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**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

-----x	Chapter 11
	:
In re:	: Case No. 20-11133 (MG)
	:
AVIANCA HOLDINGS S.A. <i>et al.</i> , ¹	: (Jointly Administered)
	:
Debtors and Reorganized Debtors	:
	:
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**REPLY IN SUPPORT OF
 AEROVÍAS DEL CONTINENTE AMERICANO S.A.
 AVIANCA’S OBJECTION TO CLAIM NUMBER 1729
FILED BY THE ASOCIACIÓN COLOMBIANA DE AVIADORES CIVILES**

¹ The Debtors and Reorganized Debtors in these chapter 11 cases, and each Debtor’s and Reorganized Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A) n/k/a HVA Associated Corp.; Aero Transporte de Carga Unión, S.A. de C.V. (N/A); AeroInversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Loyalty Bermuda Ltd. (N/A); AV Taca International Holdco S.A. (N/A); Aviacorp Enterprises S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int’l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaragüense de Aviación, Sociedad Anónima (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aéreo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors’ and Reorganized Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



Reorganized Debtors Aerovías del Continente Americano S.A. Avianca (“Avianca” or the “Reorganized Debtors”) hereby submit this reply (the “Reply”) to the *Response of Asociación Colombiana de Aviadores Civiles (“ACDAC”) to Objection of Aerovías del Continente Americano S.A. Avianca (“Avianca”) to Claim Number 1729* [Docket No. 2687] (the “Response”) and in support of Avianca’s *Objection of Aerovías Del Continente Americano S.A. Avianca to Claim Number 1729 Filed By the Asociación Colombiana De Aviadores Civiles* [Docket No. 2660] (the “Objection”), which objected to proof of claim numbered 1729 (the “Claim”) filed by the Asociación Colombiana de Aviadores Civiles (“ACDAC”). In support of the Reply, Avianca respectfully states as follows:

PRELIMINARY STATEMENT²

1. In its Claim, ACDAC asserted that its members were entitled to “monthly operational efficiency incentives and semiannual fuel bonuses . . . at 100% of the benefit levels paid to non-union members.” Claim, Addendum ¶ 3. Now that Avianca has established in its Objection that union and non-union members alike receive exactly the same efficiency and fuel bonuses, ACDAC’s Response introduces a new theory of recovery, based on a new interpretation of the governing documents, that has not been previously asserted in this Court. ACDAC’s claim premised upon this last-minute about-face is entirely unfounded; moreover, it is time-barred and precluded under principles of international comity.

2. Instead of seeking parity with non-union pilots, ACDAC now claims that its pilots are entitled to 100% of the maximum bonus amounts that *could* be earned if they met the highest levels of performance in each category, regardless of what level the pilots actually demonstrate. This new argument comes too late: the bar date has long passed. Moreover, this very same

² Capitalized terms not defined herein shall have the meanings set forth in the Objection.

argument has been rejected by multiple Colombian courts, and this Court should defer to those decisions. And even putting those barriers aside, ACDAC's Claim falls woefully short at the first step—*prima facie* validity—as ACDAC has again failed to meet its burden of proof.

RELEVANT BACKGROUND

3. On November 16, 2020, the Court entered an order establishing January 20, 2021 as the general bar date by which proofs of claim against the Debtors must be filed (the "Bar Date"). *See Order (I) Establishing Bar Dates for Filing Proofs of Claim, (II) Approving Proof of Claim Forms, Bar Date Notices, and Mailing and Publication Procedures, (III) Implementing Uniform Procedures Regarding 503(b)(9) Claims, and (IV) Providing Certain Supplemental Relief* [Docket No. 1180] (the "Bar Date Order").

4. On January 20, 2021, ACDAC filed its Claim for an unsecured, undetermined amount, alleging that Avianca is obligated to "pay monthly operational efficiency and semiannual fuel bonuses to ACDAC members at 100% of the benefit levels paid to non-union pilots" pursuant to Judgment T-069 and the 2017 Arbitration Award. Claim, Addendum ¶ 3. ACDAC attached to its Claim the full Judgment T-069 and an excerpt of the 2017 Arbitration Award. *See* Claim, Attachments A, B. Neither of these documents offers any support for ACDAC's new theory.

5. On October 19, 2021, ACDAC filed a limited objection [Docket No. 2237] (the "Plan Objection") to the Plan, taking issue with certain proposed cure amounts. (The Plan Objection was consensually resolved.) In its Plan Objection, ACDAC again noted, consistent with its Claim, that the 2017 Arbitration Award requires "that the payment of the operational efficiency incentive (monthly) and the payment of the fuel bonus (semi-annual) shall be paid in 100% of its corresponding value [i.e., the incentive and bonus amounts Avianca pays to nonunion pilots], pursuant to ruling T069 of 2015." Plan Objection ¶ 13 (bracketed text in original).

6. On March 9, 2022, the Reorganized Debtors objected to the Claim, and others, on the ground that it asserted an unliquidated or contingent claim and failed to assert a valid *prima facie* claim by indicating a certain amount. *See Reorganized Debtors' Sixteenth Omnibus Objection to Proofs of Claim* [Docket No. 2525]. (This omnibus objection was not tailored to ACDAC's Claim, and was withdrawn as to ACDAC's Claim without prejudice after conferring with ACDAC's counsel.) ACDAC filed a response [Docket No. 2550] (the "2022 Response"), noting that the efficiency and fuel bonuses were subject to "mandatory equalization" between ACDAC and non-union pilots and that ACDAC pilots were entitled to receive the full amount "paid to non-union pilots" (2022 Response ¶ 10), but that ACDAC believed (incorrectly, as it turns out) those equalizing payments had not yet been made. For example, the 2022 Response stated:

- "[Judgment T-069] orders Avianca to extend the benefits and increases contained in the 'Voluntary Plan of Benefits' to ACDAC pilots. Article XXVII of the [2017] Arbitration Award confirms that both the operational efficiency incentive and the fuel bonus are subject to this *mandatory equalization between ACDAC and non-union pilots*." *Id.* ¶ 9 (emphasis added).
- "Avianca has not begun paying these benefits to ACDAC pilots at 100% of their corresponding value (i.e., *the full amount in which these benefits are paid to non-union pilots*) following the issuance of the 2017 Arbitration Award. *See id.* par. 7. Nor has Avianca made additional payments to ACDAC pilots *to equalize the amounts* they received prior the 2017 Arbitration Award with *the full levels at which these benefits were paid to non-union pilots*." *Id.* ¶ 10 (emphasis added).
- "ACDAC thus believes that additional payments are required for *the equalization* mandated by Article XXVII of the Arbitration Award." *Id.* ¶ 11 (emphasis added).

ACDAC also contended that the information necessary for ACDAC to determine whether "additional payments [were] required for the equalization mandated" by the 2017 Arbitration Award was "solely in Avianca's possession." *Id.*

7. On November 9, 2022, Avianca shared the Avianca Incentive Payment Calculations with ACDAC. These calculations confirm that Avianca has applied a uniform approach for calculating Incentive Payments for all of its pilots irrespective of their union affiliations. *See*

Villota Decl. ¶ 11; Objection, Ex. F (Avianca Incentive Payment Calculations). ACDAC had the opportunity to review the Avianca Incentive Payment Calculations, but never raised any concerns that ACDAC pilots are entitled to more than what was reflected in the spreadsheets. Nonetheless, ACDAC declined to withdraw its Claim, leading Avianca to file its Objection in December 2022.

8. On January 6, 2023, ACDAC filed its Response. In its Response, ACDAC appears to concede that Avianca has paid ACDAC pilots the same as non-union pilots. *See* Response ¶¶ 12 (“Following Judgment T069, Avianca began applying the Incentives to ACDAC pilots as well as non-union pilots”), 30 n.4 (“these spreadsheets do appear to indicate the [sic] Avianca applies the same formula for all pilots”). But in that Response, ACDAC now claims—contrary to what it has asserted throughout these Chapter 11 cases—that the Compensation Decrees require Avianca to “pay ACDAC pilots at the *maximum level of pay for the Incentives.*” *Id.* ¶ 30 (emphasis added).

REPLY

9. Having abandoned its fact-oriented theory, ACDAC now claims that its pilots are entitled to 100% of the maximum possible level of Incentive Payments, regardless of their actual performance.

10. This is an about-face from arguments repeatedly submitted to this Court over the last two years. In filing its Claim nearly two years ago, in objecting to the Plan over one year ago, and in responding to a previous claim objection in the middle of last year, ACDAC consistently argued that its pilots were entitled to “the full levels at which these benefits [bonus payments] were paid to non-union pilots” (2022 Response ¶ 10), and that Avianca had an obligation to “equaliz[e]” payments between union and non-union pilots (*id.* ¶ 11). But now that Avianca has provided ACDAC with evidence that union and non-union pilots are, in fact, compensated under one incentive payment structure, with no distinction made regarding union membership, ACDAC has determined to present an alternative argument to the Court.

11. Gone is the demand that union and non-union pilots be paid equally (for they already are). ACDAC's new demand is that its pilots be paid *more* than non-union pilots, whose Incentive Payment compensation remains tied to performance metrics. But ACDAC's argument finds no support in the evidence it cites.

12. ACDAC bases this new theory on a single line in the 2017 Arbitration Award, which states the Incentive Payments for ACDAC pilots "shall be paid in *100% of its corresponding value*, pursuant to the ruling T069 of 2015." Response ¶¶ 14, 30 (emphasis added). According to ACDAC, "100% of its corresponding value" means 100% of the highest achievable bonus level.

13. ACDAC's interpretation is astonishing. There is simply no basis in the rulings ACDAC cites to conclude that ACDAC pilots should be treated differently from non-union pilots. Indeed, the holding of Judgment T-069 was that the same benefits plan (the Voluntary Plan of Benefits)—and, accordingly, the same Incentive Payments compensation structure—must be offered to union and non-union pilots alike. *See* Objection, Ex. C (Excerpt of Judgment T-069) (ordering Avianca to "extend the unionized workers [of ACDAC] and / or the employees who benefit from the collective agreement of that organization the benefits and increases established in the Voluntary Plan of Benefits"). And multiple Colombian courts interpreting Judgment T-069 have agreed that this judgment did not impose a discriminatory incentive structure whereby ACDAC pilots (and only ACDAC pilots) are guaranteed Incentive Payments at the 100% tier. *See* **Exhibits C, D, E, and G** (four Colombian Court Judgments, translated to English in relevant part).

14. The 2017 Arbitration Award did not change this. It simply affirms that Avianca is obligated to make the Incentive Payments "in accordance with judgment T069 of 2015"—meaning, on an equal basis to ACDAC and non-ACDAC members. *See* **Exhibit A** (2017

Arbitration Award) at 34. Indeed, the question of Incentive Payments was so well-settled that it was not even disputed by the parties in the vigorously-contested 2017 arbitration.

15. Accordingly, ACDAC's Claim must be disallowed for the following reasons: (1) ACDAC has completely failed to meet its burden of proof, (2) ACDAC's new Claim is untimely and procedurally improper, and (3) principles of international comity justify deference to the Colombian Courts.

I. ACDAC Fails to Meet its Burden of Proof.

16. ACDAC has not met its burden to establish *prima facie* validity of its Claim as that Claim has been amended through the Response. ACDAC attached no additional materials to its Response and has offered no additional evidence. As the Objection shifted the burden of proof to ACDAC and ACDAC has failed to meet that burden, the Claim should be disallowed.

17. In its Response, ACDAC contends that its attachment of Judgment T-069 and the 2017 Arbitration Award to its Claim satisfies the minimal threshold required for *prima facie* validity under Rule 3001(c). *See* Response ¶¶ 17-19. Nonsense. Those determinations nowhere address, let alone support, ACDAC's new claim.

18. ACDAC also contends that the 2017 Arbitration Award somehow interpreted Judgment T-069 as requiring Avianca to pay a guaranteed 100% bonus to ACDAC pilots. *See* Response ¶ 30. This misconstrues entirely the language of the 2017 Arbitration Award: with respect to Incentive Payments, that award simply confirmed that Avianca was obligated to comply with Judgment T-069. It did not purport to expand Avianca's obligations under Judgment T-069. *See **Exhibit A*** (2017 Arbitration Award) at 34 ("It is understood that the payment of the operational efficiency incentive (monthly), and the payment of the fuel premium (six-monthly) will be paid at one hundred percent of their corresponding value, *in accordance with judgment T069 of 2015.*") (emphasis added).

19. Courts are clear that Rule 3001 requires that any attached documentation must actually provide support for the claim: merely attaching documents that do not address the claim does nothing. *See In re Minbatiwalla*, 424 B.R. 104, 111 (Bankr. S.D.N.Y. 2010) (“Rule 3001 requires a claimant to attach **supporting** documentation to a proof of claim”) (emphasis added); *see also In re Lundberg*, 2008 WL 4829846, at *2 (Bankr. D. Conn. Oct. 27, 2008) (“If the claimant fails to allege facts in the proof of claim that are **sufficient to support** the claim, *e.g.*, by failing to attach **sufficient** documentation to comply with Fed. R. Bankr. P. 3001(c), the claim is . . . deprived of any *prima facie* validity which it could otherwise have obtained”) (emphasis added).

20. In *In re Avaya, Inc.*, a case ACDAC relies on, the court disallowed a claim for legal fees because the documents attached to the proof of claim—namely, a “Settlement Term Sheet, a New York Supreme Court decision and an order enforcing the Settlement Term Sheet and the Notice of Entry of Judgment”—did not actually reflect any debt of legal fees to which the claimant was allegedly entitled. 608 B.R. 366, 369 (Bankr. S.D.N.Y. 2019). Likewise, here, ACDAC’s mere attachment of the two Compensation Decrees does not satisfy Rule 3001 as those documents do not factually or legally support ACDAC’s Claim.

21. ACDAC’s Claim must therefore be disallowed for lack of supporting evidence.

II. ACDAC’s New Claim is Time-Barred.

22. Under section 502(b)(9) of the Bankruptcy Code, a proof of claim that is not timely filed will be deemed disallowed. *See* 11 U.S.C. § 502(b)(9). The Bar Date Order provides that any party who fails to timely file a proof of claim by the Bar Date “is forever barred, estopped and enjoined from asserting such claims against any of the Debtors . . . and the Debtors and their property shall be forever discharged from any and all indebtedness or liability with respect to such claim.” Bar Date Order ¶ 10.

23. This bar applies to newly-asserted theories of recovery that were not originally pleaded in the proof of claim. *See Integrated Res., Inc. v. Ameritrust Co., N.A. (In re Integrated Res., Inc.)*, 157 B.R. 66, 70 (S.D.N.Y. 1993) (“the court must subject post bar date amendments to careful scrutiny to assure that there was no attempt to file a new claim under the guise of amendment”); *In re Asia Glob. Crossing, Ltd.*, 324 B.R. 503, 507 (Bankr. S.D.N.Y. 2005) (“The claimant may not, however, through the guise of an amendment, circumvent the bar date by asserting a new claim”). The Bar Date Order therefore bars ACDAC from asserting, at this late date, a new claim.

24. ACDAC’s Claim, as filed, focused narrowly and exclusively on securing *equal* payments for union pilots and non-union pilots. ACDAC asserted a claim for the amount that would equalize any discrepancy in compensation, and reiterated that request in a number of subsequent filings made to this Court. *See, e.g.*, Claim, Addendum ¶ 3 (“Debtor is obligated under [Judgment T-069 and the 2017 Arbitration Award] to pay monthly operational efficiency incentives and semiannual fuel bonuses to ACDAC members *at 100% of the benefit levels paid to non-union pilots*”); 2022 Response ¶ 10 (seeking “additional payments to ACDAC pilots *to equalize the amounts* they received prior the 2017 Arbitration Award with *the full levels at which these benefits were paid to non-union pilots*”) (emphasis added). ACDAC now understands that its pilots have, in fact, been compensated on equal footing with non-union pilots, and concedes as much in its Response. *See* Response ¶¶ 12, 14, 25, 30 n.4. This concession resolves ACDAC’s Claim as originally presented to the Court.

25. Moreover, ACDAC’s belated claim is procedurally improper, as ACDAC did not move to amend its Claim. *See In re B456 Sys., Inc.*, 2017 WL 6603817, *15 (Bankr. D. Del. Dec. 22, 2017) (holding claimant to the “original claim of damages set forth in its proof of claim”

where claimant introduced a new theory of recovery on the “eve of trial” in its briefing and claimant did not seek to amend the Claim).

