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66 F.4th 500
United States Court of Appeals, Fourth Circuit.

Dawn C. POLK Plaintiff - Appellant
v.
AMTRAK NATIONAL RAILROAD PASSENGER CORPORATION; Andrew Collins, Amtrak D.ER; Alton Lamontagne, Roadforeman Manager; Tracey Armstrong, Trainmaster Manager
Defendants - Appellees.

No. 22-1912
|
Argued: March 9, 2023
|
Decided: April 26, 2023

Appeal from the United States District Court for the District of Maryland at Baltimore. Lydia Kay Griggsby, District Judge. (1:21-cv-01740-LKG)

Attorneys and Law Firms

ARGUED: Denise M. Clark, CLARK LAW GROUP, PLLC, Washington, D.C., for Appellant. Alison Nadine Davis, LITTLER MENDELSON P.C., Washington, D.C., for Appellees. ON BRIEF: Rosa T. Goodman, LITTLER MENDELSON, P.C., Washington, D.C., for Appellees.

Before WILKINSON, AGEE, and HEYTENS, Circuit Judges.

Opinion

Affirmed by published opinion. Judge Wilkinson wrote the opinion, in which Judge Agee and Judge Heytens joined.

WILKINSON, Circuit Judge.

Congress enacted the Railway Labor Act (RLA), 45 U.S.C. §§ 151 *et seq.*, to curb disruption of the rail yards, tracks, and terminals that tie our economy together. As relevant here, the statute directs workers and carriers to resolve their differences through mediation and arbitration. But Dawn Polk, a rail worker, elected to sue her employer, Amtrak, in federal court. The district court, however, held that Polk's claims were subject to arbitration under the RLA. We agree and thus affirm the judgment.

I.

Dawn Polk, an African American woman, worked as a conductor for Amtrak National Railroad Passenger Corporation (Amtrak). During her employment, she belonged to a division of the Sheet Metal, Air, Rail and Transportation Workers (SMART) union, which maintained a collective bargaining agreement (CBA) with Amtrak.

In late 2018, Polk suffered an injury that caused her to miss multiple months of work. Before returning to the job, Polk was required to take a drug test in accordance with Amtrak's Drug and Alcohol-Free Workplace Program (Drug-Free Program). The Program

specifies that "[a]ny employee returning to work after an absence of at least 30 consecutive days . . . must pass a [d]rug test before returning to work." J.A. 314.

On March 25, 2019, an Amtrak representative called Polk and asked her to take the drug test that day. Polk promptly went to the testing site but was unable to produce an adequate sample of urine during an allotted three-hour period. She then called Andrew Collins, Amtrak's director of employee relations, to ask to reattempt the test the following morning. According to Polk, Collins responded that "you don't get a second test" and advised her to undergo a medical evaluation for shy bladder syndrome. J.A. 26. After Polk's subsequent assessment for shy bladder syndrome came back negative, Amtrak terminated her employment pending an investigative hearing.

A couple of weeks later, on April 19, Amtrak extended Polk a settlement offer via her union representative. Per the offer, which the parties refer to as "the Waiver," Amtrak proposed to reinstate Polk so long as she agreed to several conditions including that she waive her right to the investigative hearing. The Waiver also obligated Polk to see a substance abuse professional, undergo "unannounced drug and/or alcohol follow-up testing at least six (6) times for a period of twelve (12) months," and "waiv[e] all rights under the Collective Bargaining Agreement" in the event of a future violation of the Drug-Free Program. J.A. 55-56. Polk alleges that she signed the Waiver "under duress." J.A. 28.

Polk returned to work on May 8, six weeks after the initial drug test. She alleges that she received four drug tests over the following year, and then another seven tests in the year after that. As the tests continued into the second year following her reinstatement, Polk expressed concern to her union that Amtrak was testing her beyond the twelve-month period mentioned in the Waiver. Polk alleges that the added tests caused her embarrassment and interfered with her medical appointments.

In early 2021, Polk collected her concerns into a formal grievance that she filed with Amtrak's dispute resolution office. She alleges that she subsequently received a call from an Amtrak representative attributing the continued testing to a computer entry error. Polk further alleges that the representative "never called . . . back as promised" and failed to rectify the error. J.A. 32. Two months later, Polk retired from Amtrak on disability benefits.

In July 2021, Polk brought the instant lawsuit *pro se* in the District of Maryland. She named Amtrak and Collins as defendants, along with three other Amtrak colleagues, Alton Lamontagne, Curtis Stencil, and Tracey Armstrong. Polk asserted state-law claims of breach of contract and tort, as well as a federal claim of racial discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* She requested $1.5 million in damages.

Defendants moved to dismiss, and Polk in turn moved for summary judgment as well as for leave to

amend her complaint. In June 2022, the district court granted defendants' motion and denied Polk's two motions. It reasoned that the Railway Labor Act preempted Polk's state-law claims and precluded her federal Title VII claim because all of these claims would "require that the Court interpret the rights within the CBA" between Amtrak and SMART. J.A. 362.

Polk timely appealed.

II.

This appeal concerns the Railway Labor Act, which aims to "avoid any interruption to commerce" and "provide for the prompt and orderly settlement" of disputes between rail workers and carriers. 45 U.S.C. § 151a. In relevant part, the statute sets forth a detailed dispute-resolution procedure, culminating in arbitration, for conflicts "growing out of . . . the interpretation or application" of a collective bargaining agreement. *Id.* § 153 (first). Such conflicts are known as "minor disputes." *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252-53, 114 S.Ct. 2239, 129 L.Ed.2d 203 (1994); *see Consol. Rail Corp. v. Ry. Lab. Executives' Ass'n*, 491 U.S. 299, 302, 109 S.Ct. 2477, 105 L.Ed.2d 250 (1989) ("[M]ajor disputes seek to create contractual rights, minor disputes to enforce them.").

The Supreme Court has held that the RLA's arbitral procedure for minor disputes is "mandatory." *Hawaiian Airlines*, 512 U.S. at 252, 114 S.Ct. 2239. Thus, minor disputes that are not resolved through an

intra-carrier grievance procedure are to be referred to arbitration. For the hearing of these matters, the RLA created the National Railroad Adjustment Board, a specialized tribunal consisting equally of union and carrier representatives. 45 U.S.C. § 153 (first). Carriers and unions may also institute their own adjustment boards instead with a single representative from each side. *Id.* § 153 (second). To secure the RLA's arbitral procedure, the Supreme Court has ruled that the RLA preempts state-law claims that also constitute minor disputes. *Hawaiian Airlines*, 512 U.S. at 262-63, 114 S.Ct. 2239.

III.

