No. _____

In The

Supreme Court of the United States

AMERIJET INTERNATIONAL, INC.,

Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Railway Labor Act (RLA) regulates collective bargaining in the railway and airline industries, imposing on carriers and the labor representatives of carrier employees the duty to "make and maintain agreements concerning rates of pay, rules and working conditions," and to resolve disputes concerning such agreements through exclusively non-judicial mechanisms, which include negotiation, mediation, and arbitration. The RLA grants federal district courts limited federal question jurisdiction to compel participation in those non-judicial dispute resolution mechanisms with respect to disputes involving the application, interpretation, and modification of collective bargaining agreements.

The question presented is whether a district court may enforce participation in the non-judicial dispute resolution mechanisms under the RLA for disputes concerning a carrier's operations entirely outside the United States, or if instead a district court lacks jurisdiction as to those disputes because the RLA does not extend to a carrier's operations abroad.

RULE 29.6 STATEMENT

Petitioner's parent company is Amerijet Holdings, Inc. No publicly held company owns 10% or more of the stock of either corporation.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The panel opinion of the United States Court of Appeals for the Eleventh Circuit (App. 1-32) is reported at 604 Fed. Appx. 841. The district court's order (App. 33-55) is published at 904 F. Supp. 2d 1278. The order of the United States Court of Appeals for the Eleventh Circuit denying the petition for rehearing and for rehearing en banc (App. 56-57) is not reported.

JURISDICTION

The decision of the United States Court of Appeals for the Eleventh Circuit was entered on March 23, 2015. App. 1. Petitioner's petition for rehearing and for rehearing en banc was denied on June 2, 2015. App. 56. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

45 U.S.C. § 151. Definitions; short title

. . . . Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

45 U.S.C. § 151a. General purposes

The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

45 U.S.C. § 152. General duties

First. Duty of carriers and employees to settle disputes. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof. . . .

Second. Consideration of disputes by representatives. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute. . . .

45 U.S.C. § 181. Application of 45 U.S.C. §§ 151, 152, 154-163 to carriers by air

All of the provisions of Title I of this Act, except the provisions of section 3 thereof, are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce. . . .

45 U.S.C. § 184. System, group, or regional boards of adjustment

. . . . It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act. . . .

STATEMENT

A. The Railway Labor Act

The Railway Labor Act (RLA), 45 U.S.C. §§ 151 *et seq.*, was enacted in 1926 to regulate labor relations in the rail transportation industry, and was extended in 1936 to cover air transportation. 49 Stat. 1189, 45 U.S.C. §§ 181-188. The RLA makes it the duty of carriers and employees "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce." 45 U.S.C. § 152 First. The RLA sets out mandatory non-judicial procedures for the resolution of disputes concerning the contracts between carriers and the representatives of their employees, whether arising in the formation or alteration of collective bargaining agreements (major

disputes) or in the application or interpretation of those agreements (minor disputes). 45 U.S.C. §§ 153, 156, 184. Major disputes are subject to "virtually endless negotiation, mediation, voluntary arbitration, and conciliation," only after which the parties may engage in self-help. *Burlington N.R.R. Co. v. Brotherhood of Maint. of Way Employees*, 481 U.S. 429, 444-45 (1987). Minor disputes "must be resolved only through the RLA mechanisms, including the carrier's internal dispute-resolution processes and an adjustment board established by the employer and the union." *Haw. Airlines, Inc. v. Norris*, 512 U.S. 246, 253 (1994).

This Court has held that federal district courts have jurisdiction to enforce the statutory commands of the RLA to resolve disputes concerning the making or maintaining of collective bargaining agreements through the statutorily-mandated non-judicial mechanisms created by the RLA. *See, e.g.*, *Virginian R. Co. v. System Federation*, 300 U.S. 515, 545 (1937); *Int'l Ass'n of Machinists v. Central Airlines*, 372 U.S. 682, 692 (1963).

B. The Course of Proceedings Below

Amerijet International, Inc. is an all-cargo airline and a "carrier by air" covered by the RLA. Its operations and its flight crews are based at Miami International Airport in Miami, Florida. The International Brotherhood of Teamsters (IBT) is a labor organization certified under the RLA as the exclusive

representative of Amerijet's pilots and flight engineers. Amerijet and the IBT are parties to collective bargaining agreements covering Amerijet's pilots and flight engineers. IBT brought this case to compel arbitration of labor disputes concerning the application of certain provisions of those collective bargaining agreements to Amerijet flight crews while stationed on short-term assignment in Port of Spain, Trinidad.

Amerijet has an operations hub in Port of Spain, and stations flight crews there on temporary assignments averaging ten days in duration, during which time they are engaged in flying Amerijet aircraft around the Caribbean and Latin America, never flying to or from or transiting through the United States. These temporary assignments are intermittent but regular, occurring every two to three months or more frequently for those flight crews that operate Amerijet's Port of Spain-based aircraft. The Port of Spain grievances that are the subject of this case concern the compensation of Amerijet flight crews while stationed in Port of Spain and the separation from employment of a pilot while stationed in Port of Spain and based on events that occurred in Port of Spain. Compensation of flight crews and employee discharge are among the matters addressed by the terms of the collective bargaining agreements.

Amerijet moved to dismiss the IBT's claims to compel arbitration of the Port of Spain grievances on the basis that the RLA does not apply to employees engaged in work in an air carrier's operations

occurring entirely outside the United States, and hence the district court lacked subject matter jurisdiction over the IBT's claims to compel arbitration of those grievances. The district court agreed and dismissed these claims under Fed. R. Civ. P. 12(b)(1). App. 47-51.

On appeal, a panel of the Eleventh Circuit reversed the district court. According to the Eleventh Circuit the "relevant question" is not "whether the RLA has extraterritorial application. It does not. Rather, we must ask whether the district court was correct that it would be applying the RLA extraterritorially by compelling arbitration of the Port of Spain grievances." App. 25. The Eleventh Circuit held "as a matter of law that ordering arbitration would not constitute the extraterritorial application of the RLA," as "[i]t is the contractual agreement between the parties that is being applied here." App. 27. The Eleventh Circuit stated that IBT did not "seek to have the court apply substantive rights created by a federal statute to employee's work overseas," but rather "asks the court to compel arbitration to determine whether Amerijet violated the terms of the collective bargaining agreements it signed with IBT." App. 29.

The Eleventh Circuit reasoned that a federal court's order compelling arbitration of "a dispute regarding the application (and scope) of collective bargaining agreements" that were "executed in the United States between an American employer and an American union" covering U.S.-based flight crew

members "does not constitute the extraterritorial application of the RLA merely because the parties entered into the bargaining agreements in accordance with the RLA." App. 26, 27-28. "[I]f Amerijet wants to preclude arbitration for employees who work intermittently in Port of Spain, it can negotiate to do so as part of its collective bargaining agreements. But any extraterritoriality implications arising from an agreement will be driven by the agreement's terms." App. 28.

REASONS FOR GRANTING THE PETITION

A. The Eleventh Circuit decision below deepens the circuit split over when the RLA is applied extraterritorially in contravention of Congressional intent

The presumption against extraterritoriality embodies the default assumption that legislation of Congress is only meant to apply within the territory of the United States. *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010). The Eleventh Circuit below, and those other circuit courts that have considered the question, agree that Congress did not intend for the RLA to apply outside the territory of the United States. *See, e.g.*, *Air Line Stewards & Stewardesses Ass'n v. Northwest Airlines*, 267 F.2d 170, 178 (8th Cir.), *cert. denied*, 361 U.S. 901 (1959); *Air Line Dispatchers Ass'n v. National Mediation Board*, 189 F.2d 685 (D.C. Cir.), *cert. denied*, 342 U.S. 849 (1951).

Where the circuit courts diverge is on the question of what it means to apply the RLA extraterritorially where there is a collective bargaining agreement in place between a carrier and a labor representative of the carrier's employees – and in particular, whether the prohibition on extraterritorial application of the RLA itself applies to collective bargaining agreements entered into by parties covered by the RLA and in accordance with the duty under the RLA to make and maintain such agreements.

In *Local 553, TWU v. Eastern Air Lines, Inc.*, the Second Circuit affirmed a district court's exercise of its equitable authority to restrain carrier Eastern from departing from the terms of a collective bargaining agreement which gave the flight attendants represented by Local 553 the exclusive right to work all of the carrier's flights, including flights in the carrier's newly-acquired operations in Latin America. Implicit in the district court's holding affirmed by the Second Circuit, and consistent with the Eleventh Circuit's holding below, is that a collective bargaining agreement entered into under the RLA is presumed to apply anywhere the carrier operates and any exclusion of any of the carrier's operations from coverage of the agreement must be expressly negotiated. In affirming the district court, the Second Circuit rejected the argument of Eastern "that the entire agreement, including the scope clause, should be read against the statutory background of the RLA, which Eastern contends is limited to the territorial United States," and therefore the collective bargaining

agreement did not apply to the carrier's newly-acquired operations in Latin America by operation of law. In its affirmance the Second Circuit also acknowledged that applying the collective bargaining agreement to Eastern's operations outside the territorial United States placed Eastern in direct conflict with the laws of several South American countries. *Local 553, TWU v. Eastern Air Lines*, 544 F. Supp. 1315, 1334-36 (E.D.N.Y.), *aff'd and modified*, 695 F.2d 668 (2d Cir. 1982).

In *Air Line Pilots Ass'n v. TACA Int'l Airlines*, the Fifth Circuit similarly held that a collective bargaining agreement entered into under the RLA and thus "clearly located in the United States," could not be unilaterally modified by the relocating of the carrier's pilot base outside the United States, without first complying with the RLA's procedures for changes to a collective bargaining agreement. Although the carrier was the national air carrier of El Salvador, and it sought to relocate its pilot base to El Salvador to comply with a constitutional provision and directive from the government of El Salvador, the Fifth Circuit held that "we cannot give effect to El Salvador's directive to TACA to extinguish ex parte the collective bargaining agreement and relocate the pilot base" because the carrier's actions were subject to the contract and the RLA procedures for modification of the contract. *Air Line Pilots Ass'n, Int'l v. TACA Int'l Airlines*, 748 F.2d 965 (5th Cir. 1984), *cert. denied*, 471 U.S. 1100 (1985).

By its decision below, the Eleventh Circuit joins the Second and Fifth Circuits in holding that the RLA's dispute resolution machinery for contract disputes applies to work performed for a carrier anywhere in the world that the collective bargaining agreement applies, which is in turn to be decided through those dispute resolution mechanisms based upon the terms of that contract; therefore if a party to a collective bargaining agreement wishes to withdraw any category of employees or carrier operations from coverage of that agreement or coverage of the dispute resolution mechanisms for resolution of disputes under that agreement, such exclusions must be expressly negotiated between the parties and made part of the contract terms. Moreover, because disputes regarding the application, interpretation, or modification of contracts are to be resolved exclusively through the non-judicial dispute resolution mechanisms of the RLA, so long as a dispute arguably grows out of a collective bargaining agreement entered into between parties covered by the RLA, a district court not only may but must enforce the application of the RLA's non-judicial dispute resolution mechanisms to the settlement of that dispute.

In contrast, decisions of the Eighth, Ninth, and D.C. Circuits limit the application of the RLA's dispute resolution machinery for contract disputes to disputes arising from work performed in the carrier's operations within the geographic scope of the RLA itself. According to this interpretation, collective bargaining agreements arising under the RLA extend

no further territorially than the statute under which they arise. Moreover, the territorial reach of a collective bargaining agreement is not a matter to be determined from the terms of the agreement but is a matter of law. Therefore a district court lacks federal question jurisdiction under the RLA to enforce the application of the RLA's non-judicial dispute resolution machinery with respect to disputes arising in a carrier's operations outside the United States.

