



ESTADO LIBRE ASOCIADO DE
PUERTO RICO

Department of Labor and
Human Resources

August 31, 2016

OPINION NO. 15, 811

We acknowledge receipt of your communication sent on May 16, 2016, in which you request an opinion regarding an interpretation of some provisions of the collective bargaining agreement between your client and the workers union.

In first instance, we will take care of the issue regarding if your client must pay overtime wages under Act No. 379 of May 15, 1948, *as amended*, to an employee who works overtime in Puerto Rico if those hours are the result of a voluntarily shift trade made pursuant to the provisions of a collective bargaining agreement, which provides that the employee will be paid only straight time for those additional hours. As delineated in your request, your client current information regarding this matter is as follows:

"Our client, an air carrier authorized to do business in Puerto Rico (hereinafter referred to as "Airline"), has asked us to request a legal opinion on the applicability of the daily and weekly overtime provisions of Act No. 379 of May 15, 1948, as amended, to the airline industry, which is subject to the provisions of the Railway Labor Act.¹

A. Background Facts

Airline is authorized to do business in Puerto Rico. It is an air carrier as defined under the Railway Labor Act ("RLA"), 45 U.S.C. §181.

Airline's employees are divided into different crafts or classes as the term is used in the RLA. The majority of its employees in the United States and Puerto Rico are represented by unions (hereinafter the various unions are collectively referred to as the "Unions"), which were certified for that purpose under 45 U.S.C. §152 Ninth under the democratic selection procedure of the RLA. Consistent with their obligations

¹ I hereby certify that the inquiry submitted for your opinion is not currently under the consideration of any court, forum or agency with jurisdiction to entertain this matter.



under the RLA, Airline and the Unions have "made and maintained" a series of collective bargaining agreements which apply to its unionized workforce.

The relevant collective bargaining agreements entered into between the Airline and the Unions provide that employees may voluntarily trade shifts or days off with their co-workers pursuant to the terms of the applicable collective bargaining agreement. These collective bargaining agreements provide that any hours employees work in addition to their scheduled hours as a result of voluntarily trading shifts or days off pursuant to the provisions of these collective bargaining agreement are paid at straight time. In other words, the employees are paid for the hours they work; but they are not paid to overtime rates, even if they work more than 40 hours in one week, or 8 hours in one day, as a result of those voluntary shift trades. The relevant collective bargaining agreements further provide that if overtime is required by law, employees may not trade shifts if doing so would require the Airline to pay overtime.² The Airline would like your opinion with respect to whether it must pay overtime wages (as opposed to wages at straight time) for hours worked in excess of 40 in one week as a result of voluntary shift trades, or for hours worked in excess of 8 hours in one day as a result of voluntary shift trades. These scenarios are illustrated in the examples that follow:

- A. Employee A is scheduled to work 40 hours from Monday through Friday, but voluntarily decided to pick up an additional 8 hour shift on Saturday, and instead worked 48 hours during that week, but only 8 hours each day (in 6 days). Is Employee A entitled to the payment of overtime for those hours worked in excess of 40 hours during the workweek, which resulted from a voluntary shift trade?*
- B. Employee B is scheduled to work Monday through Friday from 4:00 am to 12:30 pm with a 30 minute unpaid lunch period, that is, 8 hours per day, for a total weekly shift of 40 hours. Employee B drops his Friday shift, and picks up Employee C's shift on Thursday from 1:00 pm to 9:30 pm. As such, Employee B worked 40 hours during that week, but by picking up Employee C's shift, Employee B worked more than 8 hours on Thursday. Is Employee B entitled to the payment of daily overtime for those hours worked in excess of 8 hours on Thursday, as a result of a voluntary shift trade?*

Under both scenarios, the applicable collective bargaining agreement states that Employees A and B are not entitled to overtime rates of pay. Instead, the applicable collective bargaining agreement provides that Employee A will be paid straight time for the hours worked over 8 in one day.

The Airline would appreciate your opinion with respect to the following questions:

- 1. Must the Airline pay overtime wages under Act No. 379 of May 15, 1948, as amended, to an employee who works more than 40 hours in one week if those hours are the result of a voluntarily shift trade made pursuant to the provisions of*

² Airline employees place a great deal of importance on their ability to trade shifts. Shift trades allow employees to manage their own schedules and, in many cases, increase their earnings. For these reasons, certain of the Airlines' unions, including the union which represents the Airlines' passenger service employees and the union which represents fleet service and maintenance employees, are aware of this request and have asked that the Airline relay their desire that employees be able to work in excess of 40 hours per week and 8 hours per day at straight time in cases where a union expressly has bargained for the ability of the airlines employees it represents to shift trade voluntarily to work in excess of 40 hours per week and/or 8 hours per day at straight time.

a collective bargaining agreement, which provides that the employee will be paid only straight time for those additional hours?

