No. 21-309

IN THE
Supreme Court of the United States

SOUTHWEST AIRLINES CO.,
Petitioner,

v.

LATRICE SAXON,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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Corporate Disclosure Statement

The AFL-CIO is not a corporation and thus does not have a parent corporation or issue any stock.

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BRIEF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

INTEREST OF *AMICUS CURIAE*

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is a federation of 57 national and international labor organizations with a total membership of over 12.5 million working men and women.[1] Affiliates of the AFL-CIO represent transportation workers in collective bargaining and in arbitrating grievances arising under the resulting collective bargaining agreements. The AFL-CIO frequently participates in cases before this Court concerning arbitration in the rail and air industries covered by the Railway Labor Act. *See, e.g., Union Pacific Railroad Co. v. Brotherhood of Locomotive Engineers*, 558 U.S. 67, 70 n. * (2009).

STATEMENT

Latrice Saxon is employed by Southwest Airlines at Chicago Midway International Airport in the job classification of "ramp supervisor." Pet. App. 2a. In that position, "Saxon supervises, trains, and assists a team of ramp agents—Southwest employees who physically load and unload planes with passenger and commercial cargo." Pet. App. 3a. *See id*. at 23a-25a (describing Saxon's duties in detail).

[1] Counsel for the Petitioner and counsel for the Respondent have each consented to the filing of this *amicus* brief. No counsel for a party authored this brief in whole or in part, and no person or entity, other than the *amicus curiae*, made a monetary contribution to the preparation or submission of this brief.

Saxon sued Southwest under the Fair Labor Standards Act, and Southwest moved to dismiss on the grounds that Saxon had agreed to arbitrate such disputes. Pet. App. 3a. The district court granted Southwest's motion. Pet. App. 42a.

The Seventh Circuit reversed the district court's judgment on the grounds that Saxon "is a transportation worker whose contract of employment is exempt from the Federal Arbitration Act." Pet. App. 21a. In this regard, the Seventh Circuit explained that "airplane cargo loaders are a class of workers engaged in commerce and Saxon is a member of that class." *Ibid*.

The Seventh Circuit's determination regarding Saxon's status is contrary to the Fifth Circuit's conclusion that, categorically, "workers who load or unload goods that others transport in interstate commerce are not transportation workers." *Eastus v. ISS Facility Services, Inc.*, 960 F.3d 207, 211 (2020). This Court granted a writ of certiorari to resolve this conflict.

SUMMARY OF ARGUMENT

Airline employees who load and unload cargo from airplanes and their low-level supervisors are covered by the Railway Labor Act. These airline employees perform tasks that are nearly identical to those long performed by railroad employees who are also covered by the Railway Labor Act. The "contracts of employment" of "railroad employees" who perform that freight handling work are expressly exempt from the Federal Arbitration Act. The airline employees performing that work are transportation workers whose contracts of employment are likewise exempt from the FAA.

ARGUMENT

Section 1 of the Federal Arbitration Act states that "nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. By this Court's authoritative construction, "Section 1 exempts from the FAA only contracts of employment of transportation workers." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119 (2001). In so construing the FAA exemption, the Court held that the scope of the excluded class of "transportation workers" is "controlled and defined by reference to the enumerated categories of workers which are recited [in FAA § 1]," namely "'seamen' and 'railroad employees.'" *Id.* at 115.

By this metric, there can be no doubt that "airplane cargo loaders are a class of workers engaged in commerce" in the sense of being "transportation worker[s] whose contract[s] of employment [are] exempt from the Federal Arbitration Act." Pet. App. 21a. Persons employed by rail carriers to load and unload cargo transported by passenger trains are unquestionably "railroad employees" within the meaning of FAA § 1. Persons employed by air carriers to load and unload cargo transported by passenger airplanes are just as much "transportation workers" as the "railroad employees" performing the identical task.

I. Persons Employed by Rail Carriers to Load and Unload Cargo from Trains Are "Railroad Employees."

This Court has explained the FAA exemption for "contracts of employment of . . . railroad employees," 9 U.S.C. § 1, as follows:

> "When the FAA was adopted, . . . grievance procedures existed for railroad employees under federal law, see Transportation Act of 1920, §§ 300-316, 44 Stat. 456, and the passage of a more comprehensive statute providing for the mediation and arbitration of railroad labor disputes was imminent, see Railway Labor Act of 1926, 44 Stat. 577, 46 U.S.C. § 651 (repealed). It is reasonable to assume that Congress excluded . . . 'railroad employees' from the FAA for the simple reason that it did not wish to unsettle established or developing statutory dispute resolution schemes covering specific workers." *Circuit City*, 532 U.S. at 121.

