

SECTION 21

SYSTEM BOARD OF ADJUSTMENT

Definitions:

FILE/ISSUE

A document shall be deemed "filed" or "issued," as applicable, on the day in which the document is postmarked, or if Federal Express is used, on the day in which the document is submitted to the Company for shipment or if a facsimile machine or electronic mail is used to transmit the document, on the day in which the appeal or decision is transmitted by such means.

CASE IN CHIEF

The evidence presented by a party in the primary presentation of its case. The term does not include evidence used on cross examination or in rebuttal.

As provided in Section 204, Title II of the Railway Labor Act, a System Board of Adjustment is established for the purpose of adjusting and deciding grievances which arise under the terms of this Agreement and have been processed under Section 19 or Section 20 of this Agreement which are properly brought before it in a timely fashion. The System Board of Adjustment shall be known as the Federal Express Pilots' System Board of Adjustment (hereinafter referred to as "the System Board").

A. Jurisdiction

1. The disciplinary System Board shall have jurisdiction over disputes between a pilot(s) or the Association and the Company growing out of grievances, or out of the interpretation or application of any of the terms of the Agreement, which are processed under Section 19 of this Agreement and which are submitted to the System Board as provided in Section 21.B. A neutral arbitrator from the disciplinary panel shall hear such disputes as the sole member of the Board unless either party elects to proceed before a 3-person board. Any such election must be made at least 45 days prior to the System Board proceeding.
2. The non-disciplinary System Board shall have jurisdiction over disputes between a pilot(s) or the Association and the Company growing out of grievances, or out of the interpretation or application of any of the terms of the Agreement, which have been processed under Section 20, and which have been submitted to the System Board as provided in Section 21.B. Such disputes shall be heard by a 3-person System Board unless either party elects to proceed before a 5-person System Board. Any such election must be made at least 45 days prior to the System Board proceeding.
3. Retirement and Benefit disputes which are referred to the Pilot Benefit Review Board, as provided in Sections 27 and 28, are handled as set forth in those Sections.
4. The jurisdiction of the System Boards shall not extend to proposed changes in hours of employment, rates of pay or working conditions covered by agreements between the parties in existence at the time the System Board decision is rendered.

B. Submissions to the System Board

1. At least 60 days prior to a System Board proceeding, the Company and the Association shall confer and designate the case(s) to be heard during that session. Copies of the appeal(s) for the case(s) designated to be heard shall be promptly provided to the neutral member. If the parties cannot agree, the oldest case(s) shall be selected first, except that under the disciplinary System Board, termination cases shall take precedence over non-termination cases.
2. Disputes shall be appealed to the System Board by filing an Appeal with the System Board Chairman as provided herein.

3. Appeals to the System Board shall contain the following:
 - a. Statement of facts and circumstances.
 - b. A citation to the portions of this and/or related Agreements which gave rise to the Grievance.
 - c. A statement of the issue(s) and/or questions to be decided.
 - d. Position of the party submitting the appeal.
 - e. Position of the other party or parties.
 - f. The relief sought (optional).
 4. Copies of appeals shall be sent to the FedEx MEC Grievance Committee Chairman, the FedEx MEC Representation Department, the Vice President, Flight Operations and the designated officials in the Company's Labor Relations and Contract Administration Departments.
 5. If any party disagrees with the statement of its position contained in an appeal filed by another party, the objecting party may submit its own statement to the System Board and all other parties.
 6. Pre-hearing briefs may be submitted only to the System Boards by agreement of the parties, or by order of the arbitrator.
- C. System Board Composition and Proceedings
1. Composition
 - a. The Company and the Association, when applicable, shall each appoint an equal number of members to serve on the System Board. Such members shall be current or former employees of the Company or current or former regular employees of the Association. The neutral member of the System Board shall be the arbitrator.
 - b. Each member of the System Board shall have one vote.
 2. Proceedings before the System Board
 - a. System Board proceedings shall take place in person, unless all parties agree to conduct the hearing telephonically.
 - b. Disputes between pilots or the Association and the Company which are processed under Section 19 of this Agreement and which are submitted to the System Board as provided in Section 21.B., may be consolidated by mutual agreement of the Company and the Association.
- D. Arbitration
1. The 3-person System Board, when elected by one of the parties for disciplinary cases, shall hear disputes submitted under Section 19 of this Agreement. Otherwise, the neutral member shall decide disciplinary cases alone. The non-disciplinary System Board shall hear disputes submitted under Section 20 of this Agreement.
 2. Each member of the System Board shall have one vote. If one member of a 5 person System Board is absent, he may give his proxy to another member. Proxies must be in writing.
 - a. The System Board may not reach a decision without a vote by all members. No member may refuse to vote in order to prevent a decision from being rendered.
 - b. If the System Board reaches a decision by majority vote, that decision shall be final and binding on all parties and the System Board shall issue a written decision within 30 days after the vote.
 3. The neutral member shall serve as the chairman of the System Board and shall preside at all hearings of the System Board.
 4. 15 Day Evidentiary Exchange

Each party shall exchange all documents they intend to enter in their case in chief, in support of their respective positions, and make available, in writing, the names of all witnesses they intend to summon whom they deem necessary to the dispute 15 days prior to the date set for the hearing. Nothing herein shall require the parties to present the aforementioned documents or summon the aforementioned witnesses during the course of the hearing. The parties shall not be restricted from entering

documents or summoning witnesses who become known subsequent to the 15 day exchange, provided timely notice is given to the opposing party.

