ Captains. [ALPA Exhibit 11; TR 156].

C. The Furlough of AA Pilots After September 11, 2001

At the time that AA and APA constructed the post-acquisition AA seniority list, Supplement CC, Section V.A prevented former TWA pilots, furloughed at AA, from flowing down to AE. [Joint Exhibit 3]

Ryter testified that, after the former TWA pilots were added to the AA seniority list but prior to Letter OO, some previously furloughed AA pilots were recalled to service causing the furlough of several former TWA pilots. [TR 148] Ryter stressed that these former TWA pilots did not have access to Section IV of Letter 3/Supplement W because former TWA Pilot Viele, who is expressly mentioned in Supplement CC, Section V.A, had not been given notice of a recall from furlough. [TR 150] Ryter declared that AA furloughed about 1,000 pilots between late 2001 and May, 2003 which raises the reasonable inference that the possibility of Viele receiving a recall notice was miniscule, if not nil. [TR 151]

Prior to the cataclysmic and tragic September 11, 2001 attacks which precipitated gigantic upheavals in the airline industry, a substantial number of AE CJ Captains received AA seniority numbers pursuant to Section III of Letter 3/Supplement W. [AE Exhibit 1] A large group of AE CJ Captains, who apparently received AA seniority numbers almost coincident with September 11, 2001, have yet to "physically" go to AA. [TR 128] William Couette, an AE CJ Captain, was aware that AE CJ Captains flowed through to AA after TWA LLC was established but before the September 11, 2001 attacks, inasmuch as AA was hiring pilots off the street. [TR 109]

On May 1, 2003, APA and AA entered into the Restructuring Agreement with attached Letter OO. Ryter related that, for those former TWA pilots furloughed from AA after May 2003, Paragraph 10 of Letter OO abolished the prohibition contained in Section V.A of Supplement CC. [TR 148, 151] Sweep testified that, commencing in late 2003, some former TWA pilots flowed down to AE from AA. [TR 154-155] Sweep emphasized that allowing the former TWA pilots access to Section IV of Letter 3/Supplement W had "everything" to do with ALPA filing the instant grievance because the former TWA pilots henceforth displaced AE pilots. [TR 155] AA furloughed 672 pilots between May and August, 2003 and the bulk of these were former TWA pilots. According to AE, 174 of the 368 pilots who flowed down to AE were former TWA pilots.[8] Most of the AA furloughees were former TWA pilots and more than 400 attempted to flow down to AE. [9]

The *Bloch Decision* held that Section IV of Letter 3/Supplement W does not distinguish among the furloughees based on how they came to AA. Arbitrator Bloch

[8] **American Eagle Airlines Post Hearing Brief at P. 8.**
[9] **ALPA Post Hearing Brief at P. 21. Presumably, more former TWA pilots would have actually flowed down to AE but for the cap in Section IV.A of Letter 3/Supplement W.**

concluded that the former TWA pilots were "fully" qualified, furloughed AA pilots and so, they were eligible to utilize the flow down provisions in Section IV.B of Letter 3/Supplement W. [ALPA Exhibit 9]

D. Training Former TWA Pilots

Christopher Broom, Managing Director of AA Flight Training Operations, extensively described the training that AA provided to some (but far from all) of the former TWA pilots.[10] At the onset, Broom related that AA developed the training program pursuant to *FAA Order 8400.10* and the FAA approved the training. [TR 40, 48, 63]

The "Prerequisites", for entering TWA training, enumerated at pages 5 and 6 of the AA Advanced Qualification Program, state:

> Candidate is a cockpit crewmember or instructor who is currently or was previously qualified in their respective duty position at TWA LLC and is transferring to American Airlines into the same or different duty position.
>
> NOTE: Completion of the TWA Indoctrination course by TWA LLC crewmembers and instructors will satisfy all requirements for new hire indoctrination into American Airlines (Basic Indoctrination), First Officer Initial Upgrade, Initial Security, and Initial Hazardous Materials training. [ALPA Exhibit 16]

Chapter 1, Section 1 of AA's Approved Training Manual describes pilots who must complete initial new hire training as well as transition training. Section 1.I.B.1 provides:

> INITIAL NEW-HIRE Training: This training category is for personnel who have not had previous experience with American Airlines (AAL) (newly-hired personnel). It also applies to personnel employed by AAL who have not previously held a crewmember or dispatcher duty position with AAL. It also applies to flight attendants and dispatchers employed by AAL who have not previously held a flight crewmember duty position with AAL. Initial new-hire training includes basic indoctrination training

[10] **As noted earlier, Pilot Stremler was the most junior TWA pilot who completed AA training.**

> and training for a specific duty position and aircraft type. The training for a specific duty position and aircraft type is equivalent to "Initial Equipment Training". Since initial new-hire training is usually the employee's first exposure to specific company methods, systems, and procedures, it is the most comprehensive of the six categories of training. For this reason, initial new-hire training is a distinct separate category of training and should not be confused with "initial equipment training". When AAL hires crewmembers with previous Part 121 operator experience, abbreviated curriculum segment outlines for initial new-hire training may be used, if approved. [ALPA Exhibit 17]
>
> Section 1.I.B.3 states:
>
> TRANSITION Training: This category of training is for an employee who has been previously trained and qualified for a specific duty position by AAL and who is being assigned to the same duty position on a different aircraft type. If the transitioning crewmember has been previously qualified on that aircraft in another crewmember position, the ground and emergency training segments are abbreviated based on the length of time elapsed since the crewmember was quailed and current on the aircraft. [ALPA Exhibit 17]

Broom compared the training that AA provides to a pilot hired off the street with the training it gave to the former TWA pilots. Broom testified that AA treated the former TWA pilots different than pilots AA hired off the street because the FAA allowed AA to specifically tailor the training to address the needs of the former TWA pilots.[11] [TR 47-49] Broom testified that the flight training for former TWA pilots consisted of sixteen days of flight academy plus a minimum of ten hours operating experience while the training program for a pilot hired off the street consisted of thirty-seven days in the flight academy and a minimum of twenty-five hours operating experience. [AA Exhibits 2 and 3; TR 41-42, 49-50] Broom declared that the training program for the former TWA pilots included five days of indoctrination. Broom denied that TWA indoctrination was equivalent to basic indoctrination. [AA Exhibit 2; TR 52] Broom testified that, if a

[11] **While the record is not entirely clear, AA apparently incorporated the TWA training into the AA Advanced Qualification Program.**

former TWA pilot switched aircraft, the pilot received the same type of transition training as if an AA pilot changed aircraft. [TR 59]

Broom emphasized that AA could not shorten the training for AE pilots, who flow up to AA, even if, hypothetically, the pilot were to fly the same aircraft at AA as the pilot flew at AE. The AE pilots undergo the same training as pilots AA hires off the street. [TR 61-62]

Broom declared that, if a pilot furloughed from TWA LLC was called up to active service from the AA seniority list, the kind of training afforded the pilot would depend on the length of time the pilot has spent on furloughed status. [TR 60] Broom explained that these pilots would qualify for TWA indoctrination but the amount of ground and flight training would be contingent on whether the pilot was currently qualified as a Captain or First Officer.[12] Broom elaborated that, if not currently qualified, the pilot would receive the same ground and flight training that AA provides to a pilot hired off the street. [TR 60]

E. Negotiating History

In 1997, APA and AA bargained over the contentious issue of who would fly commuter (regional) jets. [*Kasher Decision* TR at 83] The two parties negotiated the rough parameters of a flow-through, flow-back arrangement which was labeled the "Final, Final Final, Final Proposed Tentative Agreement" dated March 17, 1997. This tentative agreement provided that every third "new hire vacancy at AA" will be offered to an AE CJ Captain (subject to a minimum amount of experience). [APA Exhibit 11 in the *Kasher*

[12] Anderson understood that if AA called a former TWA pilot from furlough, AA would not put the former TWA pilot through the same training as a pilot AA hires off the street because "the training is different in terms of indoctrination". Anderson's testimony was largely based on his understanding of Broom's testimony. [TR 175-176]

Decision] APA and ALPA then quickly negotiated, outside the presence of AA and AE, the ultimate provisions of a flow-through, flow-back agreement.[13] Couette, an ALPA negotiator, and then APA Vice President Ralph Hunter participated in the March 1997 bargaining. [TR 83-84]

During the March 1997 negotiations, APA and ALPA adopted an ALPA proposal that AE pilots were entitled to flow up to AA on the basis of one out of every two "new hire positions" at AA. [APA Exhibit 17 in *Kasher Decision*] Couette testified that the ALPA negotiators successfully sought to change the term "vacancy" to "position" to be "more specific" because "position" would mean a "job". [TR 92] Couette distinguished a "position" from a "vacancy" in that the latter would "... be something put out for bid." [ALPA Exhibit 13; TR 91-92] Couette explained that the negotiators discussed AA growth with the recognition that the industry goes through cycles of "high points and low points of hiring." [TR 106] Couette also related that the ALPA negotiators examined the AA seniority list to forecast the number of upcoming retirements which would determine how many AE pilots "... were going to be able to go over to that seniority list at AA". [TR 106]

Couette and Hunter concurred that the negotiators did not discuss an AA merger or acquisition. Couette acknowledged that the ALPA negotiators never announced to the APA negotiators that Section III.A would cover pilots added to the AA seniority list in any way, including a merger. [TR 105]

[13] **APA and ALPA negotiated in Washington, DC during forty-eight hours in March 1997. [TR 83]**

Couette declared that Letter 3/Supplement W is instilled with a risk verses reward principle. Couette explained that the opportunity for an AE pilot to go to AA is the reward while an AE pilot's exposure to possible displacement by an AA pilot in the event of an AA furlough is the risk. [TR 85]

In his October 23, 2006 declaration, Hunter acknowledged that the APA negotiators understood that ALPA perceived that Letter 3/Supplement W contained a balance of risk and reward. Hunter claimed that, but for the September 11, 2001 attacks, AE pilots might have had enjoyed more opportunities to flow up to AA (i.e. greater rewards) due to the increased retirements resulting from the addition of the older, former TWA pilots to the AA seniority list. Hunter asserted that it was never APA's intent to provide AE pilots "... with any proportion of the jobs at an airline brought into AA through merger or acquisition." Hunter declared that the ALPA negotiators never informed the APA negotiators that ALPA was seeking such a right. Hunter also declared that the former TWA pilots were not treated like new hire pilots. He elaborated that, in accord with Supplement CC, the former TWA pilots received integrated seniority, special bidding rights and other privileges that are never afforded to pilots hired off the street.

Couette stated that Section 1.C of the ALPA/AE Basic Agreement governs how AE and ALPA integrate pilots into the AE seniority list should AE acquire another air carrier. Couette similarly related that Section 13 of the Basic Agreement provides how new pilots are added to the AE seniority list. [TR 96-97] Couette declared that, based on the two agreement provisions, a pilot added to the AE seniority list via acquisition is a different "animal" from a pilot hired off the street. [TR 100]

F. AA's Acquisition of Reno Air

Broom testified that AA acquired Reno Air in early 1999. By August 1999, the former Reno Air pilots had completed AA training.[14] [TR 55] Broom declared that the former Reno Air pilots received Reno Air indoctrination as opposed to the basic indoctrination provided to pilots AA hired off the street. [TR 64] The former Reno Air pilots spent eight days in the flight academy consisting of five days of Reno Air indoctrination, two days of MD 80 (aircraft) ground training and one day of MD 80 flight training. No operating experience was required. [AA Exhibit 4] Broom explained that, upon their transfer to AA, the Reno Air pilots stayed in the "exact airplanes" that they had been flying. [TR 64] Broom also stated that, like the TWA training, the FAA approved the special training program for Reno Air pilots. [AE Exhibit 4; TR 63]

Ryter acknowledged that the merger of Reno Air pilots into AA did not generate any seniority numbers for AE flow through pilots. [TR 152] Ryter related that, in 1999, all eligible AE flow through pilots received AA seniority numbers because AA was hiring pilots off the street "at such a rate" that no AE pilots were delayed in receiving an AA seniority number. [TR 140, 152] Ryter concluded that the addition of the Reno Air pilots to the AA seniority roster did not harm any AE pilot. [TR 152]

G. Terminology

Anderson, who has worked for various air carriers since 1975, commented that the term "new hire" means a pilot hired off the street. [TR 171-172] Anderson claimed that based on his experience in the industry, pilots coming to an airline by merger are not considered to be pilots hired off the street. [TR 172]

[14] **Broom was the flight training leader on the Reno Air pilot training program. [TR 54]**

Broom stated that his understanding of the term "new hire pilot" is "hiring people to come work for your airline". [TR 73] Broom testified that he has frequently heard the term "new hire pilot" and he invariably understood that the term to referred to hiring "somebody off the street." [TR 73-74]

Couette understood that the words "new hire" refers to someone "... taking a new position at American" or "people that were hired and added onto the AA seniority list". [TR 94, 104]

IV. POSITIONS OF THE PARTIES

A. The Position of the Air Line Pilots Association

Letter 3/Supplement W does not define the term "new hire" or the phrase "new hire position." Absent a contractual definition, the definition of a "new hire pilot" in *FAA Order 8500.10,* which is widely accepted throughout the airline industry, demonstrates the meaning of "new hire" in Section III.A. Technical terms must be given their technical meaning when used within the technical field. *Restatement (2d) of Contracts (1979), §202(3)(b).* Couette confirmed the industry usage of "new hire" refers to someone taking a new position at AA. Among the categories listed in *Chapter 2* of *FAA Order 8500.10* is "initial new hire" training. *Chapter 2* explicitly states that initial new hire training is for a pilot who has not had "previous experience" with the carrier. Subsection G (1) goes on to provide that the initial new hire training is for all personnel not previously employed by the airline. Indeed, AA's own Training Manual adopts the FAA definition of a new hire pilot by applying "initial new-hire training" to pilots who have not had prior flying experience at AA. The former TWA pilots did not have any

"previous experience" with AA and so, they were new hire pilots. The definition of "new hire pilot" in *FAA Order 8500.10* is the most reliable source for defining the term "new hire" in Section III of Letter 3/Supplement W.

Also, since the negotiators of Letter 3/Supplement W were well acquainted with the airline industry's specialized vocabulary, they understood and adopted the "new hire" definition set forth in *FAA Order 8500.10*.

Besides defining a new hire pilot, *FAA Order 8500.10* requires a pilot coming to an airline to undergo basic indoctrination. It is recognized throughout the industry that all new pilots must successfully complete basic indoctrination. *Air Line Pilots Association vs. FedEx, Inc.; Grievance 05-01 (LaRocco, 2006)* While Broom claimed that the former TWA pilots did not undergo new hire basic indoctrination, his testimony is contrary to both *FAA Order 8400.10* and AA's own Advanced Qualification Program. Both mandated that the former TWA pilots complete basic indoctrination. The length of the indoctrination was shortened for the former TWA pilots, with approval of the FAA, since a merger or acquisition requires only operator specific training modules. Abbreviating the length of basic indoctrination does not alter the fact that the former TWA pilots were compelled to successfully complete basic indoctrination at AA, just as a pilot AA hires off the street must complete basic indoctrination.

Next, AA treated the former TWA pilots just as it would treat any other group of pilots arriving at AA. AA screened the TWA pilots and it elected not to hire all the TWA pilots. Those that AA hired began their service for the carrier like any new pilot per Section 13.A of the APA/AA Basic Agreement. The pilots AA employed were clearly

"new hire pilots". Letter 3/Supplement W does not contain any exception for pilots that AA hires during a merger or acquisition. The *Delta* case, on which APA relies, actually supports ALPA's position. The court in *Delta* referred to the custom in the industry of placing "newly hired pilots" at the bottom of an airline seniority list regardless of the length of service that the pilot may have had with other airlines. Therefore, prior experience at TWA does not alter the fact that the former TWA pilots were "newly hired" when they came to AA.

Most of the former TWA pilots were stapled to the bottom of the AA seniority roster and simultaneously placed on furloughed status. They never attended an AA training class. If these pilots accept a future recall and are trained, they will be AA new hires and so, they must generate seniority numbers for AE CJ flow through Captains.

ALPA's interpretation of Letter 3/Supplement W is logical and equitable. Conversely, APA's and AA's interpretation of Letter 3/Supplement W is illogical and inequitable. The core principle of Letter 3/Supplement W was to reward AE CJ flow through pilots as the AA seniority list grew in exchange for exposing themselves to the risk of being displaced by AA furloughees. The former TWA pilots qualified for furlough protection pursuant to the *Bloch Decision*. It is eminently equitable that, since the former TWA pilots can access the flow back provisions of Section IV of Letter 3/Supplement W, the addition of the former TWA pilots to the AA seniority list entitled AE CJ flow through Captains to receive AA seniority numbers under Section III of Letter 3/Supplement W. One entitlement cannot be fairly sustained without the other. Stated differently, if the former TWA pilots are included in Section IV they cannot be excluded from Section III. Indeed, AA and APA created this controversy by lifting the restriction,

originally contained in Supplement CC, which prevented former TWA pilots from procuring employment at AE. Under the APA's and AA's inequitable interpretation of Section III, the former TWA pilots receive furlough protection at the expense of AE pilots while the AE pilots receive nothing in return even though the former TWA pilots substantially expanded the AA seniority list. Consequently, the AE pilots unreasonably absorbed two hits. The addition of the TWA pilots resulted in an increase in the number of AA furloughees displacing AE pilots and significantly reduced future employment opportunities for AE pilots at AA. Surely, the parties did not intend for the application of Letter 3/Supplement W to result in the forfeiture of the reward embedded in the core principle. Applying Section III of Letter 3/Supplement W in conformity with ALPA's interpretation will avoid a harsh result and the forfeiture of AA seniority. *Ruben, A.M. et al., Editors, Elkouri & Elkouri, How Arbitration Works, 6th Ed.(BNA 2003) at 482-484.* Both are ameliorated by providing AE CJ flow through Captains, on a 1 to 2 basis as specified in Section III.A, with AA seniority numbers. ALPA's interpretation preserves the core principle resulting in a balanced, rational application of Letter 3/Supplement W.

During negotiations over Letter 3/Supplement W, the APA negotiators not only understood, but also they agreed to, the risk equals reward principle. ALPA successfully changed "vacancies" to "positions" to prevent any misinterpretation that Section III.A applied only to jobs that must be advertised for bid. The term "position" equates to any cockpit assignment regardless of how the job is established at AA. The modification from "vacancies" to "positions" renders Hunter's declarations speculative and argumentative. Hunter persistently uses the term "vacancies" despite the presence of the word "positions" in Section III. Hunter also wants to add the phrase "off the street" to

describe new hires in Section III. Hunter acknowledges that the definition of new hires was not discussed and thus, the language in Letter 3/Supplement W does not substantiate his speculation that the parties intended for a new hire pilot to be limited to a pilot AA hires off the street. Hunter nonetheless concedes that AE pilots are entitled to AA positions established as a result of AA fleet expansion which is exactly what happened when AA acquired aircraft from TWA LLC.

If the parties intended for Letter 3/Supplement W to exclude the former TWA pilots from Section III, APA bears the burden of proving that the four parties intended to exclude them. APA did not meet its burden of proof. Moreover, the parties could not foresee every future event, including an acquisition, and thus, Letter 3/Supplement W establishes the framework to deal with a broad range of not necessarily anticipated future events. *Ruben, A.M. et al., Elkouri & Elkouri, How Arbitration Works, 6th Ed. (BNA 2003) at 441-442.*

AA's acquisition of Reno Air did not constitute a proven or relevant past practice. In 1999, all eligible AE CJ flow through Captains timely received AA seniority numbers. The AE pilots did not suffer any harm. Thus, the Reno Air situation was wholly different from AA's purchase of TWA's assets where a large number of AE CJ Captains incurred a seniority forfeiture.

ALPA petitions the Arbitrator to answer yes to the first issue.