On appeal, Polk solely challenges the district court's holding that the RLA precludes her Title VII claim. At the dismissal stage, we review the district court's decision de novo. *AFSCME Md. Council 3 v. Maryland*, 61 F.4th 143, 148 (4th Cir. 2023). Polk argues that the RLA does not preclude her Title VII claim because the claim is not a minor dispute. She advances two arguments. First, Polk maintains that Title VII claims are "never" minor disputes because Title VII supplies an "independent" cause of action. Appellant Opening Br. at 4. Second, and in the alternative, Polk contends that at least her particular claim is not a minor dispute because it does not require the "interpretation or application" of a CBA. 45 U.S.C. § 153 (first). We address each of Polk's contentions in turn.

A.

Polk first argument is categorical. She contends that *all* Title VII claims are intrinsically different from RLA minor disputes because Title VII "rights are guaranteed to employees whether or not a collective bargaining agreement exists." Appellant Opening Br. at 9. Polk's proposition that a Title VII claim cannot be a minor dispute, however, runs headlong into Supreme Court guidance, circuit court precedent, and the congressional judgments behind the RLA. While Polk is entitled to seek a remedy for workplace discrimination, the RLA accords her the avenue for such relief in arbitration.

1.

The Supreme Court has indicated that federal claims, such as those arising under Title VII, can constitute minor disputes. On multiple occasions, the Court has explained that state causes of action can be minor disputes even though they can arise in the absence of a CBA. *Hawaiian Airlines*, 512 U.S. at 261-62, 114 S.Ct. 2239; *Andrews v. Louisville & Nashville R. Co.*, 406 U.S. 320, 323-24, 92 S.Ct. 1562, 32 L.Ed.2d 95 (1972). That Title VII is a federal statute makes no difference. For the Court has stated that the RLA's preemption inquiry for state claims and its preclusion inquiry for federal claims are founded upon common "principles." *Hawaiian Airlines*, 512 U.S. at 259 n.6, 114 S.Ct. 2239. Whether in the preemption or preclusion context, "Congress considered it essential to keep

[minor] disputes within the Adjustment Board and out of the courts." *Atchison, Topeka & Santa Fe Ry. Co. v. Buell*, 480 U.S. 557, 562 n.9, 107 S.Ct. 1410, 94 L.Ed.2d 563 (1987).

Following the Supreme Court's guidance, we recently stated that a "federal claim" can double as a minor dispute—and thus be subject to RLA preclusion. *Giles v. Nat'l R.R. Passenger Corp.*, 59 F.4th 696, 703 (4th Cir. 2023). Our sister circuits have largely agreed when confronted with a smattering of nominally independent federal causes of action. *E.g.*, *Carmona v. Sw. Airlines Co.*, 536 F.3d 344, 349 (5th Cir. 2008) (Title VII); *Brown v. Illinois Cent. R.R. Co.*, 254 F.3d 654, 668 (7th Cir. 2001) (Americans with Disabilities Act); *Schiltz v. Burlington N. R.R.*, 115 F.3d 1407, 1415 (8th Cir. 1997) (Age Discrimination in Employment Act). The lesson from these cases is not that a federal claim will always be a minor dispute, but that, contrary to Polk's view, a federal claim can at times be one.

There is good reason not to carve out federal claims from the RLA's preclusive scope. Congress understood minor disputes—that is, disagreements over the "interpretation or application" of a CBA—to be destabilizing in and of themselves. *Hawaiian Airlines*, 512 U.S. at 252, 114 S.Ct. 2239 (quoting 45 U.S.C. § 151a). The adjudication of minor disputes can determine prevailing CBA interpretations and therefore "govern future relations" between unions and carriers. *Slocum v. Delaware, L. & W.R. Co.*, 339 U.S. 239, 242, 70 S.Ct. 577, 94 L.Ed. 795 (1950). As a result, minor disputes have "long been considered a potent cause of

friction leading to strikes." *Id.* By getting courts out of the business of interpreting CBAs, Congress sought to avoid "protracted railway labor disputes" that would adversely affect the national economy. *Fairbairn v. United Air Lines, Inc.*, 250 F.3d 237, 241 (4th Cir. 2001).

The RLA's rationale has little to do with whether a minor dispute arises from a contractual claim or some other cause of action under state or federal law. The end-result is the same: A minor dispute can be destabilizing because of its precedential implications for a CBA. To mitigate that inherent risk, Congress opted for the centralized arbitration of minor disputes over their sporadic litigation all across the country.

This congressional decision was premised on the several advantages that adjustment boards have over courts. First, their members are "peculiarly competent" in that they "understand railroad problems and speak the railroad jargon." *Slocum*, 339 U.S. at 243-44, 70 S.Ct. 577. Second, centralization fosters "a desirable degree of uniformity" in CBA interpretations. *Id.* And third, the flexibility of arbitral procedure allows for greater delicacy and dispatch, reducing the likelihood of "strikes bringing railroads to a halt." *Nat'l Union Pac. R. Co. v. Bhd. of Locomotive Engineers & Trainmen Gen. Comm. of Adjustment, Cent. Region*, 558 U.S. 67, 72 (2009).

Congress is, of course, welcome to pare back the RLA's "mandatory arbitral mechanism." *Hawaiian Airlines*, 512 U.S. at 252, 114 S.Ct. 2239. But Title VII, the statute invoked by Polk, gives no indication that

Congress meant to do that. The text of Title VII does not refer to, let alone repudiate, the RLA's "elaborate administrative procedures" for minor disputes. *Buell*, 480 U.S. at 562, 107 S.Ct. 1410. And the broad reach of Title VII cautions against displacing other statutory procedures that are focused on a narrow problem. Title VII governs almost any entity country-wide "engaged in an industry affecting commerce" so long as it has fifteen or more employees. 42 U.S.C. § 2000e(b). In contrast, the RLA concerns itself with railroad companies and airlines. 45 U.S.C. § 151. As the "more specific statute," the RLA is therefore to "be given precedence over a more general one." *Busic v. United States*, 446 U.S. 398, 406, 100 S.Ct. 1747, 64 L.Ed.2d 381 (1980).

In sum, we decline to unwind a nearly century-old statutory scheme without a clear congressional directive to do so. The mere fact that Polk's claim arises under Title VII does not disqualify that claim from being a minor dispute within the RLA's ambit.

2.

Polk protests that arbitration would render her Title VII rights "ineffective." Appellant Opening Br. at 4. But arbitration is no death knell. In extending an arbitral forum, the RLA serves not to deny Polk due process but to afford it.

