In the

United States Court of Appeals

For the Seventh Circuit

No. 24-1530

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, *et al.*,
Plaintiffs-Appellants,

v.

REPUBLIC AIRWAYS INC., *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Indiana, Indianapolis Division.
No. 23-cv-995 — **Richard L. Young**, *Judge.*

ARGUED OCTOBER 30, 2024 — DECIDED JANUARY 31, 2025

Before SCUDDER, ST. EVE, and KIRSCH, *Circuit Judges*.

ST. EVE, *Circuit Judge*. This appeal concerns a dispute between regional air carriers and their pilots' unions over the propriety of the carriers' individual employment agreements with pilots. Republic Airways Inc. and Hyannis Air Service, Inc. contracted with pilot candidates to provide certain incentives in exchange for commitments the candidates made to the carriers. The International Brotherhood of Teamsters ("Teamsters"), along with two of its local unions (together, the

"Unions"), allege that these employment agreements violate the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 et seq., because they were not bargained for and fall outside the scope of the parties' collective bargaining agreements ("CBAs").

Under the RLA, we characterize the parties' dispute as either "minor," mandating arbitration, or "major," permitting the suit to proceed in federal court. The district court deemed this dispute minor because its resolution centered on interpretation of the parties' CBAs. It therefore dismissed the Unions' complaint for lack of subject-matter jurisdiction. Recognizing the RLA's strong preference for arbitration, we agree, and affirm the judgment of the district court.

I. Background

Republic Airways Inc. ("Republic") and Hyannis Air Service, Inc. ("Hyannis") provide regional passenger air service. Republic and Hyannis (together, the "Carriers") each maintain a CBA with Teamsters, which acts as the certified bargaining representative for pilots employed by the Carriers. Each of these CBAs contains a provision key to the resolution of this case: Article 3.O of the CBA between Teamsters and Republic (the "Republic CBA"), dated October 14, 2022, and Section 1.J of the CBA between Hyannis and Teamsters (the "Hyannis CBA"), dated April 1, 2020.

Article 3.O of the Republic CBA governs bonuses and incentives for Republic pilots. It grants Republic broad discretion to determine the terms and conditions of the incentives that it offers:

> 1. With respect to signing bonuses, stipends and other new hire incentives, the Company has the discretion to offer, and to increase or decrease, signing bonuses,

> stipends, and/or incentives in its recruitment efforts of New Hire Pilots. The Company has the discretion to determine the terms of the signing bonus, stipend, and/or other incentives for New Hire Pilots including but not limited to the timing of payments of such signing bonuses, stipends, and/or incentives.
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> …
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> 3. The Company, in its discretion, may offer a bonus or financial incentive at any time and of any type or form to incentivize a qualified Pilot to complete Captain qualification training. The Company has the discretion to determine the terms of the bonuses, or other incentives for Pilots, including but not limited to the timing of payments of such bonuses and/or incentives.
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> 4. Until the amendable date of this Agreement, the Company, in its discretion, may offer a bonus or financial incentive at any time and of any type or form to incentivize the retention of Pilots. The Company has the discretion to determine the terms of the bonuses, or other incentives for Pilots, including, but not limited to, the timing of payments of such bonuses and/or incentives as well as terms specific to each Position.

Section 1.J of the Hyannis CBA, the "Management Rights" clause, similarly imbues Hyannis with discretion. It provides:

> [Hyannis] has and retains and the Union recognizes the sole and exclusive right of the Company to exercise all rights or functions of management except to the extent that such rights of management are limited by this Agreement and so long as the exercise of such rights does not conflict with the terms of this Agreement.

In addition to the CBAs, the Carriers entered into employment agreements with individual pilots. This appeal concerns two of these agreements, both of which involve pilots ascending to the position of captain at Republic. The Republic Airways Career Advancement Program Pre-Hire Enrollment Agreement (the "Pre-Hire Agreement"), entered into between a pilot candidate and Republic, makes the pilot eligible for $100,000 in incentive payments, paid according to when the pilot completes different stages of training to become a captain. In exchange, the pilot commits to two years of employment as an active status captain at Republic. If the pilot loses his or her position as captain, the pilot agrees to a five-year commitment as a Republic pilot and becomes ineligible for future incentive payments.