B. The Position of American Eagle Airlines

Letter 3/Supplement W provides AE CJ flow through Captains with one out of every two positions at AA which reflects that the AE Captains staked a position on AA's threshold to guarantee that they would be the first pilots through AA's front door. In exchange for being rewarded with preferential AA employment, these AE pilots assumed the risk of being displaced in the event of an AA furlough. AA and APA improperly seek to abandon this central principle of Letter 3/Supplement W by permitting former TWA pilots to flow down to AE while simultaneously barring eligible AE pilots from obtaining AA seniority numbers based on AA's hiring of the former TWA pilots. The TWA pilots gained extraordinary protection from the adversities of a furlough, and now, APA wants to eliminate the rights of AE pilots to flow up to AA. APA and AA unreasonably seek to strip the AE flow through pilots of job security which would turn the risk verses reward principle on its head. The AE pilots rightly reap AA employment opportunities because they sacrificed a degree of job security. By failing to provide AE pilots with AA seniority numbers when AA hired twenty-five hundred TWA pilots, the benefits for AE pilots evaporated while the risk was heightened. The APA argues that if the former TWA pilots had not flowed down to AE, pre-acquisition AA pilots would have been furloughed and displaced to AE positions. However, APA ignores the magnitude of the furloughs due to AA seniority list growth generated by the former TWA pilots. Thus, AE pilots suffered greater risk while losing any possible chance at the reward. AE urges the Arbitrator to reinstate the risk and reward balance that is the foundation of Letter 3/Supplement W.

The FAA required the former TWA pilots to complete initial new hire training at AA which demonstrates that they were new hire pilots filling new hire positions. *FAA Order 8400.10, Chapter 2, Section 1, Paragraph 289* mandates that initial new hire training include basic indoctrination which introduces new crew members to AA's operations. While *Paragraph 371* of *FAA Order 8400.10* allows for a reduction in the length of basic indoctrination for the initial hiring of merger/acquisition pilots, the indoctrination is still basic, i.e. it is still given to all pilots who have never before worked for AA. The former TWA pilots underwent basic indoctrination because they were initial new hire pilots.

Broom and Anderson merely gave their personal understanding of the term "new hire" as opposed to an industry attribution of the term. Absent evidence of a special trade meaning, the FAA definition becomes the technical and appropriate meaning for the term "new hire". It is a pilot who has never been employed at AA which obviously encompassed the former TWA pilots.

The plain meaning of the word "new hire" in Section III of Letter 3/Supplement W embraced the former TWA pilots. Inasmuch as Letter 3/Supplement W does not define "new hire" pilots, the term must be given its ordinary and popularly accepted meaning. Merriam-Webster's Online Dictionary defines "new" as having recently come into existence; having been seen, used, or known for a short time; different from one of the same category that has existed previously; and, beginning as the resumption or repetition of a previous act or thing. [www.M-W.com/dictionary/new] This definition precisely describes the former TWA pilots.

Next, nothing in Letter 3/Supplement W restricts the meaning of "new hire" to a pilot employed off the street. The term appropriately fits any pilot who accepts employment with AA. None of the former TWA pilots were previously employed by AA. AA exercised discretion by screening the TWA pilot group to determine who AA would hire just as it screens any applicant pool.

The context of the term "new hire" in Letter 3/Supplement W supports ALPA's interpretation of the term. Phrases such as "new hire positions" and ""new hire class" appear eighteen times in Section III of Letter 3/Supplement W. Under the recognized application of Section III, AE pilots transfer to AA just like the former TWA pilots transferred to AA. The term "new hire" obviously has a multi-faceted meaning and so the term must be broadly applied. *Kitty Hawk Air Cargo, 122. Lab. Arb. Rep. (BNA) 979, 985 (Vernon, 2006).*

The former Reno Air pilots were also new hire pilots when AA acquired Reno Air, but ALPA did not waive its argument in this case by not grieving in 1999. At the time that AA hired the Reno Air pilots, it was also hiring pilots off the street in sufficient numbers to permit all eligible AE CJ Captains to flow up to AA and be assigned AA seniority numbers. Any grievance would have been rendered moot.

The negotiating history supports ALPA's interpretation of Section III.A of Letter 3/Supplement W. During the March 1997 negotiations, ALPA negotiators purposely replaced "vacancy" with "position". In airline parlance, "vacancy" refers to a job that is routinely put out for bid. Conversely, "position" means all existing jobs. Therefore, the

former TWA pilots occupied positions which placed them within the coverage of Section III.A

APA and AA apparently concede the prospective issue, that is, they admit that the staplees have not yet been hired by AA since they were furloughed directly from TWA LLC. Thus, the staplees will generate seniority numbers for AE flow through CJ Captains when the staplees fill future AA positions.

In conclusion, the AE submits that ALPA satisfied its burden of proof.

C. The Position of the Allied Pilots Association

The contention by ALPA and AE that the four parties intended that one-half of the jobs of another air carrier brought into AA would go to AE pilots is patently implausible. The record does not contain any evidence that the negotiators of Letter 3/Supplement W ever considered such a proposition. Most significantly, granting AE pilots one-half of the jobs added to AA as a result of the TWA acquisition would unfairly give AE pilots priority over the former TWA pilots to the jobs they previously held at TWA. Inasmuch as the TWA pilots came to AA along with their positions, they were not "new hire" pilots and those positions were not "new hire positions". The transitioning of the pilots of an acquired carrier into AA would encounter an enormous, insurmountable obstacle if AE pilots had a right to one-half of the positions brought to AA. The obstacle would be a poison pill to future mergers and acquisitions. Nothing in Letter 3/Supplement W suggests that AE pilots have any role in the complexities of integrating an acquired or merged air carrier into AA. ALPA's position is void of any equity and grossly understates the cost to AA since ALPA seeks to place about two hundred thirty-

eight AE pilots in line for AA jobs ahead of furloughed former TWA pilots who have not received any benefit from Letter 3/Supplement W.

The term "new hire positions" has a specialized meaning in the airline industry. Airline labor relations veterans understand that "new hire positions" are filled by pilots being employed "off the street". Broom and Anderson confirmed this understanding. The understood meaning is implicitly found in the ALPA/AE Basic Agreement which distinguishes between a pilot hired off the street and a pilot coming to AE via merger. Section 1.C of the ALPA/AE Agreement provides separate handling for pilots coming to AE via merger. Section 13, which governs how a new hire pilot is assigned AE seniority, does not contain any language addressing a merger or acquisition because the industry definition of a "new hire pilot" excludes pilots coming to AE (or any other air carrier) via merger or acquisition. Thus, ALPA's claim that the trade meaning of a new hire pilot is covered in *FAA Order 8400.10* is inconsistent with the ALPA/AE Basic Agreement. Moreover, there is not any presumption that the parties adopted *FAA Order 8400.10* to define "new hire". Indeed, such a presumption cannot reasonably arise in light of the language in Sections 1.C and 13 of the ALPA/AE Basic Agreement which plainly contradicts *FAA Order 8400.10.*

At the hearing, an ALPA negotiator conceded that a pilot coming to AA via a merger and a pilot hired off the street were two different animals. Simply put, a pilot joining a seniority list by merger is not the same as a new hire pilot. *Abdu-Brisson v Delta Airlines, Inc.; 239 F. 3d 456, 462-463, 469 (2d Cir. 2001).*

There is a wealth of evidence that the parties excluded merger/acquisition pilots from Section III of Letter 3/Supplement W. When the provisions of Letter 3/Supplement W are read as a whole, it becomes clear that the arrangement was not intended to apply to mergers or acquisitions. In particular, Section III.B provides seniority numbers for AE pilots unable to go directly to AA due to a training freeze or AE operational constraints. Section III.B does not mention the special, transition type training given to the former TWA pilots because such training would not apply to AE pilots. Broom emphasized that the training for TWA pilots was substantially shorter than training AA provides to pilots hired off the street and to AE pilots. In addition, Section III.G provides that AE pilots obtain a particular seniority number based on the lowest number in a training class. This seniority establishment becomes nonsensical if applied to a merger or acquisition. The former TWA pilots acquired AA seniority according to the terms of Supplement CC as opposed to their participation in any training class.

Assuming, *arguendo*, that some ambiguity appears in Letter 3/Supplement W, the extrinsic evidence clearly shows that Letter 3/Supplement W does not apply to pilots acquired by merger or acquisition. More significantly, because any ambiguity is traceable to an ALPA negotiating proposal, the ambiguity must be construed against ALPA's position. During Letter 3/Supplement W negotiations between APA and ALPA, the latter changed the term "vacancy" to "position" in Section III but the ALPA negotiators never announced that the change was intended to cover a merger or acquisition. To the contrary, ALPA acknowledged that the negotiators never discussed a merger or acquisition. Everyone understood that the term "vacancies" would necessarily exclude merger and acquisition pilots. Therefore, the ALPA negotiators were under a

duty to disclose that the change from "vacancies" to "positions" was intended to encompass pilots coming to AA in a merger and acquisition to avoid any future misunderstanding or ambiguity. Rather, the obvious purpose of the change from "vacancies" to "positions" was to ensure that an AE pilot would not have to bid for a vacancy as a condition of coming to AA.

Other evidence of the negotiating history demonstrates that Section III of Letter 3/Supplement W was not intended to cover pilots employed by AA as a result of a merger or acquisition. Couette acknowledged that, during negotiations, ALPA calculated the likely reward to AE pilots by forecasting upcoming AA retirements. If the term "new hire positions" included merged pilots, the ALPA negotiators would have forecasted a much greater reward for AE pilots. Yet, now ALPA improperly seeks to force AA to render one-half of the pilots acquired by the TWA asset purchase superfluous by offering the incoming positions to AE pilots. Even if one is persuaded by ALPA's risk verses reward argument, there is not any justification for expanding the preferential hiring rights for AE pilots to positions brought into AA by the TWA acquisition. Moreover, ALPA's argument that AE pilots must enjoy the rewards of Section III ignores that the risk (Section IV) side of the so-called risk verses reward balance was not increased. The cap on the number of AA pilots flowing down to AE is unrelated to the size of the AA cockpit workforce. Rather, the cap is determined by the mix of Eagle rights pilots within the class of AE CJ Captains. Furthermore, AE pilots might accrue greater rewards in the future as a result of the TWA acquisition because the expansion in the number of AA positions will, upon retirements and resignations, make more positions available for AE flow up pilots. In sum, the negotiating history does not support ALPA's position.

Rather, the bargaining history demonstrates that Section III does not apply to pilots arriving at AA in conjunction with a merger or acquisition.

APA petitions the Arbitrator to answer the first issue in the negative.

D. The Position of American Airlines

ALPA strives to give "new hire" an unprecedented, unfounded and novel meaning. In essence, ALPA wants to foment a flood of AE pilots flowing up to AA. Neither the language of Letter 3/Supplement W nor the negotiating history indicates that the parties understood that the term "new hire" would apply to AA's acquisition of TWA. Thus, the transition of TWA pilots to AA did not create seniority list opportunities for AE flow through CJ Captains.

Although Letter 3/Supplement W does not contain a definition of "new hire positions", the former TWA pilots were not "new hire" pilots since AA did not employ them to fill vacancies. Moreover, if any entity hired the former TWA pilots, it was TWA LLC which was not a party to Letter 3/Supplement W. The Asset Purchase Agreement, on which ALPA relies, was executed well before the establishment of TWA LLC and prior to Supplement CC. Moreover, the former TWA pilots that eventually transitioned to AA did so with their TWA LLC jobs and TWA aircraft. Nevertheless, the AA seniority list demonstrates that pilots transitioning from TWA to AA continue to have a date of hire reflecting their start of employment at TWA as opposed to when they came to AA. In contrast, a new hire pilot has a date of hire when first employed at AA.

The context and use of "new hire" in Letter 3/Supplement W shows that the term applies to a pilot who is hired to fill vacancies. Letter 3/Supplement W, Section III.J provides that the AE pilots flowing up to AA are "new hire" pilots because they may encounter operational hurdles at AE. Thus, the term "new hire" appropriately applies to AE CJ Captains but not pilots coming to AA via an acquisition who would never confront such operational obstacles.

A close reading of Supplement CC reveals that APA and AA never envisioned that integrating the seniority of former TWA pilots into the AA seniority roster would create flow up rights for AE pilots since the former TWA pilots did not fill vacancies subject to the system wide bidding process. Nevertheless, for the most part, the TWA pilots were relegated to St. Louis positions that were specifically fenced in for their benefit.

ALPA failed to present any evidence that the four parties intended for "new hire" to include AA's purchase of TWA assets. Although the word "vacancies" evolved into "positions" during bargaining, Couette admitted that the negotiators did not discuss a merger situation. Indeed, the Reno Air acquisition manifests a contrary intent, that is, merged pilots are excluded from the term "new hire". The real reason to change "vacancies" to "positions" during negotiations was to harmonize Section III with the rest of the sections in Letter 3/Supplement W because those sections uniformly used the word "positions".

AA did not treat the former TWA pilots as "new hire" pilots. Broom and Anderson explained not only that they received training different from pilots hired off the

street but also, they understood the term "new hire" to refer solely to pilots hired off the street. Because the pilots were already flying under AA rules at TWA LLC, the FAA permitted AA to create a flexible training program solely for the former TWA pilots. They underwent abbreviated TWA training rather than AA training for new hire pilots. The length of the training was substantially reduced for both basic indoctrination and flight training. AA may have used some portions of new hire training for the TWA pilot training but AA simply did not treat the former TWA pilots like new hires. Moreover, the definition of an initial new hire pilot in *FAA Order 8400.10* does not reflect that the parties' intended definition of a "new hire" pilot in Section III of Letter 3/Supplement W because the record does not contain any evidence that the negotiators ever considered the training documents during bargaining.

Next, AA's training and integration of the former TWA pilots was similar to the training and transitioning afforded to the former Reno Air pilots in 1999. Like the former TWA pilots, the former Reno Air pilots did not receive initial new hire training. Most importantly, no AE pilot received a seniority number as a result of the seniority integration of Reno Air pilots into the AA seniority list. Although AE CJ Captains did not flow up to AA as a consequence of the Reno Air acquisition, ALPA did not initiate any grievance challenging the practice.

The Arbitrator must reject ALPA's equity arguments. The arguments are not only factually erroneous but also distort the risk verses reward concept. ALPA exaggerates the risk side of the equation. Letter 3/Supplement W, Section IV places a limit on the risk exposure to AE pilots so that an increase in the number of pilots eligible for potential flow down from AA does not increase the risk of displacement for AE pilots. The cap

does not fluctuate according to the number of furloughed AA pilots, inasmuch as, once the maximum is reached, AA furloughees may only displace less senior AA furloughees as opposed to AE CJ Captains. Put succinctly, the number of AA furloughees is irrelevant to determining the degree of risk to AE pilots. In addition, ALPA's argument that the former TWA pilots, who flowed down to AE, increased the risk of displacement to AE pilots is wholly speculative. If not for the TWA acquisition, pre-acquisition AA pilots would have been furloughed and would have flowed down to AE resulting in the same number of AE pilot displacements.

In summary, Letter 3/Supplement W is wholly inapplicable to the transition of the former TWA pilots into the AA seniority list. The grievance must be denied.

V. DISCUSSION

Letter 3/Supplement W neither defines "new hire positions" and "new hire class" nor expressly addresses the addition of pilots to the AA seniority list when AA acquires another air carrier.

The absence of a definition implies that the parties believed that they readily and mutually understood the meaning of "new hire positions" eliminating any need for an express definition and they did not anticipate a major controversy concerning the application of the term. The silence about mergers and acquisitions in Letter 3/Supplement W is not particularly suggestive. The silence cannot be reasonably construed to either include or exclude acquisitions. One might expect such inclusion or exclusion to be expressly stated since, unlike the September 11, 2001 attacks, airline merger and acquisitions are foreseeable events.

Because of a dearth of contract language pinpointing the meaning of "new hire positions", other rules of contract construction control how Section III of Letter 3/Supplement W shall be applied. As will be discussed, these contract interpretation rules, in conjunction with circumstantial evidence, cumulatively demonstrate that Section III.A of Letter 3/Supplement W does not apply to positions coming into AA via a merger or acquisition and the inapplicability of Section III is limited to positions as opposed to the addition of persons to the AA seniority list.

To begin, the words in Section III.A of Letter 3/Supplement W must be given their usual and ordinary meaning. It is significant that the plural noun "positions" appears after the modifiers "new hire" in the opening clause of Section III.A "Positions" is repeated in the second sentence. Section III.A only uses "pilots" to refer to AE CJ Captains. The term "pilots" is not used to designate who AA is hiring. Thus, the characterization of a particular pilot as "new" or a "new hire" is important, but not the starting point, for interpreting Section III.A Rather, the focus is on the type of "position".[15] The phrase "new hire positions" strongly suggests that the position was not previously in existence for a "new hire". In other words, a "position" available for a "new hire" must materialize. Positions can have many origins. AA might establish a cockpit position because: it expands its system to new markets; introduces new aircraft; increases the frequency of its flight schedule; or, other similar operational change. Under these circumstances the position is truly new and may be available to a new hire. If an existing position becomes vacant and cannot be filled by AA forces, the position is likely

[15] **"New hire positions" must be somewhat distinct from "new hire pilots" otherwise the drafters of Section III.A would have written "pilots" to allude to who AA was hiring just as they used "pilots" to refer to persons coming from AE.**

available to a new hire. If, however, a position is transferred from a defunct air carrier to AA, the position was previously in existence and is not automatically available to a "new hire". Rights to these positions, which existed on another carrier, are predicated on negotiations surrounding the merger and acquisition. Clearly, the position is not akin to a position that opens up due to normal pilot attrition (including but not limited to resignations, retirements, disablements, etc.) or, as stated above, due to market expansion or fleet expansion. Also, the modifier "new hire" before "positions" in Section III.A, indicates that some positions may be excluded from the scope of Section III.A If the four parties wanted every position included within the ambit of Section III.A, the authors could simply and easily have written "any positions" instead of "new hire positions". Therefore, the literal language of Section III.A raises an inference that some "positions" may not trigger the flow up provisions of Letter 3/Supplement W. The language also suggests that positions coming to AA via a merger or acquisition may be properly categorized as a type of position beyond the scope of "new hire positions".

Next, Section I.C of Letter 3/Supplement W provides for the continuing application of the provisions in the parties Basic Collective Bargaining Agreements unless a provision in Letter 3/Supplement W conflicts with a provision in a Basic Collective Bargaining Agreement. If so, the former supersedes the latter. Absent any conflict, the terms of the Basic Agreements are controlling. The ALPA/AE Basic Agreement addresses mergers while Letter 3/Supplement W is silent on the subject. Section 1.C.1 and 1.C.2 of the ALPA/AE Basic Agreement separates the seniority establishment method for pilots coming to AE via merger or acquisition from pilots who come to AE to occupy positions created by AE operational changes or to fill attrition

caused vacancies. The ALPA/AE Basic Agreement provides that pilots coming to AE via merger may receive seniority and employment enhancements that are foreclosed to other pilots hired by AE. The fact that the ALPA/AE Basic Agreement affords preferential seniority treatment for merger related pilots as opposed to non-merger related pilots is a recognition by ALPA and AE that, the similar situation, that is, pilots arriving at AA via acquisition and merger, might be treated differently than other pilots for purposes of establishing AA seniority. Indeed, the former TWA pilots established seniority outside the parameters of Section III of Letter 3/Supplement W. They did not attain seniority according to the methodology similar to the seniority establishment provisions described in Section III.G of Letter 3/Supplement W or Section 13.B.2 of the ALPA/AE Basic Agreement. This circumstantial evidence raises the inference that the parties intended for the Basic Agreements to cover merger/acquisition positions and the seniority of those pilots filling the positions. The inference logically leads to a conclusion that "new hire positions" in Section III.A of Letter 3/Supplement W does not apply to positions coming into AA via merger or acquisition.