Polk's skepticism of arbitration is, in any event, out of step with the views of Congress and the Supreme Court. The Supreme Court has discussed the benefits of arbitration in recent years within the context of the

Federal Arbitration Act (FAA), 9 U.S.C. § 1 *et seq*. Congress's view, the Court explained, is that arbitration can offer "quicker, more informal, and often cheaper resolutions for everyone involved." *Epic Sys. Corp. v. Lewis*, ___ U.S. ___ 138 S. Ct. 1612, 1621, 200 L.Ed.2d 889 (2018). In a string of recent cases, the Supreme Court has rejected state-and court-made exceptions to the FAA's strong presumption of arbitrability. *Viking River Cruises, Inc. v. Moriana*, ___ U.S. ___ 142 S. Ct. 1906, 1924, 213 L.Ed.2d 179 (2022); *Epic*, 138 S. Ct. at 1619; *Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 239, 133 S.Ct. 2304, 186 L.Ed.2d 417 (2013); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352, 131 S.Ct. 1740, 179 L.Ed.2d 742 (2011). Under the Supreme Court's jurisprudence, there is no reason to fear that arbitration will not give "statutory antidiscrimination rights the full protection they are due." *Penn Plaza LLC v. Pyett*, 556 U.S. 247, 265 n.5, 129 S.Ct. 1456, 173 L.Ed.2d 398 (2009).

Polk appeals to *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 94 S.Ct. 1011, 39 L.Ed.2d 147 (1974), but the Supreme Court has substantially narrowed and explicitly repudiated that decision. *See Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 35, 111 S.Ct. 1647, 114 L.Ed.2d 26 (1991); *Penn Plaza*, 556 U.S. at 265, 129 S.Ct. 1456. The value of arbitration does not vanish simply because Polk raises a workplace discrimination claim. Polk's argument about the inefficacy of arbitration is but a riptide to the Supreme Court's admonition that "the advantages of the arbitration process [do not] somehow disappear when transferred to the

employment context." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 123, 121 S.Ct. 1302, 149 L.Ed.2d 234 (2001).

While arbitration does not compromise Title VII protections, Polk's proposed rule would scuttle the RLA's continued operation. Any dispute about a disciplinary action can be reframed through artful pleading as a discrimination claim under Title VII. Thus, if Title VII claims are never minor disputes, workers will be able to "cavalierly bypass" the regular grievance process and arbitration and head straight to federal court merely by adding allegations of discrimination to a complaint. *Zombro v. Baltimore City Police Dep't*, 868 F.2d 1364, 1367 (4th Cir. 1989). This maneuver would not be difficult. But it would turn courts into adjudicators of first instance, whereas the RLA permits them to reverse adjustment board decisions only for lack of jurisdiction, failure to comply with RLA requirements, or taint of fraud or corruption. 45 U.S.C. § 153 (first). By blessing Polk's new strategy of artful bypass, we would be nullifying the RLA's emphatic preference for the arbitration of minor disputes.

The less disruptive alternative is for claims like Polk's to go to arbitration. Polk has already taken the first step by filing a grievance with Amtrak's dispute resolution office. She can ultimately make her case to an adjustment board, half composed of union representatives. 45 U.S.C. § 153. In addition, Amtrak has represented that Polk can raise her Title VII claim and obtain Title VII relief in the arbitral forum. Oral Arg. at 19:43.

Preclusion of a Title VII suit need not be the end of the story. Employees can still hold their carrier accountable for discriminatory conduct. The RLA charts the path to do so through arbitration.

B.

That Title VII claims can be RLA minor disputes does not end our analysis, since Polk also argues that at least her *particular* claim is not a minor dispute. As noted above, minor disputes "grow[] out of . . . the interpretation or application" of a CBA. *Hawaiian Airlines*, 512 U.S. at 252, 114 S.Ct. 2239 (quoting 45 U.S.C. § 151a). Polk contends that her claim is not a minor dispute because the claim is limited to "Amtrak's discriminatory behavior and not the collective bargaining agreement itself." Appellant Opening Br. at 4.

We disagree. The thrust of Polk's Title VII claim is that Amtrak deviated from its policies when dealing with her. While Polk's allegations as to her own treatment are factual, those concerning Amtrak's policies directly implicate the relevant CBA between Polk's union, SMART, and Amtrak. That some of Polk's interpretive disagreements concern the Drug-Free Program does not alter the character of her claim because the Program is itself integrated with the CBA. Since Polk's Title VII claim requires the interpretation of a CBA, it is a minor dispute.

1.

The dispositive role of the CBA is illuminated by the substance of Polk's Title VII claim. A worker may prove a claim of racial discrimination under Title VII either through "direct" or "circumstantial" evidence. *U.S. Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 714 n.3, 103 S.Ct. 1478, 75 L.Ed.2d 403 (1983). Polk does not refer to her race or the race of her colleagues in her complaint, apart from a conclusory statement that she was "discriminated against due to [her] race." J.A. 14. Her allegations of racial discrimination are "circumstantial." *Aikens*, 460 U.S. at 714 n.3, 103 S.Ct. 1478.

To make out a prima facie case of Title VII discrimination in the absence of "direct evidence," Polk must show "(1) membership in a protected class; (2) satisfactory job performance; (3) adverse employment action; and (4) different treatment from similarly situated employees outside the protected class." *Coleman v. Md. Ct. of Appeals*, 626 F.3d 187, 190 (4th Cir. 2010). As Polk herself appreciates, her claim thus necessitates a showing that she was "treated differently" than other Amtrak employees on account of her race. Appellant Opening Br. at 3. The concept of differential treatment, after all, implies a *difference.*

The problem for Polk is that evaluating her theory of differential treatment would require a court to interpret CBA provisions covering employee discipline and reinstatement. That is, Polk relies on her interpretation of these provisions as a stand-in for allegations

about Amtrak's factual treatment of her similarly situated colleagues. She chiefly alleges that Amtrak broke its own rules when it (1) terminated her for failing to complete the initial drug test, and then (2) tested her "excessively" beyond the one-year period specified in the Waiver. J.A. 15, 25. Yet even assuming *arguendo* that these allegations could establish the element of differential treatment in a Title VII claim, they would still necessitate the "interpretation or application" of a CBA. *Hawaiian Airlines*, 512 U.S. at 252, 114 S.Ct. 2239 (quoting 45 U.S.C. § 151a). Polk's claim is accordingly a minor dispute.

To begin, Polk contends that Amtrak's "policy" was to give workers who failed to complete a drug test a second chance, not to terminate them. J.A. 25. To determine whether Polk is correct, a court would need to examine the CBA because the Drug-Free Program explicitly delegates discipline for union employees to the "appropriate collective bargaining agreement." J.A. 320. In particular, Rule 25 of the CBA governs disciplinary measures. That provision spells out when and how Amtrak may discipline SMART members. It also describes what kind of offense would warrant taking an employee "out of service pending a trial and decision," as Polk was. J.A. 292. A court would have to construe Rule 25 to decide whether Amtrak strayed from its "policy" in disciplining Polk.