In *Indep. Union of Flight Attendants v. Pan Am. World Airways*, the Ninth Circuit concluded after a review of the text and legislative history of the RLA that "the RLA does not prescribe substantive law with respect to flights which are not within its definitions of commerce." As a result, the Ninth Circuit found that the district court had properly concluded that it lacked subject matter jurisdiction and dismissed the union's action to compel arbitration of a dispute over whether the collective bargaining agreement between Pan Am and IUFA prevented Pan Am from operating its new intra-European service using flight attendants who were not IUFA-represented flight attendants. The Ninth Circuit found that the dispute was not subject to the RLA dispute resolution machinery for contract disputes because the flights themselves were entirely outside of the United States and the "RLA does not extend to purely foreign flying." The Ninth Circuit held:

> Concern for compliance with the statutory mandate need not and should not extend beyond the scope of that mandate itself. Since,

> as we have seen, the RLA does not apply to purely foreign flying, no substantial question of federal law appears to be raised by an action to enforce an arbitration agreement with respect to such flying. The parties' voluntary extension of RLA policies and procedures to purely foreign flying does not alter this conclusion.

Indep. Union of Flight Attendants v. Pan Am. World Airways, 923 F.2d 678, 682-84 (9th Cir. 1991), *opinion withdrawn by Indep. Union of Flight Attendants v. Pan Am. World Airways*, 966 F.2d 457 (9th Cir. 1992). Although taking note of the *Eastern Air Lines* case in the Second Circuit, the Ninth Circuit considered that case wrongly decided, as "'[w]here the transportation [is],' however, is the central issue." *Id.* at 682 n.7.

The D.C. Circuit and the Eighth Circuit, in cases involving rail carriers, similarly held that the RLA's dispute resolution mechanisms could not be enforced by a district court with respect to contract disputes concerning work performed in transportation outside the United States. In *Allen v. CSX Transp.*, the D.C. Circuit held that the RLA does not vest the district court with jurisdiction to review an award by an arbitral body concerning an alleged breach of the collective bargaining agreements between a rail carrier and the unions representing its employees, as to the compensation to be paid for work performed in Canada, because the RLA did not apply to decide disputes regarding the interpretation of a collective bargaining agreement on "transportation performed

exclusively outside the United States." The D.C. Circuit remanded with instructions to dismiss the petition for lack of subject matter jurisdiction. *Allen v. CSX Transp.*, 22 F.3d 1180, 1182 (D.C. Cir. 1994). Likewise in *Gen. Committee of Adjust. v. Burlington Northern*, the Eighth Circuit held that the right to have an arbitral body resolve disputes relating to interpretation of a collective bargaining agreement "does not extend to claims submitted by employees who perform the disputed work exclusively outside the territorial limits of the United States." *Gen. Committee of Adjust. v. Burlington Northern*, 563 F.2d 1279, 1286 (8th Cir. 1977).

This split among the circuit courts reflects competing outcomes from application of this Court's test for determining when a statute is being applied extraterritorially. In *Morrison*, this Court recognized that the application of the presumption against extraterritoriality of a statute is often "not self-evidently dispositive, but its application requires further analysis." Under the test outlined in *Morrison*, a court is to determine the focus or object of congressional concern in a statute – "the statute's solicitude" – and allow the statute to be applied if the event or relationship that comes within the statute's focus occurred domestically. Thus in *Morrison* the Court reasoned that the focus of the Exchange Act is the purchase and sale of securities, and therefore held that it applies only to "transactions in securities listed on domestic exchanges, and domestic transactions in other securities." The Court then held that

the anti-fraud provisions of the Exchange Act did not apply to a foreign sale of securities that were listed on an Australian exchange. 561 U.S. at 266.

The Eleventh Circuit's determination that the RLA is not applied in an impermissibly extraterritorial way, when dispute resolution mechanisms are enforced in a collective bargaining agreement being applied to a carrier's operations abroad, turned on the focus or object of Congressional concern in the RLA being the contractual relationship between a carrier and the union representing carrier employees. The Eleventh Circuit's contract-based focus – a focus consistent with the decisions of the Second and Fifth Circuits preceding *Morrison* – has support in the stated purposes of the statute to "provide for the prompt and orderly settlements of all disputes," 45 U.S.C. § 151a, and in statements from this Court that the "central theme" of the RLA is "to bring about voluntary settlement." *Chicago & N.W.R. Co. v. Transportation Union*, 402 U.S. 570, 595 (1971) (Brennan, J., dissenting).

The Ninth Circuit's conclusion that the RLA is being applied in an impermissibly extraterritorial way, when collective bargaining agreement terms are enforced abroad, turns instead on the focus or object of Congressional concern in the RLA being "[w]here the transportation [is]" – and specifically, whether the air transportation is within the RLA's definition of commerce, 45 U.S.C. § 151 Fourth, which is limited to commerce within the territory of the United States or between the United States and any foreign nation;

thus the enforcement of a contract to a carrier's operations in purely foreign flying is the impermissible extraterritorial application of the RLA. The Ninth Circuit's transportation focus has support in a stated purpose of the Act, to "avoid any interruption to commerce or to the operation of any carrier engaged therein," 45 U.S.C. § 151a, and in statements from this Court that the RLA was created to mitigate the potential for disruption of interstate travel and transportation of goods. *See Detroit & Toledo Shore Line R.R. Co. v. United Transp. Union*, 396 U.S. 142, 148-49 (1969).

Each of these competing approaches has support in the text and interpretations of the RLA. However, the ramifications that flow from the approaches are starkly different. The contract-based approach of the court below, and the Second and Fifth Circuits, to the analysis of whether the RLA is being applied extraterritorially in violation of Congressional intent, is a construction that construes the RLA to violate the law of nations, and is an approach that has produced, in the *Eastern* and *TACA* cases, head-on collisions with foreign law.

This Court has frequently explained that the presumption against extraterritorial application of federal statutes avoids "unintended clashes between our laws and those of other nations which could result in international discord." *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659, 1664 (2013); *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991). The presumption against extraterritoriality in turn

reflects the "presumption that United States law governs domestically but does not rule the world." *Kiobel*, 133 S.Ct. at 1664 (citing *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 454 (2007)). As this Court further emphasized in *Kiobel*, there is likewise no indication that Congress intended to make this country the forum "for the enforcement of international norms. . . ." *Id.* at 1668.

This Court has been particularly diligent in applying the presumption against extraterritoriality to preclude application of United States labor statutes in circumstances where its application could produce a clash with foreign law. Thus in *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963), this Court struck down an assertion of jurisdiction by the National Labor Relations Board under the National Labor Relations Act over a vessel, even though it was "not temporarily in United States waters but operating in a regular course of trade between foreign ports and those of the United States." *McCulloch*, 372 U.S. at 18-19. This Court concluded that recognition of the union by the NLRB would have created a direct conflict with the Honduran Labor Code that recognized Sociedad as the sole Honduran bargaining agent, and would produce a "head-on collision" with foreign law. According to this Court "such highly charged international circumstances," called for adherence to the interpretive guide that "'an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.'" *Id.* at 20-21 (quoting *Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804).

The Eleventh Circuit's contract-focused analysis of the extraterritorial application of the RLA, in which considertation of the law of nations has no place, appears to create a conflict with international labor law norms and the labor law of foreign states as well. This Court should grant the petition to resolve the circuit split and to ensure, in an increasingly globalized economy, a construction of the RLA that is consistent with international law principles and does not allow, even indirectly, for United States law to collide with the law of foreign nations.

The International Labour Organization (ILO) is generally viewed as the principal source for international labor law norms, and its eight core labor conventions constitute the fundamentals of international labor law. Two of those core labor conventions – number 87 and number 98 – concern workers' rights to establish and join trade unions, and to organize and bargain collectively. The foreign states in which Amerijet operates, including Trinidad, generally have ratified these core conventions. *See* ILO website Ratifications of the Fundamental Human Rights Conventions by Country, http://www.ilo.org/global/about-the-ilo/lang--en/index.htm (last visited July 26, 2015). Thus the foreign states in which carriers covered by the RLA may also operate have generally endorsed the core principles of labor law embodied in the RLA.

The structure of the international legal system is based on the general principle that each State is responsible for implementing its international law

obligations in accordance with its own domestic law and institutions.

> This feature of international law is largely explained by the diversity of legal systems throughout the world. Because the legal systems of the world differ so drastically from one another, any attempt to dictate the manner in which States implement the obligation to protect human rights would be impractical. "[G]iven the existing array of legal systems within the world, a consensus would be virtually impossible to reach – particularly on the technical accouterments to an action – and it is hard even to imagine that harmony ever would characterize this issue."

Kiobel v. Royal Dutch Petroleum Co., 621 F.3d 111, 172 (2d Cir. 2010) (Leval, J., concurring) (quoting *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 778 (D.C. Cir. 1984) (Edwards, J., concurring)). The contract-focused approach of the court below, and the Second and Fifth Circuits, to the question of whether the RLA is being applied extraterritorially, is a construction of the RLA which disregards these international law principles and would result in the export of the labor law scheme of the RLA to foreign nations in contravention of international law.

That neither Congress nor the Executive branch intends to export United States labor law schemes to foreign nations is reinforced by U.S. trade laws and executive agreements, and the provisions of the free

trade agreements to which the United States is a party.

U.S. free trade agreements incorporate labor rights provisions to ensure international labor law norms respecting collective bargaining and associational rights, but do not impose on foreign nations the particular means by which the United States has implemented those international labor law norms. *See* Sandra Polaski, *Protecting Labor Rights through Trade Agreements: An Analytical Guide*, 10 U.C. DAVIS J. INT'L L. & POL'Y 13, 13 (2003); *see also* https://ustr.gov/trade-agreements/free-trade-agreements (listing free trade agreements entered into by the United States with links to the text of these agreements) (last visited July 26, 2015).

The Air Transport Agreement between the United States and the European Union of 2010 includes an article addressing labor rights, which upholds international labor law norms but respects the means by which each country chooses to implement those norms:

> The Parties recognise the importance of the social dimension of the Agreement and the benefits that arise when open markets are accompanied by high labour standards. The opportunities created by the Agreement are not intended to undermine labour standards or the labour-related rights and principles contained in the Parties' respective laws.

Protocol to Amend the Air Transp. Agreement Between the U.S. and the European Cmty. and Its Member States, art. 4 (June 24, 2010), available at http://www.state.gov/e/eb/rls/othr/ata/e/eu/index.htm (last visited July 26, 2015).

The U.S. General Systems of Preference (GSP) statutes condition preferential trade benefits to an eligible foreign country upon the country taking steps to "afford internationally recognized worker rights to workers in the country," and define "internationally recognized worker rights" to include "the right of association" and "the right to organize and bargain collectively." However, these GSP statutes do not impose upon foreign nations the steps taken under U.S. law to recognize those same rights. *See* 19 U.S.C. §§ 2461, 2462(b)(2)(G), 2467(4).

Because the contract-focused approach of the Eleventh Circuit would result in the imposition of the RLA's dispute resolution mechanisms – and, indirectly, the underlying provisions of a collective bargaining agreement between a carrier and union entered into under the RLA – on a carrier's operations in a foreign nation, in likely conflict with the laws and institutions of that nation regarding collective bargaining, this Court should grant the petition to resolve the conflict in favor of the transportation-focused analysis of the Ninth Circuit to determining when the RLA is being applied extraterritorially in contravention of Congressional intent.