Next, when the phrase "new hire positions" in Section III.A is read in harmony and in context with the remainder of Section III, applying Section III.A to positions established at AA due to a merger or acquisition becomes problematic and borders on the nonsensical. As stated above, Section III.G specifically provides for the assignment of seniority numbers according to a pilot's position in a training class. The former TWA pilots, who occupied the positions at AA subsequent to the TWA acquisition, received their seniority by the methodology specified in Supplement CC. Thus, Section III.G did not cover these former TWA pilots. To give Section III internal consistency it logically

follows that Section III.A did not cover them. Section III.J alludes to the possibility of temporarily holding a flow through AE CJ Captain back at AE, without any diminution in compensation, for operational reasons. Section III.J refers to an AE CJ Captain in the singular, rather than the plural, which shows that Section III.J was not constructed to address a massive influx of AE CJ Captains from AE to AA. A merger could result in the addition of 1000 or more positions to AA. If these positions fell within the ambit of Section III.A, more than 500 AE flow through CJ Captains would flow up to AA which could strain the rational operation of Section III.J.

Therefore, when Section III.A is placed in context with the rest of Section III, the rule of always construing a contract reasonably leads to the conclusion that Section III.A does not apply to merger related positions.

Last, the AA training program developed for the former TWA pilots was hardly identical to training provided to AE flow through pilots or pilots commencing AA employment by other than a merger or acquisition. AA developed a training program to address the unique needs of the former TWA pilots. To begin flying at AA, the former TWA pilots did not undergo a lengthy basic indoctrination or a prolonged flight academy. Rather, they were specifically trained to continue to occupy the same kind of positions that they occupied at their former employer. The abbreviated training for the former TWA pilots who immediately occupied AA positions, demonstrates that the positions created as a consequence of the TWA acquisition cannot be properly characterized as "new hire positions".

ALPA argues that training for the former TWA pilots was legally classified as initial "new hire" training under *FAA Order 8400.10, Chapter 2, Section 1.* As already discussed, the training program was custom tailored to for the former TWA pilots. They did not attend the same kind of training classes that are afforded to AE flow through CJ Captains. Thus, the FAA Training Order is substantially broader than the language in Section III.A. Most importantly, ALPA did not cite any language which expressly or implicitly incorporated the FAA descriptions of new hire training into Letter 3/Supplement W. Nothing on the face of Letter 3/Supplement W even hints that the parties mutually understood that they would look to the *FAA Order* to describe a new hire position.[16] Therefore, the record is void of any evidence that the four parties intended to adopt the definition of "initial news hire" training in *FAA Order 8400.10* as the definition of "new hire positions" in Section III.A.

In sum, the Arbitrator utilized the following elementary rules of contract construction: the plain meaning of the words used in Section III.A; the application of Section 1.C.; the rule of reason; interpreting Section III.A within the context of Section III; and, the absence of any reference to *FAA Order 8400.10.* In addition, the circumstantial evidence of how the former TWA pilots were trained is also pertinent.

One of these elementary rules of contract construction, by itself, may not be sufficient to provide a definitive interpretation of Section III.A of Letter 3/Supplement W. But, when the rules are taken together, the cumulative effect clearly evinces that Section III.A is inapplicable to positions established at AA which were directly related to

[16] **Indeed, *FAA Order 8500.10* refers to training pilots and does not precisely state what are "new hire positions".**

AA's acquisition of TWA. These positions were not "new hire positions" and so, the former TWA pilots who assumed active employment at AA and occupied positions coincident with the acquisition were not new hire pilots.

After the acquisition was consummated, the positions established at AA as a consequence of the acquisition, evolved into solely AA positions. Thus, the positions do not hold any special merger related status beyond their establishment at AA at the time AA purchased the assets of TWA. This distinction is critical. ALPA presented overwhelming evidence that many former TWA pilots, including several pilots subject to the 1:8 ratio in Supplement CC, neither performed any active service at AA nor were trained at AA. If and when positions are available at AA, the presence of a huge group of former TWA pilots (the staplees) on the AA seniority roster cannot interfere with the rational operation of Section III.A of Letter 3/Supplement W. Pilots who did not commence active employment at AA in conjunction with merger are equivalent to new hires because positions are no longer being established or filled due to the acquisition.[17] While Section III.A of Letter 3/Supplement W does not apply to positions established at AA exclusively due to a merger or acquisition, Section III.A applies to positions that are established or become vacant based on the causes previously enunciated in this Opinion, such as expansion of market, expansion of fleet and pilot attrition. In addition, if two of the four parties to Letter 3/Supplement W could simply append thousands of individuals to the bottom of the AA seniority list to place them ahead of AE flow through CJ Captains, two parties could effectively nullify the flow through provisions of Letter

[17] **The stapelees are identical to a large pool of successful applicants (for employment) since they will not obtain AA positions stemming from the TWA acquisition.**

3/Supplement W.[18] The parties do not enter into their intricate agreements with the expectation that entire sections will be rendered meaningless. Because Section III.A uses the term "positions", the former TWA pilots, who were never trained and who never occupied a position at AA, do not bar the operation of Section III.A as AA positions become available in the future.

To summarize, with regard to Issue No. 1, the term ""new hire positions" does not apply to positions that were established at AA as a direct result of AA's acquisition of TWA and does not apply to former TWA pilots who obtained positions at AA coincident with the acquisition. However, the exclusion from Section III of Letter 3/Supplement W does not extend to former TWA pilots added to the AA seniority list who did not obtain an AA position.

The Arbitrator is unable to draw a precise line on the AA seniority list where the division occurs. The Arbitrator delegates this task to the four parties. Suffice it to state, the parties are, of course, free to draw the line at any mutually agreeable location on the seniority list.

Inasmuch as the Arbitrator interpreted Section III of Letter 3/Supplement W according to elementary rules of contract construction, the Arbitrator did not consider evidence of negotiating history or any past practice. ALPA, AE, APA and AA also raise strong equitable arguments. ALPA and AE persuasively argued that the TWA acquisition distorted the delicate balance of the risk verses reward principle. APA and AA persuasively argued that applying Section III.A to pilots arriving at AA via merger or

[18] **Such a machination would be completely contrary to the rule of reason in construing contracts.**

acquisition would create an insurmountable obstacle to future mergers which could detrimentally harm not only AA and AE but also the pilots working for those two entities. The Arbitrator elects, within the parameters of this particular case, to refrain addressing these compelling equitable considerations especially since the Arbitrator did not resort to extrinsic evidence to interpret Section III.A. The Arbitrator notes that equities are best reserved for the parties to discuss at the bargaining table.

At the hearing, the parties prudently agreed that the remedy in this matter should be remanded to the property. Thus, the parties will have an opportunity to formulate remedial strategies that are beyond the Arbitrator's jurisdiction and authority. Also, the parties will have an opportunity to deliberate about potential remedies, and their consequences, given that the obvious uncertainties about what might occur in the future. In addition, since the answer to the first issue in dispute is partially in the affirmative and partially in the negative, the remedy may be conditional. As stipulated by the parties, the Arbitrator reserves jurisdiction over the case should the parties be unable to formulate a satisfactory remedy. However, the Arbitrator places a time limit on the reserved jurisdiction which can be extended.

AWARD AND ORDER

The Arbitrator issues the following Order:

1. The first issue states: whether former Trans World Airlines (TWA) pilots placed on the AA seniority list filled or may fill "new hire positions" in "new hire classes" within the meaning of Section III.A of Letter 3/Supplement W. The answer to this issue is partially no and partially yes as more fully described in this Opinion.

2. The second issue states: what is the appropriate seniority number remedy for AE CJ (Commuter Jet) Captains covered by Letter 3/Supplement W, Section III? The Arbitrator remands this case to ALPA, AE, APA and AA to formulate an appropriate remedy in accord with the second issue herein.

3. The Arbitrator retains jurisdiction over this case for a period of two years from the date stated below. The four parties may mutually agree to extend the retention of jurisdiction beyond two years. Any party may bring a motion seeking to extend the period of reserved jurisdiction.

4. Any party may request the Arbitrator to exercise jurisdiction over the second issue herein within the two year period, or as it may be extended, provided such request shall not be made within sixty days of the date stated below.

DATED: May 11, 2007

John B. LaRocco
Arbitrator

EXHIBIT B

In the Matter of the Arbitration Between:	)	
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,	)	Grievance Under Letter Three/Supplement W
and	)	
AMERICAN EAGLE AIRLINES, INC.,	)	Case No. FLO-0903 (Former TWA Pilots)
and	)	
ALLIED PILOTS ASSOCIATION,	)	**SUPPLEMENTAL OPINION AND AWARD ON REMEDY**
and	)	
AMERICAN AIRLINES, INC.	)	

Hearing Date: April 24, 2008
Hearing Location: Sacramento, CA
Date of Supplemental Award: October 20, 2008

JOHN B. LaROCCO
Arbitrator
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FLO-0903

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL / AMERICAN EAGLE AIRLINES, INC. / ALLIED PILOTS ASSOCIATION / AMERICAN AIRLINES, INC.

SUPPLEMENTAL OPINION AND AWARD ON REMEDY

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OPINION

I. INTRODUCTION

This Opinion and Award supplements the May 11, 2008 Opinion and Award concerning a dispute involving the four parties to Letter Three/Supplement W: The Air Line Pilots Association, International (ALPA), the Allied Pilots Association (APA), American Airlines, Inc. (AA), and American Eagle Airlines, Inc. (AE).

The May 11, 2007 Opinion and Award resolved the contract liability phase of this case. The Arbitrator remanded the case back to the properties for the parties to attempt to fashion a remedy while retaining jurisdiction over the dispute. Despite good faith efforts, the parties were unable to reach an agreement. Therefore, the Arbitrator granted the parties' request to exercise his retention of jurisdiction to adjudicate the appropriate remedy.

The four parties presented additional evidence at a hearing held on April 24, 2008. They filed opening and reply post-hearing briefs. The Arbitrator received the reply briefs on August 18, 2008 and the matter was deemed submitted.

At the April 24, 2008 hearing, the Arbitrator framed the issue as follows: Based on the Opinion and Award issued on May 11, 2007, what is the appropriate remedy within the context of that issue? [TR 187] The issue is stated broadly because the parties have a substantial disagreement regarding the scope of this Arbitrator's jurisdiction to fashion certain remedies. They also disagree on whether ALPA and AE waived their right to seek particular remedies. Later in this Opinion, the Arbitrator will state the subset of issues in great detail.

II. BACKGROUND AND SUMMARY OF THE FACTS

Most of the pertinent facts and contract provisions are fully set forth in the May 11, 2007 Opinion and Award. For easy reference, Sections III.A through III.G of Letter Three/Supplement W are set forth below:

A. At least one (1) out of every two (2) new hire positions per new hire class at AA will be offered to CJ Captains who are line pilots and who have completed their IOE at AMR Eagle, Inc. Such positions will be offered to the CJ Captains who are line pilots in order of their AMR Eagle, Inc. seniority.

B. If a CJ Captain is unable to fill a new hire position at AA in accordance with Paragraph III.A. above, due to a training freeze or other operational constraint, (see Paragraph III.J. below), such CJ Captain will be placed on the AA Pilots Seniority List and will count toward the number of new hire positions. The pilot's AA occupational seniority date and number will be established as if he were able to fill such new hire position at AA and had attended the new hire training class referenced in Paragraph III.A. above. Such pilot's length of service for pay purposes, date of hire for pension purposes, and length of service for vacation accrual will be established in accordance with III.C. below. The number of such CJ Captains will not exceed the difference between the number of CJ Captains who are able to fill new hire positions at AA and the number of new hire positions which must be offered to CJ Captains in accordance with Paragraph III.A. above.

C. A CJ Captain's (1) placement on the AA Pilots Seniority List (except as provided in Paragraph III.B. above which is only applicable for placement on the AA Pilots Seniority List in order to establish an AA occupational seniority date and number), (2) length of service for pay purposes, and (3) "date of hire" for pension purposes will be based on the date such pilot is entered on the AA payroll. Such pilot's length of service for vacation accrual will be based on the cumulative total of the pilot's service at AMR Eagle, Inc. and AA.

D. If a CJ Captain is placed on the AA Pilots Seniority List per III.B. above, such CJ Captain will receive priority based on his AA seniority in filling a new hire position in the next new hire class, following release from a training freeze or other AMR Eagle, Inc. imposed operational constraint. Such CJ Captains will not count toward the number of new hire positions offered to CJ Captains at AMR Eagle, Inc., under Paragraph III.A. above.

E. Each of the first 125 AMR Eagle, Inc. pilots who successfully complete transition training as a CJ Captain must fulfill a training freeze for a period of eighteen (18) months from the date said pilot completes IOE. All other pilots who successfully complete transition training as CJ Captains must fulfill a training freeze for a period of two (2) years from the date each pilot completes IOE, unless released from such training freeze by AMR Eagle, Inc.

F. An AMR Eagle, Inc. pilot may, not later than the completion of IOE for a CJ Captain position or at such time as the pilot is able to demonstrate hardship, elect to forfeit the opportunity to secure a position on the AA Pilots Seniority List as provided by this Supplemental Agreement. Such pilot will hereinafter be referred to as an "Eagle Rights CJ Captain," and will not be eligible for a future new hire position at AA which may otherwise become available under Paragraph III of this Supplemental Agreement. The existence of a hardship for this purpose shall be approved by the ALPA AMR Eagle MEC Chairman and the appropriate management official(s).

G. A CJ Captain who is awarded a new hire position at AA will be issued the lowest seniority number at AA in the applicable new hire class, subject to AA's policy concerning the assignment of seniority numbers to new hire pilots who have previous service in other employee classifications. AMR Eagle, Inc. pilots will receive their AA seniority number in order of their seniority at AMR Eagle, Inc. [Joint Exhibit 1]

Other facts that were presented at the April 24, 2008 hearing herein and/or arose subsequent to May 11, 2007 may be relevant to the outcome of this case and are covered in the ensuing paragraphs.

On March 13, 2008, this Arbitrator issued an Opinion and Award in Case FLO-0106 which adjudged that AE flow-through pilots, who had acquired AA seniority numbers but had not yet transferred to AA, did not possess recall rights under Letter Three/Supplement W. Consequently, AA is not obligated to call them to AA service in seniority order. Rather, the recall right is governed by the APA-AA Working Agreement. In essence, the decision means that AE flow-through pilots come to AA, for the first time, exclusively by the operation of Letter Three/Supplement W. *Air Line Pilots Association,*

American Eagle Airlines, Inc,. Allied Pilots Association, and American Airlines, Inc., FLO-0106 (2008) (LaRocco, Arb.).[1]

Shortly thereafter, on June 30, 2008, Arbitrator Richard Bloch adjudged that the ten year duration clause in Section VII.A of Letter Three/Supplement W did not extinguish flow-up rights for those AE pilots who, prior to May 1, 2008, had completed CJ Captain IOE and received AA seniority numbers. *Allied Pilots Association, Air Line Pilots Association, American Airlines, Inc., and American Eagle Airlines, Inc.* (2008) (Bloch, Arb.) (*Bloch* decision). Correspondingly, the *Bloch* decision held that AE pilots who had not acquired AA seniority numbers by May 1, 2008 do not gain a right to flow-up to AA due to the expiration of Letter Three/Supplement W.

The May 11, 2007 Award herein adjudged that some, but not all, of the former TWA pilots were equivalent to "new hire pilots" within the meaning of Section III.A of Letter Three/Supplement W.[2] The May 11, 2007 holding drew a distinction between former TWA pilots who had never trained or flown at AA and former TWA pilots who were integrated into active employment at AA, as a direct consequence of the acquisition, even if those pilots may have been subsequently furloughed from AA. However, the holding did not precisely identify each and every TWA new hire pilot. The parties now concur that there are 154 TWA new hire pilots. [Joint Exhibit 4, TR 187] AA began recalling these 154 TWA new hire pilots in 2007 and evidently the first group came to AA in the June 6, 2007 training class. [APA Exhibit 2, TR 312]

As of April 30, 2008, the AA seniority list evinced the following attributes. Pilots holding seniority from numbers one through 8870 remained actively employed at AA,

[1] This Opinion will refer to the FLO-0106 decision as the "recall decision."

[2] The Arbitrator will refer to these pilots as "TWA new hire pilots."

i.e., they were never furloughed.[3] [TR 248] Beginning on January 3, 2007, AA commenced offering recall opportunities to pilots starting with the pilot who currently holds seniority number 8871. [TR 311] Between January 2007 and April 2008, AA moved down the seniority list to offer recall to pilots through the pilot at number 10492, except AA skipped over AE flow-through pilots holding AA seniority numbers since they do not possess recall rights. As of April 2008, 388 AE flow-through pilots held AA seniority numbers between 8416 and 11876. These AE flow-through pilots are interspersed throughout this range with some below the large block of former TWA pilots integrated into the AA seniority list near the bottom of the list. [ALPA Exhibit 11]

As was related in the May 11, 2007 Opinion, pursuant to Supplement CC to the APA-AA Working Agreement, former TWA pilots were integrated into the AA seniority list on a 1:8 ratio and then a block of 1,156 pilots were added near the bottom of the list.[4] Eighty-one former TWA pilots were integrated into the AA seniority roster below seniority number 9218 on a 1:8 basis. [APA Exhibit 2; TR 248-249] Of these 81 pilots, 56 accepted a proffered AA recall opportunity. Another 98 pilots from the block of 1,156 former TWA pilots also accepted recall. The 56 pilots plus the 98 pilots equals the 154 pilots that are deemed TWA new hire pilots for purposes of applying the May 11, 2007 Award. [APA Exhibit 2; TR 254]

Following the block of former TWA pilots on the AA seniority roster, there are 385 pilots who, according to Michael Mellerski, were hired or added to the list after April

[3] The most junior pilot on the roster possessed seniority number 11927.

[4] APA represented that only 455 of the 1,156 pilots were eligible to flow down to AE. [APA Exhibit 2]

10, 2001.[5] [TR 249] The 385 pilots include 92 pilots that were afforded reemployment rights pursuant to Supplement CC. [APA Exhibit 2; Joint Exhibit 3] Mellerski explained that these pilots were in AA training when the September 11, 2001 terrorist attacks precipitated their furlough before they had completed IOE. [TR 250] The 92 pilots were granted occupational seniority, even though they lacked recall rights inasmuch as they had not finished IOE. However, Mellerski conceded that there is not any meaningful difference between reemployment rights and recall rights. [TR 251] Mellerski recounted that AA and APA agreed to place these pilots on the AA seniority list because they had generated seniority numbers for AE flow-through pilots. [TR 251]

As of April 2008, more than 400 AE CJ pilots had elected flow-through status, but had not received AA seniority numbers. Thus, the aggregate population of AE flow-through pilots consists of 388 pilots who currently hold AA seniority numbers but have not yet shifted to AA, and the 400 plus AE pilots who opted for flow-through status but do not hold AA seniority numbers. For example, Captain Linder, an AE flow-through pilot who acquired an AA seniority number, has waited years to commence active employment at AA. Linder forewent other job opportunities based on his expectation that his AA seniority would permit him to soon transfer to AA. [TR 103-106 in FLO-0107]

The parties stipulated that between October 1999 and September 2001, 124 AE flow-through pilots completed their training freeze at AE and flowed-through to AA. These pilots attended AA training and began flying at AA. The parties further stipulated that, in accord with Section III.B of Letter Three/Supplement W, the 124 AE pilots

[5] Mellerski is presently an AA First Officer on the 767 aircraft. He previously served on the APA Negotiating Committee in 1997 and the Mergers & Acquisitions Committee in 2001. [TR 227-228, 240]

received AA seniority numbers as if they had attended training and filled new hire positions. They were granted the senior numbers in the class unless a trainee had prior service in another AA classification. New hire pilots not originating with AE or AA received the junior numbers in the class. After the 124 AE pilots served their lock-in at AE, AA assigned the pilots to the next scheduled training class. The parties stipulated that AA did not award an AA seniority number to another AE flow-through pilot when an AE flow-through pilot came to an AA training class after the expiration of the pilot's training freeze. [Joint Exhibit 5]

A portion of the controversy herein centers on the extent of the Arbitrator's authority to formulate a remedy as well as whether or not ALPA and AE may have waived some potential remedies. Both ALPA and AE seek a remedy which would require AA to provide seats in upcoming training classes to AE flow-through pilots who either: (1) already possess AA seniority numbers, or (2) acquire AA seniority numbers as a consequence of implementing a remedy herein. ALPA and AE contend that mandating AE pilots to attend training classes ahead of most or all former TWA pilots is an appropriate, make-whole remedy. APA and AA cited portions of the record and post-hearing briefs from the contract liability phase to support their arguments concerning lack of jurisdiction and waiver.