26. Even if ACDAC had formally moved to amend its Claim, ACDAC still would not satisfy the applicable legal standard. Courts apply a two-step inquiry when considering whether to allow post-bar date amendments to proofs of claim. See *In re Residential Capital, LLC*, 507 B.R. 477, 494 (Bankr. S.D.N.Y. 2014) (Glenn, J.). First, the court must determine “whether there was a timely assertion of a similar claim or demand evidencing an intention to hold the estate liable,” meaning that the amendment must “relate back” to the original proof of claim. *Id.* (citing *Midland Cogeneration Venture Ltd. P’ship v. Enron Corp. (In re Enron Corp.)*, 419 F.3d 115, 133 (2d Cir. 2005)). If the “relation back” inquiry is satisfied, courts will then examine whether it would be equitable to allow the amendment. *In re Residential Capital, LLC*, 507 B.R. at 494. Equitable factors such as “bad faith or dilatory behavior on the part of the claimant” or “the justification for the inability to file the amended claim at the time the original claim was filed” will be considered. *Id.*

27. Here, ACDAC’s argument that the “100% of its corresponding value” language from the 2017 Arbitration Award requires paying ACDAC pilots the *maximum possible* Incentive Payment payouts, regardless of actual performance, is a brand-new claim before this Court. Even if this new claim for additional bonus amounts “relates back” to ACDAC’s original proof of claim (which seeks only *equal* bonus amounts), it would not be equitable to permit ACDAC to amend its Claim. ACDAC easily could have presented its “maximum possible payout” interpretation earlier in these cases: ACDAC made the same argument in Colombia as long ago as 2015. See **Exhibit E** (ACDAC’s Request to the 39th Municipal Court) (“[Avianca] must recognize the economic values paid to pilots NOT unionized *and in no way must the regulatory conditioning*

be applied (Achievement Factor), clarifying that the [Voluntary Benefits Plan] does not establish conditions on an individual basis for the worker to become entitled to this.”) (emphasis added); **Exhibit H** (ACDAC’s Request to the 72d Municipal Court) (same). ACDAC had appeared to abandon this argument after Colombian courts repeatedly rejected it. *See infra* at III. There is no reason why, if ACDAC still believed in the “maximum possible” interpretation, it could not have included it in the original Claim it filed in 2021 or any of its subsequent pleadings.

28. ACDAC’s claim for the maximum possible Incentive Payment payouts, as it was not included in its Claim, should be denied as time-barred.

III. Colombian Courts Have Confirmed That Avianca Has Complied with Judgment T-069.

29. In seeking a Claim for amounts above and beyond those paid to union pilots, ACDAC asks this Court to interpret a judgment of the Colombian Constitutional Court—Judgment T-069—in a manner different than lower Colombian courts have already done. As noted in the Objection and as described in the Colombian Court Judgments, multiple Colombian courts have determined that Avianca is required to offer identical incentive pay to ACDAC members and non-members, meaning that ACDAC pilots are only entitled to 100% of what they actually *earned*—an entitlement identical to that of non-ACDAC pilots. *See Exhibit F* (Judgment of the 39th Municipal Court) (finding that “what is here petitioned lies outside the scope of protection granted in [Judgment T-069], which appears to have been complied with, taking into account that the company AVIANCA S.A. proceeded to recognize the emoluments offered in the Voluntary Benefits Plan without distinction among all workers, regardless of whether they are unionized or not”), **Exhibit G** (Judgment of the 67th Municipal Court)³ (finding Avianca’s “intention, as has been demonstrated, has been to recognize and pay each plaintiff . . . according to their legal

³ This judgment was rendered on ACDAC’s Request to the 72d Municipal Court, attached as **Exhibit H**.

entitlements”); *see also* **Exhibit C** (Judgment of the 11th Municipal Court) (finding “no basis to impose a penalty” on Avianca for non-compliance with Judgment T-069), **Exhibit D** (Judgment of the 34th Municipal Court) (finding “no elements of evidence that would allow a possible breach of the ruling of [Judgment T-069]”). Those decisions should be respected based on principles of international comity, especially as the Colombian courts have far greater familiarity with Colombian labor law than does this Court. *See In re Nat. Bank of Anguilla (Private Banking Trust) Ltd.*, 580 B.R. 64, 94 (Bankr. S.D.N.Y. 2018) (Glenn, J.) (“Applying international comity among courts . . . reflects the proper respect for litigation in and the court of a sovereign nation, fairness to litigants, and judicial efficiency.”) (internal quotations omitted); *see also Pravin Banker Assocs. v. Banco Popular Del Peru*, 109 F.3d 850, 854 (2d Cir. 1997) (“Under the principles of international comity, United States courts ordinarily . . . defer to [judicial acts and] proceedings taking place in foreign countries, allowing those acts and proceedings to have extraterritorial effect in the United States” unless doing so “would be contrary to the policies or prejudicial to the interests of the United States.”); *In re SLS Capital, S.A.*, 2015 Bankr. LEXIS 2468, at *25 (Bankr. S.D.N.Y. July 20, 2015) (granting comity to a Luxembourg court order interpreting its own liquidation order, as this was “consistent with the principles of comity because there was no evidence that the proceedings in the Luxembourg [c]ourt were not fair and impartial”).

30. ACDAC contends that the judgments rendered by Colombian Courts are not relevant, for they interpret Judgment T-069 rather than the 2017 Arbitration Award. *See* Response ¶ 37. But as discussed above, the 2017 Arbitration Award simply confirmed that Avianca was obligated to comply with Judgment T-069 and did not purport to expand Avianca’s obligations thereunder. *See Exhibit A* (2017 Arbitration Award) at 34 (“It is understood that the payment of the operational efficiency incentive (monthly), and the payment of the fuel premium (six-monthly)

will be paid at one hundred percent of their corresponding value, *in accordance with judgment T069 of 2015.*”) (emphasis added). Avianca had in fact been complying with that obligation as of the time of the 2017 Arbitration Award, as several Colombian courts recognized. *See, e.g., Exhibit F* (Judgment of the 39th Municipal Criminal Court) (“AVIANCA S.A. proceeded to recognize the emoluments offered in the Voluntary Benefits Plan without distinction among all workers, regardless of whether they are unionized or not, as verified by the payslips submitted in the case”); *Exhibit G* (Judgment of the 67th Municipal Court) (“[Avianca’s] intention, as has been demonstrated, has been to recognize and pay each plaintiff in the incident, according to their legal entitlements”).

31. ACDAC’s argument that no Colombian court decision after the 2017 Arbitration Award speaks to this issue is also disingenuous. All of the court cases the Reorganized Debtors cite are the result of ACDAC-initiated litigation that sought to enforce provisions of Judgment T-069 (*see Exhibits B, E,*⁴ *H*), and all such cases find that Avianca was in fact in compliance (*see Exhibits C, D, F, G*). But ACDAC never sought to enforce Judgment T-069 following the issuance of 2017 Arbitration Award. ACDAC’s lack of action on this subject following the 2017 Arbitration Award speaks volumes—it never attempted to make the argument it belatedly presents to this Court before any Colombian court. If it truly believed the 2017 Arbitration Award *altered* the instruction of Judgment T-069 in some way, it would have brought that argument before a Colombian court.

32. As Colombian courts confirm that Avianca has offered identical Incentive Payments to union and non-union pilots, and as no Colombian court has agreed with ACDAC that

⁴ As ACDAC’s requests made to the 34th Municipal Court and 39th Municipal Court were identical, only one is attached here. *See Exhibit E* (ACDAC’s Request to the 39th Municipal Court).

its pilots are entitled to greater incentive compensation than non-union pilots, this Court should defer to the decisions of the Colombian courts regarding these matters.

NOTICE

33. Notice of the Reply has been provided to (i) ACDAC to the addresses and email addresses listed on its Claim; (ii) the Office of the U.S. Trustee; and (iii) all other parties entitled to notice pursuant to Bankruptcy Rule 2002. The Reorganized Debtors submit that no other or further notice need be given.

RESERVATION OF RIGHTS

34. The Reorganized Debtors reserve the right to amend, modify, or supplement this Reply, and to file additional replies or objections to the Claim on any other ground that bankruptcy or non-bankruptcy law permits. In the event that ACDAC pursues the Claim in any forum other than this Court, the Debtors also expressly reserve the right to contest the Claim on the grounds set forth in this Reply, the Objection, or on any other ground.

CONCLUSION

WHEREFORE, the Reorganized Debtors respectfully request that the Court (i) sustain the Objection, (ii) disallow the Claim in its entirety and order it expunged from the claims register, and (iii) grant such other and further relief as the Court may deem just and appropriate.

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Dated: New York, New York
January 18, 2022

/s/ Evan R. Fleck

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Exhibit A to Reply

2017 Arbitration Award

**MANDATORY ARBITRATION TRIBUNAL: AEROVIAS DEL CONTINENTE AMERICANO
S.A. (“AVIANCA”) AND ASOCIACIÓN COLOMBIANA DE AVIADORES CIVILES
 (“ACDAC”)**

PERSONAL NOTIFICATION PROCEDURE. In Bogotá, DC, on the eleventh (11th) day of the month of December of the year two thousand and seventeen (2017), at the address Calle 70, #7 - 30 Piso 6 in this city, the practice of LOPEZ & ASOCIADOS ABOGADOS, in my capacity as Secretary of the MANDATORY ARBITRATION TRIBUNAL OF AEROVIAS DEL CONTINENTE AMERICANO S.A. “AVIANCA” and ASOCIACIÓN COLOMBIANA DE AVIADORES CIVILES “ACDAC”, I personally notified Dr. ANGÉLICA MARÍA CARRIÓN BARRERO, of ID Card #65761658 and Professional ID #95278 of the Higher Judiciary Council, in her capacity as legal representative of AVIANCA S.A., of the Arbitral Award issued on December 7, 2017, through which the aforementioned collective dispute was decided. A copy is presented of the Award, comprising thirty-seven (37) pages, and of the exception and/or clarification of the individual vote of Dr CARLOS ERNESTO MOLINA MONSALVE, on seven (7) pages.

The Notified Party.

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[Signature]

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ID Card [Handwritten text]

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The Secretary.

[Signature]

ANGEL ALFONSO BOHORQUEZ MORENO

Bogota D.C., December 11, 2017

Doctors

CARLOS ERNESTO MOLINA MONSALVE

Arbitrator

LUIS ENRIQUE CUEVAS VALBUENA

Arbitrator

JAIME PINZÓN QUINTERO

Arbitrator

ARBITRAL TRIBUNAL BETWEEN ACDAC AND AVIANCA S.A.

By hand

Re.: Request for a copy of the file.

I, ANGÉLICA MARÍA CARRIÓN BARRERO, holder of ID Card 65761658, of Ibagué, with Professional ID Card No. 95,278 issued by the Higher Judiciary Council, in my capacity as legal representative of AEROVÍAS DEL CONTINENTE AMERICANO S.A. - AVIANCA S.A., respectfully request, at my expense, that a copy of the entire case file in your possession be issued with regard to the collective dispute between the company AVIANCA S.A. and the trade union organization ACDAC.

[Handwritten text]

Regards,

[Signature]

ANGÉLICA MARÍA CARRIÓN BARBERO

ID Card 65761658 of Ibagué.

Professional ID 95278 of the Higher Judiciary Council.

**MANDATORY ARBITRATION TRIBUNAL: AEROVIAS DEL CONTINENTE AMERICANO
S.A. (“AVIANCA”) AND ASOCIACIÓN COLOMBIANA DE AVIADORES CIVILES
 (“ACDAC”)**

In Bogotá D.C., on the seventh (7th) day of December of the year two thousand and seventeen (2017), at 4:30 pm, at the headquarters where this Corporation operates, the Drs JAIME AUGUSTO PINZON QUINTERO, LUIS ENRIQUE CUEVAS VALBUENA and CARLOS ERNESTO MOLINA MONSALVE met as arbitrators, with the assistance of the secretary ANGEL ALFONSO BOHORQUEZ MORENO.

In accordance with the terms set out at the meeting held yesterday (December 6 of this year, minutes #5), the President proceeds to present for consideration the text of the Arbitral Award defining this collective Labor dispute, in the following terms:

In this Arbitral Award, the parties ASOCIACIÓN COLOMBIANA DE AVIADORES CIVILES “ACDAC” will be referred to as **ACDAC**, and when **AVIANCA** is stated, unequivocal reference is being made to AEROVIAS DEL CONTINENTE AMERICANO AVIANCA S.A.

I. BACKGROUND.

1.1. On August 8, 2017, ACDAC submitted a dossier of petitions to AVIANCA, by means of communication designated on that date, stating:

“...I wish to inform you of the decision to withdraw the Dossier of Petitions presented on February 04, 2016.

I likewise present the update to the new dossier of petitions summarizing the aspirations of the Civil Aviators professionally linked to the company AVIANCA S.A. ...”.

The dossier of petitions comprises the Preamble, Special Chapter and clauses identified from number 137 up to 218 (Book 2, pages 1 to 33).

The name of the different clauses is:

CLAUSE 137. OBLIGATION TO COMPLY WITH AVIATION STANDARDS **CLAUSE 138. PARTITION OF COMMITTEES** **CLAUSE 139. INVESTIGATION OF ACCIDENTS, INCIDENTS OR OPERATIONAL EVENTS ON THE COMPANY'S AIRCRAFT** **CLAUSE 140. CONTROL OF EXPOSURE TO IONIZING RADIATION, PARAGRAPHS 1 AND 2** **CLAUSE 141. SCHEDULING OF SUCCESSIVE FLIGHTS.** **CLAUSE 142. MINIMUM REST PRIOR TO CONTINUOUS NIGHT FLIGHTS.** **CLAUSE 143. OPERATIONAL DOCUMENTATION AND MANUALS** **CLAUSE 144. DEFINITION OF WORKING HOURS** **CLAUSE 145. REGULATION OF WORKING HOURS** **CLAUSE 146. RECOGNITION FOR WORKING TIME** **CLAUSE 147. DAYS IN LIEU.** **CLAUSE 148. MONTHLY PUBLICATION OF ITINERARIES** **CLAUSE 149. TRAINING SCHEDULE.** **CLAUSE 150. ITINERARY AND VACATION COMMITTEES. PARAGRAPHS 1 and 2** **CLAUSE 151. PROMOTIONS AND ATR**

