

As provided at Section 19A of the Agreement the Company may prescribe the uniform item that will fulfill the basic uniform item entitled "Serving Garment" in Section 19B. If the Company determines that the optional vest shown at pages 19 and 24 of Company Exhibit 2 and approved for wear in Business Elite as shown on Union Exhibit 4 is to be the serving garment as identified in Section 19B subsections 1c and 2c, then all flight attendants who have previously purchased that vest shall be reimbursed for all costs associated with such purchase.

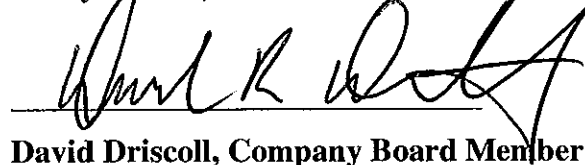
Alternatively, the Company may prescribe that the previously prohibited serving garment may be worn in Business Elite or the Company may prescribe and provide an entirely different item to fulfill the requirements of a serving garment for wear in Business Elite. Finally, the Board recognizes that Flight Attendants may have incurred cleaning costs directly associated with the wearing of the dress, vest, or jacket as a serving garment in Business Elite for the time period beginning with the launch of the Richard Tyler Collection in April 2009 until such time as a serving garment is provided however there was no evidence provided to the Board that would enable it to determine an appropriate calculation of such costs and therefore will remand that matter to the parties for further discussion and resolution. If the matter cannot be resolved within sixty days of the issuance of this decision then the parties shall submit that matter to the System Board for a final determination.

Respectfully submitted on May 7, 2010 by



Sylvia Skratek, Neutral Board Member

Kathy Collias, Union Board Member



David Driscoll, Company Board Member

*(Dissenting)
see attachment*

IN THE MATTER OF)
)
NORTHWEST AIRLINES, INC.)
(The Employer))
)
AND)
)
ASSOCIATION OF)
FLIGHT ATTENDANTS-CWA)
(The Union))

AFA Grievance
No. 88-00-02-045-09

HEARING: January 19, 2010

HEARING CLOSED: March 1, 2010

SYSTEM BOARD OF ADJUSTMENT MEMBERS:

Sylvia P. Skratek, Neutral Member
David Driscoll, Company Member
Kathy Collias, Union Member

DISSENTING OPINION

The Company submits the following Dissenting Opinion to the majority decision in the above-referenced matter. The Company dissents on the basis the majority's analysis of the law, contractual language and evidentiary record is flawed and on the basis the remedies ordered are improper. Moreover, since it remains unclear whether and under what circumstances the Board may award the reimbursement of cleaning expenses as a remedy, for the reasons set out below the Company reserves the right to challenge the Board's final determination on that issue in the appropriate forum.

A. The Majority's Analysis is Fatally Flawed.

The majority's decision is premised entirely on the faulty premise that "[t]he use of rules in aid of contract interpretation do not depend upon any determination that there is an ambiguity but are used in determining what meanings are reasonably possible as well as in choosing among possible meanings." (Majority Decision at p. 9). One of the most basic principles of contract law, however, is that when "the words are plain and clear, conveying a distinct idea, there is no occasion to resort to technical rules of interpretation." Elkouri & Elkouri, How Arbitration Works (5th ed. 1997) at p. 470.

The majority's decision to ignore this fundamental principle of contract interpretation is confounding. "[A]n arbitrator or court has no authority to consult extrinsic evidence such as alleged oral agreement . . . of the parties' course of dealing or alleged expectations" when the language of the collective bargaining agreement is clear and unambiguous. Dematic Corp. v. Int'l Union, United Auto., Aerospace and Agricultural Implement Works of America (UAW), 635 F. Supp.2d 662, 677-78 (W.D. Mich. 2009). An "arbitrator cannot 'ignore clear-cut contractual language,' and 'may not legislate new language, since to do so would usurp the role of the labor organization and employer.'" Elkouri & Elkouri, How Arbitration Works (5th ed. 1997) at p. 482.

Despite that fact arbitrators do not have the authority to legislate new contractual language, that is precisely what the majority has done. The majority has relied on extrinsic "evidence," i.e. the alleged expectations of union negotiators that admittedly were never communicated to the Company during bargaining, to revise the parties' agreement. Even in situations where an arbitrator is required to interpret ambiguous language, only "the intent manifested by the parties to each other during negotiations by their communications and their responsive proposals—rather than undisclosed understandings and impressions—is considered by the arbitrators in determining contract language." Kahn's & Co., 83 L.A. 1225, 1230 (John Murphy, 1984).

The majority's flawed analysis has led it to conclude that the Company violated the terms of the collective bargaining agreement when it modified its Uniform Wear Standards to prohibit the wearing of the "Female serving garment or Male apron" in the Business Elite or World Business Class cabins. (Majority Decision at p.11). The majority found the Company's decision to prohibit the wearing of the female serving garment/male apron in Business Elite or World Business Class violated the collective bargaining agreement on the ground "that a flight attendant is entitled to a serving garment as a basic uniform piece regardless of which cabin they are working." (Majority Decision at p. 11).

The majority cites the following reasoning as the basis for its conclusion:

The removal of the word "domestic" as a modifier of the serving garment as well as the deletion of the international serving jacket leaves only one interpretation: a serving garment will be provided to a flight attendant as a basic uniform piece regardless of what class of service is being provided.