Failure to comply with any of the Pre-Hire Agreement's commitments constitutes a material breach and requires the pilot to repay any already earned incentive payments. On top of that, the pilot must pay damages—"not as a penalty, but as liquidated damages representing the harm to Republic based on the cost of training." If the employment relationship terminates prior to the pilot fulfilling the terms of the agreement, the pilot cannot work for any competitor airline for a period of one year.

The Republic Airways Captain Pathway Program Enrollment Agreement (the "Pathway Agreement") is a three-party agreement between a pilot candidate, Hyannis, and Republic. As its name suggests, the Pathway Agreement provides a pathway for new Hyannis pilots to become captains at Republic. Like the Pre-Hire Agreement, the Pathway Agreement provides for incentives in exchange for certain employment commitments. When Hyannis hires the pilot candidate,

Republic pays the pilot a $2,500 signing bonus. A pilot in the Captain Pathway Program also receives either a monthly housing stipend or housing accommodation arranged by Hyannis. Upon performing at least 720 hours of specific training time at Hyannis, the pilot receives a guaranteed spot in Republic's first officer trainee class. At this point, these pilots must terminate their employment at Hyannis—forfeiting their seniority rights and other privileges—and accept employment at Republic. Upon successful upgrade to the position of captain at Republic, the pilot becomes eligible for an incentive payment of up to $100,000.

In exchange for the incentive payment, the Captain Pathway Program pilot agrees to a three-year employment commitment, which includes two years as a Republic captain. As with the Pre-Hire Agreement, the Pathway Agreement provides that in the event a pilot does not fulfill these obligations, the pilot must repay the incentive payment to Republic in addition to liquidated damages. And if the employment relationship between the pilot and Republic ends, the pilot may not work at any airline that competes with Republic for one year.

The Unions challenge these agreements. In their first amended complaint, the Unions allege that the Carriers, along with Republic Airways Holdings, Inc. ("Holdings"), violated the RLA.[1] They also bring a state law claim alleging that the

[1] Holdings wholly owns Republic and owns a shareholder interest in Hyannis. Because the parties' dispute belongs before an adjustment board and not in federal court, we do not resolve the parties' disagreement regarding whether Holdings is a proper defendant.

non-compete provisions in the individual employment agreements violate Indiana law on restrictive covenants.

The defendants moved to dismiss for lack of subject-matter jurisdiction under Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6). The district court dismissed the Unions' claims for lack of subject-matter jurisdiction, holding that the dispute belongs in arbitration before an adjustment board, not in federal court.

The Unions now appeal. We review de novo the district court's dismissal for lack of subject-matter jurisdiction, accepting all of the Unions' well-pleaded allegations as true. *Choice v. Kohn L. Firm, S.C.*, 77 F.4th 636, 638 (7th Cir. 2023).

II. Discussion

A. The Railway Labor Act

Congress enacted the RLA "to promote peaceful and efficient resolution of [labor] disputes." *Union Pac. R.R. Co. v. Bhd. of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment, Cent. Region*, 558 U.S. 67, 72 (2009); *see also Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252 (1994). The RLA permits employers to modify the rates of pay, rules, or working conditions of their employees in one of two ways: they may "act in accordance with an[] existing agreement," or "go through the bargaining and negotiation procedures prescribed in the RLA." *BLET GCA UP v. Union Pac. R.R. Co.*, 988 F.3d 409, 412 (7th Cir. 2021) (citing 45 U.S.C. § 152 Seventh); *see also Bhd. of Locomotive Eng'rs & Trainmen (Gen. Comm. of Adjustment, Cent. Region) v. Union Pac. R.R. Co.*, 879 F.3d 754, 756 (7th Cir. 2017) (hereinafter "*Brotherhood 2017*").

