UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AIRLINE DIVISION

Plaintiff,

-against-

AIR INDIA, LTD.

Defendant.

----------X

Case No.: 20-cv-09724 (LTS)

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR A PRELIMINARY INJUNCTION

Plaintiff International Brotherhood of Teamsters, Airline Division ("IBT" or "plaintiff"), respectfully moves this Court for a preliminary injunction against defendant Air India, Ltd. ("Air India" or "defendant"). As described below, the facts and law in this matter entitle plaintiff to such relief at this time. Air India unilaterally forced concessions on its clerical employees, who are represented for collective bargaining purposes by the IBT under the terms of the Railway Labor Act ("RLA"). In so doing, Air India violated the RLA's status quo requirement that terms of employment must be preserved during bargaining, creating a "major dispute" that must be remedied by restoration of the status quo. This Court must therefore enjoin Air India to restore the status quo and preserve the ability of the parties to bargain as required by the RLA.

SUMMARY OF ARGUMENT

The National Mediation Board ("NMB") certified the IBT to represent Air India's clerical employees in 1970, and the parties have had a collective bargaining relationship for almost fifty years. In 2005, Air India and the IBT adopted the current collective bargaining agreement ("CBA"), which became amendable again in 2009. The parties resumed bargaining in 2010 for an amended agreement. In 2013, the IBT requested that the NMB participate in

negotiations as mediator, as permitted by the RLA. The parties remain in mediation before the NMB, during which time the obligation under the RLA is for both parties to maintain the status quo.

According to its management, Air India has been experiencing financial difficulties and has imposed pay cuts on its employees in other countries. Air India also proposed implementing those pay cuts on clerical employees in the United States and requested that the IBT accede to a pay cut of 10%, up to $300 per month, for each IBT-represented employee. The IBT refused to amend the CBA to allow Air India to impose such concessions. Air India nevertheless cut wages over the IBT's objections, in clear violation of the terms of the parties' CBA and the RLA's status quo requirement. The IBT brings this action to force Air India to restore its employees' pay.

STATEMENT OF FACTS

I. The Parties and their Negotiations for Collective Bargaining Agreements

The IBT was certified by the National Mediation Board as representative of the Air India clerical and related employees on October 28, 1970 in Case No. R-4173. Complaint ("Compl.") at ¶ 6; De Figueiredo Decl. at ¶ 4. In the fifty subsequent years, the IBT has represented the clerical employees and related employees of Air India, who now number approximately 30 in New York City and Chicago, under a series of successively amended collective bargaining agreements. Compl. at ¶ 6; De Figueiredo Decl. at ¶ 4.

The current CBA has been in place since 2005, when the IBT's members at Air India agreed to a four-year agreement set to become amendable in 2009. Compl. at ¶ 8; De Figueiredo Decl. at ¶ 5. The parties began bargaining to amend this CBA in 2010, and in November 2013

requested the NMB to provide a mediator to assist with bargaining pursuant to Section 5 of the RLA, 45 U.S.C. §155. Compl. at ¶ 8; De Figueiredo Decl. at ¶ 5. Even with the efforts of the mediator, an amended collective bargaining agreement has not yet been reached. Id.

On July 24, 2020, Air India announced a "mandate" that all its employees worldwide would be required to take a 10% pay cut and ordered that its U.S.-based employees would be required to take a 10% pay cut up to $300 of its employees' monthly salary. Compl. at ¶ 10; De Figueiredo Decl. at ¶ 6. The IBT objected to Air India's plans for a pay cut, citing the RLA's requirement that the status quo be maintained while negotiating and mediating to amend a collective bargaining agreement. The IBT's representative, Cynthia De Figueiredo, replied to Air India that it could not change the terms of employment without the IBT's agreement. Compl. at ¶ 10; De Figueiredo Decl. at ¶ 7. The NMB-appointed mediator scheduled meetings to discuss Air India's request and virtual discussions were held on August 4, 10 and 26, 2020, although the parties could not agree to pay cuts. Compl. at ¶ 10; De Figueiredo Decl. at ¶ 8.

While the matter remained unresolved, Air India continued to threaten a unilateral cut to employees' pay. De Figueiredo sent a letter to Kamal Roul, Air India's Regional Manager on September 14, 2020 again pointing out that any unilateral change to the terms and conditions of employment such as a reduction in wages by Air India is a violation of the RLA. De Figueiredo Decl. at ¶ 9. Mr. Roul's response was simply that there was "no scope of negotiation" and that Air India would be implementing the 10% pay cut to its clerical employees effective from August 2020. De Figueiredo Decl. at ¶ 10.