B. The exercise of judicial power to enforce RLA dispute mechanisms for contract disputes growing out of a carrier's operations abroad appears to conflict with the principles articulated by this Court in *Kiobel*

The question presented here is whether a federal district court has power, under the jurisdiction accorded to it to enforce the RLA, to compel participation in the RLA dispute resolution mechanisms for contract disputes when the particular contract dispute at issue grows out of a carrier's operations abroad. The Eleventh Circuit finds such jurisdiction exists. Yet principles articulated by this Court in *Kiobel* suggest that a district court should refrain from exercising its authority to enforce the dispute resolution mechanisms of the RLA with respect to contract disputes that concern the operations of a carrier abroad. This Court should grant the petition to clarify the proper exercise of the power of the federal courts in this circumstance.

In *Kiobel*, this Court stated that "[t]he presumption against extraterritorial application helps ensure that the Judiciary does not erroneously adopt an interpretation of U.S. law that carries foreign policy consequences not clearly intended by the political branches." 133 S.Ct. at 1664. This Court went on to state that with respect to the Alien Tort Statute (ATS), which is "strictly jurisdictional," and "does not directly regulate conduct or afford relief" but "instead allows federal courts to recognize certain causes of action based on sufficiently definite norms

of international law," the principles underlying the presumption against extraterritoriality "similarly constrain courts considering causes of action that may be brought under the ATS." *Id.* "These concerns, which are implicated in any case arising under the ATS, are all the more pressing when the question is whether a cause of action under the ATS reaches conduct within the territory of another sovereign." *Id.*

The power of the federal district courts to enforce the RLA's dispute resolution mechanisms, including the power to compel arbitration in accordance with those provisions, is likewise a jurisdictional recognition of causes of action. This Court should grant the petition to clarify that the "principles underlying the presumption against extraterritoriality . . . constrain courts exercising their power under" the RLA, and preclude the exercise of that power in connection with contract disputes that concern a carrier's operations abroad.

CONCLUSION

The grant of certiorari is warranted so this Court can further define the boundaries of the Railway Labor Act. Absent guidance and a resolution of the split between the circuits, there can be no uniformity in application of the RLA in such circumstances, and there remains the continuing threat of interference with foreign law, in contravention of the intent of Congress and the principles articulated by this Court.

Respectfully submitted,

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 14-12237

D.C. Docket No. 0:12-cv-60654-FAM

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Plaintiff-Appellant,

versus

AMERIJET INTERNATIONAL, INC.,

Defendant-Appellee.

Appeals from the United States District Court
for the Southern District of Florida

(March 23, 2015)

Before HULL and JULIE CARNES, Circuit Judges, and ROTHSTEIN,* District Judge.

ROTHSTEIN, District Judge:

Plaintiff-Appellant International Brotherhood of Teamsters ("IBT") filed this case in the United States

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* Honorable Barbara J. Rothstein, United States District Judge for the Western District of Washington, sitting by designation.

District Court for the Southern District of Florida, seeking, *inter alia*, to compel arbitration of two different sets of grievances arising from disputes with Defendant-Appellee Amerijet International, Inc. ("Amerijet"). The district court found that it lacked subject-matter jurisdiction over IBT's claims and granted Amerijet's motion to dismiss Counts I, II, and III of IBT's complaint. This appeal followed.

IBT challenges (1) the district court's determination that it lacked subject-matter jurisdiction to compel arbitration of nine deadlocked grievances because they were "minor disputes" under the terms of the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.* (Count I), and (2) the district court's determination that the RLA cannot be applied extraterritorially and, therefore, that it lacked subject-matter jurisdiction to compel arbitration of the grievances arising out of Amerijet's operations in Port of Spain, Trinidad (Counts II and III).

After a careful review of the briefs and the record, and with the benefit of oral argument, we reverse the district court's dismissal of Counts I, II, and III of IBT's complaint and remand them to the district court for further proceedings consistent with this opinion.

I. STANDARD OF REVIEW

Review of a district court's determination of its own subject-matter jurisdiction is *de novo*. *Calderon v. Baker Concrete Constr., Inc.*, 771 F.3d 807, 810

(11th Cir. 2014). In addition, the district court's application of the RLA is reviewed *de novo*. *See CSX Transp., Inc. v. Bhd. of Maint. of Way Emps.*, 327 F.3d 1309, 1320 (11th Cir. 2003) ("The district court's classification of a dispute as major or minor under the RLA is a question of law we review *de novo*.").

To survive a motion to dismiss, a complaint must contain sufficient factual matter that, when accepted as true "'state[s] a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974 (2007)). At the motion to dismiss stage, the court must accept the factual allegations contained in the complaint as true and must construe them in the light most favorable to the non-moving party. *Baloco ex rel. Tapia v. Drummond Co.*, 640 F.3d 1338, 1344-45 (11th Cir. 2011).

II. THE DISTRICT COURT ERRED IN FINDING THAT IT LACKED JURISDICTION TO COMPEL ARBITRATION OF THE NINE DEADLOCKED GRIEVANCES

A. Factual Background

1. The Parties and the CBAs

IBT is a labor union that is the exclusive representative of Amerijet's pilots and flight engineers. Amerijet is a cargo airline and common air carrier subject to the provisions of the RLA. IBT and Amerijet are governed by two collective bargaining

agreements ("CBAs") that concern, respectively, Amerijet's pilots and flight engineers. The CBAs are identical in all terms relevant to this case.

The CBAs contain grievance procedures for resolving disputes between the parties. The CBAs first contemplate an "informal discussion." If a grievance is not resolved through informal discussion, Step 1 of the formal grievance process is an appeal to the Chief Pilot, which must be submitted within fourteen days following receipt of a disciplinary notice or a violation of the CBAs.[1] The Chief Pilot must issue a written decision within fourteen days of receipt of the grievance.

A grievance may next proceed to Step 2, the appeals process.[2] If the Chief Pilot's decision is not satisfactory to an employee, the employee may first appeal the decision to the Director of Operations. The appeal "must be submitted by an accredited Union representative within ten (10) calendar days of receipt of the decision rendered by the Chief Pilot." If the decision rendered by the Director of Operations is unsatisfactory, the employee may further appeal to the Vice President of Human Resources. The appeal "must be submitted by an accredited

[1] Grievances both by engineers and by pilots are initially submitted to the Chief Pilot.

[2] Although the CBAs refer to an "appeal" to the Chief Pilot as the first part of the formal process in Step 1, the CBAs entitle Step 2 as "Appeals."

Union Representative within ten (10) calendar days of receipt of the decision rendered by the Director of Operations."

If an earlier step does not resolve the dispute, at Step 3 "the Union may forward the appeal in writing" to the Systems Board of Adjustments (the "Systems Board") "within thirty (30) days of its denial at the previous step." The Systems Board is comprised of one member selected by Amerijet and one member selected by IBT. If the Systems Board is unable to agree to a finding, one final step remains: "[T]he Union may appeal the grievance to Arbitration within thirty (30) calendar days following notification of the deadlock."

2. The "Set of Nine" Deadlocked Grievances

In early 2010, IBT filed a series of grievances against Amerijet and advanced them through the grievance procedures set out in the CBAs. The Systems Board deadlocked on nine of the grievances (the "Set of Nine") in March, 2011. On April 6, 2011, David Renshaw, IBT's representative on the Systems Board, sent an e-mail entitled "System Board Decision – March 2011." The e-mail was addressed to seven individuals, including Derry Huff, Amerijet's Board Representative; Isis Suria, Amerijet's Vice President of Human Resources; and Daisy Gonzalez and John Kunkel, two Union representatives. In the e-mail Renshaw listed the nine deadlocked grievances

(among others) and after each grievance wrote "**deadlocked-proceed to arbitration**" (emphasis in original). Huff, Amerijet's Board Representative, responded by e-mail the same day. In his e-mail to Renshaw,[3] Huff asked, "Also, as members of the system board, must we direct that a case is to proceed to arbitration? I think it's our job to simply rule on the cases. . . . [A] proclamation to 'proceed to arbitration' I think sends the message that it must (or should) be done when in fact I think all parties are leaving our sessions with much to think about."

Later that same day, Gonzalez, IBT's business agent, responded to all persons on Renshaw's e-mail and asked Suria, Amerijet's Vice President of Human Resources, "When can we expect the filing for arbitration on the deadlocked cases?" Huff forwarded Gonzalez's e-mail to Renshaw[4] and stated, "My point exactly. . . . [I]s the IBT really taking all of these to arbitration?"

No further e-mails were sent until June 2, 2011, when John Kunkel, Gonzalez's successor as IBT's business agent, sent an e-mail to Amerijet's Suria, noting that Amerijet had failed to advance the cases to arbitration. Gonzalez also wrote to Suria on June 2, 2011, stating "[t]o date we have not received an arbitration panel for the cases that were deadlocked

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[3] Huff did not include any other recipients on the e-mail.

[4] Again, Huff did not include any other recipients on the e-mail.

at the March, 2011 System Board. These arbitration panels were requested via e-mail by David Renshaw on April 6th." Gonzalez listed the nine cases and asked Suria to "[p]lease advise."

Suria responded to Kunkel's and Gonzalez's correspondences on June 7, 2011, by e-mail. In her e-mail, Suria stated that "[t]he union did not appeal any grievance to arbitration from the last Systems Board. . . . [T]he union was required to separately advise the company within 30 days following notification of the System Board's deadlocks. . . . No notice from the union was provided to the company within 30 days. . . ." Suria stated that Renshaw's e-mail of April 6, 2011, was not sufficient notice because Renshaw's e-mail "was written notice from the System[s] Board of the System[s] Board's decision[ ]," which Suria opined was "not an appeal by the union to arbitration . . . because the System[s] Board can't act on behalf of the union but can only act for itself." Therefore, Amerijet did not advance the Set of Nine grievances to arbitration, and Suria stated that "[a]ny attempt by the union to appeal to arbitration now . . . would be untimely."

B. Procedural Background

IBT filed this lawsuit in the district court, seeking, *inter alia*, to have the court compel the arbitration of the Set of Nine grievances. In Count I of the complaint, IBT asked the district court to order

Amerijet to advance the Set of Nine grievances to arbitration.

According to IBT, it properly informed Amerijet of its intent to arbitrate the deadlocked grievances when, on April 6, 2011, its Systems Board representative sent an e-mail in which he listed the nine deadlocked grievances at issue and after each grievance wrote "**deadlocked-proceed to arbitration**" (emphasis in original). In addition, later the same day, IBT representative Gonzalez sent an email asking Suria, Amerijet's Vice President of Human Resources, "When can we expect the filing for arbitration on the deadlocked cases?"

Amerijet filed a "Motion to Dismiss Pursuant to Rule 12(b)(1) and (6) or, in the Alternative, for Summary Judgment." First, Amerijet moved to dismiss Count I, pursuant to Federal Rule of Civil Procedure 12(b)(1), arguing that the district court lacked subject-matter jurisdiction and the authority to compel arbitration. Alternatively, Amerijet moved to dismiss Count I for failure to state a claim, pursuant to Rule 12(b)(6), arguing that "IBT has failed to plead facts sufficient to demonstrate a plausible claim for relief, i.e., by pleading facts sufficient to show a right to have arbitration compelled as to the group of nine deadlocked grievances."

Finally, assuming that the district court had jurisdiction to compel arbitration, Amerijet moved for summary judgment, pursuant to Rule 56. Amerijet contended that "[t]he undisputed material facts

establish that Amerijet has satisfied its responsibilities under the CBAs as the IBT did not pursue the issue of whether it properly advanced any of the deadlocked grievances to arbitration through the CBAs' dispute resolution mechanisms." Specifically, Amerijet argued that IBT "did not file [a] grievance or pursue the multi-step appellate grievance procedures in the CBA as necessary to obtain arbitration of this issue." Therefore, because it "has failed to exhaust the dispute resolution procedures in the CBA[,] . . . IBT is not entitled to arbitrate that dispute and summary judgment should be granted for Amerijet[,] denying Count I of the Complaint."