COPILOT TECHNICAL SCALE. **CLAUSE 152.** EQUALITY SALARY BETWEEN COPILOTS
CLAUSE 153. MATERNITY LEAVE **CLAUSE 154.** PATERNITY LEAVE. **CLAUSE 155.** PAY
DURING MATERNITY LEAVE. **CLAUSE 156.** LEAVE IN THE EVENT OF MISCARRIAGE,
STILL BIRTH OR DEATH OF NEWBORN BABY. **CLAUSE 157.** MATERNITY LEAVE IN THE
EVENT OF ADOPTION **CLAUSE 158.** ASSIGNMENTS FOR PILOT MOTHERS.
CLAUSE 159. APPLICATION FOR VACANCIES AND/OR PROMOTIONS BY PILOT
WOMEN ON MATERNITY LEAVE. **CLAUSE 160.** COMPENSATION FOR CRECHE,
NURSERY AND/OR PRESCHOOL EXPENSES **CLAUSE 161.** EXTRAORDINARY BONUS
FOR CLOSURE OF NEGOTIATION **CLAUSE 162.** SCHEDULE OF SPECIAL DATES
December dates. Birthday. Paragraph. **CLAUSE 163.** DAYS ASSIGNED FOR PAPERWORK
REQUIRED TO PERFORM PROFESSIONAL DUTIES. **CLAUSE 164.** EXTRAORDINARY
ALLOWANCE FOR CHRISTMAS AND NEW YEAR **CLAUSE 165.** CHRISTMAS DINNER
AND NEW YEAR **CLAUSE 166.** REMUNERATION FOR INSTRUCTORS **CLAUSE 167.**
SENIORITY PARAGRAPHS 1 and 2 **CLAUSE 168.** RETIREMENT PLAN AND SAVINGS
FUND. **CLAUSE 169.** EBITDA BONUS Paragraph **CLAUSE 170.** VARIATION OF
ASSIGNMENTS AND DAYS OFF.- **CLAUSE 171.** ONE (1) DAY OF ADDITIONAL VACATION
PER YEAR WORKED **CLAUSE 172.** VACATION BONUS **CLAUSE 173.** DOMESTIC AND
INTERNATIONAL ROUTES FOR ACTIVE AND RETIRED CREW MEMBERS **CLAUSE 174.**
RISK PREMIUM **CLAUSE 175.** RELOCATION PENALTY **CLAUSE 176.** CREW MEMBERS
ACQUIRING PENSION OR RETIREMENT. Paragraph **CLAUSE 177.** RIGHT TO MEDICAL
SERVICE. Paragraph **CLAUSE 178.** MEDICAL SERVICE FOR RELATIVES **CLAUSE 179.**
TICKET RIGHTS Paragraphs 1 and 2 **CLAUSE 180.** UNALLOCATED ADDITIONAL CREW
PLACES **CLAUSE 181.** PARKING LOT AT ALL BASES **CLAUSE 182.** EXTRAORDINARY
BONUS FOR LOSS OF LEAVE RESULTING FROM PERMANENT DISABILITY.
CLAUSE 183. MOBILIZATION **CLAUSE 184.** PERMANENCE OF INSTRUCTORS AND
INSPECTORS **CLAUSE 185.** SELECTION OF ADMINISTRATIVE STAFF **CLAUSE 186**
NON-DISCRIMINATION COMMITMENT AND GUARANTEE OF EQUALITY Paragraphs 1
and 2. **CLAUSE 187.** PRESENTATION OF ACDAC TO NEW CREW MEMBERS IN ON-
BOARDING AND SCHOOL OF OPERATIONS. **CLAUSE 188.** LEAVE FOR NEGOTIATORS
CLAUSE 189. IMPACT ON TRADE UNION LEAVE. **CLAUSE 190.** TRAVEL FOR UNION
USE. **CLAUSE 191.** RIGHT TO INSTITUTIONAL INFORMATION. **CLAUSE 192.** LEAVE
FOR COMPLAINTS, TECHNICAL MATTERS AND SAFETY COMMISSION **CLAUSE 193.**
PENALTIES FOR THE COMPANY IN FAVOUR OF THE CREW MEMBER **CLAUSE 194.**
REIMBURSEMENT OF EXPENSES INCURRED BY ACDAC FOR LEGAL PROCEEDINGS,
ADMINISTRATION AND OTHER FACTORS CAUSED BY ACTIONS IN DEFENSE OF THE
COLLECTIVE AGREEMENT. **CLAUSE 195.** CORPORATE UNIT **CLAUSE 196.**
TELEWORKING Paragraphs 1, 2 and 3. **CLAUSE 197.** LUGGAGE. **CLAUSE 198.** AVERAGE
ALLOWANCE **CLAUSE 199.** ENTRY TO VIP LOUNGES **CLAUSE 200.** WORKING
ELEMENTS FOR COMMUNICATIONS IN TURBOPROP OPERATIONS **CLAUSE 201.**
SALARIES Paragraphs 1, 2 and 3 **CLAUSE 202.** INCREMENTS Paragraph. **CLAUSE 203.**
PRESENTATION OF WEIGHT AND BALANCE CALCULATION WITH FINAL DATA.
CLAUSE 204. MINIMUM CREW TRANSIT TIMES. **CLAUSE 205.** MINIMUM CREW PER
AIRCRAFT **CLAUSE 206.** COMPENSATION DURING THE VACATION PERIOD.
CLAUSE 207. FLIGHT BOOKS (ON-BOARD LOGBOOK) **CLAUSE 208.** AIR TICKETS
WITHOUT ANY LIMITATION. **CLAUSE 209.** PAYMENT OF DOCUMENTS. **CLAUSE 210.**
ALLOWANCE CARD **CLAUSE 211.** WITHHOLDING OR PAYMENT OF TAX ON ANY ITEM
CONSTITUTING SALARY. **CLAUSE 212.** PLACE TO EAT. **CLAUSE 213.** EXTRA CREW.
CLAUSE 214. ALLOCATION AND PROVISION OF RESERVATIONS. **CLAUSE 215.**

REQUIREMENT TO REGISTER THE SCALE **CLAUSE 216**. MAXIMUM FLIGHT TIME
CLAUSE 217. NOTICE POLICY **CLAUSE 218**. VALIDITY.

1.2. AVIANCA did not, at the appropriate opportunity, repudiate the existing collective agreement.

1.3. The direct arrangement stage began on August 23, 2017 (Book 2, page 134).

1.4. On September 11, 2017, and following completion of the direct arrangement stage (Book 2, pages 140 and 141), the parties signed the corresponding minutes, which established, among other aspects:

“... Deem the direct arrangement stage to be concluded today, September 11, 2017. The direct arrangement stage ends without agreement between the parties”

1.5. The Ministry of Labor on September 28, 2017, issued Decision 3744, which resolved to CONVENE a Mandatory Arbitration Tribunal to examine the collective dispute between AVIANCA and ACDAC, and also called on the parties to appoint the arbitrators for each of them (main book, pages 1 and 2).

1.6. The Ministry of Labor, by means of Decision 4147, dated October 23, 2017, decided to establish the members of the Mandatory Arbitration Tribunal to decide this dispute, as follows:

For the company: Dr CARLOS ERNESTO MOLINA MONSALVE.

For the Trade Union: Dr LUIS ENRIQUE CUEVAS VALBUENA.

Third Arbitrator: Dr ELSY DEL PILAR CUELLO CALDERON.

1.7. Noting that Dr ELSY DEL PILAR CUELLO CALDERON declined to be appointed, the Ministry of Labor proceeded to draw lots to determine the name of the third arbitrator. Dr JAIME AUGUSTO PINZON QUINTERO, appointed by Decision 4438 of November 8, 2017 and notified on November 10, 2017, was ultimately chosen.

1.8. The Arbitrators who will definitively decide the dispute duly took up their positions.

II. TRIBUNAL PROCEEDINGS.

2.1. The Tribunal was inaugurated in Bogotá, D.C., on November 22, 2017, appointing as President Dr JAIME AUGUSTO PINZON QUINTERO and as Secretary the Lawyer ANGEL ALFONSO BOHORQUEZ MORENO, who was sworn in under oath upon taking up his role. At the inaugural session (main book, pages 78 to 82), the following was determined:

- That the venue and secretarial office of the Tribunal will operate at the address Calle 69, 4 - 48, Oficina 503, Bogotá D.C.

- Request that the Internal Labor Relations Working Group of the Ministry of Labor send all the background to the conflict to form part of the case file.

- Request that the parties submit all the background to the conflict.

- Hear the representatives of ACDAC and AVIANCA on November 27, 2017, at 9:00 a.m. and 11:00 a.m. respectively.

2.3. The Tribunal studied the text of each and every one of the challenges and impediments formulated or presented by ACDAC and resolved to REJECT them outright as being extemporaneous, as may be seen in the inaugural minutes and that identified as number 2 (main book, pages 78 to 82 and 130 to 132).

2.4. The Trade Union Organization ACDAC did not answer the summons at 9:00 a.m. on November 27, 2017, and did not explain its absence or request the postponement of the hearing. However, it submitted documentation contained in book 3 on 384 pages. Nonetheless, this Tribunal, in order to guarantee due process, intervention and the right of defense, again summonsed them for November 4, 2017, at 11:00 a.m., as shown in the main book, pages 360 to 362. They stated that they were unable to attend on that date because of advanced disciplinary proceedings, and submitted new documents contained on pages 326 to 330 of the main book.

The Tribunal must emphasize that all the documents submitted by ACDAC were analyzed, assessed and taken into consideration for the present case, which is why one may understand ACDAC to have tacitly given this Tribunal its guarantee.

2.5. AVIANCA attended the session to which they were summoned, by means of a legal representative and several officials, and gave an extensive presentation connected with the general situation of the country's economy, and in particular that of the Company; the state of the national and international aviation market, the Company's competitors; the equipment that it operates; the general employment situation presented by AVIANCA and the negotiation process, and enclosed all documents included in the case file (main book, pages 135 to 239).

It should be noted that once the intervention of the spokespersons of AVIANCA had been completed, the Tribunal decided to raise the concerns on the part of the Arbitrators and, in order to be absolutely certain of the responses and so be able to assess them properly, decided to establish evidence of all the above, by means of a recording that was included in the case file on the CD seen on page 134 of the main book.

2.6. At subsequent sessions, the Arbitrators examined the arguments of the parties, and the dossier of petitions, and reviewed the minutes signed at the direct settlement stage; the administrative acts issued by the Ministry of Labor, connected with the announcement and inauguration of this Arbitration Tribunal; the background to the dispute; the collective agreement in force, the collective pact; the financial situation of the Company; the records decreed and argued to as evidence, corresponding to the conversations and agreements reached by the parties in the presence and with the mediation of the Ministry of Labor; the various CDs included in the case file, demonstrating various actions, including the involvement of the spokespersons of AVIANCA; multiple press reports connected with the handling of the dispute; the responses by the parties to the demands for information from the Tribunal, and electronic communications submitted and/or sent by the parties.

IV. CONSIDERATIONS OF THE TRIBUNAL.

For the purposes of issuing the Arbitral Award to resolve this collective dispute, the Tribunal took into consideration the statements made by the Constitutional Court in judgment T-069 of 2015, which obligated each and every member of the ACDAC Trade Union Organization to receive the same and equal benefits enjoyed by non-unionized workers in the so-called VOLUNTARY BENEFITS PLAN ('PLAN VOLUNTARIO DE BENEFICOS', or 'PVB').

In this ruling, the Constitutional Court upheld the right of Association and Collective Bargaining, which had been violated by AVIANCA, highlighting in paragraph nine the following:

“INSTRUCT the AVIANCA Company that henceforth, when entering into pacts and collective agreements governing working conditions, both for non-unionized workers signing such pacts and for unionized workers, it must REFRAIN from establishing working conditions in such agreements that imply discrimination against unionized workers, and from adopting policies intended to discourage workers from joining or remaining in the trade union”.

In the present dispute, one might imagine in principle that AVIANCA had attempted to evade compliance with the order of the Constitutional Judge and/or seek mechanisms to discourage worker membership of the ACDAC trade union organization.

It is indeed possible to infer that when Collective Bargaining was entered into, before the Collective Agreement, which was subsequently offered and/or extended to all pilots of the Company, unless they renounced it (Clause 2), they were being discouraged from joining ACDAC, and/or that when this new pact establishes, in Clause 5, Avianca's obligation and commitment that if it is forced or committed to recognize benefits greater than those of the pact, it will, in accordance with the principles of equality, freedom and favorability, apply those provisions that are more favorable to the latter and **“FOR THIS PURPOSE THE CORRESPONDING AGREEMENTS WILL BE SIGNED, IF NECESSARY”**, that the aim is potentially to cause members to leave and/or discourage them from joining the Trade Union Organization.

However, **ALL OF THIS IS UNDERMINED** by the attitude and position adopted by AVIANCA within the present conflict, as expressed in the different proposals, benefits and increases presented by its representatives through the stages of the conflict, and in the substantial mediation carried out by the Minister of Labor, Dr GRISELDA JANETH RESTREPO GALLEGU.

One example of the above is the written proposal submitted on September 26, 2017 by AVIANCA to the ACDAC, in which clause one, GENERAL CONSIDERATIONS, item 3, indicated:

“In furtherance of the foregoing, if there are differences in salaries or benefits between what is agreed in the present agreement and what has previously been recognized, it will proceed to recognize AND PAY ANY DIFFERENCE THAT MAY EXIST, demonstrating thereby its intention to implement and/or agree better benefits for the unionized workers, with respect to the terms established in the collective pact”*

Indeed, the free and sovereign will of the representatives of the parties, exhibited during the negotiation period, is decisive for this Arbitral Tribunal. AS THEY ESTABLISH THE CRITERION OF EQUITY AND EQUALITY THAT EACH OF THEM IS WILLING TO ASSUME AND THAT REPRESENT THE REFERENCE FRAMEWORK FOR OUR DECISION.

It is therefore important to stress that the proposals and attitude assumed by the AVIANCA negotiators always referred to proposing some NEW benefits and/or clauses for ACDAC members and even, regarding proposals and/or commitments THAT EXCEEDED, in some cases, those provided for in the collective pact.

These negotiators and representatives of the Company, as with their proposals and/or pre-agreements, must be taken into consideration by this Tribunal, since they start out from the constitutional principle of good faith, from the primacy of reality over formality, but above all they are governed by the provisions of Article 2 of Act 39 of 1985, which indicates.

*"The negotiators of the dossiers of petitions must be vested with full powers that are presumed to allow them celebrate and sign on behalf of the parties they represent any agreements to be reached at the stage of direct arrangement, **WHICH ARE NOT OPEN TO RECONSIDERATION OR AMENDMENT AT LATER STAGES OF THE COLLECTIVE CONFLICT**".*

Although it is true that, within the stages of collective bargaining, it is possible to modify and/or restate certain proposals, it is no less true that in order to delimit the equity and scope of the commitments entered into by AVIANCA, consideration must be given to the verbal and/or written consensus that existed within this.

As a result, within the evidentiary scope that must prevail at this Arbitral Tribunal, statements, testimonies, documents, emails, promises, press, radio or television reports will be taken into account, and with the corresponding evidentiary value, *SINCE THEY ARE DERIVED FROM THE WILL AND EXPRESSION OF EACH OF THE PARTIES.*

In the case in question, and to comply with the ruling of the aforementioned Constitutional Court, AVIANCA signed on March 31, 2017, a COLLECTIVE BARGAINING AGREEMENT (collective pact), effective from April 1, 2017, until March 31, 2020, the benefits, prerogatives, increases, both economic and in kind, of which have been recognized for the members of ACDAC in order to comply with equality between the Company's employees, independently of the source of regulations enshrining them.

It is clear that AVIANCA established a regulatory framework called the VOLUNTARY BENEFITS PLAN that was applied from the year 2005 up until March 31, 2017 and which immediately (April 1, 2017) applied the benefits of the so-called COLLECTIVE LABOR AGREEMENT.

It is important to emphasize that any type of prerogative or salary increase that has been granted to unionized workers belonging to ACDAC must necessarily follow the same principle of equality enshrined in judgment T069 of 2015, *AND THUS ON NO GROUNDS MAY BENEFITS BE REDUCED AND/OR EXISTING BENEFITS AMENDED BY VIRTUE OF THE ISSUANCE OF THIS ARBITRAL AWARD.*

As a result, any increase decreed in this Award must be IMPUTABLE to any values, increases and/or benefits received at the due time, to avoid the possibility of a double payment.

Once the stage of direct arrangement had been completed, the Ministry of Labor proceeded to convene the parties to establish dialogues, which would allow the Company and the ACDAC Trade Union to reach agreements to end the conflict and allow the lifting of the cessation of activities. In developing these approaches, the parties exchanged numerous different proposals, as may be seen in writing in book 1, pages 1 to 102.

In order to adopt the determination with regard to the dossier of petitions, as this is an economic conflict or a conflict of interests, the Tribunal relies, among others, on the principle of EQUITY and EQUALITY, the case-law guidance of the Supreme Court of Justice and the Constitutional Court, and the provisions of Article 458 of the Substantive Labor Code, which provides:

"their ruling cannot affect the rights or powers of the parties recognized by the National Constitution, by laws or by the conventional standards in force..."

It should lastly be emphasized that the decisions adopted by the Tribunal took into consideration the judgments of the Labor Law Chamber of the High Court of Justice, including in particular: case number 5501, of December 4, 2012; SL 17138, 2015; SL 17654, 2015; SL 3266, 2016 and SL 2034, 2016.

The Tribunal clarifies that the Arbitral Award is made within the term indicated in Article 459 of the Substantive Labor Code, which establishes ten (10) days which, counting from the date of Inauguration on November 22, 2017 (minutes #1), would end on 5 December of the same year, although we must exclude from this period Monday 4 and Tuesday 5, on which sessions could not be held, due to the accredited health problems of Dr LUIS ENRIQUE CUEVAS VALBUENA, as a result of which the SUSPENSION OF TERMS was ordered, due to circumstances of force majeure.