Here, the parties dispute whether the Carriers acted in accordance with an existing agreement—their respective CBAs

with the Unions. When a disagreement over the scope of a CBA arises, the RLA distinguishes between two classes of disputes: those "'over the formation of [CBAs] or efforts to secure them'"—so-called "major" disputes—"and those that 'contemplate[] the existence of a [CBA]'"—so-called "minor" disputes. *BLET GCA UP*, 988 F.3d at 412 (quoting *Elgin, J. & E. Ry. Co. v. Burley*, 325 U.S. 711, 722–23 (1945)). The terms "major" and "minor" do not connote the size or significance of a dispute. They are terms of art. Major disputes arise over the creation of contractual rights, while minor disputes concern the interpretation or application of already existing agreements. *Consol. Rail Corp. v. Ry. Labor Execs.' Ass'n*, 491 U.S. 299, 302–03 (1989) (hereinafter "*Conrail*"); *see also BLET GCA UP*, 988 F.3d at 412.

Federal courts only have jurisdiction to hear major disputes;[2] minor disputes are resolved in arbitration. *Brotherhood 2017*, 879 F.3d at 757–58. In furtherance of the RLA's goals to avoid disruption in labor and to ensure that industry experts interpret and enforce CBAs, the RLA reflects a "strong preference" for arbitration. *BLET GCA UP*, 988 F.3d at 413; *see also Conrail*, 491 U.S. at 310 ("Referring arbitrable matters … will

[2] In this circuit, we have treated the RLA's arbitration requirement as jurisdictional without "consider[ing] the effect of the Supreme Court's modern understanding of the difference between 'jurisdiction' and other kinds of rules." *Miller v. Sw. Airlines Co.*, 926 F.3d 898, 901 (7th Cir. 2019); *see also BLET GCA UP*, 988 F.3d at 415; *Brotherhood 2017*, 879 F.3d at 756; *Carlson v. CSX Transportation, Inc.*, 758 F.3d 819, 831 (7th Cir. 2014) (recognizing that this court has yet to consider whether the RLA's arbitration requirement is jurisdictional). We need not address this issue here, "for either a substantive or a jurisdictional label ends the litigation between these parties and forecloses its continuation" in federal court. *Miller*, 926 F.3d at 901.

help to … assur[e] that collective-bargaining contracts are enforced by arbitrators who are experts in the common law of [the] particular industry." (internal quotations omitted)). An employer's burden to persuade a court that a dispute is "minor" (i.e., subject to arbitration) is therefore "relatively light." *Conrail*, 491 U.S. at 307 (internal quotations omitted); *see also Brotherhood 2017*, 879 F.3d at 758 (an employer's burden to establish a minor dispute "is quite low"). An employer need only show that its CBA "arguably justifie[s]" its conduct. *Conrail*, 491 U.S. at 307. So long as the employer's argument is "'neither obviously insubstantial or frivolous, nor made in bad faith,' the court lacks jurisdiction to do anything but dismiss the case and allow arbitration to go forward." *Brotherhood 2017*, 879 F.3d at 758 (quoting *Conrail*, 491 U.S. at 310).

"Plain and simple, 'in making the choice between major and minor, there is a large thumb on the scale in favor of minor, and hence arbitration.'" *BLET GCA UP*, 988 F.3d at 413 (quoting *Brotherhood 2017*, 879 F.3d at 758); *see also Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Exp. & Station Emps. v. Atchison, Topeka & Santa Fe Ry. Co.*, 847 F.2d 403, 406 (7th Cir. 1988) ("[B]ecause a major dispute may escalate into a strike, we resolve all doubts in favor of finding the dispute at issue to be minor."); *Ry. Lab. Execs. Ass'n v. Norfolk & W. Ry. Co.*, 833 F.2d 700, 705 (7th Cir. 1987) ("[I]f there is any doubt as to whether a dispute is major or minor a court will construe the dispute to be minor.").

With the law settled and agreed on by the parties, we turn to the two challenged individual employment agreements.

B. Pre-Hire Agreement

The Pre-Hire Agreement provides monetary incentives for pilots who become Republic captains in exchange for certain employment commitments. The Unions challenge the Pre-Hire Agreement as both outside the scope of the Republic CBA and a violation of it. But the Pre-Hire Agreement's incentives and commitments are, at the very least, arguably justified by Article 3.O of the Republic CBA.

