

{In Archive} Unilateral decision to apply the appropriate remedy for  
NC-08-79364-CCR

Bobby D Rodriguez to: Jay Barrett, Sarah

02/07/2012 03:09 PM

Cc: Monique France, Michael Valencia, Aletha Hicks-Moffatt, Daniel A  
Castrellon

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Unilateral Remedy re NC 08 79364 CCR.pdf

60.  
Thru  
63.

Good afternoon Jay,

As stated during our conversation on Friday, February 3, 2012, I am forwarding you the attached formal notice regarding Management decision to unilaterally implement what we believe to be the appropriate remedy for the grievance that is scheduled for hearing on February 16, 2012, before Arbitrator Lindauer. I have also included Arbitrator Lindauer in this e-mail so that he may be aware of Management's unilateral decision.

If you have any questions regarding this particular subject matter, please contact me at the office number provided below.

Thank you,

Bobby Rodriguez  
FAA Labor / Employee Relations Specialist  
AWP - 16  
Western-Pacific Region  
Phone 310-725-7840  
FAX 310-725-6834

F12-7293WP  
Rcvd 11/21/12

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U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Federal Aviation Administration  
Human Resources Management Office  
Labor and Employee Relations Branch

14000 A. Wayth Boulevard  
Lowndes, CA 91291

February 2, 2012

*Certified # 7010-1870-0000-1199-5498  
Return Receipt Requested*

Mr. Jay Barrett, Esq.  
MIA Tower/Tracon  
Labor Relations Representative  
6400 NW 22<sup>nd</sup> Street  
Miami, Florida 33122

Arbitrator Eric Lindauer  
1000 SW Broadway  
Suite 2400  
Portland, OR 97205

Re: Notice of Management's determination to unilaterally apply a remedy to grievance # NC-08-79364-CCR

Dear James,

This correspondence is being forwarded to you as a follow up to our phone conversation that took place at approximately 11:00 a.m. on Friday, February 3, 2012. During our conversation, I verbally responded to your February 2, 2012, e-mail I received on February 3, 2012. As you may recall, your February 2, 2012, e-mail contained what appeared to be a witness list along with a request. Your witness list contained the following names:

1. Jeffery Lewis
2. Glenn Rotella
3. Andy Richards
4. Ros Maible

14000 A. Wayth Boulevard  
Lowndes, CA 91291  
Tel: (951) 947-1111  
Fax: (951) 947-1112  
www.faa.gov

Notice of Management's determination to unilaterally  
apply a remedy to grievance # NC-08-70364-CUB

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According to your e-mail, you also requested an additional amount of time in order to add more names to your witness list, dependent upon their availability. As I stated during our conversation, I do not agree to your request for additional time. In addition, as Management's Representative for this scheduled hearing, it is my responsibility to inform you that Ms. Ros Marable will not be available to attend this hearing. This is based upon a previously scheduled engagement that she has committed to attend. As such, Ms. Marable will not be available to attend this scheduled hearing.

Furthermore, as mentioned during our February 3, 2012, telephonic conversation, as well as in my e-mail to you the same day, Mr. Glenn Rotella is no longer an employee of the Federal Aviation Administration. As such, the agency can not ensure Mr. Rotella's presence in a duty status, as stated in Article 9 Section 10 of the 2006 CBA. Therefore, the Agency can not compel Mr. Rotella to appear as a witness since he is no longer an employee of the FAA and subject to applicable rules, regulations or contractual obligations contained in the various handbooks, manuals, order or applicable CBA.

As stated during our telephonic conversation, I am in receipt of your witness list that appears to be contrary to the language provided in Article 9, Section 10 of the 2006 CBA. More specifically, it is noted your witness list was not exchanged with Management within the required time period of 14 days prior to the scheduled hearing. According to the 2006 CBA, Article 9 section 10 states in relative part:

*"The Parties will exchange list of potential witnesses to an arbitration hearing fourteen (14) days prior to the scheduled hearing."*

As such, it would appear the party's have a contractual obligation to exchange their potential list of witnesses fourteen days (14) prior to the scheduled hearing. However, the Union failed to exchange their list of potential witnesses with Management as required and stated above.

More specifically, Management notes your witness list is documented as being sent to Management via e-mail and fax. According to the record, Management received your witness list by e-mail on Thursday, February 2, 2012, at 5:01 p.m., Pacific Standard Time, PST. Since you sent this e-mail from a time zone located in the Eastern Standard Time, EST, zone, it is evident your list of potential witnesses was not sent to Management until 8:01pm, EST. This is apparent since California is in the Pacific Standard Time, PST, zone, and Miami is located in an EST zone that is 3 hours ahead of California. Therefore, when you e-mailed your list of potential witnesses, it was not only e-mailed to me after business hours (3:30pm PST) but it

cc: [redacted]  
cc: [redacted]  
cc: [redacted]  
cc: [redacted]  
cc: [redacted]  
cc: [redacted]

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Notice of Management's determination to unilaterally  
apply a remedy to grievance # NC-08-79364-CCR.

was sent to me well after business hours. Your actions of sending your potential list of witnesses at the mentioned time of day resulted in Management not receiving the Union's list of potential witnesses until the morning of Friday, February 3, 2012. Receiving your witness list on Friday, February 3, 2012, is clearly 12 days prior to the scheduled hearing and not 14 days as required by Article 9 section 10 of the CBA.