Both parties agreed that the merits of the nine grievances are arbitrable as minor disputes under the RLA and that the issue of whether IBT provided proper notice of its intent to proceed to arbitration (the "notice issue") is likewise a minor dispute.

Accepting those positions, the district court concluded that it did "not have jurisdiction to proceed further" by compelling arbitration "once it has been established that the notice issue" was a minor dispute subject to the dispute resolution procedures set out in the CBAs. Accordingly, the district court ruled as follows:

> (1) Amerijet's Motion to Dismiss Pursuant to Rule 12(b)(1) and (6) or, in the Alternative, for Summary Judgment, filed on May 24, 2012, is GRANTED.

(2) Counts I, II, and III of the IBT's complaint are dismissed for lack of subject matter jurisdiction.[5]

(Record citation omitted; emphasis omitted).

IBT timely appealed.

C. Analysis

On appeal, IBT contends that, although the district court may have lacked jurisdiction to rule on the merits of the grievances, it nonetheless had jurisdiction and authority to compel Amerijet to arbitrate the grievances, where the arbitrator could consider the notice issue before turning to the merits of the grievances. IBT argues that the district court's order "dismissing Count I should be reversed" and Count I "remanded for entry of an order directing

[5] IBT's original complaint had six counts. The district court dismissed Counts I, II, and III for lack of subject-matter jurisdiction, but dismissed Counts IV, V, and VI with leave to amend. IBT then filed its first amended complaint, which included the same six counts. Amerijet moved to strike Counts I, II, and III of the first amended complaint, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure. The district court granted the motion to strike Counts I, II, and III of the first amended complaint "under Rule 12(f) as this Court has already dismissed the counts for lack of subject matter jurisdiction." The district court subsequently resolved the remaining counts, and those counts are not at issue on appeal and are not relevant to our resolution of IBT's claims. Because Counts I, II, and III were struck from the first amended complaint, all references to "the complaint" refer to IBT's initial complaint, filed on April 12, 2012.

Amerijet to proceed to arbitration on the nine deadlocked grievances."

By contrast, Amerijet argues that the consequence of the notice issue being a minor dispute is that the district court lacked subject-matter jurisdiction to compel arbitration, and that the notice issue must be contested through a new and separate grievance process, as set out in the CBAs. Amerijet contends that the district court's dismissal of Count I should be affirmed. In its brief on appeal, Amerijet expressly argues that IBT "has failed to establish that the District Court had subject matter [jurisdiction] in fact and that an order compelling arbitration of the deadlocked grievances was mandated as a matter of law under the circumstances."

This Court has not had occasion to consider whether, pursuant to the RLA, a district court has the authority to compel arbitration where an employer refuses to arbitrate due to an alleged procedural failure on the part of a union or aggrieved party. In the absence of controlling circuit precedent, we turn to relevant Supreme Court decisions to guide us.

The parties' disagreement over whether IBT properly provided notice of its intent to arbitrate mirrors one of the issues addressed in *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 84 S. Ct. 909 (1964). In *Wiley*, a union and a publishing firm had a collective bargaining agreement covering 40 of the firm's approximately eighty employees. *Id.* at 545, 84 S. Ct. at 912. The publishing firm merged with

another publisher, John Wiley & Sons ("Wiley"), which did not have any union-represented workers. *Id.* After the merger, the union contended that Wiley was obligated to recognize certain rights created by the collective bargaining agreement for the forty union-represented employees, and the union sought arbitration of those issues. *Id.* at 545-46, 84 S. Ct. at 912. However, Wiley asserted that the merger terminated the bargaining agreement for all purposes and that the company therefore was not bound to arbitrate under the collective bargaining agreement's arbitration provision. *Id.* The union then filed suit and moved to compel arbitration of the disputes over the recognition of the workers' rights. *Id.*

The district court denied the motion and refused any relief. *Id.* at 544, 84 S. Ct. at 912. The Second Circuit reversed and directed the district court to order arbitration. *Id.* The Supreme Court affirmed the Second Circuit's decision. *Id.*

The Supreme Court first concluded that a court, rather than an arbitrator, must decide whether Wiley was bound by the pre-existing collective bargaining agreement and, thus, the arbitration provision. *Id.* at 546-47, 84 S. Ct. at 912-13. The Supreme Court then held that Wiley was bound by the collective bargaining agreement and its arbitration provision. *Id.* at 550-51, 84 S. Ct. at 915.

Next, the Supreme Court considered whether the subject matter of the dispute was within the scope of the arbitration clause. *Id.* at 552-55, 84 S. Ct. at

916-17. The *Wiley* Court did not answer the question but merely held that the union's complaints were "not so plainly unreasonable that the subject matter of the dispute must be regarded as nonarbitrable because it can be seen in advance that no award to the Union could receive judicial sanction." *Id.* at 555, 84 S. Ct. at 917.

Finally, and most relevant to this case, the Supreme Court considered Wiley's contention that it had no duty to arbitrate, even if it was bound by the collective bargaining agreement, because the union failed to comply with the procedures established by the arbitration provision. *Id.* at 555-56, 84 S. Ct. at 917-18. The Supreme Court rejected Wiley's argument that the union's alleged procedural failure should prevent a federal court from compelling arbitration. *Id.* at 557, 84 S. Ct. at 918. The *Wiley* Court noted that "labor disputes of the kind involved here cannot be broken down so easily into their 'substantive' and 'procedural' aspects." *Id.* at 556, 84 S. Ct. at 918. The Supreme Court stated that "it best accords with the usual purposes of an arbitration clause and with the policy behind federal labor law to regard procedural disagreements not as separate disputes but as aspects of the dispute which called the grievance procedures into play." *Id.* at 559, 84 S. Ct. at 919. Accordingly, the *Wiley* Court concluded that, if the subject matter of an underlying dispute is arbitrable, "'procedural' questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator." *Id.* at 557, 84 S. Ct. at 918. The

Supreme Court therefore affirmed the Second Circuit's order directing the district court to compel arbitration. *Id.* at 559, 84 S. Ct. at 919.

We think the instruction of *Wiley* is clear: Where, as here, an employer has refused to arbitrate a minor dispute based on an alleged failure by the union to comply with the procedures set forth in collective bargaining agreements, the district court ordinarily should compel arbitration of the dispute, with the procedural issue to be considered by the arbitrator.[6]

We recognize that the *Wiley* Court did not address the basis for the district court's jurisdiction to compel arbitration – or even whether the dispute was a major dispute, a minor dispute, or something else altogether. However, a review of the text of the RLA and case law indicates that federal courts maintain the authority to compel arbitration of minor disputes.

Amerijet correctly notes that, as a jurisdictional matter, the RLA prohibits federal courts from reaching the merits of minor disputes. *See Consol. Rail Corp. v. Ry. Labor Execs.' Ass'n*, 491 U.S. 299, 304, 109 S. Ct. 2477, 2481 (1989) (stating that "any adjustment board under the RLA" has "exclusive jurisdiction over minor disputes"); *see also Empresa Ecuatoriana De Aviacion, S.A. v. Dist. Lodge No. 100*,

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[6] Similar to the notice issue, the issue of whether IBT had to separately grieve and "exhaust" Amerijet's failure to arbitrate is a procedural issue for the arbitrator to decide under the relevant provisions of the CBAs.

690 F.2d 838, 844 (11th Cir. 1982) ("A minor dispute must be submitted to compulsory arbitration by an adjustment board, which has exclusive jurisdiction to decide minor disputes." (citation and footnote omitted)).

At the same time, the RLA's provisions preventing federal courts from ruling on the merits of minor disputes do not leave the courts completely powerless. Although federal courts lack the subject-matter jurisdiction to resolve the merits of minor disputes under the RLA, those courts maintain jurisdiction to enter orders required to ensure compliance with the procedures prescribed by the RLA for settling such disputes. *See id.* ("Employees are forbidden to strike over minor disputes, and the federal courts have jurisdiction to enjoin such strikes." (citing *Bhd. of R.R. Trainmen v. Chicago River & Ind. R.R. Co.*, 353 U.S. 30, 77 S. Ct. 635 (1957)). Thus, a federal court has the authority to compel arbitration of a minor dispute, even if it lacks the subject-matter jurisdiction to resolve the merits of the minor dispute. *See W. Airlines, Inc. v. Int'l Bhd. of Teamsters*, 480 U.S. 1301, 1302, 107 S. Ct. 1515, 1515 (1987) (O'Connor, Circuit Justice, granting application for stay) ("While courts lack authority to interpret the terms of a collective-bargaining agreement, a court may compel arbitration of a minor dispute before the authorized System Board.").

This conclusion accords with the Supreme Court's precedent in the context of "major disputes" under the RLA. Like with minor disputes, the merits of major

disputes under RLA generally are not to be resolved by federal courts. Instead, the RLA "established rather elaborate machinery for negotiation, mediation, voluntary arbitration, and conciliation" of major disputes. *Detroit & Toledo Shore Line R.R. Co. v. United Transp. Union*, 396 U.S. 142, 148-49, 90 S. Ct. 294, 298 (1969); *see also* 45 U.S.C. §§ 154, 155 (establishing the National Mediation Board and authorizing it to resolve major disputes).[7] Nonetheless, even where federal courts lack subject-matter jurisdiction under the RLA to resolve major disputes, district courts "have subject-matter jurisdiction to enjoin a violation of the status quo pending completion of the required procedures." *Consol. Rail Corp.*, 491 U.S. at 303, 109 S. Ct. at 2480.

In addition, recognizing federal courts' limited authority to compel arbitration of minor disputes furthers one of the stated purposes of the RLA by ensuring "the prompt and orderly settlement of all disputes growing out of grievances." 45 U.S.C. § 151a(5). Specifically, this outcome avoids the prospect of requiring the parties to engage in two separate

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[7] The Supreme Court has noted that the RLA "provides an exhaustively detailed procedural framework to facilitate the voluntary settlement of major disputes," and the "effectiveness of these private dispute resolution procedures depends on the . . . assurance that neither party will be able to enlist the courts to further its own partisan ends." *Trans World Airlines, Inc. v. Indep. Fed'n of Flight Attendants*, 489 U.S. 426, 441, 109 S. Ct. 1225, 1234 (1989) (citation and quotation marks omitted).

disputes – one procedural, one substantive – before a labor dispute is resolved.

Accordingly, the district court erred in granting Amerijet's motion to dismiss Count I and in finding that it lacked subject-matter jurisdiction to compel arbitration. As explained above, IBT's complaint has pled undisputed facts sufficient to show a right to have arbitration of the Set of Nine deadlocked grievances compelled by the district court as a matter of law, with the procedural issues to be decided by the arbitrator.

III. THE DISTRICT COURT ERRED IN FINDING THAT IT LACKED SUBJECT-MATTER JURISDICTION OVER THE PORT OF SPAIN GRIEVANCES

A. Factual Background

Since 2008, rotating crews of IBT members have been temporarily assigned to work in Port of Spain, Trinidad,[8] at a facility established by Amerijet. At all times since the establishment of the Port of Spain facility, all of Amerijet's crewmembers have been "permanently domiciled" in Miami. No employee is "permanently domiciled" in Port of Spain.

