

No. 02-58

IN THE
Supreme Court of the United States

EASTERN PILOTS MERGER COMMITTEE,
Petitioner,

v.

CONTINENTAL AIRLINES, INC.,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit**

**MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE AND BRIEF AMICUS CURIAE OF
THE ALLIED PILOTS ASSOCIATION
IN SUPPORT OF PETITIONER**

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The Allied Pilots Association (“APA”) is the collective bargaining representative for 12,000 pilots at American Airlines, Inc. (“AA”), the largest airline in the world. APA moves for leave to file the attached brief *amicus curiae* in support of the Petition for *Certiorari*. Petitioner granted consent. Respondent’s counsel refused APA’s request for consent.

APA views the issues in this case from the perspective of a labor organization with ongoing obligations under the Railway Labor Act (“RLA”) to negotiate successorship rights and remedies for its pilots, and the further obligation to resolve disputes over the interpretation and application of its labor agreement through the adjustment board process mandated by

the RLA. In addition, AA pilots now include 2,000 pilots who formerly flew for Trans World Airlines, Inc. ("TWA"). Those pilots participated in section 1113 procedures under the Bankruptcy Code before AA purchased TWA's assets out of bankruptcy in April 2001.

APA shares petitioner's concern: the panel decision below grants airline management the same relief from collectively bargained obligations that management should have achieved, if at all, through the procedure for rejecting collective bargaining agreements prescribed in section 1113. The decision thus effectively negates both procedural and substantive employee protections mandated by the Bankruptcy Code, in favor of *ad hoc* inquiry by a bankruptcy court.

The panel decision also, however, in remarkably clear terms, infringes upon the exclusive jurisdiction of RLA adjustment boards to decide disputes growing "out of the interpretation or application" of labor agreements, including the jurisdiction to determine contractual remedies. 45 U.S.C. § 184. The panel decision thereby violates this Court's rulings in *Hawaiian Airlines v. Norris*, 512 U.S. 246, 252-53 (1994), and *Consolidated Rail v. Railway Labor Executives' Ass'n*, 491 U.S. 299, 303 (1989) ("*Conrail*"). Both cases clearly mandate primary and exclusive adjustment board jurisdiction over the interpretation of disputed contractual terms. Inadvertently or not, the panel decision opens the doors of federal courts to issues of contract interpretation formerly reserved for adjustment boards.

Because the airline industry faces unprecedented financial instability in the wake of September 11, 2001, including the potential bankruptcy of several carriers that AA may be interested in buying; because APA is currently negotiating a new labor agreement with AA, including expanded successorship rights; because AA, a Delaware corporation, is based in Dallas and thus peculiarly subject to the circuit split over bankruptcy law identified in the Petition for *Certiorari*; and

because the appropriate jurisdiction of RLA adjustment boards is a continual concern, and repeated subject of litigation, for APA and its pilots,¹ the APA asserts an interest in this proceeding and urges this Court to grant APA's motion for leave to file this brief *amicus curiae*.

Respectfully submitted,

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¹ See, e.g., *Whitaker v. Am. Airlines*, 285 F.3d 940 (11th Cir. 2002) (challenged discharge of probationary employee not a minor dispute); *Veta v. Am. Airlines*, No. 95-56299, 1997 U.S. App. LEXIS 4049 (9th Cir. Feb. 3, 1997) (challenged discharge of acquired airline's employee a minor dispute); *Anderson v. Am. Airlines*, 2 F.3d 590 (5th Cir. 1993) (allegation of retaliation for filing state workers' compensation claim not a minor dispute); *Renneisen v. Am. Airlines*, 990 F.2d 918 (7th Cir. 1993) (challenge to contract's validity not a minor dispute); *Davies v. Am. Airlines*, 971 F.2d 463 (10th Cir. 1992) (state law wrongful termination claim not a minor dispute); *Chandler v. Am. Airlines*, No. 91-5079, 1992 U.S. App. LEXIS 6796 (10th Cir. Apr. 10, 1992) (claimed breach of collective bargaining agreement a minor dispute); *Allied Pilots Ass'n v. Am. Airlines*, 898 F.2d 462 (5th Cir. 1990) (alcohol testing policy subject to mandatory arbitration because minor dispute).