ALPA initiated the grievance herein on November 26, 2003. Items 4, 5, and 6 of the grievance read:

> 4. Former TWA pilots hired by AA fill "new hire positions" at AA within the meaning of Letter Three/Supplement W, III.B.
>
> 5. American Eagle CJ Captains who were otherwise qualified and eligible have not been awarded positions on the AA Pilots'

Seniority list at the rate of one (1) out of two (2) new hire positions per new hire class at AA.

6. As a result of the facts stated herein, CJ Captains employed at American Eagle Airlines have been wrongfully denied positions on the AA Pilots' Seniority List. [ALPA Exhibit 2]

At the commencement of the hearing on the liability phase of this proceeding, the parties stipulated that the issue was whether former TWA pilots placed on the AA seniority list filled new hire positions and new hire classes within the meaning of Letter Three/Supplement W and if so, "...what is the appropriate AA seniority number remedy for AE CJ Captains covered by Letter 3, Roman III?" [TR 9]

In its opening statement during the liability phase, ALPA remarked that "...a new hire training class at AA generates employment opportunities for American Eagle CJ Captains in the form of ... AA seniority numbers." [TR 14] ALPA went on to state that it sought "a precedential ruling that when those pilots [TWA new hire pilots] are trained they meet the definition of attending new hire training classes and as a result they'll generate the numbers for the Eagle pilots." [TR 18] [Brackets added for clarification] ALPA claimed that the core of the Letter Three/Supplement W bargain was that, as AA added positions, AE pilots would share in AA's growth by receiving "...some of those seniority numbers so that they could eventually go to AA." [TR 19]

During its opening statement, AE posited that the term "new hire positions" in Section III.A must be read "to provide Eagle pilots with AA seniority numbers...." [TR 21-22] AE further stated that "...to deny Eagle pilots to flow -- to seniority numbers when American was hiring ... is unfair and was not intended by the drafters of the Letter 3." [TR 23]

AA submitted during its opening statement that "there is, in fact, no basis for an interpretation for Supp W/Letter 3 that creates positions for Eagle pilots in the context of an integration of an air carrier or two air carriers...." [TR 23] AA also stated that the parties "never envisioned that such an acquisition would create flow-up rates [rights] for Eagle pilots." [TR 28] [Brackets added for clarification.]

APA offered the following observation in its opening statement. "And I guess I'd want to emphasize that although ALPA is today speaking largely in terms of a right to seniority numbers...that's a kind of secondary right under Supplement W. What Supplement W provides in Section III.A. is the right of CJ Captains to one out of every two new hire positions per new hire class at AA. That's not just the seniority number, that's a right to come to class and, you know, be hired at American and proceed." [TR 32] APA also forecasted that one implication of sustaining ALPA's position could be:

> "...when American acquired TWA, half of the TWA pilots coming over in these transition classes, instead those slots belonged to Eagle pilots and the TWA pilots would be shot out the door if they were on the bottom of the list. So rather than a situation of a growing American where Eagle was coming into slots, you're literally talking about a situation where if Eagle pilots had been entitled to half the positions in the transition classes, then – and we only had a certain – we only had the aircraft that was brought over that we're talking about here – then you're talking about having to furlough what are now American pilots out the door to make room for Eagle pilots to come up. [TR 36-37]

The following excerpts appeared in ALPA's Post-Hearing Brief during the liability phase of this dispute. ALPA argued that if former TWA pilots "accept recall and are trained, they will continue to be part of AA's growth and, as such, they must generate AA seniority numbers for the Eagle CJ Captains who are waiting to receive them." [ALPA Post-Hearing Brief at p.3] ALPA submitted that AE flow-through pilots "...should have received AA numbers as a result of AA hiring and would subsequently

continue to accrue AA seniority..." because the "intended" benefit for AE flow-through pilots was "the addition to the AA seniority list...." ALPA asserted that: "The result proposed by ALPA herein is a balanced approach that does not impose any unreasonable burden upon either AA or the APA. AE pilots would receive the AA seniority numbers they rightly deserve, but no AA pilots would be furloughed or displaced as a result of the issuance of these numbers." [ALPA Post-Hearing Brief at p.35]

In its Post-Hearing Brief during the liability phase, AE implored that, if AE prevails, the Arbitrator should remand the matter "...to the parties for discussion of the appropriate AA seniority number remedy." [AE Post-Hearing Brief at p.23]

APA wrote in a footnote in its post-hearing brief that: "If former TWA pilots are deemed to fill 'new hire' positions in 'new hire' classes as they transition into AA from TWA LLC, then Section III.A of Supp. W/Letter 3 clearly mandates that at least one out of every two of those positions be offered to CJ Captains at Eagle." APA then argued that such a result is "...so implausible that only the strongest evidence of the parties' intent would suffice to establish it." [APA Post-Hearing Brief at p.1]

III. THE POSITIONS OF THE PARTIES

A. The Position of the Air Line Pilots Association

ALPA seeks a remedy that would grant AA seniority numbers to virtually all, if not all, AE flow-through pilots and bring the AE flow-through pilots, who possess and/or acquire AA seniority numbers, into AA training classes.

While ALPA's computations are not entirely clear, it counts the number of TWA new hire pilots in each class from July 3, 2007 through June 4, 2008 as a basis for its

formula on generating seniority numbers.[6] For example, the two TWA new hire pilots in the July 3, 2007 class generate 184 AA seniority numbers for AE flow-through pilots because there are 182 AE flow-through pilots senior to the two junior TWA new hires and, by extrapolation, a total of 366 (182 + 184) AE pilots would be in a hypothetical training class to achieve the proper ratio required by Sections III.A and III.D of Letter Three/Supplement W. Examining the August 1, 2007 class as another example, 31 seniority numbers are generated by the nine TWA new hire pilots who attended that class because there are 22 remaining AE flow-through pilots senior to the TWA new hires. Using the same calculation, the total number of AE pilots needed in a hypothetical class to obtain the proper ratio is 53 (22 + 31).[7]

ALPA also seeks a readjustment of the AA seniority list to prevent AE pilots who acquire seniority numbers under this remedy from attaining greater seniority than many AE pilots who already possess an AA seniority number. Consequently, the 93 AE pilots who hold seniority numbers junior to the TWA new hire pilots must move up the AA seniority list so that their numbers are approximately at or more senior to the TWA new hire pilots. The logical solution is to award 93 seniority numbers generated by the first 93 TWA new hire pilots to the 93 AE pilots who previously received AA numbers because the previously awarded numbers are improper.

Section III.A of Letter Three/Supplement W provides that 50% of all new hire positions in any new hire class must be offered to AE CJ Captains who completed IOE and elected flow-through status. Once an AE pilot acquires an AA seniority number, the

[6] The number of TWA new hire pilots in these classes ranged from a low of two in the first class to a high of 26 in the April 16, 2008 class.

[7] ALPA submitted a table on page 25 of its Opening Post-Hearing Brief illustrating its proposed remedies.

AE pilot will either transfer to AA and begin training in a new hire class or be held back at AE to serve a training lock-in. If the latter occurs, the AE pilot is given top priority to transfer to AA after the pilot is released from the AE lock-in per Section III.D of Letter Three/Supplement W. When this AE pilot later transfers to AA, the AE pilot occupies a position in an AA training class which would have otherwise been filled by a conventional new hire pilot. Nevertheless, the 50% ratio in Section III.A continues to apply so that half of the positions in any class attended by the AE pilot coming to AA under Section III.D must be offered to AE flow-through pilots. Pursuant to the express language of Section III.D, the AE pilot coming to AA after the lock-in does not count as a new hire pilot so that pilot must generate another AA seniority number.[8] For example, suppose AA needs to hire 50 pilots. Initially, the hiring process will be half and half; that is, 25 of the pilots will be conventional new hire pilots and 25 will be AE flow-through pilots. If the 25 AE pilots are withheld by AE, due to a training freeze, AA needs to bring in 25 more conventional new hire pilots to fill the training class. Of the 50 new hire pilots in training at AA, none are AE flow-through pilots. However, the AA seniority list is increased by 75 pilots since the 25 AE pilots receive AA seniority numbers along with the 50 conventional new hire pilots. If, several months later, AA needs to hire 50 more pilots, AA will establish a training class for 50 new hire pilots. Assuming the prior 25 AE pilots are released from the AE training freeze, those 25 pilots are afforded priority in filling the new hire class. They occupy 25 of the 50 seats in the class. However, AA must still abide by the 50% ratio in Section III.A. To satisfy the compulsory ratio, AA must offer the remaining 25 training class seats to the next 25 AE

[8] Conversely, under Section III.B, the AE pilot coming to AA counts as a new hire pilot and does not generate another AA seniority number.

pilots who have opted for flow-through status.[9] Now, AA has hired 100 pilots: 50 are conventional new hires and 50 are AE flow-through pilots which complies with the minimum ratio specified in Section III.A of Letter Three/Supplement W. Unless the training classes are filled as described above, AE pilots would never receive the guaranteed allotment of one out of every two new hire positions at AA. APA's interpretation of Section III.A would result in a one out of three ratio because it disregards the operation of Section III.D.

Each AE flow-through pilot is entitled to the most senior number in each class after any new hire pilots who have prior service in another AA classification. In other words, the conventional new hire pilots obtain the seniority numbers immediately below the seniority numbers assigned to the AE flow-through pilots. The parties stipulated that, in the past, 124 AE flow-through pilots received seniority numbers higher than other trainees, except for AA employees with prior AA service. In this case, the former TWA new hires are equivalent to conventional new hire pilots. So, each AE pilot acquiring an AA seniority number must be more senior than the pilot's TWA new hire pilot counterpart.

Prior to 2001, an insufficient number of AE pilots had completed CJ IOE to take advantage of the full potential of the number generation percentage in Sections III.A and III.D. If more AE pilots had entered AA new hire classes after serving the training freeze, they would have generated additional AA seniority numbers for other AE flow-through pilots who had completed IOE and elected flow-through status.

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[9] Regardless of whether these next 25 flow-through pilots are withheld at AE, they acquire AA seniority numbers.

To provide AE pilots with seniority numbers above the TWA new hire pilots, the AA seniority list must be reordered to place the AE pilots and the TWA new hire pilots in their rightful positions. This Arbitrator is authorized to adjust the AA seniority list to achieve the appropriate remedy. *Brotherhood of Locomotive Engineers and Trainmen v. CSX, Inc.*, 455 F.3d 1313 (11th Cir. 2006) The Arbitrator is empowered to modify a seniority list to harmonize the list with the provisions of Section III of Letter Three/Supplement W. *LaRocque v. R.W.F., Inc.*, 8 F.3d 95 (1st Cir. 1993). The AE flow-through pilots who have AA numbers and who will receive AA numbers must be properly inserted to their rightful place on the AA seniority roster because APA and AA failed to place the TWA new hire pilots at the bottom of the seniority list. Consequently, the AE flow-through pilots must obtain AA seniority numbers immediately senior to each of the TWA new hires in each respective training class. However, to maintain relative AE seniority, 93 AE flow-through pilots previously afforded AA seniority must move up the roster so that junior AE flow-through pilots do not leapfrog over them. Contrary to AA and APA's position, the 93 pilots are not being provided with underserved seniority. Rather, they are simply being reallocated to their rightful position on the AA seniority roster.

Reordering and adjusting the AA seniority list is the only reasonable remedy because APA and AA inflicted substantial harm on AE pilots when they integrated the TWA new hire pilots into the AA seniority roster without negotiating with ALPA. ALPA had a real interest in the terms and conditions of Supplement CC because ALPA represented a large group of pilots possessing AA seniority numbers. Many pilots, like Captain Linder, have patiently waited for their chance to pursue their career at AA, an

opportunity that now must be offered to them. Furthermore, Item 3 in Letter PP to the AA-APA working agreement provides:

> Recognizing that this is the first large scale implementation of the flow back provisions of Supplement W, and recognizing that the four parties may have differing interpretations of the correct implementation, this agreement may be modified from time to time based on the outcome of the dispute resolution procedures of Supplement W. In any case, the implementation of Supplement W reflected in this letter, as modified, if necessary, to accommodate such future rulings, fulfills any and all obligations concerning Supplement W arising from the parties' May 1, 2003, New Collective Bargaining Agreement.

Thus, APA and AA fully anticipated that they may have to adjust the AA seniority roster to comply with the judgments issued by arbitrators interpreting and applying the provisions of Letter Three/Supplement W.

This Arbitrator has jurisdiction to award training class seats to AE flow-through pilots holding AA seniority numbers. Section 2, Second, as well as Section 2, Eleventh and Section 3, First, of the Railway Labor Act provides that an Adjustment Board has liberal authority to adjust disputes between "a carrier or carriers, and its or their employees...." 45 U.S.C. § 151, 152. When TWA new hire pilots attend new hire classes, AE pilots have indisputable priority, pursuant to the express language in Section III.D, to go to AA. ALPA never waived its right to seek seats for AE pilots in training classes. Indeed, ALPA could not intentionally relinquish a right until the right matures which did not occur until the Arbitrator issued the ruling in the liability phase of this case. At the time this case was originally litigated, none of the parties knew when (or if) a new hire class may be convened and no party knew that AA would deny AE pilots seats in those classes. ALPA cannot waive an unknown right.

In conclusion, ALPA urges the Arbitrator to adopt its proposed remedy.

B. The Position of American Eagle Airlines, Inc.

AE flow-through pilots have seniority numbers both senior and junior to the 154 TWA new hire pilots that AA has recalled in 2007 and 2008. These 154 pilots must generate AA seniority numbers for AE flow-through pilots on a one-to-one basis in accord with Section III.A. In addition, Section III.D grants AE pilots priority to attend new hire training classes after serving their training freeze. Consequently, before any TWA new hire pilot attends an AA training class, the 388 AE flow-through pilots with AA seniority numbers, who have completed their AE training freezes, are entitled to go to AA training classes.

Section III.A expressly provides that each of the 154 TWA new hire pilots must generate a seniority number for an AE flow-through pilot who has not yet received a seniority number. Mellerski admitted that if AE pilots could attend a class without having to serve a training freeze, half of the class would be populated with flow-through pilots and the other half of the class with new hire pilots. Therefore, Section III.A contains a one to one ratio (154 to 154) for seniority number generation.

While AE does not take a position on what specific numbers shall be afforded to each of the 154 AE flow-through pilots, AE observes that Section III.G entitles the AE pilots to receive the most senior numbers in a new hire class. This seniority assignment provision is consistent with how AE flow-through pilots received AA seniority numbers after they completed CJ IOE between October 1999 and September 2001. The AE pilots only received seniority numbers lower than a trainee who had service in another AA classification. The remaining new hire pilots were given the junior numbers in the training class.

The priority given to AE flow-through pilots in Section III.D cannot be disputed. APA wants to ignore the Arbitrator's ruling that TWA pilots are filling new hire positions. The holding on the liability phase of the case necessarily implicates Section III.D. Therefore, AE flow-through pilots must now be given priority in filling the new hire positions in all upcoming AA new hire classes.

There is not any past practice showing the relationship between Section III.A and Section III.D inasmuch as the 1999-2001 practice was limited to AE pilots who could not immediately attend a new hire class. Beginning in 2007, AA improperly filled new hire positions with TWA new hire pilots, even though AE flow-through pilots were available to come to AA because they had completed their training freezes. As a result, Section III.B is inapplicable since that provision only applies if the AE flow-through pilot is not relegated to a training freeze.

The holding in the recall decision need not be considered in fashioning the remedy herein. In that case, this Arbitrator decided that AE pilots lacked a right of recall under the express provisions of Letter Three/Supplement W, but did not justify the decision on the notion that recalling AE pilots might disrupt AA training or change the AA seniority list. Therefore, nothing in the recall decision supports AA's and APA's position that AE flow-through pilots must wait to attend new hire classes held after all the TWA new hire pilots attend classes.

Also, Section III.D does not contain any limit on the number of AE pilots that can occupy a particular AA training class. Therefore, the 154 AE pilots, who will receive AA numbers, were entitled to be trained at the same time as the 154 recalled TWA new hire pilots.

Neither AE nor ALPA waived their right to seek a remedy giving AE flow-through pilots seats in AA training classes. APA unreasonably claims that AE and ALPA were asking for a remedy without a right, *i.e.*, an abstract seniority number. Obtaining an AA seniority number without concrete benefits would completely undermine the flow-through provisions of Letter Three/Supplement W. It is true that AE did not seek retroactive relief, but that does not bar AE from seeking prospective relief in the form of providing AE pilots with the benefits attached to their AA seniority number. Moreover, APA's waiver claim is paradoxical inasmuch as APA argued, during the liability phase of this case, that sustaining the grievance would give AE pilots one-half of all positions in a merger. If AE had waived its right to claim a training class remedy, APA would not have used the potential remedy to try to defeat the merits of the grievance.

A Board of Adjustment under the Railway Labor Act has mandatory and exclusive jurisdiction over minor disputes. 45 U.S.C. § 151, et seq. The Act does not leave any room for a private resolution scheme, as advanced by APA. Moreover, Section 1.C of Letter Three/ Supplement W expressly provides that Sections III.A and III.D modify pre-existing collective bargaining agreements. This arbitral proceeding, under the auspices of the Railway Labor Act, must resolve the entire dispute because it is the exclusive forum for resolving all aspects of this grievance. *Cf. Gunther v. San Diego and Air Line Eastern Railway*, 352 U.S. 257 (1965); *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994).

Finally, if the Arbitrator does not decide the issue of whether AE flow-through pilots are entitled to immediately go to AA training classes, the parties will be forced, unnecessarily, to expend substantial resources. If the dispute is left unresolved, the

controversy could end up before another arbitrator who does not understand the complexities and consequences of the original May 11, 2007 Opinion and Award.

In sum, AE seeks a remedy encompassing the generation of 154 seniority numbers for AE flow-through pilots and seats in upcoming AA training classes for AE flow-through pilots who currently hold and will acquire AA seniority numbers.

C. The Position of the Allied Pilots Association

AE flow-through pilots must receive one AA seniority number for every two of the 154 TWA new hire pilots who were recalled to AA prior to May 1, 2008. The 154 pilots generate 77 AA seniority numbers for AE flow-through pilots. The 77 seniority numbers, with the flow-through pilots, are added to the bottom of the AA seniority list.

Since the inception of Letter Three/Supplement W, AE flow-through pilots have been awarded seniority numbers at the bottom of the AA seniority list at the rate of one number for every two new hire pilots. As Mellerski declared, a new hire class consisting of 10 pilots triggers an allotment of five slots to AE flow-through pilots. Therefore, a class of 10 new hire pilots generates five seniority numbers for the AE pilots, that is, a two to one ratio. An AE pilot who is called to an AA training class after serving a training freeze does not generate additional seniority numbers. An AE flow-through pilot can only accept one new hire position. Therefore, once the AE pilot accepts the position pursuant to Section III.B, the same pilot cannot accept a separate new hire position under Section III.D. In other words, the AE pilot who comes to AA under Section III.D moves to AA more akin to a recalled pilot than a new hire pilot. Moreover, the parties stipulated that AA did not provide additional seniority numbers for AE flow-through pilots when an

AE pilot came to an AA training class after finishing the AE training freeze during the period from 1999 to 2001.