These workers, who live on a permanent basis in Florida, work out of Trinidad an average of ten days

[8] Port of Spain is the capital of Trinidad and Tobago, and it is located on the island of Trinidad.

out of a twenty-eight-day "roster period," and do not necessarily work in Trinidad during every twenty-eight-day roster period. Indeed, crews change from month to month, and are labelled by Amerijet as "transient." Thus, a crew might work out of Port of Spain for ten days in one month, but fly from bases within the United States for the entirety of the next two or three months.

In March of 2010, IBT filed several grievances against Amerijet concerning Amerijet's operation in Port of Spain.[9] The Systems Board deadlocked in November of 2010. IBT requested arbitration and the parties scheduled arbitration in August of 2011.

Richard Garcia, a former Amerijet employee represented by IBT, filed a separate grievance to challenge his termination based on events that took place in Port of Spain. In March of 2011, the Systems Board deadlocked, and that grievance was also advanced to arbitration.

On April 27, 2011, Amerijet informed IBT that it considered its facility in Port of Spain to be a "permanent foreign base" and thus outside the scope of the CBAs. Amerijet refused to advance Garcia's grievance

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[9] IBT grieved whether Amerijet had properly characterized the Port of Spain operation as a temporary base. As clarified by IBT at oral argument, IBT was not seeking designation of Port of Spain as a "permanent" base. Rather, IBT challenged the categorization of the Port of Spain facility as a "temporary" base as it related to certain compensation issues.

to arbitration. In addition, Amerijet stated that it was applying the "permanent" designation retroactively, such that it was canceling the scheduled arbitration relating to the March 2010 grievances.

B. Procedural Background

In Counts II and III of the complaint, IBT sought to compel arbitration of the March 2010 grievances and Richard Garcia's grievance (collectively, the "Port of Spain grievances").

IBT contended that the Port of Spain grievances were "the very sort of factual and contractual dispute that the parties intended to present to arbitration – indeed, are required to present to arbitration under the RLA – and an order compelling Amerijet to arbitrate is most appropriate."

However, Amerijet argued that the employees "temporarily domiciled in [Port of Spain] are engaged in purely foreign flying . . . and are therefore outside the reach of the RLA." Thus, in Amerijet's view, the district court lacked subject-matter jurisdiction to compel arbitration. Accordingly, Amerijet moved to dismiss Counts II and III of the complaint, pursuant to Rule 12(b)(1) and Rule 12(b)(6).

In the alternative, Amerijet moved for summary judgment, contending that "the grievances at issue concern matters expressly outside the scope of the collective bargaining agreements." Specifically, Amerijet argued that the "Counts II and III . . . are

disputes pertaining to Amerijet's operations which by express and negotiated agreement of the parties are outside the scope of the CBAs."

The CBAs provide, in relevant part:

D. Foreign Bases

1. Temporary foreign bases may be opened by the Company upon thirty (30) days written notice to the Union. The filling of vacancies at temporary foreign bases will be done in accordance with Section 16 of this Agreement.

2. Permanent foreign bases, as designated by the company, may be opened by the Company at any time, without notice, and shall not be covered by the scope of this Agreement.

E. Scope

1. This Agreement covers the Company and all present and future United States registered/certificated airline subsidiaries of the Company. Except as otherwise set forth in this Agreement, all present and future flying (including . . . international flying which originates or terminates [a] at a temporary foreign base or [b] within the United States or its possessions) on United States registered/certificated aircraft operated by the Company ("U.S.aircraft")

> shall be performed by [pilots] on the Amerijet [pilot's] System Seniority List in accordance with the terms and conditions of this Agreement.

Citing these provisions, Amerijet argued that, "[b]ased upon the undisputed facts[,] . . . the grievances at issue concern matters expressly outside the scope of the collective bargaining agreements. More specifically, because 'permanent foreign bases' are expressly excluded from the scope of the collective bargaining agreements, and the IBT failed to appeal Amerijet's designation of the [Port of Spain] hub as a permanent foreign base[,] . . . the March 2010 grievances concerning the status of the [Port of Spain] hub as a temporary or permanent 'domicile/base' do not constitute minor disputes within the contemplation of 45 U.S.C. § 184."

As noted above, the district court granted Amerijet's motion to dismiss and dismissed Counts II and III for lack of subject-matter jurisdiction. The district court reasoned that "a fundamental canon of statutory construction . . . [is that] 'legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States'" (quoting *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 285, 69 S. Ct. 575, 577 (1949)). The district court found that the RLA includes no clear expression of congressional intent for its provisions to apply extraterritorially, and that "the grievances in

Counts II and III involve exclusively foreign transportation taking place in Port of Spain."

IBT timely appealed.

C. Analysis

On appeal, IBT argues that the district court erred as a matter of law in finding that it lacked subject-matter jurisdiction over the Port of Spain grievances based on the court's finding that compelling arbitration of those grievances would amount to the extraterritorial application of the RLA. IBT contends that the employees' "connection to Trinidad is at best tangential; it is the United States where they reside, where they work, and from which their working conditions are governed through the parties' agreements."

1. Error in finding the application of the RLA a jurisdictional issue

As a threshold matter, the district court erred in finding that the question of extraterritoriality was an issue of subject-matter jurisdiction. In *Morrison v. National Australia Bank Ltd.*, the Supreme Court held that, to the extent that a question is raised concerning the extraterritorial application of a statute, it is a merits question rather than a question of subject-matter jurisdiction. 561 U.S. 247, 254, 130 S. Ct. 2869, 2877 (2010). As Amerijet concedes in its brief on appeal, "the U.S. Supreme Court's 2010

decision in *Morrison* . . . now dictates the analysis to be applied in deciding the extraterritorial application of a U.S. law, and further holds that such questions are on the merits."

Accordingly, the district court placed the wrong label on its order of dismissal when it based the latter on the absence of subject-matter jurisdiction, pursuant to Rule 12(b)(1). Instead, any dismissal here should have been characterized as being made on the merits, pursuant to Rule 12(b)(6). And because our reading of the district court's analysis indicates that the latter would have rendered the same decision, regardless of the label placed on that ruling, we now examine the extraterritorial issue on its merits. *Cf. id.* ("[N]othing in the analysis of the court[ ] below turned on the mistake, [and] a remand would only require a new Rule 12(b)(6) label for the same Rule 12(b)(1) conclusion.") Indeed, as to the extraterritoriality issue, Amerijet on appeal states the facts are undisputed and argues that "this Court should remand Counts II and III to the District Court with instruction to enter summary judgment in Amerijet's favor on these Counts."[10]

[10] Because we conclude Amerijet is not entitled to summary judgment on the basis of the extraterritoriality issue, *see infra* Part III.C.2, we deny Amerijet's request to direct the district court to enter summary judgment for Amerijet. Rather, we remand for further proceedings consistent with the legal rulings in this opinion.

2. Application of the RLA

At oral argument, Amerijet conceded that the RLA applies while its employees are flying from the United States to Port of Spain, and while they are returning from Port of Spain to the United States.

However, Amerijet argues that the RLA does not apply extraterritorially and that, therefore, the terms of the RLA and the CBAs do not apply to its employees for the ten days during which they work out of Amerijet's facility in Port of Spain. Amerijet contends that, during these ten-day periods, its employees are engaged in "purely foreign flying" between Port of Spain and other destinations in the Caribbean – and therefore, the RLA ceases to apply, and the CBAs, formed under the auspices of the RLA, are unenforceable as to events occurring during these ten-day periods. Notably, "purely foreign flying" is not a term used by the RLA, but instead is a term used by Amerijet to describe the activities of crews temporarily stationed in Port of Spain.

We begin our analysis by recognizing the "'longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.'" *Morrison*, 561 U.S. at 255, 130 S. Ct. at 2877 (quoting *E.E.O.C. v. Arabian Am. Oil Co.*, 499 U.S. 244, 248, 111 S. Ct. 1227, 1230 (1991) (quotation marks omitted)). Thus, there is a presumption against the extraterritorial application of federal statutes, which "can be overcome only by clear

expression of Congress' intention to extend the reach of the relevant Act beyond those places where the United States has sovereignty." *Nieman v. Dryclean U.S.A. Franchise Co.*, 178 F.3d 1126, 1129 (11th Cir. 1999); *see also Arabian Am. Oil Co.*, 499 U.S. at 248, 111 S. Ct. at 1230 ("We assume that Congress legislates against the backdrop of the presumption against extraterritoriality . . . unless there is the affirmative intention of the Congress clearly expressed." (quotation marks omitted)). Put another way, the "canon provides that when a statute gives no clear indication of an extraterritorial application, it has none and reflects the presumption that United States law governs domestically but does not rule the world." *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. ___, ___, 133 S. Ct. 1659, 1664 (2013) (citations, quotation marks, and brackets omitted).

The relevant question here, however, is not whether the RLA has extraterritorial application. It does not. Rather, we must ask whether the district court was correct that it would be applying the RLA extraterritorially by compelling arbitration of the Port of Spain grievances.

A law is applied extraterritorially if a court "extend[s] its coverage beyond places over which the United States has sovereignty or has some measure of legislative control." *Foley Bros.*, 336 U.S. at 285, 69 S. Ct. at 577.

In this case, IBT's complaint seeks to compel arbitration based on the arbitration requirement

in the collective bargaining agreements. Although certain items in the collective bargaining agreements might embody particular provisions of the RLA, Amerijet has cited no statutory provision of the RLA that mandates that air carriers must arbitrate deadlocked grievances or even that air carriers must enter into a collective bargaining agreement that requires arbitration. Accordingly, the arbitration mandate *being litigated in this particular case* stems from the collective bargaining agreements. In addition, the collective bargaining agreements at issue were executed in the United States between an American employer and an American union, which represents employees domiciled in the United States. And generally speaking those employees spend the vast majority of their work time engaged in flights from or to United States destinations.

Furthermore, in declarations Amerijet filed alongside its motion to dismiss, the company's representatives admitted that, "[a]t all times since the establishment of the [Port of Spain] hub[,] all of Amerijet's crewmembers have been permanently domiciled in Miami." Additionally, aircraft based in Port of Spain have "been crewed using rotating transient flight crews that are *temporarily assigned* or 'domiciled'[11] *for short durations* to the [Port of

[11] To the extent that Amerijet attempts to characterize this dispute as an extraterritorial one by labeling the employees as being "temporarily . . . domiciled" in Port of Spain, the attempt is without merit. Regardless of Amerijet's word choice, an

(Continued on following page)

Spain] hub" (emphasis added). Those durations averaged only ten days during twenty-eight-day roster periods. And, as clarified at oral argument, crew members do not necessarily work from Port of Spain every roster period, so crew members might spend only ten days in Port of Spain during the course of two or three months.

Considering these facts as admitted by Amerijet in the district court and on appeal, we hold as a matter of law that ordering arbitration would not constitute the extraterritorial application of the RLA in this particular case. It is the contractual agreement between the parties that is being applied here. A contract by which Amerijet agreed to be bound is being applied according to its terms: to allow arbitration. The arbitrator will decide if the provisions of the collective bargaining agreements applied to the aggrieved employees. A federal court's order requiring an American employer and American employees represented by an American union to arbitrate a dispute regarding the application (and scope) of collective bargaining agreements does not constitute

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individual's singular domicile under federal law is the place where the individual most recently both (1) was physically present and (2) had the purpose of making that place their permanent home. *See State of Texas v. State of Florida*, 306 U.S. 398, 424, 59 S. Ct. 563, 576 (1939). Accordingly, the temporary nature of the employees' presence in Port of Spain and the permanent nature of their residence in Florida, as admitted by Amerijet, establish that Port of Spain was never a domicile for the employees.

the extraterritorial application of the RLA merely because the parties entered into the bargaining agreements in accordance with the RLA and some of the employees' flights were between foreign destinations for the relatively short duration of ten days within a twenty-day roster period. Whether the collective bargaining agreements even cover these American workers during those ten-day temporary assignments is a merits question for the arbitrator to decide, and the presumption against extraterritoriality does not prevent a federal court from compelling arbitration of these disputes, arising from these facts.