When Air India made it clear that it had no intention to further negotiate the proposed pay cut and that it would be implementing the pay cuts retroactively to employees' pay, the IBT's attorney Nicolas Manicone sent a letter to Mr. Roul on September 18, 2020 warning him that if

Air India were to impose unilateral pay cuts, it would violate the Railway Labor Act and force the IBT to sue Air India. De Figueiredo Decl. at ¶ 11. Further discussions were held on October 30, 2020 between the parties, with the NMB-appointed mediator's assistance, however, the parties were still unable to reach an agreement. De Figueiredo Decl. at ¶ 12.

On November 5, 2020 Mr. Roul sent all U.S.-based Air India clerical and related employees an email which said, in relevant part: "The directive from HQ is very firm being a mandate from the AI [Air India] Board, that no exception can be made for any group of employees, and that the deduction is mandatory to all employees across the board." [sic] Mr. Roul also noted that "I have had several involved discussion with Local 210 representatives and the National Mediation Board to see if any alternate solution could be found. Sadly, we could not come to any agreement as the mandate is very clear which applies to all with no concession." [sic] Compl. at ¶ 11; De Figueiredo Decl. at ¶ 13.

On November 10, 2020, Air India clerical employees received their bi-weekly paychecks. Air India had deducted $300 from each paycheck with the exception of one employee who was making minimum wage and could not have their wages reduced. Compl. at ¶ 12; De Figueiredo Decl. at ¶ 14. Air India also announced that an additional $300 would be deducted from the upcoming November 25, 2020 paycheck, to be retroactively applied to the wages Air India paid employees in August 2020. Compl. at ¶ 12; De Figueiredo Decl. at ¶ 14. On November 25, 2020 Air India did in fact make another deduction to each Air India clerical employee's paycheck for retroactive wage cuts effective August 2020. De Figueiredo Decl. at ¶ 15.

The RLA's status quo provisions are set forth in Section 6 and Section 2, First and Seventh of the Act. 45 U.S.C. §§ 156; 152, First and 152, Seventh. Together, these provisions require air carriers like Air India to maintain collectively bargained wages and working

conditions until the parties exhaust the RLA's mandatory bargaining procedures. The parties are in the midst of the mandatory bargaining procedures and are mediating their dispute over wages with the help of an NMB-appointed mediator. Without giving this process the chance to result in a mutually-acceptable agreement, Air India bypassed the statutory process and proceeded directly to change the terms of its clerical employees' employment without agreement with the clerical employees and their exclusive representative, the IBT. By so doing, Air India flagrantly violated its obligations under the RLA and triggered what RLA jurisprudence has termed a "major dispute", for which the immediate remedy is an injunction to stop further violations and to restore the status quo.

STANDARDS FOR GRANT OF A PRELIMINARY INJUNCTION

A preliminary injunction is appropriate if the movant demonstrates all of these elements: "(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." *Citigroup Global Markets, Inc. v. VCG Special Opportunities Master Fund, Ltd., 598 F.3d 30, 35 (2nd Cir. 2010); Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc.,* 596 F.2d 70, 72 (2d Cir.1979); *Checker Motors Corp. v. Chrysler Corp.,* 405 F.2d 319, 323 (2d Cir.1969); *Hamilton Watch Co. v. Benrus Watch Co.,* 206 F.2d 738, 740 (2d Cir.1953).

The IBT meets the necessary elements. The Union is likely to prevail on the merits in this action, as Air India blatantly violated its well-established obligation to maintain the status quo under the RLA. It is not necessary to show irreparable injury to qualify for a preliminary injunction to remedy a status quo violation under the RLA; the U.S. Supreme Court has held that

"[a] failure by either side to maintain the status quo during the bargaining and mediation process may give rise to injunctive relief, **even without the customary showing of irreparable injury**." citing *Consolidated Rail Corp v. Ry. Labor Executives' Assn.*, 491 U.S. 299, 302-03 (1989)(emphasis supplied); *United Air Lines v. Int'l Ass'n of Machnists and Aerospace Workers*, 243 F.3d 349, 362-64 (7th Cir. 2001)(directing the district court to issue a preliminary injunction without any consideration of whether United had shown irreparable injury); *S.Ry.Co. v. Bhd of Locomotive Firemen & Enginemen*, 337 F.2d 127, 133 (D.C. Cir. 1964)(finding "a showing of irreparable injury [was] not required before the [then] instant status quo injunction may issue"); *US Airways, Inc. v. US Airline Pilot Ass'n*, 813 F. Supp. 2d 710, 736 (W.D.N.C. 2011)(holding that a showing of irreparable injury is not required under Section 2, First).