Section III.G expressly provides that the AE pilots are given the lowest seniority number at AA. There is not any precedent for awarding AE pilots a seniority number anywhere on the seniority list except at the bottom. ALPA unreasonably wants to slingshot 93 AE pilots up the AA seniority list simply because their seniority numbers are presently junior to furloughed TWA LLC pilots. ALPA conveniently ignored these 93 pilots during the liability phase herein. Similarly, ALPA ignored the 700 AA pilots at or near the bottom of the AA list. The parties wanted a transparent operation of seniority in Letter Three/Supplement W to avoid duplicating the experience at another air carrier where pilots sometimes jumped ahead of other pilots when moving from one carrier to another. (*Bloch* decision) ALPA's proposed remedy would allow many AE pilots to catapult past existing AA pilots who, for many years, have understood where they rank on the seniority roster. In other words, all pilots on the AA roster became vested with their relative position on the AA seniority roster. ALPA's proposed remedy undermines the transparency concept and could result in unwanted and unfortunate consequences. Put simply, ALPA has not cited any reliable precedent for moving pilots into seniority slots already occupied by other AA pilots. Nothing in the language, the bargaining history, or the past practice under Letter Three/Supplement W supports ALPA's absurd request to engage in a wholesale rearrangement of the AA seniority list. Item 3 of Letter PP only refers to a possible future modification of Letter PP. It does not reference the APA-AA Working Agreement or Supplement CC. To reiterate, placing AE flow-through pilots in the middle of the AA seniority list would likely create a great deal of conflict

and angst among pilots. Finally, Section 13.C of the APA-AA Working Agreement provides that a pilot's relative position on the AA seniority list cannot be changed for any reason.

ALPA voluntarily relinquished any right to seek a remedy beyond granting AE flow-through pilots 77 additional seniority numbers.

When it filed the grievance and argued its case, ALPA deliberately omitted any claim concerning when AE pilots should come to AA for training. ALPA made a tactical decision. ALPA fully realized that if it had aggressively claimed seats in training classes for AE flow-through pilots, the resulting disruptions would weigh heavily against granting its grievance. Now, after receiving a favorable decision in the liability phase, ALPA belatedly wants to inject a new claim into the remedy phase which would impermissibly delay the recall of furloughed TWA pilots. Thus, the Arbitrator lacks jurisdiction to determine when AE flow-through pilots should attend AA training classes. *Continental Airlines, Inc. v. International Brotherhood of Teamsters,* 391 F.3d 613 (5th Cir. 2004), *187 Concourse Assocs. v. Fishman*, 399 F.3d 524 (2d Cir. 2005). Moreover, in the recall decision, this Arbitrator unequivocally ruled that being awarded a seniority number, and filling a training slot, are distinct occurrences under Letter Three/Supplement W.

Section III.B of Letter Three/Supplement W controls the issuance of seniority numbers, but does not give AE pilots any immediate right to attend an AA training class. Sections III.A and III.B only guarantee a right for AE pilots to eventually come to AA. The plain language of Sections III.A and III.B segregates the offer of a new hire position from occupying the position. Permitting AE pilots to attend AA training classes prior to

completion of the recall, down the entire AA seniority list, would be directly contrary to the recall decision. Stated differently, allowing AE pilots to attend AA classes in the midst of the recall would nullify the recall decision that found that AE pilots, who held AA seniority numbers, have no right of recall under Letter Three/Supplement W.

ALPA proposes a convoluted, confusing, and contradictory remedy which is predicated on erroneous facts and fallacious assumptions. ALPA wrongly asserts that TWA LLC pilots were integrated into the AA seniority roster with the motive of denigrating the flow-through rights of AE pilots. Rather, at the time of the acquisition, all parties anticipated that AA would provide full employment for all TWA pilots. AA and APA did not act arbitrarily by excluding ALPA from negotiations over Supplement CC, since ALPA only represented pilots on the AA list who were placeholders in terms of possessing AA seniority. The pilots were still at AE. Moreover, none of the TWA pilots were stapled to the bottom of the list. None were immediately furloughed when AA acquired TWA. While the economic downturn forced AA to shrink before the TWA transition was completed, there were and are AA pilots junior to all the former TWA pilots.

Since the equities favor the TWA pilots, the Arbitrator should reject ALPA's proposed remedy which compels the TWA pilots to suffer substantially more inequities. During the long economic downturn, many TWA pilots were furloughed to the street, while the AE pilots reaped great rewards (continued employment) by flying commuter jets. Moreover, many of these TWA pilots could not avail themselves of the furlough protection provided by Letter Three/Supplement W because they were ineligible to flow down to AE.

In conclusion, the APA proposes that the remedy be the generation of 77 AA seniority numbers for AE flow-through pilots and those 77 pilots be added to the bottom of the AA seniority roster.

D. The Position of American Airlines, Inc.

AA's primary objectives are to avoid both operational disruptions and turmoil on the AA seniority list.

The *Bloch* decision held that 388 AE pilots, who have received seniority numbers, remain eligible to flow-up to AA, while 438 AE flow-through pilots, without AE seniority numbers, are no longer eligible to flow-up to AA. The *Bloch* decision did not address the fate of two other groups affected by the expiration of Letter Three/Supplement W: pilots who already flowed through from AE and furloughed AA pilots who flowed down to AE. The remedy herein must be commensurate with the *Bloch* decision.

AA does not take a firm position on how many AA seniority numbers should be generated for AE flow-through pilots, albeit the number must comply with the ratio specified in Letter Three/Supplement W.

Regardless of the number of seniority numbers generated, the AE flow-through pilots must be assigned AA seniority numbers that are below the most junior pilot on the AA seniority list. There is not any precedent for assigning a new seniority number to a pilot except at the bottom of the AA seniority list. Dovetailing seniority only occurs in a merger. It would be nonsensical to provide seniority numbers to AE flow-through pilots that would shoot them up the AA seniority list ahead of hundreds of AA pilots and even many AE pilots who have already received AA seniority numbers.

ALPA proposes a confusing and complicated remedy that ignores the fact that the TWA, LLC pilots were integrated into the AA seniority roster as a result of a merger. They were not placed at the bottom of the seniority roster like new hires. The AE pilots are new hires and so, they must take seniority numbers junior to any existing AA seniority number.

AE flow-through pilots cannot be placed in the next AA training class without overruling the recall decision. Allowing AE pilots to come to a current AA training class would be tantamount to providing them with the right of recall. In accord with the recall decision, AA must exhaust the recall list before placing AE flow-through pilots in an AA training class. Pursuant to Section III.D of Letter Three/Supplement W, AA is not filling a new hire position until the recall is finished. The ruling in the May 11, 2007 Award only held that TWA LLC new hire pilots are equivalent to new hires solely for the purpose of generating AA seniority numbers. AE pilots may only come to an AA training class after AA recalls all pilots furloughed from both AA and TWA LLC.

Thus, the Arbitrator should reject ALPA's proposed remedy.

IV. DISCUSSION

A. Subset of Issues.

The broad remedial issue can be segmented into several specific issues that must be consecutively addressed to determine the appropriate remedy flowing from the adjudication of the issue on the merits. The specific issues are:

(1) What is the exact quantum of AA seniority numbers that come into existence as a result of AA recalling and training the 154 TWA new hire pilots?

(2) What seniority numbers are provided to AE flow-through pilots who acquire AA seniority numbers pursuant to Issue (1)?

(3) What shall be the effective date of the seniority numbers acquired and assigned to AE flow-through pilots pursuant to Issues (1) and (2)?

(4) Does the Arbitrator have jurisdiction to adjust or rearrange the AA seniority roster as consequence of or to implement the answer to Issue (2) above?

(5) Does the Arbitrator have the jurisdiction to decide whether AE flow-through pilots were entitled to attend AA training classes ahead of TWA new hire pilots and/or whether AE flow-through pilots have a priority to attend upcoming AA training classes?

(6) If the answer to Issue (4) is "yes", does the generation of additional seniority numbers for AE flow-through pilots necessitate an adjustment in AA relative seniority for any AE flow-through pilot who acquired an AA seniority number prior to the application of the remedy herein?

(7) If the answer to Issue (5) is 'yes', did ALPA and AE waive the right to request a remedy that includes awarding AE flow-through pilots seats in AA training classes?

(8) If the answer to Issue (5) is 'yes', and the answer to Issue (7) is 'no', when are AE flow-through pilots, who possess an AA seniority number, entitled to attend AA training classes?

(9) If the answer to Issue (5) is 'yes' and Issue (7) is 'no', does the attendance of AE flow-through pilots in AA training classes generate additional AA seniority numbers for other AE pilots who have completed CJ IOE and opted for flow-through status?

B. Issue No. 1.

The first issue is how many AA seniority numbers are generated for AE flow-through pilots, who currently do not possess a seniority number, predicated on the four parties' concurrence that there are 154 TWA new hire pilots as described by the May 11, 2007 Award.

Seniority number generation is controlled by Section III.A of Letter Three/Supplement W.[10] When AA needs to hire pilots, it establishes a new hire training class. Section III.A clearly provides that a minimum of one out of every two positions in the class "will be offered" to CJ Captains who have elected flow-through status. Put simply, if AA establishes two new hire positions, a minimum of one of those positions must be offered to an AE flow-through pilot.

Next, the Section III.A ratio must be hypothetically applied to the 154 TWA new hire pilots. The best way to emulate what should have occurred is to suppose that AA needed 154 pilots and thus, convenes a training class with 154 positions. Because of the Section III.A ratio, the 154 positions cannot be offered, at least not initially, to the 154 TWA new hire pilots. Instead, one-half, or 77, of the new hire positions must be offered to AE flow-through pilots. Absent a training freeze, the 77 AE flow-through pilots acquire AA occupational seniority numbers, per Sections III.C and III.G, and attend the training class with 77 TWA new hire pilots. After this class completes training, there remains 77 TWA new hire pilots who are untrained. To bring them into active employment, AA would have to convene a training class with double the number of new hire positions (another class of 154 trainees) to satisfy the 1 out of 2 ratio mandate of Section III.A. If AA convenes a second training class of 154 new hire positions, 77 will be offered to AE flow-through pilots who will acquire AA seniority numbers. Now, the supply of former TWA new hire pilots has been exhausted. It is easy to calculate that the 154 TWA new hire pilots generated 154 AA seniority numbers for AE flow-through pilots. Since it takes 308 new hire AA positions to guarantee the "hiring" of the 154

[10] Section III.G is the technical provision that actually grants the AE flow-through pilot an AA occupational seniority date and number.

TWA new hire pilots, the same number of AE flow-through pilots will acquire AA seniority numbers.

The AE training freeze is inapplicable to this simulation because all of the AE pilots who may be awarded AA seniority numbers have long ago completed any AE training lock-in. They are immediately available, in a hypothetical sense, to occupy an AA new hire position in a new hire class. As a result, Section III.D is irrelevant to generating seniority numbers for AE pilots until or unless AE pilots, who already hold AA seniority numbers, come to an AA training class, pursuant to the priority expressed in Section III.D. The possible generation of additional AA seniority numbers by the operation of Section III.D is Issue No. 9.

Therefore, the 154 TWA new hire pilots generate 154 AA seniority numbers for AE flow-through pilots. These AA seniority numbers shall go to the 154 most senior AE flow-through pilots who do not currently possess an AA seniority number in accord with the second sentence of Section III.G of Letter Three/Supplement W.

C. Issue No. 2.

The second issue is what are the actual seniority numbers that are granted to the 154 AE flow-through pilots obtaining AA seniority numbers? ALPA argues that the seniority numbers must be senior to the 154 TWA new hire pilots because AE pilots are given the higher numbers in each training class, *i.e.*, greater seniority than conventional new hire pilots.

The placement of AE pilots on the AA seniority roster is governed by Section III.G. The applicable language specifies that AE flow-through pilots receive the "lowest" seniority numbers at AA. Without a doubt, the lowest seniority number is at the bottom

of the AA seniority list. Thus, Section III.G expressly requires that the 154 AE pilots, who are acquiring AA seniority, obtain numbers below the number 11927, which was, as of April 2008, the last number on the roster.

Nevertheless, an ambiguity arises with respect to the literal application of Section III.G because the TWA new hire pilots were already afforded AA seniority numbers as a result of the seniority integration set forth in Supplement CC. In a perfect application of Section III.G, the TWA new hire pilots would have the seniority number in each training class lower than the new seniority numbers granted to the AE flow-through pilots. If ALPA's requested remedy is appropriate, then either the 154 TWA new hire pilots must move below the 154 AE pilots acquiring seniority numbers or the 154 AE pilots must be inserted onto the seniority list one number in front of each TWA new hire pilot counterpart. Both these outcomes are inappropriate because they are contrary to a past practice and could denigrate the seniority ranking of many AE pilots who already acquired AA seniority numbers. Consequently, when a TWA new hire pilot is recalled, the pilot is treated as a new hire for purposes of a Section III.A offer of a position to generate a seniority number, but the recall, itself, does not affect the relative standing of the former TWA pilot's seniority. The past practice prior to 2001 amply demonstrates that all AE flow-through pilots were placed at the bottom of the AA seniority list. ALPA has not cited any precedent which provides a compelling justification for deviating from this past practice. Next, granting the AE flow-through pilot seniority numbers above the 154 TWA new hire pilots would vest them with seniority greater than some current AE flow-through pilots who have AA numbers. Such a result would not only directly contravene the last sentence of Section III.G, but also inequitably dilute the value of AA

seniority held by AE pilots, who already hold AA seniority numbers. They would be out of seniority order in violation of the second sentence of Section III.G. ALPA proposes adjusting the seniority of these other AE pilots, which is Issue No. 6, but there is nothing in Section III.G that even hints that pilots, upon receiving an AA seniority number, are placed on the AA roster above AE pilots who earlier acquired AA seniority numbers.

Therefore, the 154 seniority numbers shall be the next 154 numbers after the most junior pilot on the AA seniority list unless the answer to Issue No. 6 mandates an adjustment in the AA seniority list.

D. Issue No. 3.

Because the contract violation occurred while Letter Three/Supplement W was still in effect, the 154 AE pilots shall acquire their AA seniority numbers retroactive to April 30, 2008 so that they are eligible to flow-up to AA as determined by the *Bloch* decision.

E. Issue Nos. 4 and 5.

In the May 11, 2007 Opinion and Award, the Arbitrator encouraged the parties "to formulate remedial strategies that are beyond this Arbitrator's jurisdiction and authority." The parties are free, of course, to consider matters disparate from this controversy to reach a resolution on the remedy. The Arbitrator's encouragement constituted notice to the parties that, within the context of this case, the Arbitrator's jurisdiction over potential remedies was narrow. The Opinion also predicted that any remedy may be "conditional" which anticipated the possible cessation of Letter Three/Supplement W. The *Bloch* decision, while not ruling on all aspects of the termination of Letter Three/Supplement W, dispensed with the need for any conditional

remedy on identifying which pilots fall within the ambit of the May 11, 2007 Award since the *Bloch* decision permitted the parties to concur on the number (154) of TWA new hire pilots.

The question becomes whether any appropriate remedy can include a readjustment of the AA seniority roster and/or an order placing AE flow-through pilots, with AA seniority numbers, into AA training classes ahead of or instead of any former TWA pilot.

At the start of the June 28, 2006 hearing on the liability phase, the parties stipulated to this issue. "...whether former TWA pilots placed on the AA Seniority List filled or may fill 'new hire positions' in 'new hire classes' within the meaning of Letter 3, Roman numeral III.A. If so, what is the appropriate AA seniority number remedy for AE CJ Captains covered by Letter 3, Roman III." [TR 9] The issue tracked the grievance wherein ALPA sought, on behalf of CJ Captains, "... wrongfully denied positions" on the AA seniority list. Nothing in the stipulated issue or the grievance even remotely suggests that the remedy encompasses reordering the AA seniority list or moving the CJ Captain to immediate AA employment. One of the primary purposes of stipulating to the issue is to establish the boundary lines of the Arbitrator's authority. The agreed-upon question at issue submitted by the parties limits the Arbitrator's authority. *See, 187 Concourse Associates v. Fishman, Id.*

In addition, in the Award and Order, the second stipulated issue was expressly remanded to the parties. Item 2 of the Award and Order states: "...what is the appropriate seniority number remedy for AE CJ (Commuter Jet) Captains covered by Letter 3/Supplement W, Section III? The Arbitrator remands this case to ALPA, AE,

APA and AA to formulate an appropriate remedy in accord with the second issue herein." This remand unequivocally restricted the remedy to "the appropriate seniority number."

To now consider remedies beyond the generation of seniority numbers would upset stable labor management relations at AA and AE. The evidence and arguments raised during the contract liability phase were all submitted on the understanding that the remedy was solely relegated to seniority number generation. It would set a dangerous precedent for this Arbitrator to now disregard the stipulated issue. The parties could never be sure, when they stipulated to the issue in future cases, whether the Arbitrator would obey the parties limitations on his authority.

In addition, going beyond the stipulated parameters of a remedy undermines due process. The parties presented evidence and argument knowing the issues under consideration. This Arbitrator made evidentiary rulings and issued a judgment predicated solely on the stipulated issues. The parties have hardly had any meaningful opportunity to present evidence on seniority list readjustment or the proper application of Section III.D with respect to placing AE pilots in new hire classes. Due Process dictates that the remedy herein be restricted to the generation of seniority numbers.

The Arbitrator is mindful that leaving issues such as whether any flow-through pilots are entitled to seats in AA training classes, either prior to May 1, 2008 or subsequent to May 1, 2008, undecided could allow a dispute to fester, causing harm to airline operations and pilots. Nevertheless, the Arbitrator is bound to comply with the limitations on his authority.

The Arbitrator's remarks herein should not be construed to express any opinion on whether ALPA and/or AE waived any right to seek the additional relief it requested

herein in any subsequent case. More specifically, the issue of whether ALPA and/or AE waived any additional remedy is not before this Arbitrator. Therefore, the Arbitrator cannot decide if the contents of ALPA's and AE's opening statements and briefs constitute waivers.

In sum, the Arbitrator lacks jurisdiction to decide Issue Nos. 6, 7, 8, and 9.

AWARD AND ORDER

The Arbitrator renders the following Findings and Orders.

1. The 154 TWA new hire pilots generate 154 AA seniority numbers for 154 AE flow-through pilots.

2. AA and APA shall grant the 154 AA seniority numbers to 154 AE flow-through pilots, in seniority order.

3. The 154 AA seniority numbers generated herein shall be at the bottom of the AA seniority list.

4. The 154 AA seniority numbers granted to the 154 AE flow-through pilots shall be effective April 30, 2008.

5. For the reasons explained herein, the Arbitrator lacks jurisdiction to decide Issue Nos. (6), (7), (8), and (9) which are set forth at the beginning of the Discussion section herein.

6. APA and AA shall comply with Items (2), (3), and (4) of this Award and Order within thirty (30) days of the date stated below.

7. The Arbitrator retains jurisdiction over this case to resolve any dispute concerning the application of the specified remedy; provided however, this retention of jurisdiction shall expire in one (1) year unless the four parties agree to extend the retention of jurisdiction.

Dated: October 20, 2008

John B. LaRocco
Arbitrator

EXHIBIT C

In the Matter of the Arbitration Between Allied Pilots Association - and - Air Line Pilots Association and American Airlines, Inc. and American Eagle Airlines, Inc. Supplement W/Letter 3, Grv. FLO-0108	**OPINION AND AWARD**

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In 1997, American Airlines, American Eagle, and their respective pilot unions, the Allied Pilots Association (APA) and the Air Line Pilots Association (ALPA), signed a four-party Agreement known as Supplement W or Letter 3, designed to control the movement of pilots between American and Eagle. That Flow-Through Agreement (JX1), which has been the focus of a host of disputes and arbitrations since its inception, expired on May 1, 2008. However, questions, such as the one at issue here, remain.