III. DECISION

On the basis of the aforementioned actions and considerations, the Arbitrators decide as to the content of the dossier of petitions, in the same order in which the clauses were presented, as follows.

PREAMBLE - SPECIAL CHAPTER GRANTED.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clauses were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC, containing in one single body the different proposals that appear in book 1, pages 1 to 102. Consequently, the text adopted is as follows:

“GENERAL CONSIDERATIONS.

1- The parties reiterate their conviction as to the importance of collective bargaining as a source of objective labor regulations applicable to the parties and as a peaceful tool of social coexistence, all of which must allow improvements to the quality of life of our co-workers within a framework of mutual respect, guarantees of legal and extra-legal labor rights, and the sustainability of the business.

2- The parties reiterate that the benefits existing today will remain in force and will not be modified, except for any updates, adjustments or additions that the parties may agree to.

3- It is emphasized that the parties must guarantee the right to equality and favorability as fundamental cornerstones in labor regulations, and within the framework of the autonomy that the trade union organization enjoys within its constitutional and legal framework. In furtherance of the foregoing, if any differences exist in salaries or benefits between what is agreed in this agreement and what has been recognized, any difference that may exist will be recognized and paid.

4- AVIANCA reiterates its acknowledgment of ACDAC as the representative of the pilots and co-pilots affiliated to said trade union organization under the terms and conditions established in the Constitution and in Law.

5- The parties reiterate their commitment to the following:

a- To comply with the Political Constitution, legal and regulatory provisions and ILO conventions ratified by the Law, in particular Conventions 86 and 87 on freedom of trade union association and collective bargaining:

b- Comply with aviation rules and procedures, in particular the Colombian Aeronautical Regulation.

c- Respect trade union autonomy, all within the context of the Law, and the legitimacy of ACDAC as the representative of its members, and apply the corresponding deductions assigned to ACDAC for the pilots benefiting from the collective agreement, as provided in Article 37 of Decree 2351 of 1965".

CLAUSE 137. OBLIGATION TO COMPLY WITH AERONAUTICAL STANDARDS. GRANTED.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC by email dated September 24, 2017 at 18:22 hours, as may be seen on page 235 of book #3, where the different proposals contained in the file are incorporated in one single body. The text adopted is therefore as follows:

"OBLIGATION TO COMPLY WITH AERONAUTICAL STANDARDS.

The Company is committed jointly with the crew members to respect and comply with aeronautical standards. The Company will not, under any operational, commercial, financial or

service criterion or argument, permit any violation of the rules, or pressurize crew members to violate or contravene aeronautical standards. The Company will in all cases guarantee the right to due process, following the terms established in the collective labor agreement.

If as a result of a violation of standards in the circumstances described in this clause, the crew member loses their definitive license and the competent authority definitively verifies that the Company is liable, the latter will pay compensation of (500) SMMLV in damages for not being able to perform their role as an aviator”.

CLAUSE 138. PARTICIPATION IN COMMITTEES. GRANTED.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC by email dated September 24, 2017 at 18:22 hours, as may be seen on page 235 of book #3, where the different proposals contained in the file are incorporated in one single body. The text adopted is therefore as follows:

“WORKING BOARDS FOR THE REVIEW OF OPERATIONAL INDICATORS AND TRENDS.

The Company undertakes to create and maintain in force a monthly working board for the review of operational indicators and trends, which will comprise TWO (2) members elected by the ACDAC, who will be responsible for analyzing, studying and proposing improvements in all processes related to this matter, a prerequisite for operation.

Aviators who take part in these working boards will be granted the corresponding trade union leave of absence, expenses and transport required for their participation.

The company undertakes to train the members appointed by ACDAC in the tools required to perform the function.

The parties undertake to respect and ensure strict confidentiality on all matters dealt with in the work of the working boards”.

CLAUSE 139. INVESTIGATION OF ACCIDENTS, INCIDENTS OR OPERATIONAL EVENTS ON COMPANY AIRCRAFT.

The Tribunal considers that it DOES NOT have the power to decide, on the grounds that these are issues or matters involving air safety and in which the aeronautical authorities have a direct influence and involvement.

CLAUSE 140. CONTROL OF EXPOSURE TO IONIZING RADIATION. PARAGRAPHS 1 AND 2 GRANTED.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC by email dated September 24, 2017 at 18:22 hours, as may be seen on page 235 of book #3, where the different proposals contained in the file are incorporated in one single body. The text adopted is therefore as follows:

“CONTROL OF EXPOSURE TO IONIZING RADIATION.

“Following the issuance of this Arbitral Award, the Company will, through the ARL or a third party, measure the impact on aircraft and crew members of any potential ionizing exposure. The Company and ACDAC will hold a meeting to assess actions to reduce exposure, if any.

Paragraph 1: The Company will deliver and formally inform the ACDAC and the Ministry of Labor or any entity that might replace or substitute it, as to the measurement and measures adopted. The parties agree that a suitable organization in this regard may be contracted to analyze the results. If the parties so require, a new study will be performed”.

CLAUSE 141. SCHEDULING OF SUCCESSIVE FLIGHTS.

The Tribunal considers that it DOES NOT have the power to decide, on the basis that these are matters regulated by the legal provisions, given the impact on air safety.

CLAUSE 142. MINIMUM REST PRIOR TO CONTINUOUS NIGHT FLIGHTS.

The Tribunal considers that it DOES NOT have the power to decide, on the basis that these are matters regulated by the legal provisions, given the impact on air safety.

CLAUSE 143. OPERATIONAL DOCUMENTATION AND MANUALS. GRANTED.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC by email dated September 24, 2017 at 18:22 hours, as may be seen on page 235 of book #3, where the different proposals contained in the file are incorporated in one single body. The text adopted is therefore as follows:

“OPERATIONAL DOCUMENTATION AND MANUALS. From the issuance of this Arbitral Award, the company will make available to ACDAC all the operational and functional manuals issued by AVIANCA S.A., as well as the respective revisions, extensions and/or modifications, circulars, operational and administrative policies made by the Company that have a direct relationship with the pilots. These documents or manuals must include the date of entry into force and the deadlines for implementation”.

CLAUSE 144. DEFINITION OF WORKING HOURS.

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 145. REGULATION OF WORKING HOURS. GRANTED.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC by email dated September 24, 2017 at 18:22 hours, as may be seen on page 235 of book #3, where the different proposals contained in the file are incorporated in one single body. The text adopted is therefore as follows:

"REGULATION OF WORKING HOURS. Working hours will be regulated as follows:

- If the completion of a domestic flight that began the immediately preceding calendar day occurs after 5:00 a.m., the minimum rest time will be 24 hours. The rest period will begin once the crew member has been relieved of all service.
- In the monthly schedule of cockpit crew, the company will not allocate in the transits of domestic operating flights, longer times between one flight and another of more than two (2) hours of waiting at national bases other than Bogota, while in Bogota the time will not exceed three (3) hours of waiting.
- In the monthly schedules of cockpit crew members, the company will endeavor to maintain as much fairness as possible in flight assignments, always taking into account the base to which the crew member belongs, in accordance with the technical ratings that each crew member has on their license.
- The Company will not schedule service to begin before 5:00 a.m. if the preceding calendar day was a day off.
- The rest period will begin once the crew member has been relieved of all service".

CLAUSE 146. RECOGNITION FOR WORKING TIME.

REFUSED. The Tribunal considers that the manner in which the time worked by the beneficiaries of the Award is remunerated is adequate, equitable and sufficient.

CLAUSE 147. DAYS IN LIEU. Paragraph.

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 148. MONTHLY PUBLICATION OF ITINERARIES.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC by email dated September 24, 2017 at 18:22 hours, as may be seen on page 235 of book #3, where the different proposals contained in the file are incorporated in one single body. The text adopted is therefore as follows:

"MONTHLY ITINERARY PUBLICATION.

Over the course of 2018 the Company must have in place a program or software for the generation of itineraries, which will allow the monthly schedule to be published by the 25th of each month.

TRANSITIONAL PARAGRAPHS While the program or software for the preparation of itineraries is being implemented, the company will continue to publish the monthly schedule on the 28th day of the month prior to the month of execution".

CLAUSE 149. TRAINING SCHEDULE.

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 150. ITINERARY AND VACATIONS COMMITTEE PARAGRAPHS 1 and 2.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC by email dated September 24, 2017 at 18:22 hours, as may be seen on page 235 of book #3, and according to the economic proposal submitted by AVIANCA to ACDAC on September 26, 2017 (book #1, pages 97 verso and 100 to 103), where the different proposals contained in the file are incorporated in a single body. The text adopted is therefore as follows:

"VACATIONS. Over the course of 2018 the Company must have in place a program or software for the generation of itineraries and vacations. The Company will not schedule or grant vacation to any pilot while they are in training or transition of a unit other than that previously in operation, and said vacation period is therefore granted before or after the complete transition of unit.

PARAGRAPH 1. Compensation for cancellation of vacation and days OFF for a reason attributable to the Company. The Company will pay the sum of FIVE MILLION PESOS (5,000,000,000 COP) for pilots and THREE MILLION PESOS (3,000,000,000 COP) for co-pilots as the amounts to compensate for the cancellation of vacation, and with regard to vacation tickets, the provisions of the collective labor agreement will apply."

CLAUSE 151. PROMOTIONS AND ATR COPILOT TECHNICAL SCALE.

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 152. EQUAL PAY AMONG CO-PILOTS

The Tribunal considers that it DOES NOT have the power to decide the first paragraph of this clause, on the basis that these are matters governed by the legal provisions which allow employers to bind their workers by any type of contract, provided that the legal provisions are respected.

With regard to the content of subsection 2, as it is of an economic nature, it is GRANTED to guarantee the principle of equality and non-discrimination, in accordance with the terms of Article 53 of the National Constitution. The text adopted is therefore as follows:

"EQUAL PAY AMONG CO-PILOTS.

Following the issuance of this Arbitral Award, the Company will pay incoming co-pilots one hundred percent (100%) of the salary of co-pilots for the unit that fly or are designated to fly, and ensure the same legal and extra-legal benefits."

CLAUSE 153. MATERNITY LEAVE.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC by email dated September 24, 2017 at 18:22 hours, as may be seen on page 235 of book #3, where the different proposals contained in the file are incorporated in one single body. The text adopted is therefore as follows:

"MATERNITY LEAVE. For female cabin crew members, the company will ensure that once notice of pregnancy has been given, the crew member will be withdrawn from operations until the moment of birth, at which point the maternity leave defined in law will begin, up until termination of the respective period of breastfeeding allowance defined in law. In any event, the Company will guarantee the recognition of their salary, average monthly allowance of the unit to which they belong and the respective base, as well as the legal and extra-legal benefits to which they are entitled.

At the end of the breastfeeding period, the pilot must return to the normal operations."

CLAUSE 154. PATERNITY LEAVE.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC by email dated September 24, 2017 at 18:22 hours, as may be seen on page 235 of book #3, where the different proposals contained in the file are incorporated in one single body. The text adopted is therefore as follows:

"PATERNITY LEAVE Pilots will, in addition to parental leave provided for in the Act will be granted two (2) additional days of leave. The pilot may request that the statutory and extra-statutory leave provided for herein begin continuously one week before the probable date of delivery issued by the attending physician.

PARAGRAPHS. In the event of the death of the mother due to pregnancy or childbirth, the company will grant the cockpit crew member (Father) the same agreed maternity benefits as established for cockpit crew mothers in the collective agreement."

CLAUSE 155. PAY DURING MATERNITY LEAVE. REFUSED. In the opinion of the Tribunal, the regulation and form of compensation established by the comprehensive social security system in this regard is sufficient.

CLAUSE 156. LEAVE IN CASE OF MISCARRIAGE, STILL BIRTH OR DEATH OF NEWBORN CHILD.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVI ANCA to the ACDAC by email dated September 24, 2017 at 18:22 hours, as may be seen on page 235 of book #3, where the different proposals contained in the file are incorporated in one single body. The text adopted is therefore as follows:

“LEAVE IN CASE OF MISCARRIAGE. In the event of miscarriage or medical termination of the pregnancy, the cockpit crew member will be granted a period of forty-five (45) paid days, including the days established by law (2-4 weeks) under the same conditions as maternity leave, counted from the termination of the pregnancy.”

CLAUSE 157. MATERNITY LEAVE IN THE EVENT OF ADOPTION.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC by email dated September 24, 2017 at 18:22 hours, as may be seen on page 235 of book #3, where the different proposals contained in the file are incorporated in one single body. The text adopted is therefore as follows:

“MATERNITY LEAVE IN THE EVENT OF ADOPTION.

In the event of adoption, the cockpit crew member will enjoy the same conditions of maternity leave as laid down in this Agreement from the moment when parental authority, custody or adoption of the child is granted.”

CLAUSE 158. ASSIGNMENTS FOR PILOT MOTHERS.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC by email dated September 24, 2017 at 18:22 hours, as may be seen on page 235 of book #3, where the different proposals contained in the file are incorporated in one single body. The text adopted is therefore as follows:

“ASSIGNMENTS FOR COCKPIT CREW MOTHERS IN THE EVENT OF COMPLEX SITUATIONS INVOLVING THEIR CHILDREN.

In accordance with the best support for the child in the event of duly confirmed complex situations, which prevent the crew member from fully performing their duties, the company will, via the line manager, study the possibility of coordinating a schedule that allows them to accompany the child.”

CLAUSE 159. APPLICATION FOR VACANCIES AND/OR PROMOTIONS BY PILOT WOMEN ON MATERNITY LEAVE. GRANTED. In the interests of protecting the mother, the child, and guaranteeing the principle of equality and non-discrimination. The text adopted is therefore as follows:

“APPLICATION FOR VACANCIES AND/OR PROMOTIONS BY PILOT WOMEN ON MATERNITY LEAVE.

The company guarantees the position on the ranking scale of pilot mothers during their maternity leave. Likewise, upon their return to work it guarantees the training required for their rating qualification for their functions which they had been performing prior to the start of the leave or for promotion to the next unit”.

CLAUSE 160. COMPENSATION FOR CRECHE, NURSERY AND/OR PRE-SCHOOL EXPENSES.

The Tribunal refrains from making any kind of pronouncement, on the grounds that ACDAC, in the course of direct arrangement discussions and/or mediation by the Ministry of Labor, decided to WITHDRAW the clause.

CLAUSE 161. EXTRAORDINARY BONUS FOR CLOSE OF BUSINESS.

The Tribunal refrains from making any kind of pronouncement, on the grounds that ACDAC, in the course of direct arrangement discussions and mediation by the Ministry of Labor, decided to WITHDRAW the clause.

In addition to the above, it is a past event, since this conflict is resolved by a third party, namely the Arbitral Tribunal, where the parties have not reached an agreement set out in a collective labor agreement.

CLAUSE 162. SCHEDULING SPECIAL DATES. December dates. Birthdays. Paragraph.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC by email dated September 24, 2017 at 18:22 hours, as may be seen on page 235 of book #3, where the different proposals contained in the file are incorporated in one single body. The text adopted is therefore as follows:

“SCHEDULING SPECIAL DATES.

The company will schedule a block of three (3) days off to include December 25th. For January 1st this will be a block of two (2) days off from December and a block of two (2) days off in January, the aim being that those required to work on the first of the aforementioned days do not work on the last. For those cockpit crew who have not been able to be granted any of the above dates, priority will be given to the time of scheduling with regard to the Epiphany (January 6th). This clause will be scheduled in accordance with service requirements. The above may be:

- December 23, 24 and 25.
- December 24, 25 and 26.

- December 25, 26 and 27.
- December 30, 31, and January 1, 2.
- A block of three days off for the feast of Epiphany.

CLAUSE 163. DAYS ASSIGNED FOR PAPERWORK REQUIRED TO PERFORM PROFESSIONAL DUTIES.

REFUSED. The Tribunal considers that it is the duty of the pilots to keep up to date all the documentation necessary to practice their profession and they may for this make use of time other than their flight assignments.

CLAUSE 164. EXTRAORDINARY ALLOWANCE FOR CHRISTMAS AND NEW YEAR.

The Tribunal partially GRANTS the petition, on grounds of fairness, considering that the family unit and integration must be protected for these dates and special events, without entailing any further outgoings or cost to the Company. The text adopted is therefore as follows:

“EXTRAORDINARY ALLOWANCE FOR CHRISTMAS AND NEW YEAR.