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**BRIEF *AMICUS CURIAE* OF THE
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IN SUPPORT OF PETITIONER**

The Allied Pilots Association (“APA”) files this brief *amicus curiae* contingent on the Court granting the above motion.¹

¹ The APA General Counsel’s office authored this brief *amicus curiae* in whole. The Eastern Pilots Merger Committee (“EPMC”) contributed funds toward APA’s attorney fees and expenses. In addition, APA counsel provided advice to the EPMC on its Petition for *Certiorari*.

SUMMARY OF ARGUMENT

The panel decision below (“*Continental II*”) found that an earlier panel’s decision in the same case (“*Continental I*”)² had “interpreted” a collective bargaining agreement (“Agreement”) between Eastern Air Lines, Inc. and the Air Line Pilots Association (“ALPA”) to construe “the seniority provisions of the Agreement as a basis of providing a right of payment in lieu of injunctive relief after considering a variety of factors to include feasibility.” Appendix to the Petition for *Certiorari* (“Pet. App.”) 6a-7a. Based on the foregoing rationale, *Continental II* declined to reconsider the earlier panel’s holding that the pilots’ rights to seniority integration constituted “claims” under section 101(5) of the Bankruptcy Code, 11 U.S.C. § 101(5).

Continental II conflicts with well established precedents of this Court. Those precedents mandate exclusive adjustment board jurisdiction over disputed terms of labor agreements in industries covered by the Railway Labor Act (“RLA”)—disputes growing “out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.” *Hawaiian Airlines v. Norris*, 512 U.S. 246, 252-53 (1994); *Consol. Rail Corp. v. Ry. Labor Executives’ Ass’n*, 491 U.S. 299, 303 (1989) (“*Conrail*”). *Continental II* erroneously approved court, rather than adjustment board, resolution of disputed remedial terms of the Agreement.

Correcting this error in *Continental II* would require more than adopting the rationale previously set forth in *Continental I* to maintain the same result. Unlike *Continental II*, *Continental I* correctly stated this Court’s holding in *Conrail*, and disclaimed any need to interpret the Agreement. But *Continental I* then misapplied the RLA by ignoring the

² *Continental I* was reported as *In re Continental Airlines, Inc.*, 125 F.3d 120 (3d Cir. 1997). *Continental II* was reported as *In re Continental Airlines, Inc.*, 279 F.3d 226 (3rd Cir. 2002)

limitations on a court's power to set aside adjustment board awards prescribed in 45 U.S.C. § 153, First (p) and (q). Rather, *Continental I* found, prospectively, that "any" adjustment board award based on the pilots' seniority rights would give rise to a right of payment. *Continental I* thus effectively set aside any award of specific performance, even if based on an otherwise valid adjustment board determination that the parties had contracted exclusively for specific performance. Accordingly, neither *Continental I* nor *Continental II* is viable. While *Continental I*'s misapplication of the RLA to the facts did not warrant this Court's review, *Continental II*'s direct violation of this Court's precedents requires reversal, and a consequent reconsideration of the result in *Continental I*.

The errors in both *Continental I & II* flow from the panels' erroneous resolution of the issue identified in the Petition for *Certiorari*. The panels below did not require rejection of the Agreement, but sought to set aside or interpret away any right to specific performance that might arise from the Agreement. But the RLA, as construed by this Court, permits lower courts neither to interpret disputed contract terms nor to set aside adjustment board awards except on the narrow bases prescribed in that Act. Absent rejection, the contract must be given effect through the adjustment board mechanism.

By creating a circuit split over bankruptcy law, and violating this Court's precedents on the appropriate role of courts in interpreting labor agreements under the RLA, the panel decision undermines current collective bargaining in the airline industry. The panel decision creates uncertainty over the enforceability of successorship rights and seniority integration just as many carriers and their employees must adjust, and negotiate responses, to the financial instability in the industry following September 11, 2001. Increased instability in airline labor relations at this time is clearly an issue of national import.