Polk maintains that Rule 25 does not cover her mere failure to complete a drug test. But her disagreement over the rule's proper "interpretation or application" is precisely the kind of minor dispute that the

RLA reserves for adjustment boards. *Hawaiian Airlines*, 512 U.S. at 252, 114 S.Ct. 2239 (quoting 45 U.S.C. § 151a). Absent examination of the CBA, it is impossible to say whether Amtrak's decision to terminate Polk was standard or an aberration.

Polk's second concern, related to the frequency of her drug tests, likewise hinges on the CBA. Her objection primarily concerns the seven drug tests she received *after* the twelve-month period mentioned in the Waiver. Polk's position is that other employees in her position were not tested so frequently under Amtrak's policy, and that she has therefore shown differential treatment.

But Polk was not a regular Amtrak employee for drug testing purposes during the relevant time period. She had already been terminated and reinstated for a Drug-Free Program violation, which she admitted to as part of the Waiver. J.A. 55. For some employees, only the Drug-Free Program might have been relevant to determining Amtrak's policy for testing frequency. But for those in Polk's situation, the corresponding policy implicates not only the Program but also the CBA provisions that govern employee reinstatement.

Two CBA provisions, in particular, are critical to interpreting Amtrak's policy. Namely the "Rule G Bypass Agreement" and the "Prevention Program Companion Agreement" set forth reinstatement conditions for a worker following a drug violation. These provisions provide for "testing . . . for up to *two years*" and a "probationary basis for . . . *two years*" with "periodic

alcohol and/or drug tests." J.A. 298, 300 (emphasis added). These two-year provisions could entirely account for Amtrak's allegedly excessive testing of Polk, which took place in the two years after her reinstatement. Whether these provisions applied to Polk and how they are to be reconciled with the one-year period mentioned in the Waiver are questions of CBA "interpretation or application" that constitute an RLA minor dispute. *Hawaiian Airlines*, 512 U.S. at 252, 114 S.Ct. 2239 (quoting 45 U.S.C. § 151a).

2.

Polk tries to distance her interpretative assumptions from the CBA by isolating them within the Drug-Free Program. But, as an initial matter, the Drug-Free Program cannot be so cleanly removed from the CBA. To do so would divorce Polk's violation from Amtrak's remedy. Yet Polk's "refusal to test" under the Program would mean little detached from Amtrak's disciplinary action that resulted from it. Likewise, an understanding of the Program's random testing policy would be incomplete without consideration of the CBA's reinstatement provisions that explicitly refer to drug testing. That clear lines between the CBA and Program are difficult to draw is typified by the Waiver, which led to Polk's reinstatement. Although Polk depicts the Waiver as a private agreement between her and Amtrak, it referenced the CBA and was addressed to and signed by Polk's union representative.

The separation Polk seeks further overlooks the fact that the CBA incorporates the Drug-Free Program. CBAs are not limited to their express terms. For a CBA is "not an ordinary contract," but a "generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate." *Consol. Rail*, 491 U.S. at 311-12, 109 S.Ct. 2477 (internal quotation marks omitted). A CBA therefore incorporates any "practice, usage and custom" which has been "acquiesced in by the [u]nion." *Id.* (internal quotation marks omitted); *see also Fry v. Airline Pilots Ass'n, Int'l*, 88 F.3d 831, 836 (10th Cir. 1996) (noting that CBAs may "implicate practices, procedures, implied authority, or codes of conduct that are part of the working relationship").

The Drug-Free Program encompasses an ensemble of practices and customs that became de facto working conditions for SMART members such as Polk. The latest version of the Program had been in effect since June 2017—almost two years before Polk's initial test. Its policies were no secret. In Polk's words, the Program was carried out with respect to "all Amtrak employees, contractors, volunteers, and applicants who have received a conditional offer of employment." Appellant Opening Br. at 11. Amtrak's actions would almost inescapably be measured by its fidelity to or departure from the CBA and Drug-Free Program.

Polk provides no basis to believe that her union was unaware of or hostile to the Program's years-old policies. If anything, the fact that the CBA and Drug-Free Program cross-reference each other suggests that

SMART knew of the Program and had negotiated suitable accommodations for its members.

This conclusion comports with the rationale for collective bargaining. A CBA "covers the whole employment relationship," *Steelworkers v. Warrior & Gulf Co.*, 363 U.S. 574, 579, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960), and for good reason. Workers support unions in the hopes of obtaining firm rights and protections. Unions and carriers devote substantial time and energy to negotiating comprehensive, amenable accords. The resulting CBAs are not meant to be brittle arrangements that labor or management can sidestep on a whim. The whole point is for CBA procedures to be put to workplace use. That really is all this case is about.

IV.

Based on the terms of the CBA, "the gravamen" of Polk's Title VII claim is that Amtrak "violated the CBA or improperly applied it." *Giles*, 59 F.4th at 703. She has therefore raised a minor dispute. To prevent minor disputes from becoming major ones, we hold that Polk's Title VII claim is subject to arbitration under the RLA. Polk does not challenge the other parts of the district court's holding on appeal, and we see no reason to disturb them. We therefore affirm the judgment of the district court.

AFFIRMED

2022 WL 2304678
Only the Westlaw citation is currently available.
United States District Court, D. Maryland.

Dawn C. POLK, Plaintiff,
v.
AMTRAK NATIONAL RAILROAD PASSENGER CORPORATION, et al., Defendants.

Civil Action No. 21-cv-01740-LKG
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Signed 06/27/2022

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MEMORANDUM OPINION AND ORDER

LYDIA KAY GRIGGSBY, District Judge.

I. INTRODUCTION

Plaintiff *pro se*, Dawn C. Polk, brings this civil action alleging breach of contract, tort, and employment discrimination claims against defendants, Amtrak National Railroad Passenger Corporation ("Amtrak"), Andrew Collins, Alton Lamontagne, Curtis Stencil, and Tracey Armstrong, pursuant to state law and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to

2000e-17. *See generally* Compl., ECF No. 1. Defendants have moved to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(1) and (6).[1] *See* Def. Mot., ECF No. 34. Plaintiff has also moved for summary judgment in her favor, pursuant to Fed. R. Civ. P. 56. *See* Pl. Mot. Summ. J., ECF No. 56. In addition, plaintiff has moved for leave to amend the demand in the complaint. *See* Pl. Mot. Amend, ECF No. 24.

