No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SOJOURNER RUDISILL,

Petitioner,

v.

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS;
US AIRWAYS/AMERICAN AIRLINES

Respondents

On Petition for Writ of Certiorari to
The United States Court of Appeals for the Third Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

INDEX OF APPENDIX

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1093

SOJOURNER RUDISILL
Appellant
v.
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACEWORKERS; US AIRWAYS/AMERICAN AIRLINES

On Appeal from the United States District Courtfor the Eastern District of Pennsylvania (D.C. Civil Action No. 2-18-cv-05435)
District Judge: Honorable Mitchell S. Goldberg

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
September 24, 2021
Before: JORDAN, MATEY and NYGAARD, Circuit Judges

(Opinion filed: September 27, 2021)

OPINION*

---

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIUM

Pro se appellant Sojourner Rudisill appeals from the District Court's orders dismissing her complaint arising under the Railway Labor Act ("RLA") concerning an employment arbitration decision. We will affirm.

Because the parties are familiar with the background, we present only a summary. Rudisill is a former employee of American Airlines ("American" or "the airline").[1]

In 2013, American terminated her employment. Rudisill filed a grievance to challenge her termination, and, under the collective bargaining agreement ("CBA") between the airline and her union, International Association of Machinists and Aerospace Workers ("IAM"),her case went to arbitration before the System Review Board ("Board"). Under the CBA, the Board consisted of three members: one chosen by American, one chosen by IAM, and a neutral member selected by both American and IAM. Rudisill appeared at the July 2016 arbitration hearing with her own attorney, but her union representative and counsel for the airline objected. The union representative indicated that outside counsel had no right to be there and that the neutral board member agreed. Private counsel left the hearing. The Board upheld Rudisill's termination on December 16, 2016.

On December 18, 2016, Rudisill filed her complaint against American and IAM inthe District

[1] Rudisill was employed by U.S. Airways, which ceased to exist after its merger with American Airlines.

Court and raised three claims: (1) due process deprivation when her privately-retained attorney was barred from the hearing; (2) breach of the CBA by failing to render a timely decision; and (3) "fraud or corruption" under the RLA when her attorney was not allowed to participate in the hearing. American and IAM filed separate motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). The District Court considered her claims to set aside or remand the arbitration decision under § 153 First (q)of the RLA. On February 21, 2020, the District Court granted both motions to dismiss, dismissing Rudisill's due process and breach of contract claims with prejudice, ruling that neither was within the limited categories of review permitted by the RLA. As for Rudisill's RLA "fraud or corruption" claim, the District Court dismissed it due to insufficient facts to plausibly plead a high degree of improper conduct by the Board.

However, the dismissal was without prejudice to allow Rudisill to file an amended complaint, noting that she also may add a claim against her union for breach of duty of fair representation.

Rudisill filed an amended complaint, again alleging fraud or corruption against IAM and American. She also added a claim that IAM breached its duty of fair representation, alleging that it failed in its investigation and handling of her grievance. Both defendants again filed separate motions to dismiss. On December 18, 2020, the District Court found that the amended complaint still did not contain sufficient allegations to plead a "fraud or corruption" claim, noting that Rudisill based her claim on actions of IAM's counsel and the airline's counsel but made no allegations regarding the conduct of the Systems Review Board. Further, the District Court

found that Rudisill's claim against the union for breach of the duty of fair representation was time-barred because that claim was filed beyond the applicable six-month statute of limitations.

Accordingly, the District Court granted both motions to dismiss and directed the Clerk of Court to close the case.

This appeal followed, and we have appellate jurisdiction under 28 U.S.C. § 1291. We review de novo the District Court's order dismissing Rudisill's complaint. See Newark Cab Ass'n v. City of Newark, 901 F.3d 146, 151 (3d Cir. 2018).