E. Panels of Arbitrators

1. The Association and the Company shall maintain 2 separate panels of 6 arbitrators each: one with arbitrators for disciplinary cases and the other with arbitrators for non-disciplinary cases.
2. Impaneling of Arbitrators
 - a. At least 180 days prior to the amendable date, the Association and the Company shall meet to determine whether to retain either of the current panels of arbitrators. If either of the parties decides to replace a panel(s), the parties shall simultaneously exchange a list of 15 arbitrators for each panel to be replaced. An incumbent arbitrator(s) on a panel that is being re-selected may be submitted on a party's 15 arbitrator list.
 - b. Within thirty days following the exchange, the parties shall meet in order to select the subsequent panel(s) of arbitrators.
 - c. The selection of arbitrators shall be accomplished as follows:
 - ii. If an arbitrator(s) appeared on both exchanged lists described in Section 21.E.2.a., such arbitrator(s) shall be accepted as a member of the respective panel. If the panel is not complete, then;
 - iii. the parties shall examine each other's lists and determine whether there are any arbitrators on the other party's list that are acceptable to both parties. Any such arbitrator(s) shall be accepted as a member of the respective panel. If the panel is not complete, then;
 - iv. within 15 days following the meeting, the parties shall simultaneously exchange a second list, containing 7 different arbitrators, and repeat the process described in Section 21.E.2.b., and E.2.c.i., and E.2.c.ii. If a panel still is not complete, then;
 - (a) the parties shall jointly request the NMB to provide a single list containing 7 arbitrators for each remaining vacancy on that panel (e.g., a list of 14 arbitrators to fill 2 vacancies on a panel).
 - (b) following receipt of the list(s), the parties shall examine the list(s) and determine whether any arbitrators are acceptable to both parties. Any such arbitrator(s) shall be accepted as a member of the respective panel. If the panel still is not complete, then;
 - (c) any remaining vacancies shall be filled using the alternate strike method based on the list(s) provided by NMB. A coin toss shall determine which party has the first strike. If the alternative strike method is necessary for both panels, then the party losing the coin toss regarding the administrative panel shall have the first strike on the disciplinary panel.
3. Vacancies on a Panel of Arbitrators
 - a. Should vacancies occur on either panel of neutral members, other than by operation of Section 21.E.5., the parties shall attempt to agree on a replacement within 30 days after the vacancy occurs. If the parties are unable to agree on a replacement, the vacancy shall remain unfilled.
 - b. If there are too few arbitrators to hear scheduled arbitrations, the parties may select an arbitrator to hear a scheduled arbitration on an ad hoc basis. This arbitrator shall be selected by the alternate strike method from a list of 7 arbitrators provided by the National Mediation Board. A coin toss shall determine which party has the first strike.
4. Scheduling of Neutral Members of the System Boards
 - a. In September of each year the Company and the Association shall schedule mutually agreeable dates on which the neutral members of the System Boards shall conduct System Board proceedings during the following calendar year. The slotting of neutral members into the scheduled dates shall be done by mutual agreement. If by September 20 of each year, the parties have been unable to agree upon such slotting, then on the first business day thereafter, the parties shall meet to determine such slotting by drawing the panel members' names (first draw determined by coin toss) and slotting them in the order drawn.

- b. If necessary, additional dates for System Board proceedings will be scheduled by mutual agreement of the Company and the Association.

5. Removal of Neutral

a. Bilateral

The Association and the Company may, by mutual agreement, remove an arbitrator from a panel(s). Within 30 days after the arbitrator's removal, the parties shall meet to determine whether the vacancy should be filled or left vacant. If either party wishes to fill the vacancy, then the following shall apply:

- i. The Association and the Company shall simultaneously exchange a list of 7 arbitrators within 10 days after the removal.
- ii. Thirty days following the exchange, the Association and the Company shall meet in order to select the arbitrator. The selection of the arbitrator shall be accomplished as follows:
 - (a) If a single arbitrator appeared on both exchanged lists, such arbitrator shall be accepted as a member of the panel.
 - (b) If more than one arbitrator appeared on both exchanged lists, the replacement arbitrator shall be selected by an alternative strike method among the arbitrators appearing on both lists, with a coin toss to determine which party has the first strike.
 - (c) If no arbitrator appeared on both lists, the parties shall determine whether either party is willing to accept an arbitrator from the other party's list. If a mutually acceptable arbitrator is found, such arbitrator shall be impaneled. If not, then the parties shall use the process described in Section 21.E.2.c.iii.(a)-(c) to fill the vacancy.

b. Unilateral

Each party shall have the opportunity to remove a total of three arbitrators during the term of the Agreement, but no more than one in any period of 12 months. A party exercising a unilateral removal shall inform the other party, in writing, of its removal.