These motions have been fully briefed. *See generally* Def. Mot.; Pl. Resp., ECF No. 38; Def. Reply., ECF No. 48; Def. Resp., ECF No. 58. No hearing is necessary to resolve these motions. L.R. 105.6 (D. Md. 2021). For the reasons set forth below, the Court: (1) GRANTS defendants' motion to dismiss; (2) DENIES plaintiff's motion for leave to amend the complaint; (3) DENIES-as-MOOT plaintiff's motion for summary judgment; and (4) DISMISSES the complaint.

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[1] On November 4, 2021, defendant Lamontagne voluntarily accepted service of process. *See* ECF No. 44 at 1. To date, plaintiff has not served defendants Collins, Stencil or Armstrong. *See* Def. Mem. at 3 n.2. While defendant Amtrak is the only defendant that has moved to dismiss this matter, the Court construes Amtrak's motion as filed on behalf of all defendants, as the other named defendants are all Amtrak employees. *See* Compl. at 2-3.

II. FACTUAL AND PROCEDURAL BACKGROUND[2]

A. Factual Background

Plaintiff *pro se*, Dawn Polk, brings this civil action alleging breach of contract, tort, and employment discrimination claims against defendant Amtrak and several individually named defendants, pursuant to state law and Title VII of the Civil Rights Act of 1964. *See generally* Compl.

Plaintiff is African American and a former Amtrak employee. *See id.* at 5. Defendant Amtrak is a passenger railroad service that provides rail service in the contiguous United States and was plaintiff's employer during the time period relevant to this matter. *See* Def. Mem., ECF No. 34-1 at 2. Defendant Andrew Collins is the Director of Employee Relations for Amtrak and defendant Alton Lamontagne is the road foreman manager for Amtrak. *See generally* Compl. at 2. Defendants Curtis Stencil and Tracey Armstrong are trainmaster managers for Amtrak. *Id.* at 3.

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[2] The facts recited in this Memorandum Opinion and Order are taken from the complaint ("Compl."); the supplements to the complaint ("Suppl. to Compl."); plaintiff's response in opposition to defendants' motion to dismiss ("Pl. Resp"); plaintiff's supplemental responses in opposition to defendants' motion to dismiss ("Pl. Addl. Suppl. Resp."); defendants' motion to dismiss ("Def. Mot."), and memorandum in support thereof. ("Def. Mem.").

Plaintiff's Amtrak Employment

As background, plaintiff was an employee of Amtrak and a member of the Sheet Metal Air Rail and Transportation Workers Conductors NEC ("SMART") labor union. *See id.* at 9 (referencing plaintiff's union status); *see also* Compl. Ex. 1 at 1, ECF No. 1-1 (email string between Amtrak and SMART regarding plaintiff). Plaintiff's employment was governed by a collective bargaining agreement ("CBA") between Amtrak and SMART. *See generally* Def. Mot. Ex. 1, Decl. of Eric Dartt ("Dartt Decl.") at ¶ 2, ECF No. 34-2.

After plaintiff was injured at the workplace in December 2018, she took a "return-to-work" drug test on March 25, 2019. *See* Compl. at 6. Amtrak determined that plaintiff failed to produce a sufficient urine sample for this test as authorized under the Amtrak Drug and Alcohol-Free Workplace Program.[3] *See id.; see also* Compl. Ex. 1 at 3. And so, Amtrak temporarily terminated plaintiff's employment for six weeks under Amtrak's rules for drug testing violations in April 2019. *See* Compl. at 6.

On April 19, 2019, plaintiff was reinstated to work under a waiver of investigatory hearing agreement (the "Waiver Agreement") by and between SMART and Amtrak. *See* Compl. Ex. 1 at 3-4. Under the terms of

[3] Amtrak's Drug and Alcohol-Free Workplace Policy provides the steps that employees should take following a drug test violation and requires that all disciplinary action must comply with the requirements of the applicable collective bargaining agreement." *See* Dartt Decl. Ex. B at Section C § 5.0.

the Waiver Agreement, plaintiff agreed to work with a substance abuse professional and to undergo periodic follow-up drug testing. *See* Pl. Resp. at 15. Thereafter, plaintiff took another return-to-work drug test on April 30, 2019. *See* 2d Suppl. to Compl. at 2, ECF No. 32.

Plaintiff alleges that she was improperly subjected to several additional drug tests after the Waiver Agreement expired. *See id.* at 5 (alleging that the unannounced follow-up drug tests were accompanied by willful violations of hours of service as "management Andrew Collins made me stay pass the allotted 12 hours on duty causing a willful violation of hours of service in order to provide a urine specimen"). On February 4, 2021, plaintiff filed an Amtrak Dispute Resolution Office ("DRO") report challenging the drug tests. *See* Pl. Resp. at 11; *see also* Pl. Addl. Supp. Resp. at 1, ECF No. 41-2. But, this report was not resolved. *See* Pl. Resp. at 14.

Plaintiff retired from Amtrak on disability on May 1, 2021. *See* Compl. at 13. Thereafter, on May 10, 2021, plaintiff received a right to sue letter from the Equal Employment Opportunity Commission ("EEOC"), after she filed an unsuccessful EEO complaint alleging employment discrimination. *See* Compl. Ex. 1 at 10.

Plaintiff's Allegations

Plaintiff's complaint is difficult to follow. But, it appears that the gravamen of plaintiff's complaint is that she alleges Amtrak discriminated against her, and

improperly terminated her employment, by incorrectly implementing Amtrak's Drug and Alcohol-Free Workplace Program. *See* Compl. at 7. Specifically, plaintiff alleges: (1) breach of contract; (2) intentional infliction of emotional distress; and (3) employment discrimination claims in the complaint. *See id.* at 7-9.

With regards to her breach of contract claims, plaintiff alleges that Amtrak violated the Amtrak Drug and Alcohol-Free Workplace Policy, by refusing to grant her a second drug test after she failed a return-to-work drug test in 2019. *See* 2d Suppl. to Compl. at 2. Plaintiff also alleges that defendants breached the Waiver Agreement by requiring that she undergo additional drug tests after this agreement expired. *See* Compl. at 9.

With regards to her intentional infliction of emotional distress claim, plaintiff alleges that defendants caused her emotional distress by improperly implementing the Amtrak Drug and Alcohol-Free Workplace Policy. *See* 2d Suppl. to Compl. at 2 (alleging that failure to provide a second return-to-work drug test "caused me a lot of emotional distress, severe depression and a lot of anxiety."). Lastly, plaintiff alleges that defendants discriminated against her, upon the basis of race, by, among other things, wrongfully terminating her employment "for [six] weeks due to [Amtrak] breaching its own Drug and Alcohol Policy Agreement of 2017." *See* Compl. at 7.