On appeal, Rudisill challenges only the District Court's February 21, 2020 dismissal of her claim that she was deprived of due process when her attorney was barred from the arbitration hearing. As the District Court explained, judicial review of an arbitration board's award under the RLA is limited to the three narrow circumstances: (1) the arbitrators failed to comply with the RLA; (2) the arbitration board acted outside of its jurisdiction; or (3) a member of the arbitration board engaged in fraud or corruption. See United Steelworkers of Am. Loc. 1913 v. Union R.R., 648 F.2d 905, 910 (3d Cir. 1981) (citing Union Pacific R.R. v. Sheehan, 439 U.S. 89, 93 (1978) (per curiam)). Due process claims do not fall within those narrow categories for review. See id. at 911. Thus, the District Court did not err in dismissing Rudisill's due process claim. Rudisill argues that we should overturn our precedent because it was wrongly decided, noting that other courts of appeals have reached a contrary result. However, we decline to do so; our prior precedent is binding. See 3d

Cir. I.O.P. 9.1.

Accordingly, we will affirm the District Court's judgment.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

SOJOURNER RUDISILL, Plaintiff, v. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS; US AIRWAYS/AMERICANAIRLINES, Defendants.	:	CIVIL ACTION No. 18-5435

ORDER

AND NOW, this 18th day of December, 2020, upon consideration of Defendant American Airlines' Motion to Dismiss (ECF No. 30), and Defendant International Association of Machinists and Aerospace Workers' Motion to Dismiss (ECF No. 31), and Plaintiff's response thereto (ECF No. 32), I find as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

1. In the original Complaint, Plaintiff Sojourner Rudisill, proceeding *pro se*, brought claims alleging "fraud or corruption," lack of due process, and breach of contract pursuant to the Railway Labor Act ("RLA"). These allegations were filed against Plaintiff's

former employer, Defendant American Airlines,[1] and her union, Defendant International Association of Machinists and Aerospace Workers ("IAM"), in connection with the System Review Board's decision to uphold her termination in July 2016.

2. Defendants each filed motions to dismiss the original Complaint, which I granted on February 21, 2020, dismissing with prejudice Plaintiff's lack of due process and breach of contract claims and dismissing without prejudice Plaintiff's "fraud or corruption" claim under the RLA. I dismissed the "fraud or corruption" claim without prejudice to provide Plaintiff the opportunity to amend the Complaint if she was able to cure its deficiencies under Federal Rule of Civil Procedure 12(b)(6).

3. On May 29, 2020, Plaintiff filed an amended complaint,[2] again alleging fraud or corruption against both IAM and American Airlines. In support, Plaintiff asserts that because her private counsel was prohibited from participating in the arbitration hearing, she was prevented from "fully exhibiting her argument," and, as a result, her case was not decided on its merits. (Am. Compl. ¶¶ 68–69.) Plaintiff has also added a new claim against IAM, alleging that IAM breached its duty of fair representation by "act[ing] in an arbitrary manner towards Plaintiff and her grievance, failing to investigate the grievance promptly

---

[1] In 2013, American Airlines merged with US Airways, Plaintiff's original employer.

[2] A recitation of the facts of this case is provided in my February 21, 2020 Order. To the extent there are any facts alleged in the Amended Complaint that are relevant to my decision, they are included in my analysis below.

and vigorously," and for not following "established procedures." (Am. Compl. ¶ 78.)

4. Defendants have each moved to dismiss the Amended Complaint for failure to state a claim. IAM argues that it is not a proper party to Plaintiff's "fraud or corruption" claim and that Plaintiff's breach of the duty of fair representation claim is time-barred. American Airlines asserts that it was IAM's decision to not permit Plaintiff's private counsel to participate in the hearing, not the System Review Board, and IAM's conduct cannot form the basis of Plaintiff's request to vacate the arbitration award. Plaintiff cannot rely on IAM's conduct to support her "fraud or corruption" claim because, in order for such a claim against IAM and American Airlines to survive dismissal, she must plausibly plead a high degree of improper conduct by the System Review Board.[3]

5. For the following reasons, I will grant both motions to dismiss.

II. LEGAL STANDARD

6. To survive a motion to dismiss pursuant to Rule 12(b)(6), a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Conclusory allegations do not suffice. Id. Twombly and Iqbal's

[3] See Zurawski v. Se. Pa. Transp. Auth., No. 08-5040, 2010 WL 1946922, at *7 (E.D. Pa. May 10, 2010), aff'd 441 F. App'x 133 (3d Cir. 2011); Holmes v. Nat'l R.R. Passenger Corp., No. 94-7723, 1995 WL 334334, at *3 (E.D. Pa. June 1, 1995).

plausibility standard requires more than a "sheer possibility that a defendant has acted unlawfully." Id. Plausibility requires "enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary elements of a claim." Phillips v. Cnty. Of Allegheny, 515 F.3d 224, 234 (3d Cir. 2008).

