

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001



KEN HALL
General Secretary-Treasurer

202.624.6800
www.teamster.org

March 16, 2021

Hon. Rep. Peter DeFazio
Chairman, House Transportation Committee
United States House of Representatives
2134 Rayburn Office Building
Washington, D.C. 20515

Dear Chairman DeFazio:

As Director of the International Brotherhood of Teamsters, Airline Division (the "IBT"), which represents thousands of airline workers around the nation in collective bargaining, I am writing first and foremost, to thank you and your colleagues for the tremendous work you did in passing the American Rescue Plan containing critical relief to millions of American workers, including tens of thousands of IBT members represented by the Airline Division. This bill, along with the prior COVID relief bills targeting relief directly to airline workers saved thousands of our families from desperate hardship during this unprecedented crisis. I cannot say this enough: Thank You!

Of course, you and your colleagues' great work was on behalf of airline workers, like our Teamster members, and not on behalf of the airline company's shareholders. Therefore, we want to bring to your attention and ask for your help with regard to the management of United Airlines' (UAL) attempt to game the payroll support program (PSP) to its corporate advantage and the detriment of our members. I regret to inform you that UAL is currently not in compliance with the mandatory recall provisions contained in previous Covid relief bills and is further keeping federal funds earmarked to financially support such critical aviation workers during the pandemic. The IBT thus requests your urgent assistance to rectify this situation.



As you know, the federal Consolidated Appropriations Act, 2021 (the “CAA”) signed into law on December 27, 2020, contains a continuation of the CARES Act’s payroll support program (“PSP”). The PSP provides federal grants to airline carriers to guarantee that participating airlines can continue paying airline employees’ wages, salaries and benefits at previously established rates. To participate in the grant program, the CAA requires that airlines recall such furloughed employees, compensate them for lost pay and benefits from December 1, 2020 onward, and “restore the[ir] rights and protections...as if such employees had not been involuntarily furloughed.” CAA, Pub.L.No.116-260, Title 4, Section 404(b)(1)(C).

Unfortunately, UAL has not afforded their airline mechanics (“technicians”) represented by the IBT these basic statutory protections despite receiving millions of dollars of federal funds to do so during this severe pandemic. First, after having furloughed such technicians and accepting federal funds under the CAA to return them to work, United Airlines recently recalled numerous lead technicians throughout the system. However, rather than recalling them to the higher paying lead classification, the company has recalled them to lesser-paying technicians’ positions and is compensating them as technicians rather than leads. That is, while UAL accepted federal funds based upon the lead technicians’ higher salaries, it has recalled them and paying them at a lower technician salary, simply keeping the difference.

Plainly, upon receiving these CAA funds UAL was obligated to recall said technicians as follows:

SEC. 404. REQUIRED ASSURANCES.

... (b) RECALLS OF EMPLOYEES. An agreement or certification under this section shall require e a passenger air carrier or contractor to perform the following actions:

(1) In the case of a passenger air carrier or contractor that received financial assistance under title IV of the CARES Act —

(A) recall (as defined in section 401), not later than 72 hours after executing such agreement or certification, any employees involuntarily furloughed by such passenger air carrier or contractor between October 1, 2020, and the date such passenger air carrier or contractor enters into an agreement with the Secretary with respect to financial assistance under this subtitle;

(B) compensate returning employees for lost pay and benefits (offset by any amounts received by the employee from a passenger air carrier or contractor as a result of the employee’s furlough, including, but not limited to, furlough pay, severance pay, or separation pay) between —

(i) in the case of a passenger air carrier, December 1, 2020, and the date on which such passenger air carrier enters into an agreement with the Secretary with respect to financial assistance under this subtitle; or

(ii) in the case of a contractor, the date of enactment of this subtitle and the date on which such contractor enters into an agreement with the Secretary with respect to financial assistance under this subtitle; and

(C) restore the rights and protections for such returning employees as if such employees had not been involuntarily furloughed. ...

(Emphasis added).

By restoring furloughed technicians to lesser paying jobs as UAL has done here, UAL has failed to put these technicians back into the position “as if such employees had not been involuntarily furloughed.” Again, UAL received federal financial payroll support for these recalled technicians at their lead technician wages, not at the lesser technician rate. UAL is not making them whole by reinstating them to their former jobs, but instead is downgrading them by recall to lesser paying jobs but keeping the federal money nonetheless. This cannot stand.

Compounding this, UAL has failed and refused to restore lead technicians to their former positions after it furloughed them and they were forced to accept to lower paying positions in lieu of lay off. While UAL argues that the CAA in Section 401(4)(a)(i) defines recall as a “return to employment” this does not mean that these workers had to be totally out of a job to qualify for recall and salary protection under the CAA. Rather, this statute uses the broad term “furlough” as the basic qualification for such protections. Concededly, the lead technicians her have been furloughed from their higher paying positions. UAL gave them furlough notices and they simply were able to bump into lower paying positions. They lost their normal “employment” in every sense of the word. It is time that UAL recognized this and restored them to their former jobs with back pay “as if the employees had not been involuntarily furloughed. ...” under CAA Section 404(b)(1)(C).

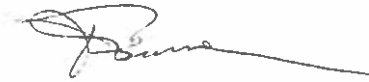
To be sure, the CAA is remedial legislation to protect workers that must be liberally construed in favor of effectuating its remedial purpose. *See, e.g., Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532 (1994) (Federal Employers' Liability Act); *King v. St. Vincent's Hosp.*, 502 U.S. 215, 220 n. 9 (1991) (Veterans' Reemployment Rights Act); *Bowen v. City of New York*, 476 U.S. 467, 486 n. 14 (1986) (Social Security Disability Benefits Reform Act); see also 3 *SUTHERLAND STATUTORY CONSTRUCTION*, § 60:1 and 2 (8th Ed. 2021). Here, the remedial purpose of this statute is to provide payroll support to airline workers through restoration of jobs and pay. It is not to enrich the carrier. A broad interpretation of furlough which includes being forced to take a lower paying job after being let go from one's higher paying job via furlough notice would serve that remedial purpose of making workers whole. Again, the statute is designed to get money in the hands of aviation workers as opposed to into the hands of the investors in UAL.

Plainly, the UAL's actions here violate the above-cited section of the CAA, which requires furloughed employees to be recalled as if they had not been furloughed – i.e., to the

positions and wages from which they were furloughed. The PSP funds have been granted to United using historic part 241 data based upon these employees' pay. Restoring leads to lead pay, aircraft technicians to aircraft technician pay, etc., under the PSP would ensure that the grants provided United under the PSP are passed on to employees as intended.

Thank you for your prompt attention to this important matter. Please do not hesitate to contact me if you have questions or concerns.

Best Regards,

A handwritten signature in black ink, appearing to read "Bourne", with a long horizontal flourish extending to the right.

Captain David Bourne
Director, Airline Division
International Brotherhood of Teamsters