That Issue is:

> Were American Eagle pilots who hold American Airline seniority numbers entitled to attend AA training classes beginning in June 2007?

If the answer is "yes," the question of remedy is to be returned to the Parties for determination, with the arbitrator retaining jurisdiction in the event a resolution is not reached.

The Grievance (JX1) was filed by ALPA on March 29, 2008. At that time, Arbitrator John LaRocco had already determined in FLO-0903 (ALPA Ex. 3) that former TWA pilots who had not attained a position at American Airlines as a result of the AA/TWA merger, but had been furloughed without serving AA in any capacity, were "equivalent to new hires." However, he had yet to decide the "seniority number remedy" for Eagle CJ Captains covered by Paragraph III of Letter 3. As a consequence, ALPA, which had already raised the issue of "new hire class slots" for Eagle Captains in FLO-0903's remedy phase, stated that the present grievance was to move forward only if Arbitrator LaRocco ultimately refused to answer that question.

In his October 28, 2008 remedy Award in FLO-0903 (ALPA Ex. 4), Arbitrator LaRocco took note of the fact that the Parties had agreed that TWA "new hire" pilots (sometimes referred to herein as "TWA LLC pilots") had begun to be recalled to American as of the June 6, 2007 training class and that as of the April 24, 2008 hearing date 154 had attended AA training. However, he refused to answer the "new hire class slots" question, saying he had no jurisdiction to do so because the sole,

previously agreed upon remedy question in FLO-0903, following a decision as to whether TWA pilots were "equivalent to new hires," was the "appropriate seniority number remedy for AE CJ Captains covered by Letter 3, Roman III," which he then determined to be 154 new AA numbers. In refusing to answer the class slot question posed by ALPA, he also said:

> The Arbitrator's remarks herein should not be construed to express any opinion on whether ALPA and/or AE waived any right to seek the additional relief it requested herein in any subsequent case.
>
> (ALPA Ex.4, pp.31-32)

Following Arbitrator LaRocco's determination that he lacked jurisdiction, this grievance was moved forward.

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Between June 6, 2007 and March 18, 2009, there had been 20 training classes at AA. There were no Eagle Captains with AA seniority numbers in those classes. There were, however, 244 TWA "new hire" pilots (ALPA Ex. 7), all of whom had been "recalled" from furlough along with AA pilots who had previously been furloughed from active AA positions.

For reasons set forth below, ALPA and Eagle contend that Eagle CJ Captains with AA seniority numbers, rather than TWA "new hire" pilots, were entitled to those training slots. In response, APA contends that ALPA's claim is barred by three separate but inter-related doctrines;

claim preclusion, election of remedies and waiver. If this is found not to be the case, APA and AA contend that ALPA and Eagle cannot prevail on the merits because the classes in question were not "new hire" classes, but "recall" classes; that all pilots who attended those classes, including the TWA LLC pilots, were properly recalled from furlough in accordance with the applicable AA/APA Contract; that there have been no "new hire" classes since 9/11 and cannot be until all furloughed AA pilots are offered recall, after which new hire classes that Eagle Captains are permitted to attend can commence.

I held a hearing on this question on June 1, 2009, at which time all Parties were afforded full opportunity to offer evidence and argument and to present, examine and cross-examine witnesses. Eagle and AA did not call anyone to testify. ALPA's witnesses were Senior Contract Administrator John Schleder and Captains Vincent Basset, Hugh Gallerneau, Jr. and Gregory Cordes; the witness for APA was Captain Arthur "Rusty" McDaniels, the Union's Membership Furlough Chairman. Following the testimony, counsel filed post-hearing briefs and reply memoranda, with the Record closed on August 18, 2009, the day of their receipt.

The Background

The starting point is SuppW/Letter 3, the May 5, 1997 four-way Agreement designed to control the movement of pilots between American and Eagle. Its stated purpose was to permit AA pilots who might be subject to furlough to flow down to Eagle as CJ Captains when positions

were available and to permit Eagle CJ Captains to move up, under certain conditions, to the main airline, AA.

For our purposes, the pertinent provisions read:

SUPPLEMENT W/LETTER 3

1. Preamble

A. This Supplemental Agreement governs American Airlines, Inc. ("AA") employment opportunities for a pilot employed at any commuter carrier (or its successor) which is majority owned by AMR Eagle, Inc....

B. This Supplemental Agreement also governs employment opportunities at AMR Eagle, Inc. for furloughed AA pilots.

C. This Supplemental Agreement supplements and makes certain exceptions to the Basic Agreements between the parties. The provisions of the Basic Agreements will continue to apply, except as modified herein and, in the event of a conflict, the provisions herein shall apply.

III. Employment Opportunities at AA for AMR Eagle Pilots

A. At least one (1) out of every two (2) new hire positions per new hire class at AA will be offered to CJ Captains who are line pilots and who have completed their IOE at AMR Eagle, Inc. Such positions will be offered to the CJ Captains who are line pilots in order of their AMR Eagle, Inc. seniority.

B. If a CJ Captain is unable to fill a new hire position at AA in accordance with Paragraph III.A. above due to a training freeze or other operational constraint,...such CJ Captain will be placed on the AA Pilots Seniority List and will count toward the number of new hire positions. The pilot's occupational seniority date and number will be established as if he were able to fill such new hire position at AA and had attended the new hire class referenced in Paragraph III.A. above...

D. If a CJ Captain is placed on the AA Pilots Seniority List per III.B. above, such CJ Captain will receive priority based on his AA seniority in filling a new hire position in the new hire class, following release from a training freeze or other AMR Eagle,

Inc. imposed operational constraint. Such CJ Captains will not count toward the number of new hire positions offered to CJ Captains at AMR Eagle, Inc., under Paragraph III.A. above.

E. Each of the first 125 AMR Eagle, Inc. pilots who successfully complete transition training as a CJ Captain must fulfill a training freeze for a period of eighteen (18) months from the date said pilot completes IOE. All other pilots who successfully complete transition training as CJ Captains must fulfill a training freeze for a period of two (2) years from the date each pilot completes IOE, unless released from such training freeze by AMR Eagle, Inc.

G. A CJ Captain who is awarded a new hire position at AA will be issued the lowest seniority number at AA in the applicable new hire class, subject to AA's policy concerning the assignment of seniority numbers to new hire pilots who have previous service in other classifications. AMR Eagle, Inc. pilots will receive their AA seniority number in order of their seniority at AMR Eagle, Inc.

Also pertinent, according to APA and AA, are Section 13 of the AA/APA Basic Agreement and Supplement CC to that Agreement. Section 13 provides that seniority "shall govern all pilots in case of promotion, demotion, their retention in case of reduction in force, their recall from furlough..." Supplement CC provides that recalls from furlough are to be administered in system seniority order, "in accordance with the Green Book [the AA/APA Basic Agreement] as modified by the Transition Agreement and Supplement CC...."

As stated, SuppW/Letter 3 was signed May 5, 1997. In previous cases, other arbitrators, specifically Arbitrator Bloch in FLO-0203 and Arbitrator Kasher in FLO-0201, described the "difficult circumstances" and "relative haste"" in which that Agreement was reached, with "little

direct communication" or meetings between all the Parties. In this case, there was some dispute as to whether furloughs were directly discussed or delved into in any detail during those negotiations. It is beyond dispute, however, that, even if touched upon, furloughs were not a focal point, the assumption being before 9/11 that the airlines would grow and furloughs would not be anticipated. Similarly, there was no exchange regarding mergers or acquisitions.

Between May 5, 1997 and the fall of 2001, some 124 Eagle CJ Captains flowed up to AA, a number that would have been larger except for the Paragraph III.D. training freezes. In early 2001, AA agreed to purchase the assets of TWA, a carrier then in bankruptcy. TWA-LLC was subsequently created to operate that airline as a subsidiary of AA. In April 2001, AA completed the asset purchase and in July of that year, AA and APA entered into a Transition Agreement providing for an integrated seniority list. In February 2002, some 1000 former TWA pilots were integrated into the AA pilot list on a 1 to 8 ratio. The remainder, some 1225, were stapled to the bottom of the list. Those pilots, plus some others, were furloughed directly from TWA-LLC and did not perform any active service for AA; neither did they receive any AA training.

Though Eagle Captains were flowing up to AA during the early stages of the TWA acquisition, this ended with 9/11/01, and in October of that year massive furloughs began, not stopping until April 2005. In November 2003, after some former TWA pilots began flowing down to AE,

ALPA filed a grievance under Supp W/Letter 3' asserting that all former TWA pilots were new hires, and, as such, triggered the operation of Paragraph III.A. On June 28, 2006, the first hearing of that proceeding (FLO-0903) before Arbitrator LaRocco, the Parties stipulated that there were two issues; the first was whether "former TWA pilots placed on the AA seniority list filled or may fill new hire positions in new hire classes within the meaning of Section III.A. of Letter 3/Supplement W." The second, if the first was answered affirmatively, was "what is the appropriate seniority number remedy for AE CJ (Commuter Jet) Captains covered by Letter 3/Supplement W Section III." At the time of this stipulation no TWA pilot subsequently as a New Hire pilot had attended an AA training class; in fact, that did not occur until June 6, 2007, a month after Arbitrator LaRocco's May, 2007 decision in FLO-0903.

In that 2007 decision, Arbitrator LaRocco decided to differentiate between TWA pilots who had entered active service with AA and those who had been furloughed directly from TWA-LLC; finding that those who had "assumed active employment at AA and occupied positions coincident with the acquisition were not new hire pilots" within the meaning of Supp W/Letter 3, but that the others—those who had not assumed such positions coincident with the merger—were "equivalent to new hires because positions are no longer established or filled due to the acquisition" and, as a consequence, Section III.A. applies should positions be established or become vacant due to other causes (FLO-

0903, p.45.) In finding that former TWA pilots who were never trained or had occupied a position at AA did "not bar the operation of Section III.A." as AA positions become available in the future, Arbitrator LaRocco said that holding otherwise would permit two of the four parties, who agreed to append thousands of individuals to the bottom of the AA list, to "effectively nullify the [Supp W/Letter 3] flow through provisions." (FLO-0903, pp. 45-46).

At the time this May 11, 2007, Award was issued, Arbitrator LaRocco, consistent with the wishes of the Parties, remanded the stipulated remedy issue to them for a possible resolution, retaining jurisdiction in the event agreement could not be reached.

The matter was returned to Arbitrator LaRocco in April 2008. Prior to that hearing, Arbitrator LaRocco had issued an Award in FLO-0106, a decision that, in AA's view, along with an Award by Arbitrator Bloch in FLO-0203, controls the outcome of this case. In FLO-0106, the question was whether AA's order of recall, which excluded some Eagle pilots who held AA numbers, but who were still flying at Eagle—many senior to those recalled—violated Supp W/Letter 3. In March 13, 2008, Arbitrator LaRocco found that it did not, holding that Supp W/Letter 3 did "not contain a right of recall to AE flow-through pilots who hold AA seniority numbers but were not furloughed from AA." He was careful to point out, however, that nothing in his answer to the question posed "shall be construed to overrule or modify [his May 11, 2007] ruling in FLO-0903"

00and that nothing in his answer was to be "construed to endorse or exclude any potential remedy in FLO-0903." In reaching the conclusion that Supp W/Letter 3 did not contain any "right of recall to AA for AE flow-through pilots who held an AA occupational seniority number and date, but never trained or flew at AA," Arbitrator LaRocco emphasized that his holding was "narrow"" and was not meant to express any opinion on how the ruling in FLO-0903 "may or may not operate to trigger the 'priority' in Section III.D. or the applicability of Section III.A."

Inasmuch as TWA New Hire pilots had begun entering AA training classes as of June 6, 2007, something that had not occurred before Arbitrator LaRocco's May 11, 2007 liability ruling in FLO-0903, ALPA raised the class seat question during the 2008 remedy phase of that proceeding, but, as previously stated, Arbitrator LaRocco ruled that it was not within his jurisdiction.

Two other awards are of moment. The first, cited by AA, is Arbitrator Bloch's June 6, 2004 Award in FLO-0203, where he ruled in a flow-down case that former TWA pilots "fully qualify as furloughed AA pilots." The second, cited by ALPA and Eagle, is Arbitrator Bloch's June 30, 2008 Award in FLO-0107, where he ruled that the SuppW/Letter 3 rights held by those Eagle Captains with AA numbers as of the May 1, 2008 expiration of the four-way Agreement vested, and accordingly survived its termination.

The Contentions In Brief

As previously stated, APA contends that the question posed by this grievance, whether AE pilots holding AA numbers were entitled to attend AA training classes as of June 2007, cannot even be reached. APA's assertion that the grievance is barred by claim preclusion, waiver and/or election of remedies is based on events arising during proceedings before Arbitrator LaRocco. APA claims that the grievance is barred, first, by Arbitrator LaRocco's final and binding award; second, because ALPA is seeking a remedy it knowingly and intentionally waived in that proceeding, and third, because the Eagle pilots already obtained a seniority number remedy for former TWA-LLC pilots attending training classes and cannot now claim another remedy, one assertedly inconsistent with the first.

The response, put most succinctly by AE, is that the violation at issue occurred after FLO-0903 was decided "when in June 2007 AA chose to give seats in its training classes to TWA New Hires instead of Eagle flow-through pilots." Claim preclusion, according to AE, can only apply when the claim arises out of the same injury. Here, the injury did not occur until after the FL0-0903 award was issued. The same is true with regard to the election of remedies inasmuch as a double recovery occurs only if it relates to the same injury and here, as previously stated, the injury occurred following the FLO-O903 award. As to waiver, AE and ALPA argue that for it to apply the event giving rise to the purported

waiver must have actually occurred. There were no training classes for TWA New Hire pilots when the grievance in FLO-0903 was filed in 2003 or when the issues in that case were stipulated in June 2006. In fact, no former TWA pilots were even designated as New Hires until the May 2007 award and none of those so-designated began attending classes until a month later.

As to the merits, ALPA contends that no new reasoning is needed; that the answer to the question posed is dictated by a straightforward application of Arbitrator LaRocco's Award in FLO-0903 and adherence to Arbitrator Bloch's Award in FLO-0107, in which he said that the rights granted Eagle Captains by virtue of Article III survived. Pursuant to SuppW/Letter 3, Eagle Captains who declined Eagle Rights status, but had completed their IOE, were entitled, initially, to at least one out of every two new hire positions per new hire class. A pilot required to undergo a training freeze, as all were, was given an AA number and placed on the AA Seniority List, then given priority to a new hire position at the freeze's expiration, but, having originally been counted as a new hire, was not counted again. This priority status, according to ALPA, entitles such Eagle pilots to take not just 50% of new hire positions, but 100% ahead of any new hires, including TWA new hires, if their number equals or exceeds the number of new hire positions. What has occurred, however, is that all of those seats have been taken by TWA new hires, which is a direct violation of the process required by Section III. There

can be no question, in other words, that Eagle pilots with AA numbers who had fulfilled all Section III requirements should have been permitted to attend AA training classes beginning in June 2007.

AA disagrees. It contends that the dispute is not governed by FLO-0903 and FLO-0107. Rather, the answer lies with Arbitrator Bloch's June 6, 2004 award in FLO-0203 and Arbitrator LaRocco's March 18, 2008 award in FLO-0106. The premise of the argument is that the June 2007 training class in which TWA New Hires participated was not a "new hire" class, but a "recall" class held pursuant to the recall provisions of the AA/APA contract. Since, according to AA, this must be so, the real question is whether the AE pilots with AA seniority numbers were entitled to be recalled to AA. That question, however, has already been answered and the answer is they were not. In FLO-0203, Arbitrator Bloch held that TWA pilots "fully qualify as furloughed AA pilots." As furloughed AA pilots, those pilots, though characterized by Arbitrator LaRocco as "equivalent to new hires" for the generation of seniority numbers, were nevertheless entitled to recall, which is what occurred beginning June 2007. However, as Arbitrator LaRocco held in FLO-0106, "[n]othing in Section III.D. (a provision upon which ALPA relies here) even hints that an AE flow-through pilot can come to AA, for the first time, via recall." Thus, there can be no question that AE pilots were not entitled to be recall in order to attend those classes.

ALPA's response is that AA ignores the context and consequently

mischaracterizes the holding of the two cases on which it relies. FLO-0203 dealt exclusively with the furlough protection of former TWA pilots seeking to flow down to AE by virtue of Paragraph IV of SuppW/Letter 3, while the present case deals with something quite different; employment opportunities of AE Captains seeking to flow up to AA via Paragraph III and Arbitrator LaRocco's finding that certain TWA pilots who never flew for or trained at AA were "equivalent to new hires" for the purpose of that Paragraph. Similarly, ALPA says, FLO-0106 has nothing to do with the present case. In that proceeding, ALPA sought recall rights for AE pilots who had yet to flow to AA, but who also held more senior AA numbers to the AA pilots being recalled. In the present case, ALPA asserts, it is not seeking a right of recall; all it asks is that it be permitted to fill new hire positions in new hire classes in accordance with Paragraphs III.A and D.

APA, along with AA, argues, as previously stated, that the TWA pilots at issue are being recalled and pursuant to earlier rulings, AE Captains have no place in those classes. While Arbitrator LaRocco characterized some TWA pilots as "equivalent to new hires," this was for a limited, now fully accomplished purpose, and the fact is that these former TWA pilots are not "new hires"; they were all hired by AA at the time of the acquisition and, as such, have the same recall rights as any other AA pilot on furlough. Since these pilots are not, in fact, "new hires," the classes they attend are not "new hire classes." The result, as ALPA must face, is that their priority under Paragraph III.D. is with respect to

those pilots AA may at some point decide to hire "off-the-street'; until those hirings take place Eagle pilots will just have to wait their turn.

APA also argues that Arbitrator LaRocco's decision in FLO-0903 extended the meaning of "new hire" beyond its plain meaning and that such a meaning "should not be similarly extended to other provisions of Supp. W. unless that was clearly the intent of the parties." Whatever Arbitrator LaRocco did with respect to III.A., Section III.D., the "priority" provision which ALPA seeks to invoke, has a different purpose and a different, shorter reach. That provision gives Eagle pilots "priority of hiring." But the TWA pilots at issue here are not being hired; they were hired by AA years ago and are being recalled. Since Eagle pilots have no "priority of recall" to AA or, as Arbitrator LaRocco held in FLO-0106, not even any "right of recall" to that airline, Section III cannot be read so as to deprive former TWA pilots of their "valuable contractual right of recall under the Basic [AA/APA] Agreement."

ALPA and AE respond that "new hire positions" and "new hire class" do not have different meanings in Paragraphs III.A. and III.D. According to AE, the sub-parts of Paragraph III are "intricately intertwined and must be read together to understand how the process for employment opportunities at AA for Eagle pilots worked."

Discussion and Analysis

The Procedural Issues

Whether ALPA's claims are barred by FLO-0903, as APA contends, requires a closer look at that decision, including the context in which that grievance arose and what was at issue as a result of that setting. When the grievance designated as FLO-0903 was initiated in 2003, there were no training classes. Indeed, furloughs were still taking place. As Arbitrator LaRocco noted, it was those furloughs during which former TWA pilots were flowing down to Eagle CJ Captain positions that spurred the grievance in which ALPA was seeking to have all former TWA pilots designated as "new hires" (FLO-0903 Award, p.17). In so alleging, ALPA did not place before Arbitrator LaRocco a purported injury with respect to training classes. When the grievance was filed, no such classes had been held and there was no evidence to indicate when circumstances would require their resumption. Thus, there was no training class injury when the grievance was filed or the anticipation of any such injury until after Arbitrator LaRocco's liability ruling of May 10, 2007. That being the case, it cannot reasonably be said that ALPA, by concentrating on what was occurring in 2003 during a period of continuing downturn, foreclosed the ability to seek relief if AA refused to abide by an award that had yet to be made. Thus, there was no claim preclusion for a purported single injury; neither was there an election of remedies for such an injury. The injury addressed by this grievance did not occur

until after Arbitrator LaRocco determined in May 2007 that some former TWA pilots were equivalent to new hires and AA, in subsequently populating the June 2007 training class, improperly acted to deny, at least in ALPA's view, Eagle Captains seats in that class.