7. To determine the sufficiency of a complaint under Twombly and Iqbal, a court must (1) "tak[e] note of the elements a plaintiff must plead to state a claim"; (2) identify the allegationsthat are not entitled to the assumption of truth because they are no more than conclusions; and (3)"where there are well-pleaded factual allegations, assume their veracity and then determine whether they plausibly give rise to an entitlement for relief." Burtch v. Millberg Factors, Inc., 662 F.3d 212, 221 (3d Cir. 2011) (citations omitted). Courts must construe the allegations in acomplaint "in the light most favorable to the plaintiff." Id. at 220.

8. When deciding a motion to dismiss, "courts generally consider only the allegations contained in the complaint, exhibits attached to the complaint and matters of public record." Schmidt v. Skolas, 770 F.3d 241, 249 (3d Cir. 2014) (quoting Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993)).

9. Because Plaintiff is proceeding pro se, I construe her allegations liberally. Higgs v. Attorney Gen. of the U.S., 655 F.3d 333, 339 (3rd Cir. 2011). "Notwithstanding this liberality *pro se* litigants are not relieved of their obligation to allege sufficient facts to support a cognizable legal claim." Humbert v. Levi, No.

08-cv-268, 2015 WL 1510982, at *4 (E.D. Pa. Apr. 2, 2015) (citing U.S. v. Miller, 197 F.3d 644, 648 (3d Cir. 1999)).

III. DISCUSSION

A. Fraud or Corruption of the System Review Board

10. Under the RLA, I may only set aside or remand an arbitration decision for "failure of the [arbitration panel] to comply with the requirements of [45 U.S.C. § 153], for failure of the order to conform, or confine itself, to matters within the scope of the [arbitration panel]'s jurisdiction, or for fraud or corruption by a member of the [arbitration panel] making the order." 45 U.S.C. § 153 First(q); see also U.S. Airline Pilots Ass'n v. U.S. Airways, Inc., 604 F. App'x 142, 146 (3d Cir. 2015). Judicial intervention in arbitration decisions under the RLA is limited to only these three categories, making it "among the narrowest known to law." Zurawski v. Se. Pa. Transp. Auth., No. 08-5040, 2010 WL 1946922, at *6 (E.D. Pa. May 10, 2010), aff'd 441 F. App'x 133 (3d Cir. 2011).

11. Plaintiff argues that the inability of her private counsel to participate in the arbitration hearing amounts to "fraud or corruption." However, "a finding of fraud or corruption [under the RLA] requires an 'extremely high degree of improper conduct' [by the arbitrator] of 'a greater level' than required by the common law." Zurawski, 2010 WL 1946922, at *6 (quoting Pac. & Arctic Ry. and Nav. Co. v. United Transp. Union, 952 F.2d 1144, 1148 (9th Cir. 1991)). "[B]ecause of the strong federal policy favoring

arbitration, 'fraud or corruption' under the RLA must be proved by clear and convincing evidence." Id.

12. Furthermore, the RLA protects against only "extrinsic" fraud, which is "fraud that will cause the innocent party to lose regardless of its argument 'because the case is not decided onits merits." See id. (quoting Pitts v. Nat'l R.R. Passenger Corp., 603 F. Supp. 1509 (N.D. Ill. 1985)). For example, extrinsic fraud occurs "when the employer-chosen arbitrator knowingly fails to disclose that perjured testimony is being offered before the board, when he or she bribes the neutral board member, or when the supposedly neutral arbitrator exhibits a complete unwillingness to respond, and indifference, to any evidence or argument in support of one of the parties' positions." Id. (internal quotation marks omitted) (citations omitted).