The Railway Labor Act states that "the term 'employee' as used herein includes every person in the service of a [rail] carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Surface Transportation Board." 45 U.S.C. § 151 Fifth.[2] The Surface Transportation Board "rules governing the classification of railroad employees" repeat the RLA definition of "employees." 49 CFR §§ 1245.1 & 1245.3. The STB regulations contain a detailed list of those employees' "job titles." 49 CFR § 1245.5 The jobs of "railroad employees" described therein include handling "freight" and "baggage," *id*. (nos. 503 and 507), as well as "supervising" railroad employees who perform those tasks, *id*. (no. 506).

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[2] This definition of "employee" appeared in the Railway Labor Act as enacted in 1926, except at the time the Interstate Commerce Commission performed the function of defining the job classifications of railroad employees and subordinate officials. 44 Stat. 577.

Unsurprisingly, workers employed by railroads to load and unload passenger train cargo were treated as railroad employees well before either the Federal Arbitration Act or the Railway Labor Act became law. In an early decision, the National Mediation Board observed that "[t]he long-established practice on railroads throughout the country is to recognize the clerical, station, and freight and storehouse forces as one craft or class for representation and collective bargaining." *Atlanta Terminal Co.*, 1 NMB 8, 11 (1936).[3] This craft or class specifically included "employees in the baggage department [who] load the baggage on to the trains." *Id.* at 10.

This grouping of railroad employees for purposes of collective bargaining dates back at least to "the period of Government operation of the railroads" when "the Director General entered into a national agreement with the Brotherhood effective January 1, 1920, establishing rules governing hours of service and working conditions of the[se] employees." *Norfolk & Western Railway Co.*, 1 NMB 68, 69 (1936). "[I]ncluded within this craft or class [we]re freight handlers," *id.* at 72, as reflected in the name of its union representative—"Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes," *id.* at 69.

In 1934, the Railway Labor Act was amended to provide that "disputes of 'clerical employees, freight handlers, express, station, and store employees' shall be heard by the Third Division of [the National Railroad Adjustment] Board." *Norfolk & Western Railway*, 1 NMB at 76. *See* 45 U.S.C. § 153 First (h). "The work performed by [this craft or class]" includ-

[3] A "craft or class" under the RLA is equivalent to a "bargaining unit" under the National Labor Relations Act. *Compare* 29 U.S.C. § 159(a) *with* 45 U.S.C. § 152 Fourth and Ninth.

ed "tasks, such as trucking freight to and from cars, stowing freight in cars, [and] handling baggage." *Id.* at 73,

In short, when "Congress provided a framework for the settlement and voluntary arbitration" of railway labor disputes, *Union Pacific R. Co.*, 558 U.S. at 72, the "developing statutory dispute resolution scheme," *Circuit City*, 532 U.S. at 121, expressly covered railroad employees who performed the tasks of loading and unloading cargo.

II. Persons Employed by Air Carriers to Load and Unload Cargo from Planes Are "Transportation Employees."

This Court has held that FAA § 1's "residual exclusion of 'any other class of workers engaged in foreign or interstate commerce'" is "explain[ed by] the linkage to the two specific, enumerated types of workers identified in the preceding portion of the sentence." *Circuit City*, 532 U.S. at 121. In this regard, the Court observed that "[i]t would be rational for Congress to ensure that workers in general would be covered by the provisions of the FAA, while reserving for itself more specific legislation for those engaged in transportation." *Ibid.* To support this observation, the Court noted that "such legislation was soon to follow, with the amendment of the Railway Labor Act in 1936 to include air carriers and their employees, see 49 Stat. 1189, 45 U.S.C. §§ 181-188." *Ibid.*

The 1936 amendments added a subchapter II to the Railway Labor Act covering "Carriers by Air." That subchapter provided that "[a]ll of the provisions of subchapter I except section 153 of this title are extended to every common carrier by air engaged in interstate or foreign commerce . . . and every . . . person

who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service." 45 U.S.C. § 181. It further provided that "[t]he duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of subchapter I of this chapter except section 153 of this title shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of 'carrier' and 'employee' respectively, in section 151 of this title." 45 U.S.C. § 182.