Neither can it be successfully argued that Arbitrator's LaRocco's 2008 remedy award, which was limited to a question of AA seniority numbers, bars the present grievance. Arbitrator LaRocco said that any award as to class seats was beyond his jurisdiction. That ruling was not a determination that such relief was foreclosed; only that he could not decide the question.

APA also claims that ALPA, by asking for seniority numbers in FLO-0903, waived any right to request training seats in this grievance. As previously noted, Arbitrator LaRocco expressed no opinion on that question in FLO-0903, leaving it open in the event it was raised in a subsequent proceeding. Waiver, as everyone knows, is the intentional abandonment of an existing right. But one cannot surrender a right that does not exist. Neither can one posit an injury until an existing right is contravened. Here, any possible right to attend training classes in which asserted "new hires" participated did not exist in 2003 or 2006. That right did not arise until 2007 following Arbitrator LaRocco's liability ruling of May 10 of that year. And no asserted injury relative to that right occurred until AA failed to request the presence of Eagle pilots in the training classes beginning in June, 2007. Thus, in the circumstances

presented, the remedy request ALPA made in 2003 cannot have constituted a waiver of the right it seeks in this proceeding.

The Merits

The issue posed by this grievance is a narrow one. The stipulated question is whether American Eagle pilots with American Airline seniority numbers were entitled to attend American Airline training classes beginning in June 2007. More precisely, whether such pilots were entitled to attend such classes instead of or along with former TWA pilots who had never flown for or trained at American and were therefore considered by Arbitrator LaRocco as "equivalent to new hires."[1]

There are, as with previous cases, equities on both sides of this dispute. I understand and fully appreciate those arguments, but the first question is whether what the Parties had agreed to in SuppW/Letter 3 answers the question at hand. If it does, consideration of the competing equities, as Arbitrator LaRocco noted, are best left to the Parties, particularly when they had the foresight of leaving any remedy, if the question is answered in the affirmative, in their hands..

[1] The classes are populated by a mix of so-called AA Legacy pilots, former TWA pilots who assumed an AA position at the time of the acquisition and former TWA New Hires, i.e., those who never flew or were trained at AA. Though there is a mix, there is no dispute, unlike prior cases, as to the nature of the training itself. Because of the length of time all participants have been on furlough APA concedes that the training is full initial training, which is what a pilot hired off-the-street would receive (Tr. 106-107, McDaniels).

As the Parties recognize, Arbitrator Bloch ruled in FLO-0107 that those Eagle Captains with AA seniority numbers as of the May 1, 2008 expiration of SuppW/Letter 3 retained the right encompassed within those numbers, saying that the "clear mandate of the agreement" was that an Eagle Captain with that number "be allowed to move up at the point a new hire class is available for assignment at AA." (FLO-0107, p. 11).

The question is whether that right can be exercised in the present circumstances. AA contends that the answer lies in FLO-0203 and FLO-0106 and that those decisions dictate a negative response. ALPA and AE assert that those decisions are inapplicable and that the answer, an affirmative one, is commanded by the meaning and reach of FLO-0903. All three of these decisions must be read in context. When that is done issues as to applicability, meaning and reach become clear.

As indicated, both AA and APA assert that FLO-0203 and FLO-0106, when read together, are sufficient to deny ALPA's claim. I am not persuaded that this is the case. In FLO-0203, which dealt with Paragraph IV furlough protections for AA pilots rather than Paragraph III employment opportunities for AE pilots, the questions were whether pilots, mainly former TWA pilots, who were flying for AA until furloughed in 2003 were eligible to invoke flow down rights to Eagle, and, if they were, whether they could properly assume AE positions made available by attrition.

Arbitrator Bloch held that those pilots qualified as furloughed AA pilots and could therefore flow down to Eagle rather than be limited to furlough pay. However, they were not permitted to assume attrition vacancies, but were restricted to displacing AE Captains. He also held that if they did displace Eagle Captains and subsequently relinquished those Eagle positions and accepted furlough pay, they were eligible to be recalled to vacant Eagle CJ Captain positions pursuant to Paragraph IV.C.2. (FLO-0203,pp.10-13). He did not, however, specifically deal with any other recall rights of said pilots. Thus, FLO-0203 cannot be said to control the instant grievance, particularly when one considers that the decision, which dealt with Paragraph IV rather than Paragraph III, was written in 2004 with no indication that Arbitrator Bloch was aware of or even anticipated the distinctions Arbitrator LaRocco was to draw some three years later between TWA pilots, putting some in one category and others in another.

Arbitrator LaRocco, on the other hand, took specific note of that distinction in FLO-0106. In that case, he held that AE pilots with AA seniority numbers who had never served at AA could not come to AA for the first time via recall; that their route was solely SuppW/Letter 3. Having already determined the year before that some TWA pilots were "equivalent to new hires,'" but yet to be faced with any remedy issues, Arbitrator LaRocco was careful to point out that the holding in FLO-0106 was narrow, saying in the course thereof:

> First, nothing in this opinion shall be construed to overrule or modify the ruling in FLO-0903. Second, nothing in this opinion can be construed to endorse or exclude any potential remedy in FLO-0903. This Arbitrator adjudged, in FLO-0903, that certain former TWA pilots were akin to new hire pilots within the meaning of Section III.A. The Arbitrator remanded the remedy to the parties without providing any guidance on the breadth of an appropriate remedy. Indeed, without giving the parties an opportunity to proffer further evidence, the Arbitrator would be trampling on due process if the Arbitrator were to speculate on a possible appropriate remedy in FLO-0903. The Arbitrator therefore declines to address the issues herein surrounding the integration of the former TWA pilots into the AA seniority roster. More specifically, the Arbitrator does not express any opinion on how the ruling in FLO-0903 may or may not operate to trigger the "priority" in Section III.D. or the applicability of Section III.A.[2]

It is evident from the above that the ruling in FLO-0106 did not bar any particular ruling with respect to TWA New Hire pilots. This is exactly what Arbitrator LaRocco said. Though ALPA asked in the subsequent remedy phase of FLO-0903 that he decide the issues alluded to in FLO-0106, specifically the so-called "trigger" class seat question, he declined to do so because that question had not been put before him when FLO-0903 had begun.

Thus, contrary to the position of AA, FLO-0203 and FLO-0106, even when read together, do not control the outcome here. Neither dealt with the instant issue and, therefore, cannot be read so as to govern its resolution.

The remaining question is whether, as ALPA and AE contend, that outcome is controlled by FLO-0903. The answer requires an even closer

[2] Arbitrator LaRocco repeated these instructions as to the interpretive limitations of his decision in its Award and Order section.

look at that decision. It must be remembered that the issue there was:

> "[W]hether former Trans World Airlines (TWA) pilots placed on the AA seniority list filled or may fill "new hire positions" in "new hire classes" within the meaning of Section III.A. of Letter 3/Supplement W."

Arbitrator LaRocco's answer to that question was that some former TWA pilots "filled or may fill" such positions in such classes and others would not; the distinction, as explained above, being between those who assumed AA positions at the time of the acquisition and those who did not. The heart of his Opinion, apart from his close reading of the words in Section III, reads as follows:

> "If and when positions are available at AA, the presence of a huge group of former TWA pilots [the staplees] on the AA seniority list cannot interfere with the rational operation of Section III.A of Letter 3/Supplement W. Pilots who did not commence active employment at AA in conjunction with merger are equivalent to new hires because positions are no longer being established or filled due to the acquisition.17 While Section III.A of Letter 3/Supplement W does not apply to positions established at AA exclusively due to a merger or acquisition, Section III.A applies to positions that are established or become vacant based on the causes previously enunciated in this Opinion, such as expansion of market, expansion of fleet and pilot attrition. In addition, if two of the four parties to Letter3/Supplement W could simply append thousands of individuals to the bottom of the AA seniority list to place them ahead of AE flow through CJ Captains, two parties could effectively nullify the flow through provisions of Letter 3/Supplement W.18 The parties do not enter into their intricate agreements with the expectation that entire sections will be rendered meaningless. Because Section III.A uses the term "positions", the former TWA pilots who were never trained and who never occupied a position at AA, do not bar the operation of Section III.A as AA positions become available in the future.
>
> To summarize,...the exclusion from Section III of Letter 3/Supplement W does not extend to former TWA pilots added to the AA seniority list who did not obtain an AA position.
>
> 17. The staplees are identical to a large pool of successful applicants (for employment) since they will not obtain AA positions stemming from the TWA acquisition.
>
> 18. Such a machination would be completely contrary to the rule of reason in construing contracts."

APA and AA say, all well and good, but these pilots, though characterized as "equivalent" to "new hires" by Arbitrator LaRocco, are not really new hires; they are furloughees who are being recalled. But if they can be recalled until their numbers are exhausted and, by so doing, block the Paragraph III advancement of Eagle pilots, are they not nullifying its flow through provisions? Are they not barring the operation of Paragraph III in contravention of Arbitrator LaRocco's words?

One response is that Arbitrator LaRocco only characterized certain TWA pilots as "equivalent to new hires" for the generation of seniority numbers, nothing else. However, it is evident that he awarded seniority numbers because that was all that was requested at the time. In addition, such a response completely ignores what Arbitrator LaRocco and other arbitrators involved in previous proceedings well understood—that the number alone had little meaning; its value is its right of admission to AA's flying ranks. That is when its worth is established.[3]

Another response is that Arbitrator LaRocco stretched the meaning of "new hires"; that his ruling should be disregarded or, at the least, not applied to other portions of Paragraph III where, according to

[3] APA recognized the distinction during FLO-0903's remedy phase, saying that the seniority number was "kind of a secondary right"; that the primary right was a "right to come to class...and proceed." (FLO-0903 Remedy Opinion, p. 9). In that proceeding, APA, though arguing that the Parties could not have intended such a result, also acknowledged that "If former TWA pilots are deemed to fill 'new hire' positions in 'new hire' classes as they transition to AA from TWA LLC, then Section III.A. of Supp.W/Letter 3 clearly mandates that at least one out of every two of those positions be offered to CJ Captains at Eagle." (Id.p.10)

APA, "new hire position" has a different meaning than that in III.A. The argument that Arbitrator LaRocco's decision should not be credited pays no heed to the important role precedent plays in labor relations. If an Opinion is rational, subsequent arbitrators should not ignore it or decide it's in the best interest of parties to come to a different conclusion. Such an approach does not advance the stability of labor relations. The response also ignores the fact that Paragraph III is an integrated provision, carefully and consistently describing the road to AA employment. There is thus no basis for concluding, either in logic or bargaining history, that the identical words used in III.A. and III.D. carry different meanings dependent on their placement.

In my judgment, none of above responses are persuasive. There is no suggestion in Arbitrator LaRocco's closely reasoned Opinion that he assumed that the status of those former TWA pilots designated as TWA New Hires because they had never been trained at AA or flown for the airline was transitory; that, without the consent of all four Parties to the Agreement, they could be transformed into something other than new hires for the purposes of Paragraph III. As I read his Opinion, such a transformation was exactly what he was guarding against. Otherwise, he would not have said that their presence "can not interfere with" or "bar the operation of Section III.A as AA positions become available in the future."

I must therefore conclude, based on the holding in FLO-0903 and the undisputed fact that the training in question was "full initial training equivalent to what a new hire would receive," that when the TWA New Hires entered training in June 2007 at the request of American Airlines, their status, consistent with FLO-0903, was that of "new hires" in a "new hire class." That being the case, Paragraph III's flow through provision applies, by its very words, to such classes. Accordingly, that application, which must prevail over a Basic Agreement pursuant to Paragraph 1.C. of SuppW/Letter 3, entitles American Eagle pilots who hold American Airline seniority numbers to attend AA training classes beginning in June 2007. Any other ruling would, as Arbitrator LaRocco said, "effectively nullify the flow through provisions of Letter 3/Supplement W."

I understand, from both the arguments made in this proceeding and the fact that TWA New Hires have participated in more than one class since June 2007, that arriving at a remedy will not be easy. As difficult as that task may be, my charge was to interpret the agreement of the Parties so as to answer the question posed, which is what I have done.

The Undersigned, acting as the Arbitrator pursuant to the Agreement of the Parties and having duly heard the proofs and allegations, renders the following

AWARD

As stated in the foregoing Opinion, American Eagle pilots who hold American Airline seniority numbers were entitled to attend AA training classes beginning in June 2007,

In accordance with the instructions of the Parties, the matter is remanded to ALPA, AE, AA and APA to formulate an appropriate remedy.

Jurisdiction will be retained for a period of one year, a period that may be extended by agreement of the Parties. In the event that agreement on an appropriate remedy is not reached during the period of retained jurisdiction, any Party may, by motion, request that jurisdiction be exercised over the question of remedy. However, such request shall not be made within ninety days of the date of this Award.

George Nicolau, Arbitrator

ACKNOWLEDGMENT

On this 18th day of October, 2009, I, George Nicolau, affirm, 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 as my Opinion and Award in the above matter.

George Nicolau

EXHIBIT D

18

In the Matter of the Arbitration	:	
	:	
Between	:	
Allied Pilots Association	:	
- and -	:	
Air Line Pilots Association	:	
and	:	
American Airlines, Inc.	:	
and	:	**OPINION**
American Eagle Airlines, Inc.	:	**AND**
	:	**AWARD**
(SuppW/Letter 3; Grv. FLO-0108 Remedy)	:	

APPEARANCES

For the Air Line Pilots Association:
Wayne M. Klocke, Esq.
Arthur Luby, Esq.
James Lobsenz, Esq.

For American Eagle Airlines, Inc.:
Paul, Hastings, Janofsky & Walker, LLP.
By: Jack Gallagher, Esq.
Intra L. Germanis, Esq.
Cathy McCann, Esq.

For the Allied Pilots Association:
James & Hoffman P.C.
By: David P. Dean, Esq.
Emilie S. Kraft, Esq.

For American Airlines, Inc.:
Morgan, Lewis & Bockius, LLP.
By: Harry A. Rissetto, Esq.
Michelle A. Peak, Esq.

On March 29, 2008, ALPA filed a grievance in which it claimed that American Eagle CJ Captains with AA seniority numbers as a result of the flow-through provisions of the now expired Supplement W/Letter 3 were entitled to attend AA training classes beginning June 6, 2007 instead of those TWA-LLC pilots designated by Arbitrator LaRocco in FLO-0903 as "equivalent to new hires."

That same question was raised before Arbitrator LaRocco in the remedy phase of FLO-0903, but his ruling was that he lacked jurisdiction to provide an answer because the Parties' previously stipulated remedy question did not encompass that issue. He also said:

> The Arbitrator's remarks herein should not be construed to express any opinion on whether ALPA and/or AE waived any right to seek the additional relief it requested herein in any subsequent case.
> (FLO-0903, 10/28/08, PP.31-32)

As a result of that determination, this grievance was moved forward and was placed before me on June 1, 2009. At that hearing, the Parties agreed on what I have characterized as a narrow question, i.e.:

> Were American Eagle pilots who hold American Airline seniority numbers entitled to attend AA training classes beginning in June 2007?

They also agreed, if this question was answered in the affirmative, that the question of remedy was to be returned to them for determination, with the arbitrator retaining jurisdiction in the event a resolution was not reached.

By the time the June 1, 2009 hearing had taken place, there had been 20 training classes at AA in the period between June 6, 2007 and March 18, 2009. No Eagle Captains with AA seniority numbers were in those classes. However, there were 244 TWA "new hire" pilots, all of whom had been "recalled" from furlough along with AA pilots who had

previously been furloughed from active AA positions.[1]

In my October 18, 2009 decision, I stated that there were, as in previous cases, equities on both sides of the dispute. I also said that I understood and fully appreciated those arguments, but that the first question was whether what the Parties had agreed to in SuppW/Letter 3 answered the question at hand. If it did, consideration of the competing equities, as Arbitrator LaRocco had previously noted, were best left to the Parties, particularly when they had the foresight of leaving any remedy, if the question was answered in the affirmative, in their hands.

For reasons fully set forth in the Opinion, I did answer the submitted question in the affirmative, stating in the Award:

> As stated in the foregoing Opinion, American Eagle pilots who hold American Airline seniority numbers were entitled to attend AA training classes beginning in June 2007.
>
> In accordance with the instructions of the Parties, the matter is remanded to ALPA, AE, AA and APA to formulate an appropriate remedy.
>
> Jurisdiction will be retained for a period of one year, a period that may be extended by agreement of the Parties. In the event that agreement on an appropriate remedy is not reached during the period of retained jurisdiction, any Party may, by motion, request that jurisdiction be exercised over the question of remedy. However, such request shall not be made within ninety days of the date of this Award.

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[1] Only one TWA-LLC pilot entered training in the June 6, 2007 class. At the time this occurred, there were 155 Eagle Captains with AA seniority senior to that pilot. As the classes continued the number of TWA-LLC pilots attending them increased, with their numbers filling the bulk of the class seats during the nine classes held during first six months of 2008.

As it was, the Parties could not agree on a remedy and that question was returned to me, with hearings held on February 25 and 26 and March 30, 2010. Prior to those hearings, position statements were filed setting forth the views of the Parties on the remedy question. All agreed on one thing, that the question was complex and the answer difficult.

Upon studying those positions and arguments in detail and reviewing the earlier proceeding as well as my October 18, 2009, Award and the prior awards, I opened the remedy hearings by advising that I did not intend to require an Eagle pilot to go to American who does not wish to do so and did not intend, whatever award I might render, that any pilot flying for American end up on the street as a direct result of the required transfer of Eagle Captains. I reinforced that view as the hearings continued so that the Parties would be well aware of my considered views.

During the hearing, in addition to lengthy opening statements and continued presentations of the respective views of the two airlines and the two unions, I heard testimony from James Anderson, Senior Principal, Employee Relations, Flight at American, Kye Johanning, Lead Economic Analyst at ALPA, Eagle Captain Robert Higgins, Michael Burtzlaff, a Principal in American's Finance Group, Cathy McCann, Vice President, People at Eagle, Captain Bill Couette, an Eagle Captain and Vice President, Administration at ALPA, American Captain Ralph Hunter

and First Officer Steven Salter, American Captains Douglas Gabel, Jeff Hefley and Glen Morris, former TWA employees, and Kenneth Cooper, former Assistant Director in ALPA's Representation Department.

The testimony of APA witness Hunter and ALPA witness Cooper dealt primarily with the question of whether or not it was obligatory under the now expired Supplement W/Letter 3 for a non-Eagle Rights Captain to flow up to American at the time an offered opportunity was available (Tr. 189-214, 315-324,Hunter; 325-339, Cooper).

The testimony of ALPA witness Johanning and American witness Burtzlaff dealt with damages issues, affecting those who were unable to flow up to American because they were not given the opportunity to attend the aforesaid training classes, and the so-called ripple or downstream damages for those who were unable to move into higher Eagle positions because of the inability of those ahead of them to move to American. ALPA took the position that both groups were damaged and that such damages should be awarded (Tr. 78-110,177-181, Johanning; ALPA Ex.1 & 1A). American's analysis was that those whose movement to American was delayed did not suffer a monetary loss in overall compensation (Tr. 118-148, Burtzlaff; AA Ex. 1). Both American and Eagle also argued that downstream damages were not just highly speculative, as confirmed through Vice President McCann's testimony as to how and why pilots bid (Tr. 149-164), but were also wholly inappropriate.