13. "Intrinsic" fraud, on the other hand, including "perjured testimony or misrepresentations by counsel," is "not the kind of fraud that is judicially reviewable under the RLA because the conduct is not that of a board member." Id. at *7 (internal quotation marks omitted). "Section 153 [of the RLA] clearly states that the fraud involved must be by a member of the division making the order. This can only mean fraud by a member of the Board itself." Holmes v. Nat'l R.R. Passenger Corp., No. 94-7723, 1995 WL 334334, at *3 (E.D. Pa. June 1, 1995) (internal quotation marks omitted). "Thus, fraud on the part of the employer alone does not satisfy the 'fraud or corruption' requirement and, even if adequately supported, cannot provide a basis for relief." Zurawski, 2010 WL 1946922, at *7.

14. Here, Plaintiff claims that the IAM attorney who represented her at the arbitration hearing

told her, before the hearing began, that he and counsel for American Airlines "both objected to the presence of Plaintiff's privately retained counsel" because "the hearing was a contractual proceeding between the two Defendants and . . . Plaintiff's counsel had no right to be there." (Am. Compl. ¶¶ 43–44.) IAM's representative also allegedly told Plaintiff that the neutral member (chosen by both American Airlines and IAM) of the System Review Board "agreed" with the removal of Plaintiff's private counsel. (Id. at ¶ 45.) Plaintiff admits in the Amended Complaint that no member of the System Review Board commented on the IAM representative's objectionto the presence of Plaintiff's private counsel. (Id. at ¶ 46.) Instead, Plaintiff states that she "reasonably believes" that all of the System Review Board members were aware of the IAM representative's objection because they were within earshot of the conversation. (Id.)

15. Initially, I note that for the reasons discussed in my February 21, 2020 Order, Plaintiff's "fraud or corruption" claim is not properly brought against IAM. See, e.g., Ollman v. Special Bd. Of Adjustment No. 1063, 527 F.3d 239, 249–51 (2d Cir. 2008).

16. Regarding American Airlines, the conduct of the IAM representative and counsel for American Airlines, even taken as true, cannot be imputed to the Board in order to prove Plaintiff's "fraud or corruption" claim against American Airlines. And as was the case in her original complaint, Plaintiff fails again to allege any specific conduct directly perpetrated by the System Review Board. This failure is fatal to Plaintiff's "fraud or corruption" claim under the RLA,

especially considering the extremely high degree of improper conduct that must be alleged in order to meet the heightened pleading standard for such a claim.

17. Even assuming that the IAM representative's belief that the neutral member of the Board was in agreement regarding the removal of Plaintiff's private counsel is sufficient to allege conduct by the Board itself, Plaintiff had to plausibly plead that due to the Board's conduct, she would have lost, regardless of her arguments at the arbitration hearing, because her case was not decided on its merits. Plaintiff alleges, in a conclusory fashion, that her case was not, in fact, decided on the merits due to the absence of her private counsel. (Id. at ¶ 69.) But as she acknowledges in the Amended Complaint, Plaintiff was represented by an IAM attorney at the hearing and, although she alleges that he did not ask all of the questions that she wanted him to ask and that she was not given an opportunity to direct the questioning of relevant witnesses, the Amended Complaint is devoid of facts supporting Plaintiff's bare assertion that her case was not decided on its merits.[4] (Id. at ¶¶ 48–53.)

---

[4] Plaintiff alleges, for example, that the IAM attorney failed to present any evidence"documenting" Plaintiff's allegation of assault or associated injuries to the System Review Board.(Id. at ¶ 51.) Yet, Plaintiff admits in her opposition that evidence regarding her alleged assault waspresented to the System Review Board at the hearing. (Pl.'s Opp. at 9 ("American mistakenly states that Plaintiff alleges that she was not allowed to present any evidence that she experienced an assault in October 2012.").) Plaintiff's admission is also corroborated by the transcript of the arbitration hearing, and the Board's Award decision, in which this evidence was discussed and found to be unpersuasive. (Ex. B to Janger Decl., ECF No. 31-4, at 168:10–170:22; Ex. A to Janger Decl., ECF No. 31-3, at 14–15.)

18. The transcript of the arbitration hearing and the Board's Award decision make clear that Plaintiff's case was both heard and decided on its merits. (See generally Ex. B to Janger Decl.,ECF No. 31-4; Ex. A to Janger Decl., ECF No. 31-3.)[5]

19. For these reasons, I find that Plaintiff has failed to plausibly plead a claim of fraud or corruption.[6] Defendants' motions to dismiss will be granted as to this claim.