(Majority Decision at p. 11). **Nevertheless, not one of the negotiators who testified at the hearing attributed this meaning to the language changes in Section 19.B. of the agreement.** To the contrary, the union negotiator testified as follows regarding the parties' discussions of the international serving jacket during bargaining:

The discussion was to get rid of it. Something to the effect of, you know, we had no discussions in any way about replacing it with anything or putting anything in lieu of it, just that we're going to get rid of it. Because at that time it was simply put we were trying to find concessions to save the company as opposed to looking at anything far reaching.

(Testimony of James Yung, tr. at p. 23, lines 13-19). Therefore, not only has the majority legislated new contractual language, the language legislated bears no resemblance to the parties' expressed intent.

B. The Remedies Ordered Are Improper.

"The System Board of Adjustment, whose authority derives from the Collective Bargaining Agreement, is empowered by the Agreement only to interpret and apply its provisions—it is not empowered to act as a court of equity." Joyce Fournier Grievance, at p. 17 (William Eaton, 1980). "[A]n arbitrator may not ignore the plain language of the contract." United Paperworkers Int'l Union, AFL-CIO v. Misco, 484 U.S. 29, 38 (1987). The arbitrator's award "must draw its essence from the contract and cannot simply reflect the arbitrator's own notions of industrial justice." Id. In other words, an arbitrator's authority to interpret the parties' collective bargaining agreement does not suggest that "the arbitrator is free to invent contract provisions." Peterbilt Motors Co. v. UAW Int'l Union, 219 Fed. App'x 434, 437 (6th Cir. 2007).

Nevertheless, the majority has ruled that if the Company elects to offer a different serving garment an an option for Business Elite or World Business Class, the Company "must provide that garment as part of the basic uniform pieces and it must be in addition to the pieces provided at subsections 1b and 2b." (Majority Decision at p. 13). Because the Company has already supplied every pre-merger NWA Flight Attendants with all of the basic uniform pieces listed in Sections 19.B.1. and 19.B.2. of the agreement, including 2 serving garments, Flight Attendants will receive additional uniform pieces above and beyond the requirements of Sections 19.B.1. and 19.B.2. Yet, the Company will receive no corresponding benefit or cost savings offset. Through its order, the majority has effectively deprived the Company the benefit of the bargain it struck with its Flight Attendant union—a contract providing \$195 mm of annual cost savings. By issuing such a remedy, the majority has ignored the clear-cut contractual language, legislated new language and usurped the role of the labor organization and employer in bargaining.

In addition, the majority has ordered the Company to pay certain cleaning expenses to the Flight Attendants. Specifically, the majority states:

[T]he Board recognizes that Flight Attendants may have incurred cleaning costs directly associated with the wearing of a dress, vest, or jacket as a serving garment in Business Elite for the time period beginning with the launch of the Richard Tyler Collection in April 2009 until such time as a serving garment is provided however there was no evidence provided to the Board that would enable it to determine an appropriate calculation of such costs and therefore will remand that matter to the parties for further discussion and resolution. If the matter cannot be resolved within sixty days of the issuance of this decision then the parties shall submit the matter to the System Board for a final determination.

(Majority Decision at p. 14) (emphasis added).

The majority's retroactive award of cleaning expenses is flawed in two respects: (1) in awarding cleaning expenses the majority has ignored the plain language of the collective bargaining agreement thereby acting as a court of equity; and (2) the union presented no evidence to support such an award.

The majority acknowledges throughout its decision that Section 4.G. of the parties' 2000 collective bargaining agreement, which provided for the reimbursement of reasonable and necessary laundry expenses for flight attendants engaged in international flying, "clearly . . . was deleted". (Majority Decision at pp. 10-11, 12). In fact, the union negotiator testified that the union received approximately \$100,000 in credit toward the union's cost savings target in agreeing to the elimination of Section 4.G. (Testimony of James Yung, tr. at pp. 26-27). In awarding cleaning expenses, after expressly acknowledging that the parties' bargained away all contractual provisions allowing for the reimbursement of such expenses, the majority is imposing its own brand of industrial justice. See United Steel Workers v. Enter. Wheel & Car Corp., 363 U.S. 593, 597 (1960).

In addition, the burden of proof is on the union in this case to prove a violation of the applicable collective bargaining agreement, as well as any alleged damages. Dyna Gel Inc. and Int'l Chemical Workers Union, 97 L.A. 510, 512 (Joseph P. Yaney, 1991) ("As the moving party the union has the burden of proof to offer data so that remedy can be calculated with certainty"). When "the union fail[s] in its burden of proof to offer time, dates, and numbers in order to meet the test of certainty alleging monetary damages, no monetary damages" should be awarded. Dyna Gel Inc., 97 L.A. at 512-513. McElroy Coal Co. and United Mine Workers of America, 93 L.A. 566, 570 (Bruce B. McIntosh, 1989) (In the absence of evidence confirming the propriety of monetary damages, an "arbitrator may not speculate but must restrict his findings to the contract and the evidence presented."). In light of the majority's conclusion that "there was no evidence

provided to the Board that would enable it to determine an appropriate calculation of such costs," any award of cleaning costs is improper.¹

The majority's tentative award of cleaning costs as a remedy is unsupported by the language of the parties' collective bargaining agreement, and, in the absence of any proof, can be considered nothing but punitive. Therefore, the Company reserves the right to challenge any award of cleaning expenses in the appropriate forum pending the outcome of the Board's final determination on this matter.

Dated: May 7, 2010.

¹ The evidentiary record was closed on January 19, 2010, at the end of the hearing. (Transcript at p. 116). The hearing was closed on March 1, 2010, upon the Board's receipt of the transcript of the parties' closing arguments.