2. *Must the Airline pay overtime wages under Act No. 379 of May 15, 1948, as amended, to an employee who works more than 8 hours in one day if those hours are the result of a voluntary shift trade made pursuant to the provisions of a collective bargaining agreement, which provides that the employee will be paid only at straight time for those additional hours?"*

Act No. 15 of April 14, 1931, as amended, known as the *Department of Labor and Human Resources Organic Law*, establishes that, as a public agency, we are called to foster and promote the interests and wellbeing of workers in Puerto Rico, as well as to strive to improve their conditions of life and work and advance their opportunities for profitable employment. The Puerto Rico Department of Labor and Human Resources (PRDOL) also has the ministerial duty to foster industrial peace and implement, develop and coordinate public policy and programs for the training of the necessary human resources to meet the needs of the labor sector.³ Due to the scope of local employment law and the rules governing it, our intervention is limited to private sector and public corporations doing business as private entities.

The Office of the Solicitor of Labor (OSL), which is assigned to the Office of the Secretary of Labor and Human Resources, provides advice regarding employment legislation, current and proposed, and issues guidance regarding questions about the scope and content of varying labor laws. The OSL will refrain from issuing opinions on claims or matters that are, or could be, in the present or in the future, before the consideration of an administrative agency, courts or subject to judicial review, or that can be investigated or adjudicated at any time by the PRDOL. It will also refrain from issuing opinions based on assumed facts or over matters that are outside the scope and jurisdiction of the PRDOL.

This opinion is based solely on the facts and circumstances stated in your communication and is issued based on representations, express or implied, made by you. We understand that you have provided a full, true and fair description of all the facts and all the circumstances that would be relevant to our consideration of your inquiry. The opinion expressed herein could change subject to other facts or considerations not included in your communication.

After carefully reviewing your inquiry we must refrain from issuing an opinion since it requires the interpretation of the collective bargaining agreement. As stated in Section IV (6) of the Letter No. 2013-001 of the Department of Labor and Human Resources related to the opinions of the Solicitor of Labor, **the OSL will refrain from issuing opinions that involves the interpretation of collective bargaining agreements because our opinion could affect the interpretation of the validity of provisions of these collective bargaining agreements.**

Notwithstanding the above, we feel obliged to emphasize that the Section 13 of Act No. 379 of May 15, 1948, as amended, establishes that:

³ See Section 2 of Act No. 15, *supra*.

JM.

"It is hereby declared that the additional compensation on the basis of double time fixed by this act for extra hours of work **may not be waived.**

Any clause or stipulation by virtue of which the employee agrees to waive the payment of the additional compensation for extra hours fixed by this act shall be null.

No judgment, award, adjudication or any other provision of a claim for compensation, right or benefit under any act, mandatory decree, wage order, collective agreement or work contract, may be raised as a defense of a former adjudication by [the] fractioning of a cause of action, to defeat another claim, unless the same cause of action has been expressly adjudicated in the previous proceeding, for the same facts between the same parties."

Also, as a matter of orientation, we must point out that it has been established that "[t]he Railway Labor Act (RLA), like the National Labor Relations Act, does not undertake governmental regulation of wages, hours, or working conditions. Instead, it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by those Acts is not primarily in the working conditions as such."⁴

Furthermore, when analyzing the RLA, in conjunction with the Fair Labor Standards Act (FLSA) and local employment legislation, the District Court for the District of Puerto Rico, has established that the:


"FLSA does allow for stricter or more beneficial state regulations providing for minimum wages and overtime to apply to employees which are covered or exempted from such provisions in the FLSA. 29 U.S.C. § 218(a) provides:

No provision of this chapter or of any order thereunder shall excuse noncompliance with any ... state law ... establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter...

In other words, state laws will prevail where more beneficial."⁵

We hope that the information provided here above is useful.

Cordially,


Damaris V. Méndez-Martinó, Esq.
Solicitor of Labor

⁴ *Terminal R. Asso. v. Brotherhood of R. Trainmen*, 318 U.S. 1, 6 (1943)

⁵ *Santoni Roig, et. al. v. Iberia Líneas Aéreas de España*, 688 F.Supp.810, 818 (1988)