---

[5] I may consider the arbitration hearing transcript and the Board's Award decision without converting the motions to dismiss to motions for summary judgment because the Amended Complaint relies on these documents and they are undisputedly authentic. U.S. Airline Pilots Ass'n v. U.S. Airways, Inc., 25 F. Supp. 3d 758, 767 (W.D. Pa. 2014), aff'd 604 F. App'x 142, 148 n.11 (3d Cir. 2015) (considering arbitration transcript in matter seeking to vacate arbitration award because "[t]he transcript of the arbitration hearing would constitute an undisputedly authentic document upon which the Complaint relies"); Blount v. Folino, No. 10-697, 2011 WL 2489894, at *10 (W.D. Pa. June 21, 2011) (taking judicial notice of administrative hearing record and report because "[o]therwise, a plaintiff with a legally deficient claim could survive a motion to dismiss simply by failing to attach a dispositive document on which [she] relied"); Evans v. Chichester Sch. Dist., 533 F. Supp. 2d 523, 531 (E.D. Pa. 2008); Obotetukudo v. Clarion Univ. of Pa., No. 13- 0639, 2015 WL 1524460, at *5 (W.D. Pa. Apr. 2, 2015); see also Santomenno v. John Hancock Life Ins. Co., 768 F.3d 284, 290–91 (3d Cir. 2014) (finding that a court may consider "documents whose contents are alleged in the complaint and whose authenticity no party questions, but which are not physically attached to the pleading").

[6] To the extent Plaintiff's "fraud or corruption" claim is based on the "too-cozy working relationship between Defendants" that she concludes "corrupted the System Board," (Am. Compl. ¶ 73–74), again, the conduct of IAM's representative and counsel for American Airlines cannot form the basis of a "fraud or corruption" claim under the RLA, and Plaintiff fails to allege any act of

B. Breach of the Duty of Fair Representation

20. Defendant IAM moves to dismiss Plaintiff's claim for breach of the duty of fair representation, arguing that it is time-barred.

21. I agree. Claims for breach of the duty of fair representation are subject to a six- month statute of limitations, running from when "plaintiff receives notice that the union will proceed no further with the grievance" or "when the futility of further union appeals became apparent or should become apparent." Vadino v. A. Valey Engineers, 903 F.2d 253, 260 (3d Cir. 1990); see also DelCostello v. Int'l Brotherhood of Teamsters, 462 U.S. 151, 169 (1983); Russo v. Am. Airlines, Inc., 340 F. App'x 816, 818 (3d Cir. 2009); Childs v. Pa. Federation Brotherhood of Maintenance Way Employees, 831 F.3d 429, 433–46 (3d Cir. 1987).

22. Plaintiff filed the Amended Complaint on May 29, 2020, asserting for the first timea breach of the duty of fair representation claim. This is well-beyond six months from December 16, 2016 when her arbitration appeal was denied by the System Review Board and even from the filing of the original Complaint on December 17, 2018.

23. Thus, I find that Plaintiff's breach of the duty of fair representation claim is time-barred and must be dismissed.

WHEREFORE, for the foregoing reasons, Defendant IAM's Motion to Dismiss (ECF No. 31) and

---

corruption by the System Review Board.

Defendant American Airlines' Motion to Dismiss (ECF. No. 30) are **GRANTED.**

The Clerk of Court shall mark this case **CLOSED.**

BY THE COURT:

/s/ Mitchell S. Goldberg
MITCHELL S. GOLDBERG, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

SOJOURNER RUDISILL, Plaintiff, v. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS; US AIRWAYS/AMERICANAIRLINES, Defendants.	:	CIVIL ACTION No. 18-5435

ORDER

AND NOW, this 21st day of February, 2020, upon consideration of Defendant American Airlines' "Motion to Dismiss for Failure to State a Claim" (ECF No. 13), and Defendant International Association of Machinists and Aerospace Workers' "Motion to Dismiss" (ECF No. 9), Plaintiff's response thereto, and Defendants' replies, I find as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

1. *Pro se* Plaintiff Sojourner Rudisill brings claims of "fraud or corruption," lack of due process, and breach

of contract for alleged violations of the Railway Labor Act ("RLA") by her former employer, American Airlines,[1] and her union, International Association of Machinists and Aerospace Workers ("IAM"), in connection with the union's System Review Board's decision touphold her termination in July 2016.