Article 3.O, entitled "Signing Bonuses, New Hire Incentives, and Other Bonuses/Incentives," grants Republic discretion to determine the terms, timing, and form of incentives for its pilots. The Carriers make a nonfrivolous argument that such broad discretion permits Republic to recruit new pilots by, among other things, incentivizing their ascension to the position of captain.

This argument is reinforced by the expanded scope of Article 3.O in the operative CBA. The previous CBA between Republic and Teamsters made no mention of "other bonuses/incentives," and, unlike the operative CBA, did not give Republic discretion to offer incentives "at any time and of any type or form" for "qualified Pilot[s]." The expansion of Republic's discretion arguably supports its position that it bargained for the ability to offer incentives to attract and retain pilots. *See Transp.-Commc'n Emps. Union v. Union Pac. R.R. Co.*, 385 U.S. 157, 161 (1966) ("In order to interpret [a CBA] it is necessary to consider the scope of other related collective bargaining agreements, as well as the practice, usage and custom pertaining to all such agreements."); *see also Brotherhood 2017*, 879 F.3d at 758 (considering evidence of the parties' CBAs and history of dealings on a 12(b)(1) motion to dismiss). The Unions' arguments to the contrary—including that subsection 3.O.3,

the only subsection that mentions captain training or upgrade bonuses, applies only to "qualified" pilots (i.e., not new hires)—sound in contract interpretation. These arguments "conceivably could carry the day in arbitration," but "they do not convince us that [the Carriers'] contractual arguments are frivolous or insubstantial." *Conrail*, 491 U.S. at 317.

This holds equally true with respect to the Carriers' arguments about the employment commitments (or, as termed by the Unions, the post-employment restrictions). The Pre-Hire Agreement provides that in exchange for Republic's investment of time, resources, and money in hiring and training pilots, the pilots will commit to working for Republic for a period of two or five years, depending on that pilot's level. If the pilot fails to fulfill his or her commitment, the pilot may have to pay back financial incentives and to pay liquidated damages.

Once again, Article 3.O arguably justifies the imposition of these employment commitments. Subsection 3.O.3 authorizes Republic, in its discretion, to "determine the terms" of any bonuses or other incentives for "Pilots." Subsection 3.O.4 similarly authorizes Republic, in its discretion, to offer a "financial incentive at any time and of any type or form to incentivize the retention of Pilots." It provides further that Republic has the discretion to "determine the terms of the bonuses, or other incentives for Pilots." The commitment incentives or post-employment restrictions, by any name, could arguably fit as a "term" within these subsections.

That Republic did not specifically raise the post-employment restrictions in negotiations does not render the Carriers' position frivolous. "[E]ven in the absence of negotiation, changes are permitted if authorized by contract." *Brotherhood*

2017, 879 F.3d at 757. Moreover, CBAs are intended to govern situations "which the draftsmen cannot wholly anticipate." *Conrail*, 491 U.S. at 311–12 (internal quotations omitted). Although silence in a CBA does not give an employer carte blanche, the Republic CBA did not need to spell out every conceivable term in order to justify an employment action. *See id.* at 309 n.7 (explaining that "the general framework of a collective-bargaining agreement leaves some play in the joints, permitting management some range of flexibility in responding to changed conditions").

An arbitrator may decide the incentives and post-employment restrictions in the Pre-Hire Agreement fall outside the scope of Article 3.O. But the parties' arguments amount to a dispute over the proper interpretation of the CBA: does Article 3.O justify the Pre-Hire Agreement? Regardless of how a decisionmaker answers this question, because the Carriers' position is not frivolous, an adjustment board, and not a federal judge, should make the decision. *See, e.g.*, *Bhd. of Locomotive Eng'rs & Trainmen v. Union Pac. R.R. Co.*, 905 F.3d 537, 542 (7th Cir. 2018) (arbitral board "plainly has jurisdiction" to determine "whether or not a term in a collective-bargaining agreement applies"); *Brotherhood 2017*, 879 F.3d at 759 (federal courts consider only whether the employer's position is "better than frivolous," regardless of whether "it may or may not prevail").[3]

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[3] The Unions' contention that the Pre-Hire Agreement conflicts with Article 9.F, Article 1.C.1, and Article 11 of the Republic CBA—to the extent they have preserved these arguments—fails to establish a major dispute. The purported conflicts do not render the Carriers' position frivolous or obviously insubstantial. *See Brotherhood 2017*, 879 F.3d at 759 (dispute was

C. The Pathway Agreement

Entered into by a pilot candidate, Hyannis, and Republic, the Pathway Agreement provides for a signing bonus, living expenses, incentive payments, and a pathway to the position of captain at Republic in exchange for employment commitments. Once again, the broad discretionary language in Article 3.O of the Republic CBA, together with the broad management discretion contained in Section 1.J of the Hyannis CBA, arguably justifies these terms.