In addition to your February 2, 2012, e-mail it was further noted the Union faxed the same request and list of potential witnesses to an unattended fax machine. According to the record your fax is documented as being received well into the evening and well after normal business hours. According to the record, your fax, containing your list of potential witnesses was received at 7:33 p.m. PST. Based upon Management not receiving your Fax and e-mail until the following day, Friday, February 3, 2012, Management recognizes this day, Friday, February 3, 2012, as the date in which the Union exchanged their list of potential witnesses with Management.

That being said, the record reflects the Union failed to submit their witness list to Management 14 days prior to the scheduled hearing as required by the CBA. Therefore, as stated during our telephonic conversation, Management will object to testimony from any of the identified potential witnesses on your witness list that was received by Management on February 3, 2012.

In addition to the above mentioned, during our conversation I inquired as to the status of the settlement offer I proposed to you during an earlier conversation on Tuesday, January 31, 2012. Although you initially requested additional time to contemplate the proposed settlement offer, you later indicated the proposed settlement offer would not be enough to settle the grievance that is scheduled for hearing on February 16, 2012. Based upon the party's obligation to settle all grievances at the lowest level possible, including at the arbitration level of the grievance process, I informed you of Management's decision to unilaterally apply what it believes to be the appropriate remedy in this particular grievance. As such, I advised you of my intentions to formally notify Arbitrator Lindauer of this unilateral decision and of Management's intentions to present the grievance as a "remedy only" issue. Additionally, in order to assure the Union is aware of this unilateral decision, I informed you of this decision during our telephonic conversation on Friday, February 3, 2012, as well as in an e-mail I sent to you on the same day.

As stated during our telephonic conversation and documented in my e-mail to you dated February 3, 2012, Management will convert all time charged to the Grievant

J. D. Williams  
Labor Relations Director  
United Brotherhood of Carpenters  
and Joiners of America  
1000 North Main Street  
Portland, Oregon 97227

Notice of Management's determination to unilaterally apply a remedy to grievance # NC48-793e-LCCR

during the time period of April 29, 2007 to August 29, 2007, into a paid Administrative Leave status. These leave hours include any sick leave, credited hours, annual leave, leave without pay, LWOP or any other hours the Grievant was charged during this particular time period. This action will result in a restoration of the Grievant's sick leave, credit hours and annual leave hours. This will also result in the Grievant receiving a 40% lump sum payment for the value of his accumulated sick leave as of the effective date of his retirement. This action is consistent with the language provided in Article 25 section 14 of the 2006 CBA.

As such, Management believes this action should make the Grievant whole as requested in the grievance that is scheduled for hearing on February 16, 2012. Also, upon review of my February 3, 2012, I stand corrected. In my February 3, 2012, e-mail I indicated the Department of Transportation would disburse any payment due to Mr. Lewis as a result of the restoration of the leave he was charged during the identified time period. However, the correct agency to render this payment is the Department of the Interior and not the Department of Transportation as indicated in my February 3, 2012, e-mail. Therefore, in order to provide clarification, this payment will be processed and disbursed to the Grievant by the Department of Interior, D.O.I. This is based upon the fact the D.O.I. is the government appointed agency responsible for disbursing all payments to current and former employees of the Federal Aviation Administration in matters of similar nature.

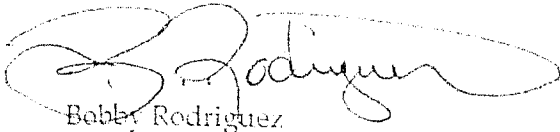
Furthermore, as stated during our conversation Management will reimburse the Grievant for all the cost associated with his psychological evaluation that took place in April of 2007, as well as his travel cost. This amount will total \$1900.00, which will be paid by the Western Service Center. As stated during our telephonic conversation it is imperative the Grievant submit his banking information to the Western Service Center as soon as possible in order to complete this reimbursement and ensure proper payment.

Based upon the above stated, Management believes the appropriate remedy has been applied and looks forward to a possible settlement of this grievance with the Union. However, if the Union should proceed forward with this grievance in the Arbitration arena, Management will be prepared to present this case as a remedy only issue.

Notice of Management's determination to unilaterally  
apply a remedy to pilots - # NC-05-79364-CCR

If you have any questions or concerns regarding this particular subject matter,  
please contact me at the office number provided.

Sincerely,



Bobby Rodriguez  
Federal Aviation Administration  
Labor/Employee Relations Specialist  
Western Pacific Region

Cc: Arbitrator Lindauer  
Mr. Jay Barrett, Esq.