The Relevant Agreements

There are several agreements involving plaintiff, SMART and Amtrak that are relevant to plaintiff's claims:

First, plaintiff's employment with Amtrak was governed by a CBA by and between Amtrak and SMART, which provides that the agreement "governs the rates of pay, hours of service and working conditions of all employees." *See* Dartt Decl. at ¶ 2; *see also* Dartt Decl. Ex. A at 5. The CBA includes provisions regarding an employee's use or possession of alcoholic beverages, intoxicants, narcotics, and the consequences of this conduct for Union members. *See* Dartt Decl. Ex. A at 7-10.

Second, the CBA contains two appendices that provide a comprehensive scheme for the resolution of drug testing violations committed by Union members. *See* Def. Mem. at 6. Specifically, the "Rule G Bypass Agreement" and the "Prevention Program Companion Agreement" are included in the CBA to help prevent the termination of employees for drug and alcohol violations and to encourage compliance with industry-wide drug and alcohol guidelines. *See* Dartt Decl. Ex. A at 11-16. In this regard, the "Rule G Bypass Agreement" provides guidelines on how to be reinstated after a Union member has been released from service due to a drug test violation. *See id.* at 11-13. The "Prevention Program Companion Agreement" provides additional guidance to the Union members on how to pursue reinstatement and the waiver of a Rule G

charge, including substance abuse counseling and follow-up drug testing. *See id.* at 14-16.

Lastly, the Waiver Agreement is authorized by the Amtrak Drug and Alcohol-Free Workplace Policy and is governed by the CBA. *See id.* at 14. This agreement was executed by Amtrak and SMART to allow plaintiff to be reinstated following her six-week termination. *See* Compl. Ex. 1 at 3-4. The Waiver Agreement explicitly refers to the CBA and provides that any further violations of the Amtrak drug testing policy will result in plaintiff's "immediate return to terminated status, waiving all rights under the Collective Bargaining Agreement." *See id.* at 4.

B. Procedural Background

Plaintiff commenced this action on July 12, 2021. *See* Compl. Plaintiff filed supplements to the complaint on October 12, 2021, October 14, 2021, October 15, 2021, November 8, 2021, and November 17, 2021, respectively. *See generally* Supp. Compl.

On October 12, 2021, plaintiff filed a motion to amend the original demand in the complaint. *See* Pl. Mot. Amend. On October 26, 2021, defendants filed a motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(1) and (6), a response in opposition to plaintiff's motion to amend and a memorandum in support thereof. *See* Def. Mot.; Def. Mem. On October 28, 2021, plaintiff filed a response in opposition to defendants' motion to dismiss. *See* Pl. Resp.

On October 29, 2021, November 1, 2021, and November 8, 2021, respectively, plaintiff filed supplements to her response to defendants' motion to dismiss. *See* Pl. Supp. On November 11, 2021, defendants filed a reply in support of their motion to dismiss. *See* Def. Reply.

On January 24, 2022, plaintiff filed a motion for summary judgment, pursuant to Fed. R. Civ. P. 56. *See* Pl. Mot. Summ. J. Defendants filed a response in opposition to plaintiff's motion for summary judgment on February 3, 2022. *See* Def. Resp.

These motions having been fully briefed, the Court resolves the pending motions.

III. LEGAL STANDARDS

A. Fed. R. Civ. P. 12(b)(1)

A motion to dismiss for lack of subject-matter jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1), is a challenge to the Court's "competence or authority to hear the case." *Davis v. Thompson*, 367 F. Supp. 2d 792, 799 (D. Md. 2005). The United States Supreme Court has explained that subject-matter jurisdiction is a "threshold matter" that is "inflexible and without exception." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1995) (quoting *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884)). And so, an objection that the Court lacks subject-matter jurisdiction "may be raised by a party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry of

judgment." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006).

The United States Court of Appeals for the Fourth Circuit has also explained that the plaintiff bears the burden of establishing that subject-matter jurisdiction exists. *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999) (citing *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991)). Given this, the Court "regard[s] the pleadings as mere evidence on the issue[] and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment," when deciding a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1). *Id.* (citation omitted). And so, if a plaintiff "fails to allege facts upon which the court may base jurisdiction," then the Court should grant a motion to dismiss for lack of subject-matter jurisdiction. *Davis*, 367 F. Supp. 2d at 799 (citation omitted).

B. Fed. R. Civ. P. 12(b)(6)

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a complaint must allege enough facts to state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible when "the plaintiff pleads factual content that allows the [C]ourt to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). When evaluating the sufficiency of a plaintiff's claims under Fed. R. Civ. P.

12(b)(6), the Court accepts the factual allegations in the complaint as true and construes them in the light most favorable to the plaintiff. *Nemet Chevrolet, Inc. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 253 (4th Cir. 2009); *Lambeth v. Bd. of Comm'rs of Davidson Cty.*, 407 F.3d 266, 268 (4th Cir. 2005) (citations omitted). But, the complaint must contain more than "legal conclusions, elements of a cause of action, and bare assertions devoid of further factual enhancement. . . ." *Nemet Chevrolet*, 591 F.3d at 255. And so, the Court should grant a motion to dismiss for failure to state a claim if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *GE Inv. Private Placement Partners II, L.P. v. Parker*, 247 F.3d 543, 548 (4th Cir. 2001) (quoting *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 249-50 (1989)).

C. The Railway Labor Act

The Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 to 181, is intended "to promote stability in labor-management relations by providing a comprehensive framework for resolving labor disputes." *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252 (1994) (citation omitted). The United States Courts of Appeal for the Fourth Circuit has recognized that federal policy favoring arbitration "has special importance in the rail and air industries, where failure to resolve labor disputes in a 'prompt and orderly' manner may 'interrupt[] . . . commerce' and thus adversely affect the public interest in traveling and shipping." *Air Line Pilots Ass'n v. United States Airways Grp.*, 609 F.3d 338, 341 (4th Cir.

2010) (ellipses and brackets in original) (quoting 45 U.S.C. § 151a); *see also Consol. Rail Corp. (Conrail) v. Ry. Labor Exec. Ass'n*, 491 U.S. 299, 310 (1989) ("Referring arbitrable matters to the [National Railroad Adjustment] Board . . . assur[es] that collective-bargaining contracts are enforced by arbitrators who are experts in 'the common law of [the] particular industry.").