Stated another way, if Amerijet wants to preclude arbitration for employees who work intermittently in Port of Spain, it can negotiate to do so as part of its collective bargaining agreements. But any extraterritoriality implications arising from an agreement will be driven by the agreement's terms. It is up to the arbitrator to decide what the current collective bargaining agreements say on this and all terms.

We also note that IBT does not seek to have the court apply substantive rights created by a federal statute to employees' work overseas. *Cf. Arabian Am. Oil Co.*, 499 U.S. at 246-47, 259, 111 S. Ct. at 1229-30, 1236 (holding that the presumption against extraterritorial application of federal statutes prevented an employee fired from work being done in Saudi Arabia from sustaining an antidiscrimination action brought under Title VII), *superseded by statute*, Civil Rights Act of 1991, Pub. L. No. 102-166, § 109, 105 Stat. 1071, *as recognized in Fray v. Omaha World Herald*

Co., 960 F.2d 1370, 1376 (8th Cir. 1992). Rather, IBT asks the court to compel arbitration to determine whether Amerijet violated the terms of the collective bargaining agreements it signed with IBT. Whether the collective bargaining agreements govern Amerijet's employees' work at the Port of Spain facility is a question for the arbitrator to decide by interpreting the CBAs, and not a question for the federal courts.

3. Amerijet's Motion to Dismiss Under Rule 12(b)(6) or, in the alternative, for Summary Judgment

Finally, we return to Amerijet's request that we "remand Counts II and III to the District Court with instruction to enter summary judgment in Amerijet's favor on these Counts." Although the district court erred in finding that compelling arbitration of Counts II and III would constitute the extraterritorial application of the RLA, we now turn to whether we can affirm the entry of judgment in Amerijet's favor on alternative grounds.

Specifically, we consider Amerijet's contract-based argument that "Counts II and III . . . are disputes pertaining to Amerijet's operations which by express and negotiated agreement of the parties are outside the scope of the CBAs." As in *Wiley*, the scope of our review is limited to whether IBT's argument – that the dispute remains subject to arbitration – is "so plainly unreasonable" that "it can be seen in advance that no award to the Union could receive

judicial sanction." *Wiley*, 376 U.S. at 555, 84 S. Ct. at 917.

To the extent that Amerijet contends that the employees bringing the grievances in Counts II and III were engaged in "purely foreign flying" that is not covered by the CBAs, we conclude that IBT's argument in favor of arbitrability of that CBA issue is not "so plainly unreasonable" that "it can be seen in advance that no award to the Union could receive judicial sanction." *See id.* Therefore, whether the "international flying" provision applies to the types of disputes at issue in the Port of Spain grievances – and whether the employees were engaged in such "purely foreign flying" – are questions for the arbitrator to decide.

Similarly, to the extent that Amerijet argues that its classification of the Port of Spain facility as a permanent foreign base and its declaration that the designation applied retroactively removed the grievances from the scope as the CBAs, we find again that IBT's argument in favor of arbitrability is not "so plainly unreasonable" that "it can be seen in advance that no award to the Union could receive judicial sanction." *See id.* It is at least arguable that the provision allowing Amerijet to designate facilities as permanent foreign bases outside the scope of the CBAs does not permit the company to cancel or deny arbitration for grievances whose relevant events

occurred prior to that designation.[12] Accordingly, the arbitrator must decide whether the grievances in Counts II and III fall outside the scope of the CBAs for Amerijet's asserted reasons.

In summary, as to Counts II and III, we hold that the district court erred in determining that it lacked subject-matter jurisdiction to compel arbitration of IBT's grievances related to Amerijet's operations in Port of Spain. As to the merits of the extraterritoriality issue before us, we conclude that compelling arbitration here does not apply the RLA extraterritorially. Finally, we conclude that Counts II and III of IBT's complaint (1) were not subject to dismissal on the merits under Rule 12(b)(6) for failure to state a claim for the relief of arbitration, and (2) were not subject to summary judgment in favor of Amerijet.

III. CONCLUSION

For the foregoing reasons, we reverse the district court's October 17, 2012 order granting Amerijet's "Motion to Dismiss Pursuant to Rule 12(b)(1) and (6) or, in the Alternative, for Summary Judgment" as to Counts I, II, and III. We remand this case to the

[12] IBT's alleged failure to bring a separate grievance to challenge the classification is a procedural issue that Amerijet may raise as a potential defense before the arbitrator. *See supra* Part II.C & n.6.

district court for further proceedings consistent with this opinion.[13]

REVERSED AND REMANDED.

[13] We recognize that, on appeal, IBT asks not only for a reversal of the district court's dismissal order but also that we remand with instructions that the district court enter an order compelling arbitration as to Counts I, II, and III. In the district court, Amerijet filed a motion to dismiss, but IBT did not file a motion to compel arbitration in response. Before us, the case stands dismissed on Amerijet's motion, and we do not have a procedural vehicle on appeal to grant the relief requested in IBT's complaint and its appeal brief. Thus, on remand, IBT will need to make the necessary motion in the district court.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 12-60654-CIV-MORENO

INTERNATIONAL
BROTHERHOOD OF
TEAMSTERS,

Plaintiff,

v.

AMERIJET INTERNATIONAL,
INC.,

Defendant.
/

ORDER GRANTING MOTION TO DISMISS

[Filed Oct. 17, 2012]

THIS CAUSE came before the Court upon Defendant Amerijet International, Inc.'s Motion to Dismiss Pursuant to Rule 12(b)(1) and (6) or, in the Alternative, for Summary Judgment **(D.E. No. 10)**, filed on **May 24, 2012**. Plaintiff International Brotherhood of Teamsters ("IBT") filed a complaint to compel arbitration and enforce arbitration awards with this Court on April 12, 2012. The complaint contains six counts requesting relief on a variety of disputes arising out of the grievance procedures of the parties' collective bargaining agreements. Amerijet then filed a motion to dismiss the complaint, arguing that the Court lacked jurisdiction over the claims and that the IBT had failed to state a claim.

Alternatively, Amerijet asked the Court to grant summary judgment in its favor. For the following reasons, the Court grants Amerijet's motion to dismiss. Counts I, II, and III of the IBT's complaint are dismissed for lack of jurisdiction. Counts IV, V, and VI are dismissed with leave for the IBT to file an amended complaint no later than **November 6, 2012**.

I. FACTUAL BACKGROUND

The IBT is a labor union certified for purposes of the Railway Labor Act ("RLA") as the exclusive representative of Amerijet's pilots and flight engineers. Amerijet itself is a cargo and common air carrier subject to the RLA. The parties entered into separate collective bargaining agreements covering pilots and flight engineers respectively, each ratified on October 1, 2009.

These agreements contain grievance procedures for the resolution of disputes arising under the terms of the agreements. A grievance is first presented to the Chief Pilot of Amerijet with an option to appeal to the Director of Operations and then to the Vice President of Human Resources. In the event that a grievance remains unresolved, the grievance can be taken before a System Board of Adjustment. A separate Board exists for pilots and flight engineers. If the Board cannot resolve the grievance, it becomes deadlocked and the IBT has the option to request arbitration of the dispute within thirty days.

Asserting six claims arising out of these grievance procedures, the IBT filed a complaint to compel arbitration and enforce arbitration awards on April 12, 2012. Count I concerns a number of grievances that the IBT asserted against Amerijet in early 2010 relating to alleged violations of the bargaining agreements. Advancing the grievances through the dispute resolution procedures, the System Boards deadlocked on nine of the grievances in March 2011. On April 6, the IBT's System Boards representative David Renshaw sent an email to Amerijet's System Boards representative Derry Huff, Chief Pilot Ed Cook, and Vice President of Human Resources Isis Suria. In the email, Renshaw listed the individual grievances and wrote "deadlocked – proceed to arbitration" next to the nine grievances over which the Boards could not reach a resolution. On the same day, IBT representative Daisy Gonzalez responded to Renshaw, Huff, Cook, and Suria with an email asking, "Isis [Suria]: When can we expect the filing for arbitration on the deadlocked cases?" The IBT maintains that these emails served as notice of its intention to advance the deadlocked grievances to arbitration.

With no response from Amerijet, the IBT's representatives followed up in an email to Suria on June 2 to inform Amerijet of its position regarding the emails and to note Amerijet's failure to advance the grievances to arbitration. Suria responded in kind on June 7, rejecting the contention that the emails served as proper notice. As a result, Amerijet argued that it was

not obligated to initiate arbitration as it had not received proper notice within the thirty-day period.

In its complaint, the IBT argues that Renshaw's April 6 email served as sufficient notice of its intent to pursue arbitration. In support, it cites an instance in September 2010 when Amerijet allegedly treated a similar email from Renshaw as notice of the IBT's desire for arbitration. Additionally, the IBT contends that Gonzalez's reply to Renshaw's email clarified any ambiguity that may have existed. As Amerijet had sufficient notice of the intent to arbitrate within thirty days of the Boards' decisions, the IBT requests that the Court compel Amerijet to proceed to arbitration.

Counts II and III pertain to grievances brought by the union on behalf of Amerijet employees regarding Amerijet's hub in Port of Spain, Trinidad. Specifically, the IBT challenges Amerijet's classification of Port of Spain under the terms of the collective bargaining agreements. In both agreements, section 1.D states that:

> 1. Temporary foreign bases may be opened by the Company upon thirty (30) days written notice to the Union. The filling of vacancies at temporary foreign bases will be done in accordance with Section 16 of this Agreement.
>
> 2. Permanent foreign bases, as designated by the company [sic], may be opened by the Company at any time, without notice, and

> shall not be covered by the scope of this Agreement.

Compl. to Compel Arbitration Ex. 1, at 7; *id.* Ex. 2, at 7.

Count II centers on grievances brought against Amerijet in March 2010 challenging its previous categorization of Port of Spain as a "temporary domicile/base" under the bargaining agreements. After the System Boards deadlocked on the grievances in November 2010, the IBT advanced them to arbitration with an arbitration date set for August 2011. Similarly, Count III involves the advancement of a grievance filed by Richard Garcia, a former Amerijet employee, challenging his separation from employment based on events that transpired in Port of Spain. In March 2011, the parties convened at the System Board and agreed to move the grievance to arbitration. Yet, on April 27, 2011, Amerijet sent notice to the IBT indicating that it now considered Port of Spain to be a "permanent foreign base" and therefore outside the scope of the bargaining agreements. The IBT claims that Amerijet then unilaterally cancelled the arbitrations on this basis. It now seeks to compel Amerijet to participate in the scheduled arbitrations.

In Counts IV, V, and VI, the IBT seeks enforcement of separate arbitration awards that it claims Amerijet has failed to honor. In particular, Count IV addresses a November 2010 arbitration award resolving a dispute over minimum pay guarantees for pilots

and flight engineers for the roster duty period of September 7, 2009 to October 4, 2009. This period of time included the union's strike against Amerijet that resulted in the ratification of the bargaining agreements on October 1, 2009. Despite the arbitrator's holding that Amerijet must pay all pilots who held bidding privileges during the period pursuant to the parties' agreements, the IBT alleges that Amerijet has yet to pay any of the eligible employees.

Next, Count V concerns an April 2011 arbitration award requiring Amerijet to continue its prior procedure of advising flight engineers in advance of a rotation for planned "Zero G" flights. The IBT alleges that Amerijet has failed to provide the advance notice or allow flight engineers to bid on the flights according to seniority in contravention of the award.