Because *Continental II* conflicts with this Court's established precedents, creates a circuit split over bankruptcy law, and concerns issues of vital national importance, EPMC's Petition for *Certiorari* should be granted.

ARGUMENT

The APA joins Petitioner in respectfully urging this Court to review the judgment below for the reason set forth in the Petition for *Certiorari*: to resolve a circuit conflict over the effect of an employer's failure to reject a collective bargaining agreement under section 1113 of the Bankruptcy Code. The APA writes separately, however, to emphasize that the panel's effective nullification of section 1113 also led the panel to violate this Court's well established precedents under the RLA.

In light of the financial difficulties in the airline industry precipitated by the events of September 11, 2001, the conflicts created by the panel decision assume particular national import. The decision undermines the effect of collectively bargained successorship and seniority integration clauses in bankruptcy just as several large employee groups, including the APA, are seeking to reach new contracts in the wake of September 11. By forcing unions to seek new and expanded protections against the negative effects of mergers, the panel decision contributes to already volatile labor relations in the airline industry.

I. BY RE-AFFIRMING *CONTINENTAL I* BASED ON THAT PANEL'S INTERPRETATION OF DISPUTED REMEDIAL TERMS IN A LABOR AGREEMENT, THE PANEL BELOW VIOLATED WELL ESTABLISHED PRECEDENTS OF THIS COURT

A. Under the Railway Labor Act, interpretive disputes over labor agreements are subject to exclusive adjustment board jurisdiction, and resulting awards may be set aside only on statutorily prescribed grounds

The RLA establishes a comprehensive framework for resolving labor disputes in the rail and airline industries. Pursuant to that scheme, the statute divides contractual disputes into two classes. The first class concerns disputes over the creation of new collective bargaining agreements or attempts to change the terms of existing agreements. Adopting language traditionally used in the rail industry, this Court has termed such disputes "major disputes." *Norris*, 512 U.S. at 252; *Conrail*, 491 U.S. at 302-03; *Elgin, Joliet & E. Ry. v. Burley*, 325 U.S. 711, 723 (1945). Major disputes are subject to a lengthy process of bargaining and mediation, and failing agreement, parties may resort to economic force. *Conrail*, 491 U.S. at 302-03.

In contrast, the RLA establishes a "mandatory arbitral mechanism to handle disputes 'growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.'" *Norris*, 512 U.S. at 248 (citing 45 U.S.C. § 153, First (i)).³

³ Enacted in 1926, the RLA was extended to the airline industry in 1936. See 45 U.S.C. §§ 181-88. Although § 201 of the RLA, 45 U.S.C. § 181, extends all provisions of the RLA to the airlines save 45 U.S.C. § 153, "congressional intent requires identical court treatment of airline board decisions under section 184 and railroad board decisions under section 153, and this has been the continuing policy of the courts." *Hunt*

In the airline industry, the Act mandates that carriers and employee representatives establish “boards of adjustment” to arbitrate such disputes. 45 U.S.C. § 184. This Court termed such disputes “minor disputes.” *Elgin*, 325 U.S. at 723 (“minor disputes” relate, *inter alia*, “to the meaning or proper application of a particular provision with reference to a specific situation”).

Adjustment board jurisdiction to resolve minor disputes is compulsory, binding and exclusive. *Conrail*, 491 U.S. at 303-04 & n.4; *Andrews v. Louisville & Nashville R.R.*, 406 U.S. 320, 322-25 (1972) (“the notion that the grievance and arbitration procedures provided for minor disputes in the Railway Labor Act are optional, to be availed of as the employee or the carrier chooses, was never good history and is no longer good law”). The reasons for this rule are well established and have been articulated repeatedly by this Court.⁴ First, of course, the statute demands it. 491 U.S. at 303-04 & n.4; 406 U.S. at 322-25. But in addition, this Court has recognized the special competence of industry arbitrators to resolve such disputes based on custom and practice in the industry—and in particular to formulate remedies:

The federal policy of settling labor disputes by arbitration would be undermined if courts had the final

v. Northwest Airlines, 600 F.2d 176, 178 (8th Cir. 1979); *see also Loveless v. E. Airlines*, 681 F.2d 1272, 1275 (11th Cir. 1982) (“A court may overturn the decision of an airline system adjustment board only on the basis of one of the grounds listed in 45 U.S.C. § 153, First (q)”); *see generally Norris*, 512 U.S. 246 (1994).