ARGUMENT

I. The IBT Is Likely To Prevail On The Merits Because Air India Violated The RLA's Status Quo Obligation When It Unilaterally Implemented Changes Without First Exhausting The Mandatory RLA Procedures For Resolving Bargaining Disputes.

The principal purpose of Congress in enacting the RLA was to prevent strikes, lockouts or other interruptions to the nation's transportation systems. 45 U.S.C. §151a; *Tex. & New Orleans R.R. Co. v. Bhd. Of Ry. & S.S. Clerks*, 281 U.S. 548, 565 (1930). To effectuate its purpose, Section 2, First, which the Supreme Court has described as "[t]he heart of the Railway Labor Act," *Bhd. Of RR. Trainmen v. Jacksonville Terminal Co.*, 394 US. 369, 377 (1969), provides that "it shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreement concerning rates of pay, rules and working conditions…in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof." 45 U.S.C. §152, First; *Detroit & Toledo Shore Line R.R. Co. v. United Trans. Union*, 396 U.S. 142, 148-

150 (1969)(describing Section 2, First's obligation "'to exert every reasonable effort' to settle disputes" as "an implicit status quo requirement.")

Courts channel disputes under the RLA into one of two categories: "major disputes" and "minor disputes". *Consolidated Rail Corp. v. Railway Labor Execs.' Ass'n,* 491 U.S. 299, 305 (1989). Major disputes involve establishing or changing rates of pay, rules, or working conditions. *Id.* Minor disputes involve the interpretation or application of collective bargaining agreements. *Id.* Minor disputes occur "where an employer asserts a contractual right to take [a] contested action"; where there is no contractual justification for taking an action, or where the justification is "frivolous or obviously insubstantial, the dispute is major." *Id.* at 307. Federal courts have jurisdiction over major disputes, whereas disputes over the meaning of a contract are resolved by arbitration. *Chicago & N.W. Ry. v. United Transp. Union*¸ 402 U.S. 570, (1971)("Congress intended the enforcement of Section 2, First [of the RLA] to be overseen by appropriate judicial means"); *compare Union Pac. R.R. v. Sheehan*, 439 U.S. 89, 94 (per curiam)("Congress considered it essential to keep these so-called "minor" disputes within the Adjustment Board and out of the courts"). Here, there is no question that the dispute between Air India and the IBT is major because Air India cannot invoke contract language that allows it to pay less than the rate of pay established by the CBA. Instead, Air India is seeking to impose new contract terms for less pay without exhausting the negotiation and mediation mechanism the RLA prescribes. This is the essence of a major dispute.

The RLA requires parties seeking to amend a collective bargaining agreement to first negotiate and then mediate with the help of the NMB. Section 6 of the RLA sets out the negotiations requirement, commanding the parties to maintain the status quo until released to self-help by the National Mediation Board: "rates of pay, rules, or working conditions **shall not**

be altered by the carrier until the controversy has been finally acted upon, as required by Section 155 of this title, by the Mediation Board[.]" 45 U.S.C. § 156 (emphasis supplied). Section 155 (also referred to as Section 5) establishes the mediation part of the process, empowering the National Mediation Board to use its best efforts to mediate disputes before authorizing the parties to utilize self-help to settle their dispute, and again requiring that the status quo be maintained while mediation is ongoing. 45 U.S.C. § 155, First.

The Supreme Court has described the RLA's negotiation and mediation procedures as a "virtually endless" process of "negotiation, mediation, voluntary arbitration and conciliation." Burlington Northern R.R. v. Bhd. of Maint. of Way Employees, 481 U.S. 429, 444 (1987). The RLA intentionally provides for "slow movements by all parties during this negotiation and bargaining process" and "[d]uring the long negotiating process…seeks to protect the public, carriers, and unions alike by imposing a legal duty upon carriers and union to **maintain the status quo** with respect to rates of pay, rules and working conditions even when there is disagreement about the CBA." *Delta Air Lines, Inc. v. Air Line Pilots Ass'n*, 238 F.3d 1300,1305 (11th Cir. 2001) (citations omitted, emphasis supplied).