Last, Count VI deals with a November 2011 arbitration award regarding the posting of component legs of flights in Amerijet's schedules. In his opinion, the arbitrator held that Amerijet was responsible for listing the component legs and their durations in its schedules where it was able to do so. Despite the award, the IBT argues that Amerijet has failed to post this information in its schedules and therefore seeks enforcement of the arbitrator's decision.

II. DISCUSSION

A. Count I

In its motion to dismiss, Amerijet contends initially that the Court lacks subject matter jurisdiction over Count I under the RLA and moves to dismiss under Federal Rule of Civil Procedure 12(b)(1). It asserts that the dispute over the manner in which the IBT attempted to advance the grievances to arbitration constitutes a "minor dispute" involving the interpretation and application of the collective bargaining agreements. Moreover, it insists that it is arguably justified in maintaining that the emails did not serve as notice requiring it to initiate arbitration under the terms of the agreements.

Disputes under the RLA are divided generally into two categories: major disputes and minor disputes. *Bhd. of Maint. of Way Emps. v. CSX Transp., Inc.*, 143 F. App'x 155, 158 (11th Cir. 2005). In distinguishing minor disputes from major disputes, the Supreme Court has stated that minor disputes are those "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." *Consol. Rail Corp. v. Ry. Labor Exec. Ass'n* (*Conrail*), 491 U.S. 299, 303 (1989). Indeed, minor disputes "contemplate[ ] the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one." *Elgin, Joliet & E. Ry. Co. v. Burley*, 325 U.S. 711, 723 (1945). Thus, in

determining whether a particular dispute is a major or minor dispute under the RLA, a court must consider whether the contested action is "'arguably justified' by the parties' agreement before the minor dispute rule can apply." *CSX Transp., Inc.*, 143 F. Appx at 160 (citing *Conrail*, 491 U.S. at 307). The threshold for "'arguability' is low" and if "reasonable doubt exists as to whether the dispute is major or minor, [a court] will deem it to be minor." *Int'l Bhd. of Teamsters v. Amerijet Int'l, Inc.*, 755 F. Supp. 2d 1243, 1249-50 (S.D. Fla. 2010) (quoting *CSX Transp., Inc.*, 143 F. Appx at 160).

Significantly, the RLA provides "exclusive jurisdiction to boards of adjustment established under the Act over minor disputes." *Id.* at 1250. Since minor disputes "must be resolved only through the RLA mechanisms, including the carrier's internal dispute-resolution processes and an adjustment board established by the employer and the unions," federal courts lack subject matter jurisdiction over such disputes. *See Haw. Airlines, Inc. v. Norris*, 512 U.S. 246, 253 (1994). Accordingly, federal courts in general have declined to regulate the manner and timing of arbitration once they have determined that they have no jurisdiction over a minor dispute. *See, e.g.*, *Air Line Emps. Ass'n, Int'l v. Republic Airlines, Inc.*, 798 F.2d 967, 968 (7th Cir. 1986); *Air Line Pilots Ass'n, Int'l v. Champion Air, Inc.*, No. 06-2467 (MJD/SRN), 2007 U.S. Dist. LEXIS 31067, at *11 (D. Minn. Apr. 27, 2007); *Prof'l Flight Attendants Ass'n v. Nw. Airlines Corp.*, No. 05-1446(DSD/SRN), 2005 U.S. Dist. LEXIS

45785, at *7 n.2 (D. Minn. Aug. 5, 2005). For instance, the District of Minnesota in *Champion Air* declined to grant a union's request for an injunction requiring an airline to select chairmen for a System Board and to schedule a hearing once it had determined that the underlying grievances were subject to arbitration. *See Champion Air, Inc.*, 2007 U.S. Dist. LEXIS 31067, at *11. The court noted the precedent establishing that courts "do not have jurisdiction to order expedited arbitration because, if the underlying dispute is minor and subject to mandatory arbitration, the courts lack jurisdiction to take any further action." *Id.* at *10. For this reason, the court concluded that it did not have the authority to regulate the manner in which the parties carried out the arbitration procedures under their collective bargaining agreement. *See id.* at *9-11.

In the present case, Amerijet points to section 25.D.2 of the bargaining agreements that states: "If a two-member [System] Board is unable to agree upon a finding or a decision, it shall forthwith provide written communication to the Company and the Union. In such event, the Union may appeal the grievance to Arbitration within thirty (30) calendar days following notification of the deadlock." Compl. to Compel Arbitration Ex. 1, at 63; *id.* Ex. 2, at 63. Because the initial email was sent by Renshaw, a System Boards representative, rather than by the IBT itself, Amerijet contends that the email does not comply with section 25.D.2's requirement that the union appeal the grievance. In fact, Amerijet cites

past instances where the IBT adhered to section 25.D.2 by separately notifying Amerijet of its arbitration appeal. In addition, Amerijet claims that Gonzalez's response email failed to constitute notice as Amerijet's System Boards representative sought clarification of the correspondence but received no response, leaving it with the impression that the IBT did not intend to appeal the grievances.

As this issue fundamentally concerns an interpretation of section 25.D.2, Amerijet argues that this is a "minor dispute" over which the Court has no jurisdiction under the RLA. In Amerijet's opinion, any order compelling arbitration would in effect constitute an impermissible affirmation of the merits of the IBT's claim that it sufficiently appealed the grievances pursuant to the bargaining agreements. Consequently, Amerijet argues that the issue must be resolved anew through the agreements' grievance procedures rather than through an appeal to a federal court.

In response, the IBT concedes that the dispute over its attempt to advance the grievances is a "minor dispute" under the RLA. However, the IBT firmly maintains that it is not requesting the Court to reach the merits of its claim that it properly advanced the grievances to arbitration. Rather, the IBT states that it is requesting the Court to merely compel Amerijet to proceed directly to the arbitration stage of the grievance procedures where the arbitrator can resolve any procedural objections Amerijet might raise regarding the emails. In effect, the IBT seeks to avoid

the inefficiency of having to restart the grievance procedures entirely anew to deal separately with this procedural issue.

In support, the IBT points to the Supreme Court's decision in *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543 (1964), where the Court held that arbitrators rather than courts should decide "procedural" questions that "grow out of" substantive disputes subject to arbitration under the National Labor Relations Act. *Id.* at 557-58. Noting that this principle has been applied equally to the RLA context, *see Indep. Ass'n of Cont'l Pilots v. Cont'l Airlines*, 155 F.3d 685, 695 n.8 (3d Cir. 1998), the IBT asserts that an arbitrator must also decide the procedural issue present here. However, citing the *John Wiley* Court's concern over the opportunities for delay inherent in separating procedural and substantive issues, *see John Wiley & Sons, Inc.*, 376 U.S. at 558, the IBT urges the Court to order the parties to initiate the arbitration stage of the grievance procedures instead of leaving the parties to start again at square one.

Both parties therefore agree that the dispute over whether the emails constituted sufficient notice to advance the grievances to arbitration is a minor dispute involving the interpretation and application of the collective bargaining agreements. Indeed, given the low threshold, Amerijet is arguably justified in maintaining that the IBT did not properly advance the grievances under the bargaining agreements. Section 25.D.2 states that the union itself must file

the appeal, but the provision is ambiguous as to what exactly constitutes a sufficient appeal after the Boards deadlock on a grievance. Furthermore, the parties agree that the original underlying grievances are substantive in nature while the present issue in front of the Court regarding the emails is procedural. Finally, the parties acknowledge that all of the grievances are subject to resolution by the bargaining agreements' grievance procedures.

At its core then, the present dispute is whether the Court can compel Amerijet to commence the final arbitration stage of the grievance procedures rather than leaving the IBT to initiate the procedures anew in order to bring its procedural challenge. The IBT is in essence asking the Court to regulate the manner of the grievance procedures after acknowledging that the dispute is a minor dispute over which the Court has no jurisdiction. As the precedent in other circuits suggests, a federal court has no authority to proceed any further over the grievance procedures once a lack of jurisdiction has been determined. *See Republic Airlines, Inc.*, 798 F.2d at 968; *Champion Air, Inc.*, 2007 U.S. Dist. LEXIS 31067, at *11; *Nw. Airlines Corp.*, 2005 U.S. Dist. LEXIS 45785, at *7 n.2. Accordingly, the Court grants Amerijet's motion to dismiss Count I for lack of subject matter jurisdiction.

Nor is the IBT's appeal to the Supreme Court's holding in *John Wiley* persuasive. That decision involved a dispute over who could decide procedural issues related to underlying substantive grievances: federal courts or the arbitration bodies established by

collective bargaining agreements. *See John Wiley & Sons, Inc.*, 376 U.S. at 556. Indeed, the *Continental Airlines* case that the IBT cites for the application of this concept to the RLA context deals with the same issue. *See Cont'l Airlines*, 155 F.3d at 692. However, neither party in the present case disputes that the bargaining agreements' grievance procedures ultimately must resolve this procedural issue. The parties merely disagree over whether this Court has the ability to regulate the manner of those grievance procedures. Yet, as noted above, this Court does not have jurisdiction to proceed further once it has been established that the notice issue is a matter exclusively for the grievance procedures to resolve.

B. Counts II & III

In response to the IBT's allegations in Counts II and III, Amerijet admits that it revisited its position on the status of Port of Spain after the IBT filed its Port of Spain grievances, re-categorizing the hub as a "permanent foreign base" since March 2010. However, Amerijet maintains that the IBT failed to timely appeal the designation, resulting in a finalization of the classification under the collective bargaining agreements. In fact, Amerijet points to communications that Chief Pilot Cook had with union representative John Kunkel requesting Kunkel to confirm the IBT's stance on the re-categorization and the applicability of the agreements. With no objections from the IBT, Amerijet states that it only then cancelled the arbitrations under the presumption that

the union had conceded the inapplicability of the agreements. Nevertheless, as a threshold matter, Amerijet now argues that the Court lacks jurisdiction over the grievances. Citing the Ninth Circuit's decision in *Independent Union of Flight Attendants v. Pan American World Airways, Inc.*, 923 F.2d 678 (9th Cir. 1991), *withdrawn by Indep. Union of Flight Attendants v. Pan Am. World Airways, Inc.*, 966 F.2d 457 (9th Cir. 1992), it maintains that the RLA has no extraterritorial application to employees who both perform their duties exclusively outside the United States and engage in "purely foreign flying." Thus, it requests the court to dismiss Counts II and III for lack of subject matter jurisdiction under Rule 12(b)(1).

A factual jurisdictional attack under Rule 12(b)(1) occurs when the motion to dismiss challenges "the existence of subject matter jurisdiction in fact, irrespective of the pleadings." *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990) (quoting *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980)). Importantly, when a party mounts a factual attack, the court may consider "matters outside the pleadings, such as testimony and affidavits." *Id.* Indeed, where the attack is factual, a "district court is free to independently weigh facts, and 'may proceed as it never could under 12(b)(6) or Fed.R.Civ.P. 56.'" *Campbell v. Paradigm Inv. Grp., LLC*, No. 5:10-cv-1196-TMP, 2011 U.S. Dist. LEXIS 154829, at *4 (N.D. Ala. Dec. 29, 2011) (quoting *Morrison v. Amway Corp.*, 323 F.3d 920, 925 (11th

Cir. 2003)). "[N]o presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Lawrence*, 919 F.2d at 1529. In the present case, Amerijet's challenge to the RLA's application to its Port of Spain crew members is one that attacks the existence of subject matter jurisdiction in fact. The Court will therefore consider matters outside the pleadings to determine whether it has subject matter jurisdiction over this dispute.