2. The following facts, viewed in the light most favorable to the Plaintiff, are derived from the Complaint, unless otherwise noted:

- On August 7, 2012, Plaintiff entered into a Last Chance Agreement[2] ("LCA") with American Airlines (then US Airways), which was in effect for twelve months. This LCA required Plaintiff to comply with all company policies explained in the Employee Handbook and Customer Service and Fleet Service Commitment to Success Performance Program. (American Airlines Motion to Dismiss, ECF No. 25 at 4.)

- On April 11, 2013, Plaintiff was notified that she was in violation of the LCA and was subsequently terminated via letter on April 24, 2013.

- Pursuant to the grievance process set forth in the collective bargaining agreement ("CBA") between American Airlines and IAM, a System Review Board arbitration hearing was scheduled for July 19, 2016. The System Review Board,

[1] In 2013, American Airlines merged with US Airways, Plaintiff's original employer.

[2] Neither party explains what conduct prompted Plaintiff to enter into the LCA with her employer.

pursuant to the CBA, "consists of a member selected by the employer, a member selected by the union, and a neutral member selected by both the employer and the union." (Id. at 3.) Prior to this hearing, Plaintiff had retained private counsel to represent her during this process.

- Before the hearing could proceed, the IAM representative, appearing on behalf of Plaintiff, and counsel for American Airlines objected to the presence of Plaintiff's privately retained counsel. The IAM's representative "indicated that the hearing was a contractual proceeding between the two defendants and that the Plaintiff's outside counsel had no right to be there and that the neutral member of the System Board was in agreement." (Compl. at 3.) Plaintiff's privately retained counsel left the hearing, and material aspects of Plaintiff's case were allegedly not presented to the System Board. Plaintiff also claims that, without private counsel, she was unable to direct the questioning of relevant witnesses.

- The System Review Board upheld Plaintiff's termination on December 16, 2016.

3. On December 17, 2018, Plaintiff filed a *pro se* complaint seeking a new System Review Board hearing because the Board prohibited her private counsel from participating. Plaintiff alleges that she was guaranteed the right to counsel under the CBA, and, as a result of her counsel's inability to participate, either the Board was guilty of "fraud or corruption" or a member of the Board "engaged in fraud or corruption that affected

7. To determine the sufficiency of a complaint under Twombly and Iqbal, a court must (1) "tak[e] note of the elements a plaintiff must plead to state a claim;" (2) identify the allegations thatare not entitled to the assumption of truth because they are no more than conclusions; and (3) "where there are well-pleaded factual allegations, assume their veracity and then determine whether they plausibly give rise to an entitlement for relief." Burtch v. Millberg Factors, Inc., 662 F.3d 212, 221 (3d Cir. 2011) (citations omitted). Courts must construe the allegations in acomplaint "in the light most favorable to the plaintiff." (Id. at 220.)

8. When deciding a motion to dismiss, "courts generally consider only the allegations contained in the complaint, exhibits attached to the complaint and matters of public record." Schmidt v. Skolas, 770 F.3d 241, 249 (3d Cir. 2014) (quoting Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993)).

9. Because Plaintiff is proceeding *pro se*, I construe her allegations liberally. Higgs v. Attorney Gen. of the U.S., 655 F.3d 333, 339 (3d Cir. 2011). "Notwithstanding this liberality, *pro se* litigants are not relieved of their obligation to allege sufficient facts to support a cognizablelegal claim." Humbert v. Levi, No. 08-cv-268, 2015 WL 1510982, at *4 (E.D. Pa. Apr. 2, 2015) (citing United States v. Miller, 197 F.3d 644, 648 (3d Cir. 1999)).