The company will provide pilots who are away from their usual base of residence on the evening of December 24 or 31 of each year on domestic or international flights on professional duties with the possibility of taking up to two (2) companions, who will be granted tickets with confirmed space.”

CLAUSE 165. CHRISTMAS AND NEW YEAR DINNER.

REFUSED, as it is not fair to impose financial burdens on the Company that correspond to personal expenses of the workers and their families.

CLAUSE 166. REMUNERATION FOR INSTRUCTORS. GRANTED, on the understanding that the Instructors are subject to additional responsibilities, burdens and functions, as pilot instructors, which must be compensated, without implying any further outgoings for the Company. The text adopted is therefore as follows:

“REMUNERATION FOR INSTRUCTORS.

Following the issuance of this Arbitral Award, the company will pay the instructors, in addition to their salary and living expenses, a monthly premium that does not constitute salary, as follows:

- Flight Instructor 2,000,000,000 COP.
- Simulator instructor, flight and designated 1,500,000,000 COP.
- Ground instructor 1,000,000,000 COP

CLAUSE 167. SENIORITY. PARAGRAPHS 1 and 2.

REFUSED, as it is not fair to impose additional economic burdens on the Company, and this benefit is in part established in the Company’s regulations.

CLAUSE 168. RETIREMENT PLAN AND SAVINGS FUND.

It should be noted that the present petition has two (2) completely different aspirations, one being savings, and the other the establishment of a company retirement bonus. The Tribunal refrains from making any kind of pronouncement, given the exclusion of this matter, as ACDAC, in the course of direct arrangement discussions and mediation by the Ministry of Labor, decided to WITHDRAW the petition related to the SAVINGS FUND.

With regard to the retirement plan, it is REFUSED because, in the opinion of the Tribunal, the amount of compensation established for termination of employment contracts is sufficient.

CLAUSE 169. EBITDA BONUS. Paragraph.

REFUSED, on the grounds that it is considered unfair, since it is an additional and unforeseen economic burden for AVIANCA.

CLAUSE 170. VARIATION OF ASSIGNMENTS AND DAYS OFF.

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 171. ONE (1) ADDITIONAL DAY OF VACATION PER YEAR WORKED.

REFUSED. The arbitrators consider that the form, amount and mechanisms as currently paid and compensated for vacation are more than sufficient for unionized workers.

CLAUSE 172. VACATION BONUS.

The Tribunal refrains from making any kind of pronouncement, on the grounds that ACDAC, in the course of direct arrangement discussions and mediation by the Ministry of Labor, decided to WITHDRAW the clause.

CLAUSE 173. DOMESTIC AND INTERNATIONAL ROUTES FOR ACTIVE AND RETIRED CREW MEMBERS.

REFUSED. The regulation related to the granting of tickets is appropriate to cover this benefit.

CLAUSE 174. RISK PREMIUM.

The Tribunal refrains from making any kind of pronouncement, on the grounds that ACDAC, in the course of direct arrangement discussions and mediation by the Ministry of Labor, decided to WITHDRAW the clause.

CLAUSE 175. RELOCATION PENALTY. The Tribunal partially GRANTS the petition, on grounds of fairness, since it considers that it is established in the collective agreement and pact, and therefore is added. The text adopted is therefore as follows:

“RELOCATION PENALTY.

Following the issuance of this Arbitral Award, the company will maintain the minimum conditions for the installation of the crew member, granting five (5) days without assignment of any kind prior to the beginning of the itinerary at the new base to achieve installation. The above notwithstanding the terms of Article 121 of the collective agreement.”

CLAUSE 176. CREW MEMBERS ACQUIRING PENSION OR RETIREMENT. Paragraph.
The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by legal and aeronautical provisions.

CLAUSE 177. RIGHT TO MEDICAL SERVICE. Paragraph.

REFUSED. The provisions which enshrine economic and in-kind prerogatives, laid down in the comprehensive social security system to address health eventualities, and benefits enshrined in the collective agreement, are considered by the Tribunal to be fair and sufficient.

CLAUSE 178. MEDICAL SERVICE FOR RELATIVES.

REFUSED. The provisions which enshrine economic and in-kind prerogatives, laid down in the comprehensive social security system to address health eventualities, and the benefits enshrined in the collective agreement, are considered by the Tribunal to be fair and sufficient to meet the needs not only of workers but also of their families.

CLAUSE 179. RIGHT TO TICKETS. Paragraphs 1 and 2.

REFUSED. The regulations regarding the granting of tickets are appropriate to cover this benefit, in terms of fairness.

CLAUSE 180. UNALLOCATED ADDITIONAL CREW PLACES.

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal aeronautical provisions.

CLAUSE 181. PARKING LOT AT ALL BASES.

REFUSED. It is not fair to grant a double benefit to satisfy the same need.

CLAUSE 182. EXTRAORDINARY BONUS FOR LOSS OF LEAVE RESULTING FROM PERMANENT DISABILITY.

“LEAVE FOR NEGOTIATORS.

Once this Arbitral Award has taken effect, the company will grant fifteen (15) calendar days’ leave to three (3) members of ACDAC for the preparation of the dossier of petitions, which must be taken with prior written notice given to the Company, before the meeting at which the dossier of petitions is to be approved.”

CLAUSE 189. IMPACT ON TRADE UNION LEAVE. Paragraph.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC, in the form of various texts setting out the offers. The text adopted is therefore as follows:

“IMPACT ON TRADE UNION LEAVE. In the event that the trade union leave day is affected by a flight delay, the Company will grant the affected Trade Union Executive another alternative day in the same or subsequent month.

PARAGRAPHS. The company will grant two (2) monthly calendar days of trade union leave to two representatives of the sub-directives of CALI and MEDELLIN in order freely to pursue their trade union activity.”

CLAUSE 190. TRAVEL FOR UNION USE. GRANTED, on the understanding that clause 52 of the collective agreement enshrines the benefit of limited tickets for trade union use to be used on the routes of AVIANCA. It will be added so that they can also be used on the routes of AVIANCA and the HOLDING company.

CLAUSE 191. RIGHT TO INSTITUTIONAL INFORMATION.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC, in the form of various texts setting out the offers. The text adopted is therefore as follows:

“RIGHT TO INSTITUTIONAL INFORMATION.

Following the issuance of this arbitral award, AVIANCA will provide ACDAC, within the first two months of each calendar year, with general and statistical information on labor matters of workers affiliated to the trade union, as follows:

- a) Number of unionized workers.
- b) Gender and age composition of unionized workers.
- c) Annual value recognized for trade union contributions.
- d) Statistics and general values of recognized extra-legal benefits.”

REFUSED. The comprehensive social security system and the risks covered in this regard by insurance policies and by the other Agreement provisions, are fair in the opinion of the Tribunal, to compensate for these incidents.

CLAUSE 183. MOBILIZATION.

REFUSED. The benefits in money and kind paid by the Company to meet the transport needs of workers are appropriate in terms of fairness, and it is not prudent to grant additional prerogatives.

CLAUSE 184. PERMANENCE OF INSTRUCTORS AND INSPECTORS. The Tribunal considers that it LACKS the power to decide, on the basis that these are matters regulated by the legal and aeronautical provisions and because they are regulatory and administrative aspects inherent to the Company.

CLAUSE 185. SELECTION OF ADMINISTRATIVE STAFF. REFUSED, as it involves interference in the field of Company management.

CLAUSE 186. NON-DISCRIMINATION COMMITMENT AND GUARANTEE OF EQUALITY. Paragraphs 1 and 2.

The Tribunal considers that it DOES NOT have the power to decide, as the regulatory sources that enshrine rights and prerogatives are mandatory for the signatories, unless by legal provision they must be applied in general.

CLAUSE 187. PRESENTATION OF ACDAC TO NEW CREW MEMBERS IN ON-BOARDING AND SCHOOL OF OPERATIONS.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC by email dated September 5, 2017 at 9:11 hours, as may be seen on page 251 of book #3, where the different proposals contained in the file are incorporated in one single body. The text adopted is therefore as follows:

“PRESENTATION OF ACDAC TO NEW CREW MEMBERS IN ON-BOARDING AND SCHOOL OF OPERATIONS.

ACDAC will have a session both in the onboarding of the Company’s new co-pilot candidates and in the reviews of the school of operations to present to the attendees information on the fundamental right of free association.”

CLAUSE 188. LEAVE FOR NEGOTIATORS. Partially GRANTED, noting that the petition is aimed at guaranteeing the right of association and collective bargaining, since in addition it is also enshrined in some aspects in the collective labor agreement. The text adopted is therefore as follows:

CLAUSE 192. LEAVE FOR COMPLAINTS, TECHNICAL MATTERS AND SAFETY COMMISSION.

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 193. SANCTIONS FOR THE COMPANY IN FAVOR OF THE CREW MEMBER.

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 194. REIMBURSEMENT OF EXPENSES INCURRED BY ACDAC FOR LEGAL PROCEEDINGS, ADMINISTRATION AND OTHER ACTIONS IN DEFENSE OF THE COLLECTIVE AGREEMENT.

REFUSED. It is not fair that AVIANCA should bear the costs incurred at law agencies and costs, amounts that should be borne by those who initiate the administration of justice.

CLAUSE 195. COMPANY UNIT.

The Tribunal considers that it DOES NOT have the power to decide, on the basis that these are matters of exclusive competence of ordinary justice and/or the Ministry of Labor.

CLAUSE 196. TELEWORKING. Paragraphs 1, 2 and 3.

The Tribunal considers that it DOES NOT have the power to decide, on the basis that these are matters governed by the legal provisions, in particular Law 1221 of 2008.

CLAUSE 197. LUGGAGE. REFUSED.

The petition constitutes an unlimited, unquantifiable request subject to internal and aeronautical restrictions.

CLAUSE 198. AVERAGE ALLOWANCE. REFUSED.

Because it is considered disproportionate, unfair and excessively onerous for the Company.

CLAUSE 199. ENTRANCE TO VIP LOUNGES.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC, in the form of various texts setting out the offers. The text adopted is therefore as follows:

“ENTRY TO VIP LOUNGES For scheduled flights where an airport stay in transit is greater than two (2) hours, the Company will have a pilot lounge or use of the VIP Lounge owned or controlled by AVIANCA, where they exist.”

CLAUSE 200. WORKING ELEMENTS FOR COMMUNICATIONS IN TURBOPROP OPERATIONS.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC, in the form of various texts setting out the offers. The text adopted is therefore as follows:

“WORKING ELEMENTS FOR COMMUNICATIONS IN TURBOPROP OPERATIONS

The company will have in place on the ATR72 units or equivalent, for use by the cabin crew of the ATR72 turboprop unit or equivalent, a set of headsets appropriate for the operation of this type of aircraft, with the following characteristics: Headphones that cover the entire ear, incorporating microphone and equipped with high-end Noise Canceling and/or Noise Reduction technology, from a globally recognized brand and with TSO approval for aviation operations”.

CLAUSE 201. SALARIES. Paragraphs 1, 2 and 3.

Noting that the content thereof was discussed by the parties, in the negotiation and/or mediation process conducted by the Ministry of Labor, and proposals were even exchanged regarding the amount, percentages of increases, conditions, requirements, imputations, effective dates, beneficiaries, among others, as evidenced by the documents mentioned below: minutes #9 of September 26, 2017, with the intervention of the Ministry of Labor, in which Dr CESAR GONZALEZ presents the economic proposal of the Company, which appears on pages 82 verso and 83 of book #1 in which he indicates as a proposal an increase of 12.75% for pilots and 10.25% for co-pilots, as of April 1, 2017. These percentages are also repeated in the presentation of AVIANCA which appears on page 98 verso, book 31. Finally, this same percentage may be seen in the proposal of September 26, 2017 submitted by AVIANCA to ACDAC before the Ministry of Labor, contained on page 103, book #1.

Meanwhile, this Tribunal holds that it forms part of the dynamics inherent in collective disputes, to exceed and/or maintain the established benefits, above all since in this case they do not appear disproportionate, nor do they affect the structure and functioning of the Company, supported by the principles of reasonableness and proportionality.

Particular note should be taken of the fact that, for the purposes of decreeing increases equivalent to 12.75% or more, the terms indicated by AVIANCA in its presentation to the Tribunal on November 27, 2017 will not be taken into account, as stated in the last proposal of September 26 of the same year, before the Ministry of Labor, according to which these percentages were conditional on the elimination of the transition system, which the Tribunal found to be transcribed and in force in Chapter XIV of the collective agreement this applies until 31 March 2020. There is therefore no basis for considering that provisions in force until 2020 could be abolished for ACDAC members, but that they could be applied to non-unionized persons and beneficiaries of the collective agreement. This would be a discriminatory act in violation of judgment T069 of 2015.

The Tribunal likewise finds that discriminatory and unfair action occurs when the Company unilaterally aims to create more significant future differences between the salary increases of pilots and co-pilots when proposing and/or agreeing different amounts and percentages for each of them.

The Tribunal will therefore order that increases within the present dispute not be so different, in order to avoid more radical discrimination and disproportion going forward, between the amount of salary earned by pilots and co-pilots. The text adopted is therefore as follows:

“SALARIES.

Following the issuance of this Arbitral Award and under the terms and conditions set out in Article 91 of the 2009-2013 collective agreement, the Company will make the following salary increases:

A- RETROSPECTIVELY, and from April 1, 2017, the salaries of pilots will be increased by the equivalent of twelve point seven five percent (12.75%) over and above the salaries accrued to March 31, 2017.

- RETROSPECTIVELY, and from April 1, 2017, the salaries of pilots will be increased by the equivalent of eleven point two five percent (11.25%) over and above the salaries accrued to March 31, 2017.

B- From April 1, 2018 onwards, the salaries of pilots and co-pilots will be increased by the Consumer Price Index (CPI), certified by the DANE or the entity replacing it, at December 31, 2017, over the last twelve months, plus a percentage of 1.5%.

C- From April 1, 2019 up until December 6, 2019, the salaries of pilots and co-pilots will be increased by the Consumer Price Index (CPI), certified by the DANE or the entity replacing it, at December 31, 2018 over the past twelve months, plus a percentage of 1.34%.

The increase decreed in paragraph c is proportional to the time of validity of the Arbitral Award and based on an annual increase of 1.75%, which was proposed by AVIANCA for this year, since this Award applies until December 6, 2019.

- **PARAGRAPHS 1.** It is understood that the payment of the operational efficiency incentive (monthly), and the payment of the fuel premium (six-monthly) will be paid at one hundred percent of their corresponding value, in accordance with judgment T069 of 2015.

- **PARAGRAPHS 2.** AVIANCA must settle only any difference that might arise between the values paid during 2017 at the date of issue of this Arbitral Award and the result of the quantification of the Increases ordered, to avoid any double payment for the same concept.”

CLAUSE 202. INCREASES. Paragraph.

Bearing in mind that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation conducted by the Ministry of Labor, and proposals were even exchanged regarding the amount, percentages of increases, conditions, requirements, imputations, effective dates, beneficiaries, among others, as evidenced by the documents mentioned below: minutes #0 of September 26, 2017, with the intervention of the Ministry of Labor, in which Dr CESAR GONZALEZ presents the economic proposal of the Company, which appears on pages 82 verso and 83 of book #1 in which he indicates as a proposal an increase of 12.75% for pilots and 10.25% for co-pilots, as of April 1, 2017. These percentages are also repeated in the presentation of AVIANCA which appears on page 98 verso, book #1. Lastly, this same percentage is visible in the proposal of September 26, 2017 submitted by AVIANCA to ACDA, before the Ministry of Labor, contained on page 103, book #1 and on page

94 verso, book #1, proposing the economic adjustments for clauses in pesos, as the CPI plus 1.50% for the second year, the CPI plus 1.75% for the third year.

Meanwhile, this Tribunal holds that it forms part of the dynamics inherent in collective disputes, to exceed and/or maintain the established benefits, above all since in this case they do not appear disproportionate, nor do they affect the structure and functioning of the Company, supported by the principles of reasonableness and proportionality.