Subchapter II mandated the creation of "[s]ystem, group, or regional boards of adjustment" for the resolution of "disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." 45 U.S.C. § 184. These airline boards of adjustment were assigned the same jurisdiction as that "lawfully exercised by system, group, or carrier boards of adjustment" on rail carriers pursuant to section 153. 45 U.S.C. § 184. *See* 45 U.S.C. § 153 Second. The 1936 amendments also empowered the National Mediation Board to require that "carriers by air and such labor organizations of their employees, national in scope" create a "National Air Transport Adjustment Board," similar in composition and function to the National Railroad Adjustment Board. 45 U.S.C. § 185.

In sum, the 1936 RLA amendments draw a direct identity between rail carriers and their employees, on the one hand, and air carriers and their employees, on the other. The only difference is that the 1936 amend-

ments did not immediately establish a national board of adjustment to resolve disputes on airlines.

Rail and air carriers were placed under the same "statutory dispute resolution scheme[]," *Circuit City*, 532 U.S. at 121, because "both are organized operationally to serve the public in the transportation of passengers, baggage, mail, express, and freight." *National Airlines, Inc.*, 1 NMB 423, 438 (1947). Given their common mission, "it is not surprising to find marked similarity in the jobs in the two branches." *Ibid.* The similarity of most immediate note is that "[w]hereas on airlines there are cargo handlers or fleet service agents their counterparts can be found on the railroads as baggage agents, callers, loaders, and truckers." *Ibid.*

The 1936 amendments to the Railway Labor Act clearly establish that Congress considered airline "cargo handlers" to be just as much "transportation workers" as the "railroad employees" who worked on "the railroads as baggage agents [and] loaders." Against that background, the Fifth Circuit could not have been more wrong in concluding that "workers who load or unload goods that others transport in interstate commerce are not transportation workers," *Eastus*, 960 F.3d at 211, within the meaning of the FAA exemption.

III. Persons Employed by Air Carriers to Supervise and Assist Cargo Handlers Are "Transportation Employees."

The fact that Saxon "supervises, trains, and assists a team of ramp agents," Pet. App. 3a. does not make her any less a "transportation employee" than the ramp agents themselves.

In the first place, Saxon "regularly fills in for Ramp Agents at least three out of the five days each week, . . . perform[ing] the Ramp Agents' duties of loading and unloading the goods and cargo from Southwest planes," handling both "passengers' personal luggage" and "other freight." Pet. App. 24a-25a (cleaned up). In recognition of this aspect of the job, "[t]he Ramp Supervisor position . . . requires that supervisors be able to lift and move items of 70 pounds and/or more on a regular basis and repetitively lift weights of 40 to 50 pounds on raised surfaces." Pet. App. 23a. In short, Saxon "physically load[s] and unload[s] planes with passenger and commercial cargo," Pet. App. 3a, in the same manner and almost to the same extent as the ramp agents themselves.

That Saxon is not covered by the ramp agents' collective bargaining agreement makes no difference to her status as a "transportation worker." The Railway Labor Act classifies employees in the job held by Saxon as "subordinate official[s]" included within the statutory definition of "employee." 45 U.S.C. § 151 Fifth. Employees whose "duties and responsibilities . . . do not extend beyond the immediate supervision of employees who perform manual work" have long been treated as "subordinate officials" equally entitled to bargain collectively as the employees they supervise. *Northwest Airlines, Inc.*, 2 NMB 27, 39 (1949). *See id.* at 35-37 (recounting the history of collective bargaining by subordinate officials on railroads). Reflecting this history, the Surface Transportation Board includes such supervisors in its list of "railroad employees." 49 CFR §§ 1245.1 & 1245.5 (no. 506). Indeed, the NMB usually includes subordinate officials in the same craft or class as the employees they supervise. *See, e.g., China Airlines, Ltd.*, 6 NMB 434, 438, 440 (1978); *Atlanta Terminal*, 1 NMB at 11.

"[E]mployee representatives and carriers not wishing to utilize the Board's services under section 2, Ninth, are at liberty to enter into recognition agreements covering any collective bargaining grouping which they may mutually determine is appropriate." *China Airlines*, 6 NMB at 439. That Southwest and the union representing the ramp agents have chosen to exclude ramp supervisors from the collective bargaining agreement does not make that "class of workers," 9 U.S.C. § 1, any less "transportation workers," *Circuit City*, 532 U.S. at 119, than the manual laborers they supervise and assist.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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