- i. The arbitrator shall be considered removed as of the date of the notice of removal, provided, however, that a System Board for which an appeal has been filed shall continue to retain jurisdiction over the dispute(s).
- ii. If the removed arbitrator originally appeared on both parties' list, then his replacement shall be accomplished as provided in Section 21.E.5.a.i., and ii.
- iii. If the removed arbitrator originally appeared only on one party's list, then, within 30 days following the removal, that party shall submit a list of 7 arbitrators. Within 15 days following receipt of the list, the parties shall determine whether there is a mutually acceptable arbitrator. If not, then the parties shall use the process described in Section 21.E.2.c.iii.(a)-(c) to fill the vacancy.

- 6. Unless otherwise agreed, all arbitrators, whether on lists submitted by the parties or obtained from the NMB, shall be members of the National Academy of Arbitrators experienced in airline arbitrations.

F. General Provisions

- 1. Time limits and meeting dates may be modified, orally or in writing, by mutual agreement of the parties. Oral agreements shall be confirmed in writing as soon as practicable. Requests for modifications shall not be unreasonably denied. When any appeal to the System Board is not requested within the respective time limits prescribed herein, including any extension mutually agreed upon, the decision of the Company shall be final and binding.
- 2. For purposes of Section 21, if a time limit is 15 days or less, the term "day" means business day. If a time limit is more than 15 days, the term "day" means calendar day. In any event, if the last day of a time limit falls on a weekend, or on a Corporate or ALPA Holiday (currently including New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day and the following Friday, Christmas, or the day on which such holiday is observed by the Company or ALPA), the time limit shall be extended through the first business day following the weekend or holiday. The parties shall inform each other expeditiously of any changes in Corporate or ALPA holidays.

3. The Association, the Company and, if applicable, the individual grievant pilot are parties to all System Board proceedings.
4. Every participant in System Board proceedings shall be free to discharge his duty without fear of retaliation by the Association or the Company. No participant shall be coerced or harassed by the Association or the Company.
5. The reasonable expenses and fees of neutral members and any line pilot witnesses summoned by the System Board, and the cost of facilities selected for System Board proceedings shall be borne equally by the Company and the Association. A party may order a transcript or other record of a System Board proceeding. A copy of such record shall be made available to a party upon request, provided the requesting party agrees to pay a pro-rata share of the cost of making such record. All other costs associated with System Board proceedings, including, but not limited to, expenses and, if applicable, flight pay loss for line pilot witnesses called by any party, shall be borne by the party who called the witness or otherwise incurred the expense.
6. If applicable, a schedule for submission of post-hearing briefs shall be established immediately prior to the close of the hearing.
7. Proceedings of the System Board shall be conducted at locations selected by agreement of the Company and the Association. In making such selections, the Company and the Association shall endeavor to minimize costs. In the absence of an agreement, proceedings shall be conducted in Memphis, Tennessee.
8. The grievant(s) and a reasonable number of witnesses and Association representatives involved in the resolution of disputes pursuant to this Section may be released from Company duty pursuant to the provisions of Section 18 of this Agreement. The arbitrator hearing the underlying dispute shall resolve disputes regarding whether the number of Grievants and witnesses to be released from Company duty is disruptive to Company operations. The Parties shall present the issue to the arbitrator so that the System Board hearing on the underlying dispute is not delayed by disputes regarding the number of grievants or witnesses to be released from Company duty. Pilots participating as a witness, representative or member in a System Board proceeding shall be authorized round trip business jumpseat status to prepare for and attend such proceeding.
9. Delivery of all notices, decisions and appeals pursuant to Section 21, and any other documentation pursuant to Section 21 shall be made by Federal Express Overnight Letter, by certified mail, return receipt requested, in person, by facsimile transmission, Company electronic mail, or by other methods which provide verification of receipt. Such correspondence shall be sent to the pilot's Company electronic mail address and the pilot's permanent primary address. A pilot shall be deemed to have received notice upon the earlier of the pilot's actual receipt of notice or 20 days after the transmission of the electronic mail message. Such correspondence shall also be sent to the FedEx MEC Representation Department, and the FedEx MEC Grievance Committee Chairman. Whenever a party sends correspondence or other documentation to an arbitrator related to a case under this Section, the other party shall be copied on such correspondence or documentation using the same delivery method by which the arbitrator was sent his copy. Correspondence by email is acceptable among System Board members unless the neutral provides otherwise.
10. By mutual agreement between the Company and the Association, a neutral from the disciplinary panel may hear a non-disciplinary case, and vice versa.
11. At any System Board proceeding, the Company and ALPA may be represented, respectively, by an employee or agent of the Company or a representative or agent of ALPA.
12. System Board Awards
 - a. If a System Board Member dissents from an award issued by the majority of the System Board, the dissenting Member may submit a written dissent within 30 days of the majority's execution of the award, which shall be attached to the award.
 - b. If a System Board Member dissents from an award issued by the majority of the System Board and has not executed the award within 30 days after the award is executed by a majority of the System Board, the majority's award shall be final and binding without the dissenting Member's signature.