The RLA establishes a mandatory arbitral mechanism for two types of disputes, one of which is a "minor dispute."[4] *Hawaiian Airlines*, 512 U.S. at 252. Minor disputes "gro[w] out of . . . the interpretation or application of" a collective bargaining agreement and "involve 'controversies over the meaning of an existing collective bargaining agreement in a particular fact situation.'" *Id.* at 252-53 (citation omitted) (brackets in original). Courts have recognized that such disputes also "implicate practices, procedures . . . or codes of conduct that are part of the working relationship," and "industry standards, and 'norm[s] that the parties have created but have omitted from the [CBA]'s *explicit* language." *Fry v. Airline Pilots Ass'n Intern.*, 88 F.3d 831, 836 (10th Cir. 1996) (citation omitted) (emphasis in original); *see also Milam v. Herrlin*, 819 F. Supp. 295, 305 (S.D.N.Y. 1993) ("Claims arising out of 'minor' disputes are preempted by the RLA even

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[4] The Fourth Circuit has recognized that railroads and other carriers have "a 'light burden' to establish arbitrability under the RLA." *See Ry. Labor Execs. Ass'n v. Chesapeake W. Ry.*, 915 F.2d 116, 119 (4th Cir. 1990); *see also* C*onnor v. LoveyBug, LLC*, Civil No. 20-425, 2021 WL 2915400, at *6 (E.D. Va. July 12, 2021).

when it appears that no specific provision of the collective bargaining agreement is directly applicable."). And so, courts have held that the interpretation of a collective bargaining agreement, and the customary procedures used in enforcing it, may be undertaken only by an arbitration board convened under the RLA. *Brown v. Ill. Cent. R. R. Co.*, 254 F.3d 654, 664 (7th Cir. 2001).

D. Fed. R. Civ. P. 15

Lastly, Fed. R. Civ. P. 15(a)(2) provides that, when a party cannot amend a pleading by right, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). The decision of whether to grant or deny leave to amend is within the discretion of the Court, and the Court "should freely" grant leave to amend "when justice so requires." Fed. R. Civ. P. 15(a)(2); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962). But, the Court should deny a party leave to amend "when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986) (citing *Foman*, 371 U.S. at 182). An amendment is futile "when the proposed amended complaint fails to state a claim." *Van Leer v. Bank Securities, Inc.*, 479 Fed. App'x 475, 479 (4th Cir. 2012). And so, the Court should deny a motion for leave to amend if "the proposed amendments could not withstand a motion to dismiss." *Cuffee*

v. Verizon Communications, Inc., 755 F. Supp. 2d 672, 677 (D. Md. 2010) (citation omitted).

IV. LEGAL ANALYSIS

Defendants have moved to dismiss this matter because, among other things, plaintiff's breach of contract, tort, and Title VII claims are either preempted or precluded by the RLA. *See* Def. Mem. at 9-13. Because defendants raise a threshold jurisdictional issue regarding whether the Court may entertain plaintiff's claims, the Court addresses this issue before considering the other arguments raised in the defendants' motion to dismiss. *See Davis*, 367 F. Supp. 2d at 799 (explaining that a motion to dismiss for lack of subject-matter jurisdiction is a challenge to the Court's "competence or authority to hear the case").

Plaintiff does not directly respond to defendants' argument that her claims are either preempted or precluded by the RLA. *See generally* Pl. Resp. But, plaintiff, nonetheless, argues that the Court should deny defendants' motion and consider her claims. *Id.*

For the reasons that follow, a careful reading of the complaint and the collective bargaining agreement at issue in this case makes clear that plaintiff's breach of contract, tort, and Title VII claims require that the Court interpret the rights within the CBA to resolve these claims. Under such circumstances, the RLA applies and preempts or precludes plaintiff's claims. Because the RLA bars all claims in this case, plaintiff's proposed amendment to the complaint is also futile.

And so, the Court: (1) **GRANTS** defendants' motion to dismiss; (2) **DENIES** plaintiff's motion for leave to amend the complaint; (3) **DENIES-as-MOOT** plaintiff's motion for summary judgment; and (4) **DISMISSES** the complaint.

A. Plaintiff's State Law Claims Are Preempted By The RLA

1. Plaintiff's Breach Of Contract Claims Are Preempted By The RLA

As an initial matter, defendants persuasively argue that plaintiff's breach of contract claims are preempted by the RLA, because the resolution of these claims would require the Court to interpret the rights and obligations regarding Amtrak's Drug and Alcohol-Free Workplace Policy under the CBA.

The Supreme Court has held that the RLA establishes a "mandatory arbitral mechanism" for minor disputes, which include disputes involving the interpretation or application of a collective bargaining agreement and controversies regarding the meaning of a collective bargaining agreement. *See Hawaiian Airlines*, 512 U.S. at 252-53. And so, courts have held that the interpretation of a collective bargaining agreement, and the customary procedures used in enforcing it, may be undertaken only by an arbitration board convened under the RLA. *See Brown*, 254 F.3d at 664; *see also Clark v. Newport News Shipbuilding and Dry Dock Co.*, 937 F.2d 934, 936-38 (4th Cir. 1991) (holding that the Labor Management Relations Act, another

federal labor law with a similar preemption application, preempted the plaintiff's state law claims, because CBA governed the employment relationship); *Connor v. LoveyBug, LLC*, No. 20-425, 2021 WL 2915400, at *8 (E.D. Va. July 12, 2021) (holding that, where a plaintiff alleges a breach of drug testing policies governed by a CBA, the duty of the employer derives from that agreement and were not "rights and obligations that exist independent of the CBA").

In this case, plaintiff alleges that defendants breached Amtrak's Drug and Alcohol-Free Workplace Policy, by refusing to grant her a second drug test after she failed a return-to-work drug test in 2019, and that defendants also breached the Waiver Agreement by requiring that she undergo additional drug tests after the expiration of this agreement. *See* Compl. at 9. It is undisputed that plaintiff's employment with Amtrak was governed by a collective bargaining agreement. *See* Dartt Decl. at ¶ 2; *see also* Pl. Resp. It is also undisputed that the CBA contains a "Rule G Bypass Agreement" and a "Prevention Program Companion Agreement," which provide a comprehensive scheme for the resolution of drug testing violations committed by plaintiff and other Union members. *See* Def. Mem. at 6; *see also* Pl. Resp.; Dartt Decl. Ex. A at 11-13.

Notably, the "Rule G Bypass Agreement" provides guidelines on how to be reinstated after a Union member has been released from service due to a drug test violation. *See* Dartt Decl. Ex. A at 11-13. The "Prevention Program Companion Agreement" also provides additional guidance to Union members on how to

pursue reinstatement and the waiver of a Rule G charge, including substance abuse counseling and follow-up drug testing. *See id.* at 14-16.