As a fundamental canon of statutory construction, "legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 285 (1949). Premised on the assumption that "Congress is primarily concerned with domestic conditions," federal courts thus must act under a "presumption against extraterritoriality to federal statutes." *Pan Am. World Airways, Inc.*, 923 F.2d at 680 (quoting *Filardo*, 336 U.S. at 285). This presumption "creates a high threshold" and courts have "consistently required . . . a 'clear expression' of congressional intent to apply legislation extraterritorially." *Id.* at 681, 682.

In relation to the RLA, federal courts have cited this presumption in rejecting extraterritorial application of the statute. *See, e.g.*, *id.* at 683; *Air Line Stewards & Stewardesses Ass'n v. Nw. Airlines, Inc.*, 267 F.2d 170, 178 (8th Cir. 1959). Looking to the legislative history of the RLA, these courts have

noted that, at the time that it was amended to apply to common air carriers, the statute defined "carrier" as one subject to the provisions of the Interstate Commerce Act ("ICA"). *See Pan Am. World Airways, Inc.*, 923 F.2d at 682-83 (citing 45 U.S.C. § 151 (1982)); *Nw. Airlines, Inc.*, 267 F.2d at 173; *Air Line Dispatchers Ass'n v. Nat'l Mediation Bd.*, 189 F.2d 685, 690 (D.C. Cir. 1951); *Gen. Comm. of Adjustment v. United States*, No. CIV. 4-75-444, 1979 U.S. Dist. LEXIS 12354, at *10 (D. Minn. May 16, 1979). Since the ICA was itself limited in application only to transportation taking place within the United States, the courts have concluded that "Congress intended these limitations to apply to carriers by air as well." *Pan Am. World Airways, Inc.*, 923 F.2d at 683 (citing *Air Line Dispatchers Ass'n*, 189 F.2d at 690; *Air Line Stewards & Stewardesses Ass'n, Int'l v. Trans World Airlines, Inc.*, 273 F.2d 69, 71 (2d Cir. 1959)). In light of this legislative history and the absence of an explicit extraterritorial application of the RLA within the statute, courts have therefore "uniformly precluded RLA jurisdiction over disputes involving employees who perform services wholly outside the United States." *Vollmar v. CSX Transp., Inc.*, 705 F. Supp. 1154, 1164-65 (E.D. Va. 1989); *see also Pan Am. World Airways, Inc.*, 923 F.2d at 683 (holding that the RLA "does not include purely foreign flying"); *Nw. Airlines, Inc.*, 267 F.2d at 175 (concluding that the RLA is "non-extraterritorial"); *Air Line Dispatchers Ass'n*, 189 F.2d at 690 ("[T]he Act does not extend to an air carrier and its employees located entirely outside the continental United States and its territories.").

Among the most recent opinions affirming this principle, the Ninth Circuit in *Pan American* refused to apply a pre-existing collective bargaining agreement to a Pan American subsidiary that operated exclusively in Europe and hired solely foreign employees represented by a German union. *See Pan Am. World Airways, Inc.*, 923 F.2d at 679. As a general matter, the court determined that the RLA did not apply to "purely foreign flying." *See id.* at 683. Likewise, the district court in *General Committee of Adjustment* found that an RLA arbitration board lacked jurisdiction over employees who worked exclusively in Canada "at all times material to their claims." *Gen. Comm. of Adjustment*, 1979 U.S. Dist. LEXIS 12354, at *3. Citing earlier precedent, as well as the possibility of a conflict with Canadian jurisdictional interests, the court concluded that the RLA contained "specific geographic limitations . . . to employment within the United States." *Id.* at *14.

To support its position in the current dispute, Amerijet has attached two affidavits from Marcia McManus, Amerijet's Crew Planner/Scheduling Manager, and Derry Huff, Amerijet's Senior Director Strategic Initiatives, describing the airline's operations in Port of Spain. These affidavits state that all Amerijet crew members working in Port of Spain are stationed there temporarily for periods lasting up to ten days on average, but are permanently domiciled in Miami. Mot. to Dismiss Ex. A, ¶ 4-5; Mot. to Dismiss Ex. B, ¶ 4. Cargo is transported from Miami International Airport to Port of Spain and then is

distributed to various Caribbean and Latin American locations via aircraft stationed in Port of Spain. Mot. to Dismiss Ex. B, ¶ 3. At no time during their temporary stay do crew members make scheduled flights to, or transits through, the United States. Mot. to Dismiss Ex. A, ¶ 6.

The IBT counters this jurisdictional challenge by attempting to distinguish the facts of the present case from the *Pan American* decision. In contrast to the foreign national employees who operated exclusively in Europe in *Pan American*, the IBT argues that Amerijet is a Florida corporation that transports cargo to and from the United States using flight crews based in the United States. Moreover, unlike the employees in *Pan American*, the Amerijet employees at issue here are all represented by an American union, namely the IBT. Though the IBT admits that Port of Spain crew members are stationed overseas temporarily, it stresses the fact that these employees are permanently domiciled in the United States. Finally, the IBT denies that Trinidad has any interest in resolving the present dispute that could result in a collision between domestic and foreign law if the Court were to apply the RLA.

Although the case law does not speak specifically to a situation where, as here, employees are only working abroad periodically before returning to the United States, the strength of the precedent limiting the scope of the RLA to the United States and its territories is convincing. In fact, as the Ninth Circuit in *Pan American* noted, the central issue in these

cases is "where the transportation was," not "where the employees were based." *Pan Am. World Airways, Inc.*, 923 F.2d at 682 n.7 (quoting *Local 553, Transp. Workers Union of Am., AFL-CIO v. E. Air Lines, Inc.*, 544 F. Supp. 1315, 1322-23 n.1 (E.D.N.Y. 1982), *aff'd with modified relief*, 695 F.2d 668 (2d Cir. 1982)). Consequently, even though the Port of Spain crew members may have been permanently domiciled in Miami, their transportation while in Port of Spain occurred strictly between foreign destinations. See Mot. to Dismiss Ex. A, ¶ 4-6. Because the grievances in Counts II and III involve exclusively foreign transportation taking place in Port of Spain, the Court dismisses both counts for lack of subject matter jurisdiction.

C. Counts IV, V & VI

Amerijet raises comparable objections to each of the IBT's final three counts. From the outset, Amerijet focuses its attacks on the sparseness of the IBT's complaint. In particular, Count IV states, "Despite receiving proof from the Union of the availability of affected members during the contested RDP, to date Amerijet has failed to pay any of those affected employees the 60-hour minimum pay guarantee as ordered by Arbitrator Lurie." Compl. to Compel Arbitration at 11, ¶ 4. Amerijet contends that the IBT has failed to identify any employee who was available to fly during the contested roster duty period and is therefore eligible for the minimum pay guarantee. Count V alleges, "Despite the award, to date Amerijet

has failed to provide advance notice to Flight Engineers of Zero G Flights and has not allowed Flight Engineers to bid on those flights by seniority. It has therefore failed to comply with Arbitrator Goldstein's award." *Id.* at 12, ¶ 8. Count VI likewise claims, "Despite the award, to date Amerijet has failed to include the component legs and the times associated with them in its schedules. It has thus failed to comply with the arbitration award." *Id.* at 13, ¶ 4.

Initially, Amerijet challenged these counts under Rule 12(b)(6) for failure to state a claim. However, in its response to Amerijet's motion to dismiss, the IBT appeared to indicate that it was not prepared to offer instances of definite violations of the arbitration awards. Indeed, in relation to Counts IV and VI, it noted that Amerijet had not cited any case law "for the proposition that a party must wait for an arbitration award [to] be breached before confirming it or compelling compliance with it." Pl.'s Resp. to Def.'s Mot. to Dismiss at 17. Regarding Count VI in particular, the IBT highlighted the fact that the award was injunctive in nature. *See id.* It concluded with a request that

> [s]hould the Union be obligated at the pleading stage to prove as an element of enforcing the award that the award has been breached, then rather than grant summary judgment to Amerijet, the court [sic] should direct the Union to provide a more definite statement or to dismiss the count with leave to amend the complaint; in the alternative, the Union

> should be given leave to engage in discovery regarding Amerijet's compliance with the component leg award.

Id. In light of these requests, Amerijet now maintains that, since the IBT cannot allege specific violations of the arbitration awards or of the collective bargaining agreements, there is no Article III case or controversy and the Court therefore lacks jurisdiction over all three counts.

Article III of the Constitution restricts the judicial power of the federal courts to "cases" or "controversies." *See* U.S. Const. art. III, § 2. Accordingly, "a number of district 'courts have denied requests to confirm [or vacate] arbitration awards between labor and management where there was no live and actual dispute between the parties.'" *IFF Chem. Holdings, Inc. v. United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union*, No. 3:10-cv-738-J-99TJC-JRK, 2011 U.S. Dist. LEXIS 68554, at *9 (M.D. Fla. Apr. 25, 2011) (quoting *1199 United Healthcare Workers E. v. Civista Med. Ctr., Inc.*, No. DKC 10-0479, 2011 U.S. Dist. LEXIS 8268, at *2 (D. Md. Jan. 28, 2011)). Thus, for instance, the *IFF Chemical Holdings* case involved an attempt by a union to confirm an arbitration award for an employee who had died before the arbitration panel rendered a decision on his grievance. *See id.* at *4-5. Finding that the employee's death had rendered the issue moot, the court declined to confirm the award. *See id.* at *12. In like manner, the District of Maryland in *Civista Medical Center* determined that no case or

controversy existed when a union sought to confirm an arbitration award even though it did not seek to collect a monetary award or enforce the award due to noncompliance. *See 1199 United Healthcare Workers E. v. Civista Med. Ctr., Inc.*, No. DKC 10-0479, 2011 U.S. Dist. LEXIS 8268, at *3 (D. Md. Jan. 28, 2011). In doing so, the court rejected the union's claims that the Federal Arbitration Act permits a court to confirm an award without a threshold factual showing of an underlying dispute between the parties. *See id.*

Here, the IBT's meager complaint and the statements in its response indicate the possibility that the IBT cannot allege genuine violations of the arbitration awards at this time. The actual claims in each count are confined to a single paragraph that only indefinitely asserts a breach of each award. If the IBT truly cannot allege specific violations of the awards, but rather is simply requesting the Court to confirm the awards as a matter of course, the Court must dismiss the counts for lack of subject matter jurisdiction similar to the decision in *Civista Medical Center*. In such a case, the IBT's claims would constitute mere hypothetical, and therefore non-justiciable, disputes. As a result, the Court dismisses the final three counts with leave for the IBT to file an amended complaint demonstrating actual violations of the respective awards.

IV. CONCLUSION

For the above it reasons, it is

ADJUDGED that:

(1) Amerijet's Motion to Dismiss Pursuant to Rule 12(b)(1) and (6) or, in the Alternative, for Summary Judgment (**D.E. No. 10**), filed on **May 24, 2012**, is GRANTED.

(2) Counts I, II, and III of the IBT's complaint are dismissed for lack of subject matter jurisdiction.

(3) Counts IV, V, and VI of the IBT's complaint are dismissed with leave for the IBT to file an amended complaint no later than **November 6, 2012**.

DONE AND ORDERED in Chambers at Miami, Florida, this 17th day of October, 2012.

/s/ Federico A. Moreno
FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-12237-CC

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Plaintiff-Appellant,

versus

AMERIJET INTERNATIONAL, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

[Filed Jun. 2, 2015]

BEFORE: HULL and JULIE CARNES, Circuit Judges, and ROTHSTEIN,* District Judge.

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* Honorable Barbara J. Rothstein, United States District Judge for the Western District of Washington, sitting by designation.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Frank M. Hull
UNITED STATES CIRCUIT JUDGE