The legal duty to bargain is backed up by the federal courts' authority to enjoin conduct that violates the RLA's negotiation and mediation requirements: "Until [the parties] have exhausted those [negotiation and mediation] procedures, the parties are obligated to maintain the status quo.... The district courts have subject-matter jurisdiction to enjoin a violation of the status quo pending completion of the required procedures." *Consolidated Rail Corp v. Ry. Labor Execs.' Ass'n*, 491 U.S. 299, 302-03 (1989). *See* also *Detroit & Toledo Shore Line R.R. Co. v. United Transp. Union*, 396 U.S. 142, 153 (1969) (affirming issuance of injunction restraining railroad from implementing changes in work conditions prior to

exhaustion of Section 6 procedures); *Air Cargo Inc., v. Local Union 851, Int'l Bhd. of Teamsters,* 733 F.2d 241, 247 (2d Cir.1984)(holding that "while the major dispute procedures of section 6 are being carried out, the district court has exclusive jurisdiction to ensure that the status quo is being maintained" by means of an injunction to enforce the status quo); *Delta* at 305 (holding that "[a] failure by either side to maintain the status quo during the bargaining and mediation process may give rise to injunctive relief, even without the customary showing of irreparable injury").

Here, Air India's unilateral implementation of a new wage scale violates the status quo obligations required by the RLA while negotiations and mediation for an amended agreement is ongoing. Any effort to change the objective conditions of employment without first exhausting the detailed requirements of the RLA undermines the purposes of the Act and violates federal labor policy, which requires the parties "to exert every reasonable effort to make and maintain agreements" and thus "to avoid any interruption to commerce" growing out of labor disputes. 45 U.S.C. §152, First. Accordingly, as provided above, the IBT is entitled to a preliminary injunction restoring the status quo and requiring Air India to negotiate with the IBT and exhaust the RLA's procedures before making any changes to the Agreement.

II. The Norris-LaGuardia Act Does Not Bar This Court From Intervening To Maintain The Status Quo During Negotiations.

The Norris-LaGuardia Act (NLGA), 29 U.S.C. §101 *et seq.* sets forth procedural requirements applicable in those situations where a federal court has jurisdiction to issue an injunction in a labor dispute, and generally deprives federal courts of authority to issue injunctions in many types of labor cases. *Jacksonville Bulk Terminals v. International Longshoremen's Ass'n*, 457 U.S. 702, 711-15 (1982). Status quo injunctions under the RLA constitute an exception, however. The Supreme Court has consistently held that courts must

"accommodate the competing demands of the RLA and the Norris LaGuardia Act" by enforcing the RLA's specific mandates where they apply. *Burlington Northern R.R. Co. v. Bhd. of Maint. of Way*, 481 U.S. 429, 445 (1987)(citing cases). In the case of a status quo violation, the substantive legal duty imposed by Section 2, First, which is a "specific provision" of the RLA and "central to the purpose and functioning" of the RLA, "takes precedence over the more general provisions of the NLGA" and therefore permits a court to issue an injunction. *Delta Air Lines*, 238 F.3d at 1307; *see also Chi. & N.W. Ry. v. United Transp. Union*, 402 U.S. 570, 582 (holding that federal courts have subject matter jurisdiction to enjoin a violation of the status quo obligations under the RLA, notwithstanding the NLGA). Accordingly, the NLGA has been found to not bar RLA status quo injunctions, although the procedural requirements of the NLGA, like those requiring an evidentiary hearing, may still apply. *Delta* at 307.

CONCLUSION

Air India's unilateral imposition of concessions upon its clerical employees violates the RLA-mandated status quo and adversely affects the employees themselves as well as the IBT's ability to negotiate on behalf of its members. The Court should therefore issue a preliminary injunction enjoining Air India from implementing unilateral changes before it exhausts the statutorily-mandated mediation process, and restoring the lawful, pre-violation status quo.

Dated: December 3, 2020

Respectfully submitted,

HOFFMANN & ASSOCIATES

By: __/s/ Andrew S. Hoffmann___

Andrew S. Hoffmann, Esq.
450 Seventh Avenue, Suite 1400
New York, NY 10123
Tel: (212) 679-0400
Fax: (212) 679-1080

Nicolas M. Manicone
(*Pro hace vice* application forthcoming)
International Brotherhood of Teamsters
35 Louisiana Avenue, NW
Washington, DC 20001
Tel: (202) 624-7470
Fax: (202) 624-6884