Particular note should be taken of the fact that, for the purposes of decreeing increases equivalent to 12.75% or more, the terms indicated by AVIANCA in its presentation to the Tribunal on November 27, 2017 will not be taken into account, as stated in the last proposal of September 26 of the same year, before the Ministry of Labor, according to which these percentages were conditional on the elimination of the transition system, which the Tribunal found to be transcribed and in force in Chapter XIV of the collective agreement in force up until March 31, 2020. There is therefore no basis to consider that provisions in force until 2020 may be abolished for members of ACDAC, but applied to non-unionized persons and beneficiaries of the collective agreement, which would be a discriminatory act in violation of judgment T069 of 2015. The text adopted is therefore as follows:

“INCREASES.

Following the issuance of this Arbitral Award, all sums or values established in pesos within this Arbitral Award and/or collective agreement will be increased by 12.75%.

From April 1, 2018 onwards, all sums or values established in pesos within this Arbitral Award and/or collective agreement will be increased by the CPI plus 1.5%.

From April 1, 2019 up until December 6, 2019, all sums or values established in pesos within this Arbitral Award and/or collective agreement will be increased by the CPI plus 1.19%.

The increase decreed for the year 2019 is proportional to the time of validity of the Arbitral Award and based on an annual increase of 1.75%, which was proposed by AVIANCA for this year, since this Award applies up until December 6, 2019.

PARAGRAPHS. AVIANCA must settle only any difference that might arise between the values paid during 2017 at the date of issue of this Arbitral Award and the result of the quantification of the Increases ordered, to avoid any double payment for the same concept.”

CLAUSE 203. PRESENTATION OF WEIGHT AND BALANCE CALCULATION WITH FINAL DATA.

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 204. MINIMUM CREW TRANSIT TIMES. The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 205. MINIMUM CREW PER AIRCRAFT.

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 206. REMUNERATION DURING THE VACATION PERIOD.

The Tribunal refrains from making any kind of pronouncement, on the grounds that ACDAC, in the course of direct arrangement discussions and mediation by the Ministry of Labor, decided to WITHDRAW the clause.

CLAUSE 207. FLIGHT BOOKS (ON-BOARD LOGBOOK).

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 208. AIR TICKETS WITHOUT ANY LIMITATION. GRANTED.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC, in the form of various texts setting out the offers. The text adopted is therefore as follows:

“AIR TICKETS WITHOUT ANY LIMITATION.

The Company will extend the current benefit enjoyed by pilots in terms of tickets for use on AVIANCA HOLDINGS routes.”

CLAUSE 209. PAYMENT OF DOCUMENTS.

The Tribunal refrains from making any kind of pronouncement, on the grounds that ACDAC, in the course of direct arrangement discussions and mediation by the Ministry of Labor, decided to WITHDRAW the clause.

CLAUSE 210. ALLOWANCE CARD.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC, in the form of various texts setting out the offers. The text adopted is therefore as follows:

“ALLOWANCE CARD.

Within 90 days of the issuance of this Arbitral Award, the COMPANY will submit an alternative formula for the use of the allowance card, in order to improve the procedure for payment of allowances at national and international level in accordance with the applicable legal provisions.”

CLAUSE 211. WITHHOLDING OR PAYMENT OF TAX ON ANY ITEM CONSTITUTING SALARY.

The Tribunal refrains from making any kind of pronouncement, on the grounds that ACDAC, in the course of direct arrangement discussions and mediation by the Ministry of Labor, decided to WITHDRAW the clause.

CLAUSE 212. PLACE TO EAT.

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 213. EXTRA CREW.

The Tribunal considers that it DOES NOT have the power to decide, on the basis that the petition involves third parties not party to the present dispute.

CLAUSE 214. ALLOCATION AND PROVISION OF RESERVATIONS.

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 215. REQUIREMENT TO REGISTER THE SCALE. Paragraph.

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 216. MAXIMUM FLIGHT TIME.

The Tribunal considers that it DOES NOT have the power to decide on the basis that these are matters governed by the relevant legal and aeronautical provisions.

CLAUSE 217. NOTIFICATION POLICY.

Noting that the content thereof was discussed by the parties, in the negotiation process and/or in the mediation carried out by the Ministry of Labor and that proposals related to the drafting, validity and scope of the clause were even exchanged, the Tribunal will adopt as the full text thereof that sent by AVIANCA to the ACDAC, in the form of various texts setting out the offers. The text adopted is therefore as follows:

"NOTIFICATION POLICY.

The company is obliged to notify the crew members of any new developments in the performance of the employment contract. Such communication will be sent by email to the corporate mail address assigned by the company to each crew member, or by any other electronic or digital means.

PARAGRAPHS 1. In order to facilitate the development of professional activity and streamline the mechanism for communications, notifications (sending of the monthly schedule, notifications of change in assignments, among others) and use of corporate email, the company will grant pilots and co-pilots a telephony and data plan with a company of recognized experience on the domestic and international market, in accordance with the restrictions and policies defined by the company and including the international roaming service.

PARAGRAPHS 2. For the implementation of this clause, AVIANCA will pay the lump sum of ONE MILLION PESOS (1,000,000,000 COP), for the purchase of the electronic device, at the choice of the pilot."

DISCIPLINARY PROCEEDINGS.

The disciplinary proceedings clause was a matter of discussion, as set out by AVIANCA in the communication on page 290 of the main book of December 4, 2017, in which the Company's legal representative states that: "with regard to the disciplinary proceedings clause, we would clarify that within the negotiation board the company in fact made proposals with regard to this point, as may be seen on page 5 of the proposal made on September 8, 2017". The Tribunal likewise finds that in the proposal of September 26, 2017 on page 6, which may be seen on page 102 verso, book #1, AVIANCA insists on modifying the disciplinary process.

Various inconsistencies were noted in the evidence submitted by the parties with regard to the disciplinary issue, since on the one hand AVIANCA responded to the request of this Tribunal by indicating via the Labor Relations Director: "...the company has not brought disciplinary processes forward to date".

Meanwhile, ACDAC, by means of a document dated December 4, 2017, indicates the contrary, specifying that to date 258 disciplinary processes have been initiated, 3 employment contracts have been terminated with just cause, and 8 retired captains have been dismissed (pages 326 to 329 of the main book). In said missive they ratify the evidence and press videos submitted in which Mr GERMAN EFROMOVICH, President of the Board of Directors of Avianca, ratifies his proposal and decision not to retaliate, if the pilots suspend the strike within 60 days.

The Tribunal concluded that it has no competence to review the disciplinary proceedings, since ACDAC did not accept having negotiated it, and moreover because it was not the subject of a complaint by AVIANCA.

Notwithstanding the above, and given the special circumstances of this dispute, the evident differences as regards the evidence of the existence of disciplinary processes, the proposals and promises made by the President of the Board of Directors, this Tribunal considers that it must in this Award ratify Clause 23 of the Collective Labor Convention, which is adopted as follows:

"PROTECTION AND STABILITY.

Empresa Aerovías Nacional de Colombia S.A., now Aerovías del Continente Americano S.A., "AVIANCA" and sociedad Aeronáutica de Medellín Consolidada S.A., "SAM", undertake not to

directly or indirectly exercise any form of retaliation against the personnel of ACDAC and those who, without being unionized, subscribe to our dossier of petitions.

Consequently, there will be no dismissals, suspensions, fines, discrimination in the allocation of flights, calls for retirement or pensioning off.”

CLAUSE 218. VALIDITY. This Arbitral Award will be valid for two (2) years from its issuance on December 7, 2017, up until December 6, 2019.

**IN PURSUANCE OF THE FOREGOING, ADMINISTERING JUSTICE IN THE NAME OF
THE REPUBLIC OF COLOMBIA AND BY AUTHORITY OF THE LAW, THE ARBITRAL
TRIBUNAL**

RULES:

ONE. GRANT for the reasons and arguments contained in the recitals, as follows:

I- GENERAL CONSIDERATIONS.

1-The parties reiterate their conviction as to the importance of collective bargaining as a source of objective labor regulations applicable to the parties and as a peaceful tool of social coexistence, all of which must allow improvements to the quality of life of our co-workers within a framework of mutual respect, guarantees of legal and extra-legal labor rights, and the sustainability of the business.

2-The parties reiterate that the benefits existing today will remain in force and will not be modified, except for any updates, adjustments or additions that the parties may agree to.

3-It is emphasized that the parties must guarantee the right to equality and favorability as fundamental cornerstones in labor regulations, and within the framework of the autonomy that the trade union organization enjoys within its constitutional and legal framework. In furtherance of the foregoing, if any differences exist in salaries or benefits between what is agreed in this agreement and what has been recognized, any difference that may exist will be recognized and paid.

4-AVIANCA reiterates its acknowledgment of ACDAC as the representative of the pilots and co-pilots affiliated to said trade union organization under the terms and conditions established in the Constitution and in Law.

5-The parties reiterate their commitment to the following:

a- Comply with the Political Constitution, the legal and regulatory provisions, and the ILO conventions ratified by Law, in particular convention 86 and 87 on freedom of trade union association and collective bargaining:

b- Comply with aviation rules and procedures, in particular the Colombian Aeronautical Regulation

c- Respect trade union autonomy, all within the context of the Law, and the legitimacy of ACDAC as the representative of its members, and apply the corresponding deductions

assigned to ACDAC for the pilots benefiting from the collective agreement, as provided in Article 37 of Decree 2351 of 1965".

II-. OBLIGATION TO COMPLY WITH AERONAUTICAL STANDARDS.

The Company is committed jointly with the crew members to respect and comply with aeronautical standards. The Company will not, under any operational, commercial, financial or service criterion or argument, permit any violation of the rules, or pressurize crew members to violate or contravene aeronautical standards. The Company will in all cases guarantee the right to due process, following the terms established in the collective labor agreement.

If as a result of a violation of standards in the circumstances described in this clause, the crew member loses their definitive license and the competent authority definitively verifies that the Company is liable, the latter will pay compensation of (500) SMMLV in damages for not being able to perform their role as an aviator".

III-. WORKING BOARDS FOR THE REVIEW OF OPERATIONAL INDICATORS AND TRENDS.

The Company undertakes to create and maintain in force a monthly working board for the review of operational indicators and trends, which will comprise TWO (2) members elected by the ACDAC, who will be responsible for analyzing, studying and proposing improvements in all processes related to this matter, a prerequisite for operation.

Aviators who take part in these working boards will be granted the corresponding trade union leave of absence, expenses and transport required for their participation.

The company undertakes to train the members appointed by ACDAC in the tools required to perform the function.

The parties undertake to respect and ensure strict confidentiality on all matters dealt with in the work of the working boards

IV-. CONTROL OF EXPOSURE TO IONIZING RADIATION.

Following the issuance of this Arbitral Award, the Company will, through the ARL or a third party, measure the impact on aircraft and crew members of any potential ionizing exposure. The Company and ACDAC will hold a meeting to assess actions to reduce exposure, if any.

Paragraph 1: The Company will deliver and formally inform the ACDAC and the Ministry of Labor or any entity that might replace or substitute it, as to the measurement and measures adopted. The parties agree that a suitable organization in this regard may be contracted to analyze the results. If the parties so require, a new study will be performed.

V-. OPERATIONAL DOCUMENTATION AND MANUALS. Following the issuance of this Arbitral Award, the company will make available to ACDAC all the operational and functional manuals issued by AVIANCA S.A., as well as the respective revisions, extensions and/or modifications, circulars, operational and administrative policies made by the Company that

have a direct relationship with the pilots. These documents or manuals must include the date of entry into force and the deadlines for implementation.

VI. REGULATION OF WORKING HOURS Working hours will be regulated as follows:

- If the completion of a domestic flight that began the immediately preceding calendar day occurs after 5:00 a.m., the minimum rest time will be 24 hours. The rest period will begin once the crew member has been relieved of all service.
- In the monthly schedule of cockpit crew, the company will not allocate in the transits of domestic operating flights, longer times between one flight and another of more than two (2) hours of waiting at national bases other than Bogota, while in Bogota the time will not exceed three (3) hours of waiting.
- In the monthly schedules of cockpit crew members, the company will endeavor to maintain as much fairness as possible in flight assignments, always taking into account the base to which the crew member belongs, in accordance with the technical ratings that each crew member has on their license.
- The Company will not schedule service to begin before 5:00 a.m. if the preceding calendar day was a day off.
- The rest period will begin once the crew member has been relieved of all service”.

VII. MONTHLY ITINERARY PUBLICATION.

Over the course of 2018 the Company must have in place a program or software for the generation of itineraries, which will allow the monthly schedule to be published by the 25th of each month.

TRANSITIONAL PARAGRAPHS While the program or software for the preparation of itineraries is being implemented, the company will continue to publish the monthly schedule on the 28th day of the month prior to the month of execution”.

VIII. VACATIONS. Over the course of 2018 the Company must have in place a program or software for the generation of itineraries and vacations. The Company will not schedule or grant vacation to any pilot while they are in training or transition of a unit other than that previously in operation, and said vacation period is therefore granted before or after the complete transition of unit.

PARAGRAPHS 1 Compensation for cancellation of vacation and days off for a reason attributable to the Company. The Company will pay the sum of FIVE MILLION PESOS (5,000,000,000 COP) for pilots and THREE MILLION PESOS (3,000,000,000 COP) for co-pilots, values that compensate for the cancellation of vacation, and with regard to holiday tickets, the provisions of the collective labor agreement will apply.

IX-. EQUAL PAY AMONG CO-PILOTS.

Following the issuance of this Arbitral Award, the Company will pay incoming co-pilots one hundred percent (100%) of the salary of co-pilots for the unit that fly or are designated to fly, and ensure the same legal and extra-legal benefits”.

X-. MATERNITY LEAVE. For female cabin crew members, the company will ensure that once notice of pregnancy has been given, the crew member will be withdrawn from operations until the moment of birth, at which point the maternity leave defined in law will begin, up until termination of the respective period of breastfeeding allowance defined in law. In any event, the Company will guarantee the recognition of their salary, average monthly allowance of the unit to which they belong and the respective base, as well as the legal and extra-legal benefits to which they are entitled.

At the end of the breastfeeding period, the pilot must return to the normal operations.”

XI-. PATERNITY LEAVE. Pilots will, in addition to parental leave provided for in the Act will be granted two (2) additional days of leave. The pilot may request that the statutory and extra-statutory leave provided for herein begin continuously one week before the probable date of delivery issued by the attending physician.

PARAGRAPHS. In the event of the death of the mother due to pregnancy or childbirth, the company will grant the cockpit crew member (Father) the same agreed maternity benefits as established for cockpit crew mothers in the collective agreement.”

XII-. LEAVE IN CASE OF MISCARRIAGE. In the event of miscarriage or medical termination of the pregnancy, the cockpit crew member will be granted a period of forty-five (45) paid days, including the days established by law (2-4 weeks) under the same conditions as maternity leave, counted from the termination of the pregnancy.”

XIII-. MATERNITY LEAVE IN THE EVENT OF ADOPTION.

In the event of adoption, the cockpit crew member will enjoy the same conditions of maternity leave as laid down in this Agreement from the moment when parental authority, custody or adoption of the child is granted.”

XIV-. ASSIGNMENTS FOR COCKPIT CREW MOTHERS IN THE EVENT OF COMPLEX SITUATIONS INVOLVING THEIR CHILDREN.

In accordance with the best support for the child in the event of duly confirmed complex situations, which prevent the crew member from fully performing their duties, the company will, via the line manager, study the possibility of coordinating a schedule that allows them to accompany the child.

XV-. APPLICATION FOR VACANCIES AND/OR PROMOTIONS BY PILOT WOMEN ON MATERNITY LEAVE.

"The company guarantees the position on the ranking scale of pilot mothers during their maternity leave. Likewise, upon their return to work it guarantees the training required for their rating qualification for their functions which they had been performing prior to the start of the leave or for promotion to the next unit."

XVI-. SCHEDULING SPECIAL DATES.

The company will schedule a block of three (3) days off to include December 25th. For January 1st this will be a block of two (2) days off from December and a block of two (2) days off in January, the aim being that those required to work on the first of the aforementioned days do not work on the last. For those cockpit crew who have not been able to be granted any of the above dates, priority will be given to the time of scheduling with regard to the Epiphany (January 6th). This clause will be scheduled in accordance with service requirements. The above may be:

- December 23, 24 and 25.
- December 24, 25 and 26.
- December 25, 26 and 27.
- December 30, 31, and January 1, 2.
- A block of three days off for the feast of Epiphany.

XVII-. EXTRAORDINARY ALLOWANCE FOR CHRISTMAS AND NEW YEAR.