The testimony of Captains Gabel, Hefley and Morris, former TWA pilots called by APA, dealt with the purchase of the airline by American, the technicalities, process and progress of the transition, and the status and role of TWA-LLC, the subsidiary created at the time of purchase. The purpose of this testimony, aided by a timeline (APA Ex.4) and other exhibits (APA Ex.1-3,5-9), was to demonstrate that TWA-LLC was a needed vehicle in a large and complicated merger; that all employed at TWA-LLC fully expected to become American pilots as American officials told them they would; that a number of them did so, and that it is not appropriate, when the facts of the transition are objectively viewed, to characterize them as "new hires." APA also argued, on different equitable grounds, that 292 of the 382 pilots such as First Officer Salter hired by American in 2001 prior to the events of 9/11 are entitled to return before any of the 244 Eagle pilots can attend class. These are pilots furloughed post-9/11, who were placed below all former TWA pilots when the AA/TWA seniority lists were merged.

There was also testimony by Eagle Captain Higgins, who is presently on short-term disability and, as a consequence, is unable to use his first-class medical. The question regarding the status and right of a pilot such as Captain Higgins, who might be unable to move to American because of such an impediment, has been resolved by a Stipulation, one of the few issues on which the Parties have agreed, that will be part of my Award.

The Positions of the Parties

Both ALPA and Eagle contend that, in order to remedy the previously found breach, 244 Eagle CJ Captains with AA numbers are entitled to flow-up to AA ahead of any new hires and any AA pilots junior to the TWA "new hires" and that said movement, which is in seniority order, is obligatory for each Eagle CJ Captain. Where they differ is on the pace of that movement. ALPA maintains that the pilots, who have waited long enough, should move without delay. Eagle maintains that a pace as swift as ALPA seeks would cripple the operations of the airline and that, as a consequence, the move should be limited to no more than 20 pilots a month, beginning 60 days after the Award. Twenty a month because that is the maximum Eagle can spare at any one time and 60 days hence because that is the time Eagle needs to train those replacing pilots who are leaving. ALPA says it understands the constraints Eagle advances, but argues that such metering should be ordered only to resolve a remedial issue that cannot be solved by other means, and that, in any event, all affected pilots must continue to be properly compensated during any further period of delay.

APA, as previously stated, is of the opinion that the above mentioned American pilots hired in 2001, the bulk of the so-called "AA Legacy" pilots, come first and that the Eagle pilots must wait. American, because it says it would have recalled those pilots if it had known that recalling TWA "new hires" was improper, takes the same position. In

addition, APA, for reasons of equity, believes an additional 154 furloughed pilots should be recalled before Eagle pilots begin transferring to AA.

The Parties also disagree over the damage issue. Here, the dispute is between the companies and ALPA. The Association contends that each pilot who was unable to flow-up is entitled to every element of compensation and every benefit he would have received if he had moved to American at the time he was entitled to do so, such time to be measured by the presence of the TWA-LLC pilots in the June 6, 2007-March 18, 2009 training classes. ALPA also contends that the compensation and benefits must go beyond seniority credit for pay and pension purposes as Eagle suggests, but must also include AA sick leave, vacation and health insurance differentials; retroactive participation and credit in both American retirement plans, American Airlines, Inc. Retirement Benefit Program–Fixed Income Plan (the "A Plan") and the American Airlines, Inc. Pilot Retirement Benefit Program–Variable Income Plan (the "B Plan"). Other than length of service credit for pay purposes, American, contending that there was no overall compensation loss, insists, as a result, that no other compensation or increased benefit is warranted. Both American and Eagle also forcefully argue that, if damages are awarded, the Companies are entitled to an offset or credit for amounts Eagle flow-through pilots earned at Eagle in

excess of the amounts they would have earned at AA if they had transferred between June 6, 2007 and March 18, 2009.

ALPA also contends that those pilots prevented from moving higher in Eagle's ranks because of the delay occasioned by the breach are also entitled to damages. By ALPA's calculation, these downstream damages, absent requested interest, total $21.9 million; $19.7 million in lost wages and $1.2 million in Company 401(k) contributions. This amount, ALPA says, should not be paid by Eagle, which did not cause the breach, but by American, which had decided to bring the TWA "new hire" pilots into the training classes rather than following the precepts of SuppW/Letter 3. Though not being held responsible for these damages, Eagle asserts they are speculative and unjustified. American vigorously opposes any such downstream damages. Like Eagle, it contends they are speculative and, given the bidding patterns of pilots, that any determination of the appropriate recipients would be fraught with uncertainty. It also argues that any consideration of downstream damages is just not encompassed within the narrow, disputed question with which this proceeding began. That question was whether Eagle pilots with AA seniority numbers were entitled to attend AA training

classes. Once that question was answered, the only remaining issue was what remedy should be fashioned for those pilots, not others.[2]

Discussion and Analysis

As every one understands, the remedy issues presented in this case are complex and inter-related. All four Parties (APA, ALPA, AA and Eagle) have vigorously and effectively presented their evidence and arguments, including strong equitable arguments on behalf of all affected pilots. In light of the complex and inter-related nature of the issues, I elected to announce certain aspects of my decision to the Parties on the record and then to ask the Parties to discuss with me, collectively, the remedy issues that would remain open in light of my preliminary rulings. During those discussions I provided the Parties further guidance about the resolution of the remedial issues. While this consultation process was helpful to me in further defining the issues and understanding the competing views and considerations, the Award that follows is my Award; it does not represent the "agreement" of any of the four parties. Indeed, as set forth above, the positions of the parties on the key issues addressed herein remain far apart. Nonetheless, in the face of an impending Award, each of the Parties has been helpful and cooperative in my efforts to finalize an Award with sufficient clarity and detail to facilitate implementation.

---

[2] Eagle raised some other remedy issues. However, they were predicated on the assumption that moving to AA was mandatory and the consequent need for a hardship provision. In view of my ruling, set forth below, these questions need not be addressed.

It should also be said that I have taken into consideration some facts that were not known until after the proceeding was underway. First, I was advised that 102 AA pilots, of whom 83 were former TWA-LLC "new hire" pilots who had been serving at American since their 2007-2009 recalls, were furloughed on February 28, 2010. However, anticipated furloughs that were to take place in April were canceled. Additionally, I was advised that American, except as a possible result of this Award, anticipates no additional training in 2010. All of this, as well as the competing equities, which will be discussed, has been taken into consideration in reaching my conclusions.

I had stated at the outset that I did not intend to require any Eagle CJ Captain to transfer to American if he chose not to do so. I reached that conclusion, which I repeat here, for two reasons. The first is that, in my judgment, the now expired Supp W/Letter 3 did not require it. Though it could be argued that those who did not elect to "forfeit the opportunity to secure a position on the AA Pilots Seniority List" pursuant to Article III.F. at the completion of CJ Captain IOE were obligated to accept the actual position when offered, the language of Supp W/Letter 3 does not support that conclusion. Other subsections of Article III, such as III. H., I. and J., speak of a CJ Captain who "accepts a new hire position." If a pilot were required to move to that new hire position when actually available, that is, if such movement were

obligatory, the word "accept," which clearly entails a choice, would not have been used.

The second reason is that SuppW/Letter 3 was crafted in 1997. Much has changed since then. As I and other arbitrators have pointed out, no one anticipated 9/11, no one anticipated the magnitude of the resultant furloughs, and mergers were not even discussed. Moreover, those pilots who did not chose Eagle Rights status did so at a very different time in a very different landscape. That unanticipated upward delay, encompassing ten years for some, strongly supports the judgment that reading Supp W/Letter 3 as containing an irrevocable obligation is inappropriate and inconsistent with equity.

It is therefore my conclusion that a choice should be made. Obviously, the choice should be extended to the 244 CJ Captains who would have had the opportunity to attend the aforesaid training classes. I am also of the opinion that the choice should be given to an additional 42 CJ Captains, for a total of 286. That includes all active Eagle CJ Captains who have greater seniority than the least senior currently active TWA-LLC pilot.

The choice these pilots make is to be made in light of the remedial components spelled out herein. Once these pilots are made aware of the compensation and benefits available to them if they choose to flow-up to American pursuant to the timetable set forth herein, a timetable consistent with the needs of the companies and the equities inherent in

the history and prior anticipations of all other pilots, their choice will be irrevocable. The opportunity to flow-up, clearly at times uncertain except for the first 35, will be offered to the 286 senior Eagle CJ Captains with AA numbers. The compensation and benefits attached to a flow-up choice will be granted to the most senior 244 of the 286 who choose this advancement. If less than 244 of the 286 choose to flow-up, the compensation and benefits will only be offered to that lesser number, whatever it may be, with such compensation and benefits offered to no other Eagle pilot. Though the opportunity to transfer to American may not occur for some time, dependent as it is on the health of the airline and the compelling equities in this case, I have decided to make the choice irrevocable rather than allowing an affected pilot to choose one option and later choose another. Supp W/Letter 3 has expired and finality, in my judgment, is to the interest of all.

As stated, the 244 Eagle CJ Captains who choose to transfer to American should have been at the Company earlier; the first on June 6, 2007, and the remainder on the July 3, 2007-March 18, 2009, class dates at the pace measured by the class attendance of the remaining 243 TWA-LLC pilots. The retroactivity of the compensation and benefits to be offered has been determined with those dates in mind. I have also

decided that, for these 244 Eagle CJ Captains, undeniable considerations of equity require that retroactivity also be applied to any "time to Captain" requirement. Therefore, the Award provides that, for such purposes, the "time of transfer" should be measured from the time that Captain would have transferred to AA had the breach not occurred.

If any one of the 244 Eagle CJ Captains chooses to flow-up to American and is subsequently enrolled in a training class, his transfer to American, save for the exception noted above, shall be no different, than transfers that had previously occurred pursuant to the now expired Supp W/Letter 3, including placement and restrictions.[3]

Once that Eagle CJ Captain transfers to American, he shall receive length of service for pay purposes retroactive to the date he would have transferred during the June 6, 2007-March 18, 2009 period. Prospectively, that Eagle CJ Captain who transfers will also receive the greater vacation and sick bank credit he would have earned if had been at American on the date he should have transferred. Those Eagle CJ Captains within the group of 244 who transfer will also become participants in America's A Plan on the day they become American employees. However, as was done when TWA pilots became American employees, the one year waiting period shall be waived and the period

[3]In all other respects, these CJ Captains who choose to flow-up to AA must meet American's criteria for employment at the time of transfer. However, it should be noted that the Parties have stipulated, as reflected in the Award, that an Eagle CJ Captain who is unable to flow to AA because he does not have an FAA First Class Medical Certificate or is on the long-term sick list or disability list does not forfeit the opportunity to flow-up at a later date.

between the time they should have transferred and the time they actually transferred shall be credited, but solely for vesting purposes. At the time that Eagle CJ Captain transfers to American, the Company, by means legally permissible as set forth in the Award, will also make contributions to the B Plan for the period that Captain should have transferred at a rate equal to the Super MD-80 First Officer rate of 73 hours, which is the reserve guarantee.

I turn now to the movement of Eagle CJ Captains to American. Here, competing equities come sharply into play. The Eagle CJ Captains have waited a long time to exercise the opportunity to transfer. On the other hand, the individual TWA pilots are not at fault for that delay. They were employees of a failing, bankrupt company whose assets were purchased by American and had little control over their fate. They, along with the Eagle CJ Captains and those pilots hired by American in 2001, were all caught up and severely impacted by the events of 9/11; events which no one anticipated and which has affected all to this day. In constructing what follows I have taken all of those equities into consideration.

The Award provides that 35 Eagle CJ Captains who choose to flow-up to American shall be placed in training beginning no later than June 2010, with said training to be in two tranches if needed. The Award also

provides that there shall be no furloughs as a direct result of these transfers. If, for other reasons, a furlough is deemed necessary during the remainder of 2010, 35 pilots furloughed shall receive two months additional furlough pay in the amount set forth in the AA/APA Agreement, as specified in the Award.

Following the aforesaid transfer, before any additional CJ Captains are transferred, recalls to AA shall be administered in accordance with the AA/APA Agreement based on the AA seniority list as of the date of this Award until the most junior pilot furloughed on February 28, 2010 has been offered recall.

Following that offer and recall, the remaining Eagle CJ Captains with AA numbers who elect to transfer when and as future positions become available and those AA pilots presently on furlough shall be entitled to enter and re-enter active service at American in AA seniority order. Of those Eagle CJ Captains who transfer, those who were in the previously referenced 244 shall be entitled to receive the previously referenced compensation and benefits as of the day they would have transferred if they were in one of the June 6, 2007–March 18, 2009 training classes.

What remains is the downstream damage question. I am not persuaded that the requested payment of monetary damages, with their

calculation and distribution so unclear and imprecise, is a suitable means of dealing with the effect on those pilots below the Eagle CJ Captains with AA numbers. A more appropriate means is to concentrate on the job opportunities which were unavailable as a result of the above described events that will become available following contractually required recalls. There are presently 1351 Captains at Eagle, 527 have AA seniority numbers, 824 do not. Through a system of preferential hiring, 824 future pilot job opportunities at AA should be made available to Eagle pilots who do not have AA seniority numbers. When job opportunities become available at a result of future hiring at AA, said Captains are to be offered one of every two new hire positions in a new hire class in Eagle seniority order subject to the following limitation. Eagle will make every attempt to release a sufficient number of pilots to meet the aforesaid ratio. It will not, however, be required to release more than 20 pilots per month should release of a greater number result, in its judgment, in severe operational difficulties. If any one of the present day Captains declines the above opportunity when available, an Eagle pilot who has become a Captain after the date of this Award shall have the option of electing that opportunity until such time as 824 pilot positions have been filled by Eagle Captains pursuant to this paragraph. This system of preferential hiring should be a matter of agreement between the directly affected Parties. The Award that follows so provides.

The Undersigned, acting as the Arbitrator pursuant to the Agreement of the Parties and having duly heard their proofs and allegations, therefore renders the following

AWARD

As stated in the foregoing Opinion, American Airlines shall offer to the 286 most senior Eagle CJ Captains holding AA seniority numbers the opportunity to elect to flow-up to American. Said election, which is to be made after said Captains are advised of the remedial components set forth herein, shall be irrevocable, and shall be made no later than May 24, 2010. Once elections are made, the opportunity to transfer to American with the remedial components set forth herein shall be offered to the 244 most senior CJ Captains of the 286 who elect this advancement. If less than 244 Eagle CJ Captains so elect, the remedial components set forth will only be offered to that lesser number.

Said CJ Captains who elect the opportunity must meet the criteria for employment at American at the time of transfer, with the "time of transfer" for the purposes of "time to Captain" measured from the time each CJ Captain would have transferred to American had the breach not occurred. By agreement of the Parties, any Eagle CJ Captain who is unable to transfer to American because he does not have a FAA First Class Certificate or is on Eagles' long-term sick list or disability list does not forfeit the opportunity to transfer at a later date provided American's eligibility criteria, as set forth herein, are met.

Except as noted above, those Eagle CJ Captains transferred to American shall be transferred in the same fashion as those CJ Captains who previously transferred pursuant to the now expired Supplement W/Letter 3, including placement and restrictions.

Once an above referenced Eagle CJ Captain electing to transfer becomes an employee of American, he shall receive length of service for pay purposes retroactive to the date he would have transferred but for the placement of TWA-LLC pilots in the June 6, 2007-March 18, 2009 training classes.

Prospectively, an above referenced Eagle CJ Captain who transfers to American will receive the greater vacation and sick bank credit he would have earned if he had been at American but for the placement of TWA-LLC pilots in the aforesaid training classes. Those Eagle CJ Captains within the group of 244 CJ Captains who transfer will become participants in American's A Plan on the day they become American employees, with the one year waiting period waived and the period between the time they should have transferred and the time they actually transferred credited solely for vesting purposes. Additionally, at the time said CJ Captain transfers to American, the Company will make contributions to the B Fund for the period that Captain should have transferred to American, which contributions shall be at the MD-Super 80 First Officer reserve guarantee rate of 73 hours. In the event such contributions are not legally permissible during the first year of said Captain's employment at American, the remainder of such contributions will be made, to the extent legally permissible, in the second year. Any remaining contributions shall be paid as taxable compensation.

The first 35 Eagle CJ Captains who elect to transfer to American shall be placed in training beginning no later than June 2010, with said training to be in two tranches if needed.

There shall be no furloughs as a result of these transfers. If, for other reasons, a furlough is deemed necessary during 2010, 35 pilots furloughed shall receive two additional months furlough pay in the amounts set forth in the AA/APA Agreement. Such additional pay shall be awarded beginning with the most senior pilot in each month of furloughs and then to each less senior pilot in that month until a total of 35 pilots have been awarded the additional pay.

Following the aforesaid transfer, before any additional Eagle CJ Captains are transferred, recalls to AA shall be administered in accordance with the AA/APA Agreement based on the AA seniority list as of the date of this Award until the most junior pilot furloughed on February 28, 2010 has been offered recall.

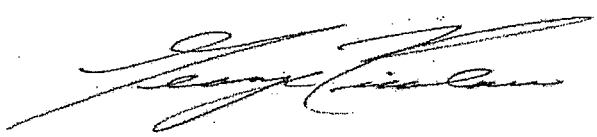
Following that offer and recall, the remaining Eagle CJ Captains with AA seniority numbers who choose to transfer when and as future positions become available and those American pilots presently on furlough shall be entitled to enter and re-enter active service at American in American seniority order. Said Eagle CJ Captains transferring to American shall be transferred in the same fashion as those CJ Captains who previously transferred pursuant to the now expired Supplement W/Letter 3, including placement and restrictions. Upon their transfer, those CJ Captains within the previously referenced 244 CJ Captains shall be entitled to receive the above referenced compensation and benefits as of the day they would have transferred but for the placement of TWA-LLC pilots in the June 6, 2007-March 18, 2009 training classes.

The affected Parties are directed to enter into a preferential hiring agreement pursuant to which American, at the time hiring resumes, will offer to 824 Eagle Captains, including Eagle Rights Captains, one of every two new hire positions in a new hire class in order of Eagle seniority, subject

to the following limitation. Eagle is to make every attempt to release a sufficient number of pilots to meet the aforesaid ratio. It will not, however, be required to release more than 20 pilots per month if doing so would, in its judgment, create severe operational difficulties.

Should any of the present day Eagle Captains decline the above offered pilot position opportunity, an Eagle pilot who becomes a Captain after the date of this Award, shall have the right to elect said opportunity in seniority order until such time as 824 pilot positions have been filled by Eagle Captains pursuant to this paragraph.

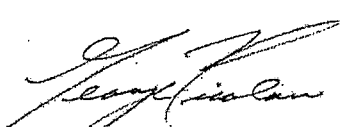
Jurisdiction will be retained in the event there is any dispute regarding the interpretation or application of this Award.



George Nicolau, Arbitrator

ACKNOWLEDGMENT

On this 9th day of April, 2010 I, George Nicolau, affirm, 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 as my Opinion and Award in the above matter.



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American Airlines, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG POULTON, STEPHAN ROBSON, AND PHILIP VALENTE III, on behalf of themselves and all persons similarly situated,

Plaintiffs,

v.

ALLIED PILOTS ASSOCIATION; and AMERICAN AIRLINES, INC.,

Defendants.

Case No. 3:15-cv-03125-RS

[PROPOSED] ORDER GRANTING DEFENDANT AMERICAN AIRLINES, INC.'S MOTION TO DISMISS COUNT ONE OF THE SECOND AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)

Hearing Date:	March 17, 2016
Time:	1:30 P.M.
Place:	Courtroom 3, 17th Fl.
Judge:	Hon. Richard Seeborg

Having considered the papers submitted by the parties and the argument of counsel,

IT IS HEREBY ORDERED that Defendant American Airlines, Inc.'s Motion to Dismiss Count One of the Second Amended Complaint is GRANTED, and that Count One of the Second Amended Complaint is DISMISSED with prejudice as to American Airlines, Inc.

DATED: _____, 2016.

_____

THE HONORABLE RICHARD SEEBORG
United States District Judge