III. DISCUSSION

10. Under the RLA, I may only set aside or remand an arbitration decision for "failure of the [arbitration panel] to comply with the requirements of [45 U.S.C. § 153], for failure of the order to conform, or confine itself, to matters within the scope of the [arbitration panel]'s jurisdiction, or for fraud or corruption by a member of the [arbitration panel] making the order." 45 U.S.C. § 153 First(q); see also U.S. Airline Pilots Ass'n v. U.S. Airways, Inc., 604 F. App'x 142, 146 (3d Cir. 2015). Judicial intervention in arbitration decisions under the RLA is limited to only these three categories, making it "among the narrowest known to law." Zurawski v. Southeastern Pennsylvania Transp. Authority, No. CIV. A. 2:08-cv-05040, 2010 WL 1946922, at *6 (E.D. Pa. May 10, 2010).

11. In Zurawski, a former employee of Southeastern Pennsylvania Transportation Authority ("SEPTA") claimed SEPTA engaged in "fraud or corruption" during the arbitration hearing following his termination, deprived the plaintiff of due process, and failed to notify him of his rightto counsel. Id. The United States Court of Appeals for the Third Circuit affirmed the district court's reasoning that (1) based on the "heightened pleading standard" of claims rooted in the RLA, the Complaint did not meet the "extremely high degree of improper conduct" required and (2) reviewof arbitration awards under the RLA is limited to the three narrow exceptions outlined in 45 U.S.C.153 First (q). Zurawski v. Southeastern Pennsylvania Transp. Authority, 441 F. App'x 133, 136 (3d Cir. 2011).

A. Due Process Claim

12. As noted above, Plaintiff alleges that her privately retained attorney was improperly ousted from

the hearing, when she was entitled to have private counsel there pursuant to the termsof the CBA. Plaintiff thus argues that material aspects of her case were not presented, and she was not given the opportunity to direct the questioning of relevant witnesses. It is on these grounds that Plaintiff claims that she was deprived of due process.

13. However, the Third Circuit in Zurawski held that deprivation of due process does not fall within the three narrow categories permitting judicial review of an arbitration decision under § 153, "thus precluding an analysis of whether an arbitration award comported with due process." See id. (citing United Steelworkers of America Local 1913 v. Union Railroad Co., 648 F.2d 905 (3d Cir. 1981)).

14. The same reasoning applies here. Plaintiff petitions for my review under the RLA of theSystem Board's decision upholding her termination. Because § 153 First (q) does not permit me to do so based on lack of due process, Plaintiff cannot plausibly state a claim for relief. Therefore, Plaintiff's due process claim is dismissed as to both Defendants.

B. Breach of the CBA Claim

15. Plaintiff also claims that the System Board breached the terms of the CBA by failing to render a decision within thirty days of the arbitration. She alleges that this undue delay caused her additional harm.

16. For the same reasons discussed above regarding her due process claim, a breach of contract

claim based on failure to comply with the CBA is not one of the limited categories of review permitted by the RLA. See United Steelworkers of America Local 1913 v. Union Railroad Co., 648 F.2d 905, 913 (3d Cir. 1981).

17. Because this claim falls outside of the narrow exceptions set forth in § 153, Plaintiff's breach of contract claim is also dismissed as to both Defendants.

C. Fraud or Corruption Claim

18. Finally, Plaintiff argues that the inability of her private counsel to participate in the System Board hearing amounts to "fraud or corruption." As noted, § 153 allows a court to review an arbitration award on these grounds. U.S. Airline Pilots Ass'n v. U.S. Airways, Inc., 604 F. App'x 142, 146 (3d Cir. 2015).

19. However, "a finding of fraud or corruption [under the RLA] requires an 'extremely highdegree of improper conduct' of 'a greater level' than required by the common law." Zurawski v. Southeastern Pennsylvania Trans. Authority, No. CIV. A. 2:08-cv-05040, 2010 WL 1946922, at *6 (E.D. Pa. May 10, 2010). "Fraud properly embraces a situation in which the supposedly neutralarbitrator exhibits a complete unwillingness to respond, and indifference, to any evidence or argument in support of one of the parties' positions." Id. (quoting Pac. & Arctic Ry. and Nav. Co. v. United Transp. Union, 952 F.2d 1144, 1148 (9th Cir. 1991)).