The Waiver Agreement, which is also the subject of plaintiff's breach of contract claims, is similarly governed by the CBA. In fact, it is undisputed that the Waiver Agreement is authorized by the "Rule G Bypass Agreement" and the "Prevention Program Companion Agreement." *See* Def. Mem. at 6; Dartt Decl. Ex. B at 24; *see also* Pl. Resp.

Given this, the Court would need to interpret the terms of the CBA to resolve plaintiff's breach of contract claims. And so, these claims are preempted by the RLA and must be dismissed. Fed. R. Civ. P. 12(b)(1) and (6); *see also Brown*, 254 F.3d at 664; *Clark*, 937 F.2d at 937.

2. Plaintiff's Tort Claim Is Preempted By The RLA

For similar reasons, plaintiff's tort claim is preempted by the RLA. In the complaint, plaintiff alleges that defendants caused her emotional distress by improperly implementing Amtrak's Drug and Alcohol-Free Workplace Policy. *See* 2d Suppl. to Compl. at 2 (alleging that failure to provide a second return-to-work drug test "caused me a lot of emotional distress, severe depression and a lot of anxiety."). And so, plaintiff's tort claim—like her breach of contract claim—is based upon the rights and obligations under Amtrak's Drug and Alcohol-Free Workplace Policy as set forth in the

CBA. *See* Dartt Decl. Ex. A at 11-16; *see also* Dartt Decl. Ex. B at 24.

Because the Court must analyze Amtrak's actions based upon the duties provided within the CBA to resolve plaintiff's tort claim, the RLA preempts this claim. *See Milam v. Herrlin*, 819 F. Supp. 295, 306 (S.D.N.Y. 1993) (holding that plaintiff's tort claim of negligent intentional infliction of emotional distress is preempted by the RLA where the court found that the drug testing procedure was "a critical issue addressed in the collective bargaining process"). And so, plaintiff's tort claim is preempted by the RLA and must also be dismissed. Fed. R. Civ. P. 12(b)(1) and (6).

3. Plaintiff's Title VII Claim Is Precluded By The RLA

To the extent that plaintiff asserts a Title VII claim in this case, the Court also agrees with defendants that this claim is precluded by the RLA.

In *Caldwell v. Norfolk S. Corp.*, the United States District Court for the Western District of North Carolina held that an employment discrimination claim brought pursuant to Title VII was preempted, because the claim involved the interpretation and application of a collective-bargaining agreement. *Caldwell v. Norfolk S. Corp.*, No. 96-443, 1998 WL 1978291, at *5 (W.D.N.C. Mar. 3, 1998). Specifically, the district court found that:

> In order to determine whether Plaintiff has stated a prima facie case of discrimination under Title VII, the Court must determine whether Defendant was required to award the position at issue based solely on seniority, or whether other factors such as relative experience could be considered. As such, Plaintiff's Title VII claim cannot be decided wholly apart from the Collective Bargaining Agreement, does not present purely factual issues which do not require interpretation and application of the Collective Bargaining Agreement, and involves a "minor dispute" as defined by the Act. Accordingly, the Act provides the exclusive means for resolving this dispute and summary judgment is appropriate.

Id.; *see also Brown*, 254 F.3d at 664, 668 (holding that "the RLA will not bar a plaintiff from bringing an independent state or federal claim in court unless the claim could be 'conclusively resolved' by the interpretation of a CBA" and that "a claim brought under an independent federal statute is precluded by the RLA only if it can be dispositively resolved through an interpretation of a CBA").

Similarly, here, plaintiff's Title VII claim involves the interpretation and application of the CBA at issue in this case, because plaintiff alleges that defendants discriminated against her by wrongfully terminating her employment under Amtrak's Drug and Alcohol-Free Workplace Policy. *See* Compl. at 7. Given this, plaintiff's employment discrimination claim is not

independent of the CBA that governed her employment.[5] And so, the Court must dismiss this claim. Fed. R. 12(b)(1) and (6).

B. Leave To Amend The Complaint Is Not Warranted

As a final matter, the Court must deny plaintiff's motion for leave to amend the complaint, because the proposed amendment would be futile. The Fourth Circuit has recognized that amendment to a complaint is futile "when the proposed amended complaint fails to state a claim." *Van Leer*, 479 Fed. App'x at 479. And so, the Court should deny plaintiff's motion for leave to amend the complaint in this case, if "the proposed amendments could not withstand a motion to dismiss." *Cuffee*, 755 F. Supp. 2d at 677 (citation omitted). Here, plaintiff seeks leave to amend the demand in the complaint to change the amount of monetary damages sought in this case. *See* Pl. Mot. Amend. But, as discussed above, plaintiff's claims in this matter are either preempted or precluded by the RLA. Given this, the proposed amendment would be futile. And so, the Court DENIES plaintiff's motion for leave to amend the complaint. Fed. R. Civ. P. 15.

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[5] Because the Court concludes that plaintiff's claims are either preempted or precluded by the RLA, the Court does not reach other issues raised in the defendants' motion to dismiss.

V. CONCLUSION

In sum, a careful reading of the complaint makes clear that the RLA preempts or precludes plaintiff's claims in this case. Because the RLA applies to plaintiff's claims, her proposed amendment to the complaint would also be futile.

And so, for the foregoing reasons, the Court:

1. **GRANTS** defendants' motion to dismiss;

2. **DENIES** plaintiff's motion for leave to amend the complaint;

3. **DENIES-as-MOOT** plaintiff's motion for summary judgment; and

4. **DISMISSES** the complaint.

Judgment is entered accordingly.

Each party to bear its own costs.

IT IS SO ORDERED.

STATUTES INVOLVED

45 U.S.C. § 153 provides in pertinent part:

National Railroad Adjustment Board

First. Establishment; composition; powers and duties; divisions; hearings and awards; judicial review

There is established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after June 21, 1934, and it is provided –

(a) That the said Adjustment Board shall consist of thirty-four members, seventeen of whom shall be selected by the carriers and seventeen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of sections 151a and 152 of this title.

* * *

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment

Board with a full statement of the facts and all supporting data bearing upon the disputes.

* * *

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: Provided, however, That except as provided in paragraph (h) of this section, final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof, and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the

appointment of arbitrators and shall fix and pay the compensation of such referees.

* * *

Second. System, group, or regional boards: establishment by voluntary agreement; special adjustment boards: establishment, composition, designation of representatives by Mediation Board, neutral member, compensation, quorum, finality and enforcement of awards

Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this chapter, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

Section 703(a) of the Civil Rights Act of 1964, 42 USC § 2000e-2(f), provides:

(a) Employer practices

It shall be an unlawful employment practice for an employer –

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Section 706(f) of the Civil Rights Act of 1964, 42 USC § 2000e-5(f), provides

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or

political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful

employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest

practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.