The company will provide pilots who are away from their usual base of residence on the evening of December 24 or 31 of each year on domestic or international flights on professional duties with the possibility of taking up to two (2) companions, who will be granted tickets with confirmed space."

XVIII-. REMUNERATION FOR INSTRUCTORS.

Following the issuance of this Arbitral Award, the company will pay the instructors, in addition to their salary and living expenses, a monthly premium that does not constitute salary, as follows:

- Flight Instructor 2,000,000,000 COP.
- Simulator instructor, flight and designated 1,500,000,000 COP.
- Ground instructor 1,000,000,000 COP.

XIX-. RELOCATION PENALTY.

Following the issuance of this Arbitral Award, the company will maintain the minimum conditions for the installation of the crew member, granting five (5) days without assignment of any kind prior to the beginning of the itinerary at the new base to achieve installation. The above notwithstanding the terms of Article 121 of the collective agreement.

XX-. PRESENTATION OF ACDAC TO NEW CREW MEMBERS IN ON-BOARDING AND SCHOOL OF OPERATIONS.

ACDAC will have a session both in the onboarding of the Company's new co-pilot candidates and in the reviews of the school of operations to present to the attendees information on the fundamental right of free association.

XXI-. LEAVE FOR NEGOTIATORS.

Once this Arbitral Award has taken effect, the company will grant fifteen (15) calendar days' leave to three (3) members of ACDAC for the preparation of the dossier of petitions, which must be taken with prior written notice given to the Company, before the meeting at which the dossier of petitions is to be approved.

XXII-. IMPACT ON TRADE UNION LEAVE. In the event that the trade union leave day is affected by a flight delay, the Company will grant the affected Trade Union Executive another alternative day in the same or subsequent month.

PARAGRAPHS . The company will grant two (2) monthly calendar days of trade union leave to two representatives of the sub-directives of CALI and MEDELLIN in order freely to pursue their trade union activity."

XXIII-. TRAVEL FOR UNION USE. An addition will be made to also allow use on the AVIANCA and HOLDING company routes.

XXIV-. RIGHT TO INSTITUTIONAL INFORMATION.

Following the issuance of this arbitral award, AVIANCA will provide ACDAC, within the first two months of each calendar year, with general and statistical information on labor matters of workers affiliated to the trade union, as follows:

- a) Number of unionized workers
- b) Gender and age composition of unionized workers.
- c) Annual value recognized for trade union contributions.
- d) Statistics and general values of recognized extra-legal benefits."

XXV-. ENTRANCE TO VIP LOUNGES. "For scheduled flights where an airport stay in transit is greater than two (2) hours, the Company will have a pilot lounge or use of the VIP Lounge owned or controlled by AVIANCA, where they exist."

XXVI-. WORKING ELEMENTS FOR COMMUNICATIONS IN TURBOPROP OPERATIONS.

The company will have in place on the ATR72 units or equivalent, for use by the cabin crew of the ATR72 turboprop unit or equivalent, a set of headsets appropriate for the operation of this type of aircraft, with the following characteristics: Headphones that cover the entire ear, incorporating microphone and equipped with high-end Noise Canceling and/or Noise Reduction technology, from a globally recognized brand and with TSO approval for aviation operations".

XXVII-. SALARIES Paragraphs 1, 2 and 3.

Following the issuance of this Arbitral Award and under the terms and conditions set out in Article 91 of the 2009-2013 collective agreement, the Company will make the following salary increases:

A-. RETROSPECTIVELY, and from April 1, 2017, the salaries of pilots will be increased by the equivalent of twelve point seven five percent (12.75%) over and above the salaries accrued to March 31, 2017.

- RETROSPECTIVELY, and from April 1, 2017, the salaries of pilots will be increased by the equivalent of eleven point two five percent (11.25%) over and above the salaries accrued to March 31, 2017.

B-. From April 1, 2018 onwards, the salaries of pilots and co-pilots will be increased by the Consumer Price Index (CPI), certified by the DANE or the entity replacing it, at December 31, 2017, over the last twelve months, plus a percentage of 1.5%.

C-. From April 1, 2019 up until December 6, 2019, the salaries of pilots and co-pilots will be increased by the Consumer Price Index (CPI), certified by the DANE or the entity replacing it, at December 31, 2018 over the past twelve months, plus a percentage of 1.34%.

The increase decreed in paragraph c is proportional to the time of validity of the Arbitral Award and based on an annual increase of 1.75%, which was proposed by AVIANCA for this year, since this Award applies until December 6, 2019.

- **PARAGRAPHS 1.** It is understood that the payment of the operational efficiency incentive (monthly), and the payment of the fuel premium (six-monthly) will be paid at one hundred percent of their corresponding value, in accordance with judgment T069 of 2015.

- **PARAGRAPHS 2.** AVIANCA must settle only any difference that might arise between the values paid during 2017 at the date of issue of this Arbitral Award and the result of the quantification of the Increases ordered, to avoid any double payment for the same concept ”

XXVIII-. INCREASES.

Following the issuance of this Arbitral Award, all sums or values established in pesos within this Arbitral Award and/or collective agreement will be increased by 12.75%.

From April 1, 2018 onwards, all sums or values established in pesos within this Arbitral Award and/or collective agreement will be increased by the CPI plus 1.5%.

From April 1, 2019 up until December 6, 2019, all sums or values established in pesos within this Arbitral Award and/or collective agreement will be increased by the CPI plus 1.19%.

The increase decreed for the year 2019 is proportional to the time of validity of the Arbitral Award and based on an annual increase of 1.75%, which was proposed by AVIANCA for this year, since this Award applies up until December 6, 2019.

PARAGRAPHS. AVIANCA must settle only any difference that might arise between the values paid during 2017 at the date of issue of this Arbitral Award and the result of the quantification of the Increases ordered, to avoid any double payment for the same concept.

XXIX-. AIR TICKETS WITHOUT ANY LIMITATION.

The Company will extend the current benefit enjoyed by pilots in terms of tickets for use on AVIANCA HOLDINGS routes.”

XXX-. NOTIFICATION POLICY.

The company is obliged to notify the crew members of any new developments in the performance of the employment contract. Such communication will be sent by email to the corporate mail address assigned by the company to each crew member, or by any other electronic or digital means.

PARAGRAPHS 1. In order to facilitate the development of professional activity and streamline the mechanism for communications, notifications (sending of the monthly schedule, notifications of change in assignments, among others) and use of corporate email, the company will grant pilots and co-pilots a telephony and data plan with a company of recognized experience on the domestic and international market, in accordance with the restrictions and policies defined by the company and including the international roaming service.

PARAGRAPHS 2. For the implementation of this clause, AVIANCA will pay a lump sum of ONE MILLION PESOS (1,000,000.000 COP), for the purchase of the electronic device, at the choice of the pilot.

XXXI-. PROTECTION AND STABILITY.

Empresa Aerovías Nacional de Colombia S.A., now Aerovías del Continente Americano S.A., “AVIANCA” and sociedad Aeronáutica de Medellín Consolidada S.A., “SAM”, undertake not to directly or indirectly exercise any form of retaliation against the personnel of ACDAC and those who, without being unionized, subscribe to our dossier of petitions.

Consequently, there will be no dismissals, suspensions, fines, discrimination in the allocation of flights, calls for retirement or pensioning off ”

TWO. The Arbitral Tribunal, accepting the will of the trade union organization "ACDAC", which, in the course of mediation by the Ministry of Labor, decided to **WITHDRAW** some clauses from the dossier of petitions, unanimously decides to exclude them from its pronouncement, namely:

- **CLAUSE 160.** COMPENSATION FOR CRECHE, NURSERY AND/OR PRE-SCHOOL EXPENSES. **CLAUSE 161.** EXTRAORDINARY BONUS FOR CONCLUSION OF NEGOTIATIONS. **CLAUSE 168.** RETIREMENT PLAN AND SAVINGS FUND (savings fund). **CLAUSE 172.** VACATION BONUS. **CLAUSE 174.** RISK PREMIUM. **CLAUSE 206.** COMPENSATION DURING THE VACATION PERIOD. **CLAUSE 209.** PAYMENT OF

DOCUMENTS. **CLAUSE 211.** WITHHOLDING OR PAYMENT OF TAX ON ANY ITEM CONSTITUTING SALARY.

THREE. The Tribunal unanimously, on the basis that the requests or petitions set out in the clauses of the dossier referred to below are connected with matters governed by the Substantive Labor Code or the regulations governing the activity of airlines, determines that it **DOES NOT** have the power to issue pronouncements with regard to the following:

- **CLAUSE 139.** INVESTIGATION OF ACCIDENTS, INCIDENTS OR OPERATIONAL EVENTS ON THE COMPANY'S AIRCRAFT **CLAUSE 141.** SCHEDULING OF SUCCESSIVE FLIGHTS. **CLAUSE 142.** MINIMUM REST PRIOR TO CONTINUOUS NIGHT FLIGHTS. **CLAUSE 144.** DEFINITION OF WORKING HOURS **CLAUSE 147.** DAYS IN LIEU. **CLAUSE 149.** TRAINING SCHEDULE. **CLAUSE 151.** PROMOTIONS AND ATR COPILOT TECHNICAL SCALE. **CLAUSE 152.** EQUAL PAY AMONG CO-PILOTS (Subsection 1). **CLAUSE 163.** DAYS ASSIGNED FOR PAPERWORK REQUIRED TO PERFORM PROFESSIONAL DUTIES. **CLAUSE 170.** VARIATION IN ASSIGNMENTS AND DAYS OFF. **CLAUSE 176.** CREW MEMBERS ACQUIRING PENSION OR RETIREMENT. Paragraph. **CLAUSE 180.** UNALLOCATED ADDITIONAL CREW PLACES. **CLAUSE 184.** PERMANENCE OF INSTRUCTORS AND INSPECTORS **CLAUSE 185.** ADMINISTRATIVE SELECTION. **CLAUSE 186.** NON-DISCRIMINATION COMMITMENT AND GUARANTEE OF EQUALITY. Paragraphs 1 and 2. **CLAUSE 192.** LEAVE FOR COMPLAINTS, TECHNICAL MATTERS AND SAFETY COMMISSION. **CLAUSE 193.** PENALTIES FOR THE COMPANY IN FAVOUR OF THE CREW MEMBER **CLAUSE 195.** CORPORATE UNIT. **CLAUSE 196.** TELEWORKING. **CLAUSE 197.** LUGGAGE. **CLAUSE 203.** PRESENTATION OF WEIGHT AND BALANCE CALCULATION WITH FINAL DATA. **CLAUSE 205.** MINIMUM CREW PER AIRCRAFT. **CLAUSE 207.** FLIGHT BOOKS (ON-BOARD LOGBOOK). **CLAUSE 212.** PLACE TO EAT. **CLAUSE 213.** EXTRA CREW. **CLAUSE 214.** ALLOCATION AND PROVISION OF RESERVATIONS. **CLAUSE 215.** REQUIREMENT TO REGISTER THE SCALE **CLAUSE 216.** MAXIMUM FLIGHT TIME.

FOUR. The Arbitral Tribunal refuses the following petitions based on the principle of fairness:

- **CLAUSE 146.** RECOGNITION FOR WORKING TIME. **CLAUSE 155.** REMUNERATION DURING MATERNITY LEAVE. **CLAUSE 165.** CHRISTMAS DINNER AND NEW YEAR. **CLAUSE 167.** SENIORITY. PARAGRAPHS 1 and 2. **CLAUSE 169.** EBITDA BONUS. Paragraph. **CLAUSE 171.** ONE (1) DAY OF ADDITIONAL VACATION PER YEAR WORKED. **CLAUSE 173.** DOMESTIC AND INTERNATIONAL ROUTES FOR ACTIVE AND RETIRED CREW MEMBERS. **CLAUSE 177.** RIGHT TO MEDICAL SERVICE. Paragraph. **CLAUSE 178.** MEDICAL SERVICE FOR RELATIVES **CLAUSE 179.** TICKET RIGHTS. Paragraphs 1 and 2 **CLAUSE 181.** PARKING LOT AT ALL BASES. **CLAUSE 182.** EXTRAORDINARY BONUS FOR LOSS OF LICENSE RESULTING FROM PERMANENT DISABILITY. **CLAUSE 183.** MOBILIZATION. **CLAUSE 194.** REIMBURSEMENT OF EXPENSES INCURRED BY ACDAC FOR LEGAL PROCEEDINGS, ADMINISTRATION AND OTHER ACTIONS IN DEFENSE OF THE COLLECTIVE AGREEMENT. **CLAUSE 198.** AVERAGE ALLOWANCE.

FIVE. CONTINUITY OF COLLECTIVE AGREEMENT CLAUSES Those articles, sections, subsections, numbers and paragraphs of the 2009 - 2013 collective agreement signed by and

between the parties on April 8, 2009, which have not been expressly or tacitly modified by this Arbitral Award, will remain in force.

SIX. Validity. This Arbitral Award will apply from the date of issuance up until December 6, 2019.

NOTIFY the parties in accordance with the legal provisions.

If no action for cancellation is brought by the Company and/or the Trade Union Organization, the Arbitral Award will be declared legally enforceable and sent to the Ministry of Labor for the relevant legal purposes.

[Signature]

JAIME AUGUSTO PINZON QUINTERO
President.

[Signature]

LUIS ENRIQUE CUEVAS VALBUENA
Arbitrator.

[Signature]

CARLOS ERNESTO MOLINA MONSALVE
Arbitrator.

[Handwritten text]

[Signature]

ANGEL ALFONSO BOHORQUEZ MORENO
Secretary.



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STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

CERTIFICATE OF TRANSLATION

This is to certify that the accompanying, to the best of my knowledge and belief, is a true and accurate translation into English, completed on January 18, 2023, of "2017-12-11 - Arbitral Award_Modified", originally written in Spanish.

Karen D'Urso

Karen D'Urso

Director of Production, Translation Division

Ubiqus Reporting, Inc.

Sworn to and subscribed before me,
This January 18, 2023.

Steven J. Albert

Notary Public

STEVEN J. ALBERT
NOTARY PUBLIC - STATE OF NEW YORK
No. 01AL6234881
Qualified in New York County
My Commission Expires 01-31-2023

Exhibit B to Reply

ACDAC's Request to the 11th Municipal Court

CU
24-07-2015

Bogota, D.C., July 23, 2015

To:
ELEVENTH MUNICIPAL CRIMINAL COURT OF GUARANTEES
Bogota, D.C.
By hand

Re: **INCIDENT OF CONTEMPT**. Within the judicial protection action brought by ASOCIACIÓN COLOMBIANA DE AVIADORES CIVILES (ACDAC), Case 2014-021.

In my capacity as president of ASOCIACIÓN COLOMBIANA DE AVIADORES CIVILES (ACDAC), I respectfully wish to file an **INCIDENT OF CONTEMPT** as a result of the failure by FABIO VILLEGAS RAMÍREZ, in his capacity as president of AVIANCA S.A., SARA MARÍA ALVAREZ, in her capacity as COL & EU Human Resources Manager, LINA MARCELA GARZÓN ROA, Human Resources Manager, SERGIO JULIÁN JACOME, Vice-President of Operations, in accordance with the following:

. . .

8. AVIANCA S.A. on June 10, 2015, sent all the Pilots a circular stating that it would comply with judgment T-069 of 2015, although to date it has not paid the full economic benefits ordered by judgment T-069 of 2015.

. . .



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STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss

CERTIFICATE OF TRANSLATION

This is to certify that the accompanying, to the best of my knowledge and belief, is a true and accurate translation into English, completed on January 18, 2023, of “11th Municipal Court – ACDAC’s Request” originally written in Spanish.

Karen D’Urso

Karen D’Urso
Director of Production, Translation Division
Ubiquis Reporting, Inc.

Sworn to and subscribed before me,
This January 18, 2023.

Audrey C. Deng

Notary Public

AUDREY C. DENG
NOTARY PUBLIC - STATE OF NEW YORK
No. 01DE6442668
Qualified in New York County
My Commission Expires 10-17-2026

Exhibit C to Reply

Judgment of the 11th Municipal Court

**REPUBLIC OF COLOMBIA
JUDICIAL BRANCH OF PUBLIC AUTHORITY**



**ELEVENTH MUNICIPAL CRIMINAL COURT WITH OVERSIGHT OF GUARANTEES
FUNCTION IN BOGOTA, D.C.**

Bogota, D.C., July twenty-second (22nd), two thousand and fifteen (2015)

Case: 2015-0027
Defendant: ASOCIACIÓN COLOMBIANA DE AVIADORES
CIVILES (ACDAC)
Plaintiff: AEROVÍAS DEL CONTINENTE AMERICANO
AVIANCA S.A.