20. Moreover, the RLA protects against only extrinsic fraud, which is "fraud that will cause the innocent party to lose regardless of its argument 'because

the case is not decided on its merits."See Zurawski v. Southeastern Pennsylvania Trans. Authority, No. CIV. A. 2:08-cv-05040, 2010 WL 1946922, at *6 (E.D. Pa. May 10, 2010) (citing Pitts v. Nat'l R.R. Passenger Corp., 603 F. Supp. 1509 (N.D. Ill. 1985)). Intrinsic fraud, which includes misrepresentations by counsel, does not qualify for review under the RLA because "the conduct is not that of a board member." Zurawski v. Southeastern Pennsylvania Trans. Authority, No. CIV. A. 2:08-cv-05040, 2010 WL 1946922, at *7 (E.D. Pa. May 10, 2010). "Thus, fraud on the part of the employer alone does not satisfy the 'fraud or corruption' requirement and, even if adequately supported, cannot provide a basis for relief." Id.

21. Plaintiff's Complaint does not discuss any specific conduct of the System Board. It does,however, allege an IAM representative told her that "the neutral member of the System Board was in agreement" that her privately retained counsel needed to leave. (Compl. at 3.) The Complaint does not make clear if this representative was on the System Board or not.

22. Plaintiff's failure to allege conduct of the System Board is fatal to her claim of fraud. Even if the Complaint is read liberally, Plaintiff's allegation that "the union's representative indicated that the hearing was a contractual proceeding between the two defendants and that the Plaintiff's outside counsel had no right to be there and that the neutral member of the System Board was in agreement" would not be enough to meet the high standard for fraud under the RLA. Plaintiff has not alleged sufficient facts to plausibly plead a "fraud or corruption" claim against either Defendant.

23. Although I am dismissing Plaintiff's RLA claim, unless an amendment would be inequitable or futile, a district court should inform a *pro se* plaintiff that she has leave to amend her complaint within a set period of time. Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).

24. Here, I find that it is conceivable that Plaintiff could allege facts to plausibly support her RLA claim against both American Airlines and IAM.[4] Therefore, this claim as to each Defendant is dismissed without prejudice.

WHEREFORE, for the reasons set forth above, it is hereby **ORDERED** that Defendant American Airlines' "Motion to Dismiss Plaintiff's Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6)" (ECF No. 13) and Defendant IAM's "Brief in Support

---

[4] In addition to its contention that Plaintiff's allegations do not meet the high standard for fraud under the RLA, IAM argues that they are not a proper defendant based on the Second Circuit's holding in Ollman v. Special Bd. of Adjustment No. 1063, 527 F.3d 239 (2d Cir. 2008). In Ollman, the court explained that a breach of the union's duty of fair representation claim is the appropriate mechanism for holding a union that allegedly "misrepresent[s] the employee's interest" accountable. See id. at 249-251 (explaining that the union was a proper party to the plaintiff's petition for review "only to the extent that [the plaintiff] asserted a claim that [the union] breached its duty of fair representation owed to him"). Plaintiff agrees that she does not bring a breach of duty of fair representation claim against IAM. (ECF No. 20 at 8 ("Indeed, in Defendant's motion to dismiss, Defendant points out that Plaintiff's complaint does not allege a duty of fair representation violation.").) Instead, Plaintiff seeks to use the alleged actions of IAM's representative to vacate the Board's award on grounds of "fraud or corruption"—a claim not properly brought against IAM. See id. However, in providing her leave to amend, Plaintiff will have the opportunity to add a claim for breach of the duty of fair representation against IAM.

Motion to Dismiss" (ECF No. 9) are **GRANTED**. However, Plaintiff's claim of "fraud or corruption" under the RLAis **DISMISSED without prejudice**, and Plaintiff will be given leave to file an amended complaint within thirty days of the date of this Order in an attempt to cure, if possible, the deficiencies regarding this claim set forth above. Should Plaintiff file an amended complaint, she should be mindful of the reasons for dismissing the RLA claim as explained in this Order. If Plaintiff fails to file an amended complaint, her case may be dismissed for failure to prosecute.

BY THE COURT:

/s/ Mitchell S. Goldberg
MITCHELL S. GOLDBERG, J.