⁴ One reason that appears central to this Court’s supervisory responsibilities is important but rarely mentioned. Opening the doors of federal courts to RLA contract interpretation issues would likely inundate the lower courts with such cases. In the railroad industry alone, the National Mediation Board reports 6,643 currently pending cases before government-funded adjustment boards as of July 26, 2002. *See* “Weekly Activity Report,” National Mediation Board website, <http://www.nmb.gov/activ-rpts/odarch.html> (last visited Aug. 6, 2002).

say on the merits of the awards. . . . [T]he arbitrators under these collective agreements are indispensable agencies in a continuous collective bargaining process. They sit to settle disputes at the plant level—disputes that require for their solution knowledge of the custom and practices of a particular factory or of a particular industry as reflected in particular agreements.

* * * *

When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations.

United Steelworkers of Am. v. Enterprise Wheel & Car Corp., 363 U.S. 593, 596-97 (1960).

There can be no question that the exclusive jurisdiction of RLA adjustment boards extends not just to the substantive rights under a labor agreement, but to nonfrivolous disputes over agreed remedies for violation of those rights as well. A core holding of *Conrail* was that the burden on the party seeking to invoke adjustment board jurisdiction is “light.” If the party “asserts a contractual right to take the contested action, the ensuing dispute is minor if the action is arguably justified by the terms of the parties’ collective-bargaining agreement. Where, in contrast, the [party’s] claims are frivolous or obviously insubstantial, the dispute is major.” *Conrail*, 491 U.S. at 307. By making a nonfrivolous assertion of right to a particular remedy under a labor agreement, a party meets its burden to vest the adjustment board with jurisdiction to decide that issue.

Thus, for instance, in *General Committee of Adjustment v. CSX Railroad.*, 893 F.2d 584 (3d Cir. 1990), where a railroad sought to sell a line without bargaining over its effects, the

court dismissed a union complaint seeking to enjoin the sale by noting that “[t]he merits of [the] issue [of the impact on union jobs] will be before the Adjustment Board as will the question of what remedy may be appropriate if it decides for the Union.” *Id.* at 592. Citing *Conrail*, the court declined to retain jurisdiction pending arbitration, noting that “[i]n minor disputes, the Board has full authority to resolve the matter and can grant a complete and adequate remedy to the prevailing party.” *Id.* at 593.⁵

Buttressing the exclusive jurisdiction of adjustment boards to decide interpretive disputes in the first instance, judicial review of adjustment board decisions is “among the narrowest known to the law.” *Union Pac. R.R. v. Sheehan*, 439 U.S. 89, 91, 93 (1979) (quoting the circuit court below, and noting that “[w]e have time and again emphasized” that the statutory language specifying three “limited” and “specific” grounds for review “means just what it says”).

RLA subsections 3, First (p) and (q) permit federal courts to set aside adjustment board decisions on only three bases: (1) failure of the Adjustment Board to comply with the requirements of the RLA; (2) failure of the Adjustment Board to conform or confine itself to matters within the scope of its jurisdiction; or (3) fraud or corruption. 45 U.S.C. § 153, First (p) & (q).⁶

⁵ See also *Air Line Pilots Ass'n v. E. Airlines*, 632 F.2d 1321, 1323 (5th Cir. 1980) (“The Supreme Court has recognized the need for flexibility in the formulation of arbitration remedies. As long as the award is essentially drawn from the essence of the agreement, it is valid and effectively etched in stone”).

⁶ In addition, some courts have reviewed adjustment board awards on due process or public policy grounds. See, e.g., *English v. Burlington N. R.R.*, 18 F.3d 741 (9th Cir. 1994) (due process); *Union Pac. R.R. v. United Transp. Union*, 3 F.3d 255 (8th Cir. 1993) (public policy). This Court has not yet spoken on these additional bases.