As to the Pathway Agreement's bonuses—which the Unions challenge as unjustified by either the parties' practices or the plain language of the Hyannis CBA—we accept as true the Unions' allegation that during negotiations, Hyannis acknowledged that it lacked the authority to pay bonuses to pilots without the Unions' consent. But Hyannis does not pay the bonuses, Republic does.[4] And although Republic makes the payments while Hyannis employs the pilots, the Pathway Agreement contemplates that each of the Captain Pathway Program pilots will eventually gain employment with Republic. The broad discretion afforded to Republic to incentivize hiring and retention of pilots arguably justifies Republic's payment of bonuses under the Pathway Agreement.

So too does the management rights clause of the Hyannis CBA, which permits Hyannis "to exercise all rights or functions of management," limited only by the terms of the CBA.

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minor where railroad proffered "a non-frivolous argument for the compatibility of the two policies").

[4] The Unions waived their argument that Republic acts as Hyannis's agent in paying the pilot bonuses by raising it for the first time on appeal. *See Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718 (7th Cir. 2012).

This broad discretion at least arguably includes the right to incentivize the hiring of its employees by permitting them to receive bonuses. *See United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 583 (1960) (characterizing the ability to "hire[] and fire[]" and "pay[] and promote[]" as management functions); *Miller*, 926 F.3d at 903 (whether a management rights clause "perhaps grant[ed]" airlines authority to act was "a question for an adjustment board"). Even if these arguments do not carry the day with an adjustment board, "the fact that a contract interpretation is questionable, and may be wrong, does not make it frivolous." *See Nat'l Ry. Lab. Conf. v. Int'l Ass'n of Machinists & Aerospace Workers*, 830 F.2d 741, 749 (7th Cir. 1987).

As to the Pathway Agreement's post-employment restrictions, simply because Hyannis has not previously imposed such restrictions does not mean that the CBA prohibits them. *See Conrail*, 491 U.S. at 315–18 (finding that the parties' course of dealings arguably justified uniliteral imposition of mandatory drug testing without cause, despite employer never having done so in the past). To the contrary, the ability to "exercise all rights or functions of management" could arguably include determining conditions of employment.

The terms of the Hyannis CBA limit the management rights clause, but nothing in the CBA clearly conflicts with the Pathway Agreement so as to render the Carriers' arguments frivolous. Although Section 3 of the Hyannis CBA governs compensation, for example, it does not preclude the financial incentives provided for in the Pathway Agreement. *See United Steelworkers of Am.*, 363 U.S. at 583 ("A collective bargaining

agreement may treat only with certain specific practices, leaving the rest to management[.]").[5]

* * *

"We are not resolving the merits" of the Unions' challenges. *BLET GCA UP*, 988 F.3d at 414. The Unions can present their arguments to an adjustment board, which may ultimately decide that their position carries the day. Our task is only to determine whether the Carriers made nonfrivolous arguments that the CBAs justify their individual employment agreements. They have. Accordingly, we find the parties' dispute minor and therefore subject to arbitration.[6]

For the foregoing reasons, the judgment of the district court is

AFFIRMED.

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[5] To the extent not specifically addressed, we find the remainder of the Unions' arguments alleging conflicts between the CBAs and the individual pilot employment agreements either without merit or waived. Including an allegation in a complaint without developing any supporting arguments does not suffice to present it to the district court. *See Puffer*, 675 F.3d at 718.

[6] With no surviving claims under federal law, we affirm the district court's decision to dismiss the Unions' state law claim. *Rivera v. Allstate Ins. Co.*, 913 F.3d 603, 617–18 (7th Cir. 2018).