. . .

III. CONSIDERATIONS

. . .

On the basis of the above, we find the case examined to reveal the legal phenomenon of lack of current object, which according to case-law occurs for one of two reasons: the event has passed or the damages have been consummated. The event is deemed to have passed when the claim contained in the application for protection is fulfilled, in other words, the intended aim to be achieved by means of the order of the judge affording judicial protection, has occurred before any order is issued. Meanwhile, consummated damage occurs when the violation of or threat to the fundamental right has had the effect that was to be avoided, such that it is no longer possible to stop the violation or prevent the threat from materializing, and all that can be done is to compensate for the damage caused by the violation of the fundamental right.

As the order issued in the ruling of judicial protection has been fulfilled and the petition of the plaintiff satisfied, the Office holds that there is no basis to impose a penalty for contempt, since the event that gave rise to the instigation of the incident has now passed.

. . .



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)
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CERTIFICATE OF TRANSLATION

This is to certify that the accompanying, to the best of my knowledge and belief, is a true and accurate translation into English, completed on January 18, 2023, of “11th Municipal Court – Judge’s Decision” originally written in Spanish.

Karen D’Urso

Karen D’Urso
Director of Production, Translation Division
Ubiquus Reporting, Inc.

Sworn to and subscribed before me,
This January 18, 2023.

Audrey C. Deng

Notary Public

AUDREY C. DENG
NOTARY PUBLIC - STATE OF NEW YORK
No. 01DE6442668
Qualified in New York County
My Commission Expires 10-17-2026

Exhibit D to Reply

Judgment of the 34th Municipal Court

THIRTY-FOURTH MUNICIPAL CRIMINAL COURT WITH EXAMINATION FUNCTION
CARRERA 28 A No. 18 - 67, PISO 1, BLOQUE A
FAX 3752773
juzgado34pmc@hotmail.com

Bogota, D.C., October 13, 2015
OFFICIAL NOTICE 748

Avianca CCI - CAV
Entry
2015-10-14 11:16:42
BOG-0000175832 11001
Elisa murgas de moreno
CAV, 10th Floor
[barcode]

Dr
ELISA MURGAS DE MORENO
Legal Representative, AVIANCA SA
Calle 26 # 59-15
City

RE: JUDICIAL PROTECTION CASE 0024-2014

DEFENDANT: AVIANCA SA
PLAINTIFF: PRESIDENT, ACDAC

Please find enclosed a copy of the decision issued on this date, for your information and for the relevant purposes. It comprises two (2) pages.

Kind regards,

[signature]

FRAY LIBARDO PARRA ROJAS
Secretary

OCT 14, 2015
Gloria Esmeralda Cruz Camargo
ID Card 51723842 Bogota
Notifier
Calle 26
Higher Judiciary Council PIQUEMAO

JUDICIAL PROTECTION INCIDENT 0024-2014

DEFENDANT: AEROVIAS DEL CONTINENTE AMERICANO (AVIANCA SA)

PLAINTIFF: PRESIDENT, ACDAC

SECRETARY. Bogota, D.C., October 13, 2015

The Judge's Office regarding this incident, accompanied by the response offered by the company in question. As ordered.

[signature]

FRAY LIBARDO PARRA ROJAS

Secretary

THIRTY-FOURTH MUNICIPAL CRIMINAL COURT
WITH EXAMINATION FUNCTION

Bogota, D.C., October thirteenth (13th), two thousand and fifteen (2015)

The information provided by the Legal Representative of AEROVIAS DEL CONTINENTE AMERICANO (AVIANCA SA) regarding compliance with the ruling of constitutional protection that was subject to review by the Constitutional Court is as follows:

As clarification for the parties, the object of judicial protection in this case includes the group of captains in the service of AVIANCA SA, affiliated to the trade union organization (ACDAC), including: ALVARO ANDRES LOZANO SALAZAR, ENRIQUE JOSE MADERO CABRERA, HECTOR LEONARDO MADRID SOTO, MIGUEL MAHILLO DIAZ, CHRISTIAN FABIAN MALDONADO HERRERA, MARIA CRISTINA MALDONADO VELASQUEZ, GIOVANNY GUSTAVO MANRIQUE PARRA, JORGE DAVID MANTILLA BARBOSA, RICARDO MANZANERA BLEL, RICARDO MARTIN MANZANERA NEUMAN, JEAN PIERRE MARIANO MUTIS, JACOBO MARIN GOMEZ, MAURICIO MARIN MARTINEZ, MIGUEL ANDRES MARTINEZ BOHORQUEZ, JOSE HUMBERTO MARTINEZ CAMACHO, OSCAR JULIAN MARTINEZ MARTINEZ, GUILLERMO ANDRES MARTINEZ MORENO, JAIME ENRIQUE MARTINEZ QUIJANO, ANDRES MAURICIO MARULANDA ANGEL, LUIS EDUARDO MATEUS ORTEGON, among others, as established in the lower court's sentence from 4 March 2014

In this sense, then, the President of ACAV representing the group of flight attendants notes an inaccuracy in terms of the different population group covered by the ruling of judicial protection, as well as the arguments set out by the Legal Representative of AVIANCA SA, claiming the lack of competence of this Office to examine the complaint formulated as an incident of contempt.

Notwithstanding the above, the annexes provided by AVIANCA SA demonstrate payment of the Voluntary Benefits Plan, at least to the unionized captains MARIA CRISTINA MALDONADO VELÁSQUEZ, GIOVANNY GUSTAVO MANRIQUE PARRA, ALVARO ANDRES LOZANO SALAZAR and JORGE DAVID MANTILLA BARBOSA (see pages 48, 49 and 51 of the response), without any disincentive causing them to leave the union or action preventing them from rejoining, as regards their right of association.

Under such conditions, it is not possible to initiate the incident of contempt as filed, as there are no elements of evidence that would allow a possible breach of the ruling of judicial protection to be deduced, under the terms specified herein.

TO BE NOTIFIED AND FULFILLED.

[signature]

CÉSAR ARMANDO PARRA RODRIGUEZ
Judge



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CERTIFICATE OF TRANSLATION

This is to certify that the accompanying, to the best of my knowledge and belief, is a true and accurate translation into English, completed on January 18, 2023, of “34th Municipal Court – Judge’s Decision” originally written in Spanish.

Karen D’Urso

Karen D’Urso
Director of Production, Translation Division
Ubiq Reporting, Inc.

Sworn to and subscribed before me,
This January 18, 2023.

Audrey C. Deng

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Exhibit E to Reply

ACDAC's Request to the 39th Municipal Court



Bogota, D.C., August 24, 2015.

Dr

FABIO VILLEGAS RAMIREZ

President

AVIANCA S.A.

By hand

RE: REQUEST FOR COMPLIANCE WITH JUDGMENT T-069 OF 2015 REGARDING PAYMENT FOR THE RIGHT TO EQUALITY AGAINST ECONOMIC BENEFITS AND INCREASES PAID AS A RESULT OF THE COLLECTIVE AGREEMENT

In my capacity as president of ASOCIACION COLOMBIANA DE AVIADORES CIVILES (ACADC), and in order for me to address the incidents of contempt being considered by the criminal courts of Bogota, I respectfully request that you recognize and pay all the pilots affiliated to this association and beneficiaries of the economic effects of judgment T-069 of 2015, in accordance with the settlement of the items that I specify in this communication. However, I will first refer to the filings made by the company before the criminal courts of Bogota.

. . .

3. THE COMPANY HAS TO DATE NOT RECOGNIZED THE FOLLOWING ITEMS ORDERED IN JUDGMENT T-069 OF 2015. I THEREFORE

**RESPECTFULLY REQUEST THAT THIS BE DONE IMMEDIATELY FOR ALL
UNIONIZED PILOTS.**

UNRECOGNIZED ITEMS

. . .

7. Monthly Operational Efficiency Incentive:

. . .

Additionally, the company must grant unionized pilots 100% of the value established in the Collective Bargaining Agreement (Voluntary Benefits Plan) taking into account that judgment T 069 of 2015 established that the company must recognize the economic values paid to pilots NOT unionized and in no way must the regulatory conditioning be applied (Achievement Factor), clarifying that the Collective Agreement does not establish conditions on an individual basis for the worker to become entitled to this.

8. Semi-annual Variable Compensation (Fuel Voucher):

. . .

Additionally, the company must grant unionized pilots 100% of the value established in the Collective Bargaining Agreement (Voluntary Benefits Plan) taking into account that judgment T 069 of 2015 established that the company must recognize the economic values paid to pilots NOT unionized and in no way must the regulatory conditioning be applied (Achievement Factor), clarifying that the Collective Agreement does not establish conditions on an individual basis for the worker to become entitled to this.

. . .



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CERTIFICATE OF TRANSLATION

This is to certify that the accompanying, to the best of my knowledge and belief, is a true and accurate translation into English, completed on January 18, 2023, of “39th Municipal Court – ACDAC’s Request” originally written in Spanish.

Karen D’Urso

Karen D’Urso
Director of Production, Translation Division
Ubiquus Reporting, Inc.

Sworn to and subscribed before me,
This January 18, 2023.

Audrey C. Deng

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My Commission Expires 10-17-2026

Exhibit F to Reply

Judgment of the 39th Municipal Court

REPUBLIC OF COLOMBIA



**THIRTY-NINTH MUNICIPAL CRIMINAL COURT WITH EXAMINATION
FUNCTION**

BOGOTA, D.C., NOVEMBER FIFTH (5TH) TWO THOUSAND AND FIFTEEN (2015)

3. CONSIDERATIONS

In this line of reasoning, the Office should specify that according to the provisions of articles 27 and 52 of Decree 2591 of 1991, provisions that constitute the regulatory basis of contempt of court, and based on the understanding that the judicial protection ruling entails an order of immediate compliance, for protection of the rights violated, as in this case, confirming the application of the voluntary benefits plan to all workers of the company AVIANCA S.A., under protection of the right to equality, it has been verified that the defendant already complied with that order, since it carried out the settlement calculation and payment, and as regards the protection of the right to the trade union association, it is also verified that there is no opposition and called on the interested parties to become part of that organization.

As a result, if the contempt constitutes a breach of the mandatory order, in the case examined this lack of acknowledgment is not specified, since it was fulfilled. It is another matter for the plaintiff and the group represented thereby to claim that they are not satisfied with said settlement, and I cannot encroach on the role of the Labor Law Judge, who must likewise avail himself of legal assistants specializing in accounting in order to determine whether the settlements for each worker are aligned with the percentages stipulated in the benefits plan.

Based on the above, we must specify that the payment of the economic rights stipulated in the Voluntary Benefits Plan was indeed recognized for all workers covered by the judicial protection action, which was settled retroactively and with the CPI increases from April 2013 to 2015 [pages 235 to 260 of book 2 of the incident of contempt]. As this circumstance has been confirmed, the new petition of the plaintiff constitutes an ancillary claim that they do not agree with the settlement of salaries and social benefits owed to workers, arguing that they failed to include monetary sums which, in their opinion, must be taken into account as salary factors in favor of those they represent. I would argue that the evidence must unquestionably be debated before the labor law judge, who will be competent to rule on the dispute as to the amount thereof, since a decision in this regard lies outside the scope of protection granted to the fundamental rights of the members of the trade union organization represented by the plaintiff, which was required in the recognition of judicial protection, since one cannot encroach

on the powers of the specific judge for labor matters that require evidentiary debate, and in such conditions what is here petitioned lies outside the scope of protection granted in the judicial protection ruling, which appears to have been complied with, taking into account that the company AVIANCA S.A. proceeded to recognize the emoluments offered in the Voluntary Benefits Plan without distinction among all workers, regardless of whether they are unionized or not, as verified by the payslips submitted in the case (pages 69 to 101 of book 1, incident of contempt), above all when the amount of the sums recognized for the workers is above the percentages provided for in the Collective Agreement, in accordance with the comparative table issued by the Court in its judgment, which gave rise precisely to protection of the workers' right to equality, without overlooking the fact that with regard to the content of the judgment a query is pending resolution.

. . .



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Karen D’Urso

Karen D’Urso
Director of Production, Translation Division
Ubiqus Reporting, Inc.

Sworn to and subscribed before me,
This January 18, 2023.

Audrey C. Deng

Notary Public

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Exhibit G to Reply

Judgment of the 67th Municipal Court

Republic of Colombia



**SIXTY-SEVENTH MUNICIPAL CRIMINAL COURT WITH OVERSIGHT OF
GUARANTEES FUNCTION**

Bogota, D.C, October seventh (7th), two thousand and fifteen (2015).

. . .

CONSIDERATIONS OF THE OFFICE

. . .

This being the case, it is true that AVIANCA has submitted evidence indicating the impossibility of determining negligent conduct in violation of the fundamental rights of the plaintiffs. On the contrary, its intention, as has been demonstrated, has been to recognize and pay each plaintiff in the incident, according to their legal entitlements, and this judge cannot determine exactly how the plaintiff so claims access to the payment of the sums settled by the plaintiff and which were specified in the written submission made to the office.

. . .



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This is to certify that the accompanying, to the best of my knowledge and belief, is a true and accurate translation into English, completed on January 18, 2023, of “67th Municipal Court – Judge’s Decision” originally written in Spanish.

Karen D’Urso

Karen D’Urso
Director of Production, Translation Division
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Sworn to and subscribed before me,
This January 18, 2023.

Audrey C. Deng

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Exhibit H to Reply

ACDAC's Request to the 72d Municipal Court

To:

**SEVENTY-SECOND MUNICIPAL CRIMINAL COURT FOR OVERSIGHT OF
GUARANTEES**

Bogota, D.C.

By hand

COURT COMPLEX OF PALOQUEMAO
31561 31-RUG-'15 15:53

Re: **INCIDENT OF CONTEMPT**. Within the judicial protection action brought by ASOCIACION COLOMBIANA DE AVIADORES CIVILES (ACDAC), Case 2014-007,

In my capacity as president of ASOCIACIÓN COLOMBIANA DE AVIADORES CIVILES (ACDAC), I respectfully wish to file an **INCIDENT OF CONTEMPT** based on the refusal by FABIO VILLEGAS RAMIREZ, in his capacity as president of AVIANCA S.A., SARA MARÍA ALVAREZ, in her capacity as COL&EU Human Resources Manager, LINA MARCELA GARZÓN ROA, Human Resources Manager, SERGIO JULIÁN JACOME, Vice-President of Operations, in accordance with the following:

. . .

3. THE COMPANY HAS TO DATE NOT RECOGNIZED THE FOLLOWING ITEMS ORDERED IN JUDGMENT T-069 OF 2015. I THEREFORE RESPECTFULLY REQUEST THAT THIS BE DONE IMMEDIATELY FOR ALL UNIONIZED PILOTS.

UNRECOGNIZED ITEMS

. . .

7. *Monthly Operational Efficiency Incentive:*

. . .

Additionally, the company must grant unionized pilots 100% of the value established in the Collective Bargaining Agreement (Voluntary Benefits Plan) taking into account that judgment T 069 of 2015 established that the company must recognize the economic values paid to pilots NOT unionized and in no way must the regulatory conditioning be applied (Achievement

Factor), clarifying that the Collective Agreement does not establish conditions on an individual basis for the worker to become entitled to this.

8. Semi-annual Variable Compensation (Fuel Voucher):

. . .

Additionally, the company must grant unionized pilots 100% of the value established in the Collective Bargaining Agreement (Voluntary Benefits Plan) taking into account that judgment T 069 of 2015 established that the company must recognize the economic values paid to pilots NOT unionized and in no way must the regulatory conditioning be applied (Achievement Factor), clarifying that the Collective Agreement does not establish conditions on an individual basis for the worker to become entitled to this.

. . .



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Karen D’Urso

Karen D’Urso
Director of Production, Translation Division
Ubiqus Reporting, Inc.

Sworn to and subscribed before me,
This January 18, 2023.

Audrey C. Deng

Notary Public

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My Commission Expires 10-17-2026