

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 28th day of September, two thousand twenty-six.

PRESENT:

JOSÉ A. CABRANES,
GERARD E. LYNCH,
JOSEPH F. BIANCO,
Circuit Judges.

FREDERICK FIGUEROO,

Plaintiff-Appellant,

v.

26-47-cv

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, TEAMSTERS LOCAL
UNION NO. 210, UNITED AIRLINES, INC.,

Defendants-Appellees.

FOR PLAINTIFF-APPELLANT:

SAMUEL A. SEHAM (Stanley J. Silverstone and Lee Seham, *on the brief*), Seham, Seham, Meltz & Petersen, LLP, White Plains, New York.

FOR DEFENDANTS-APPELLEES:

JASON ZARROW (Mark W. Robertson, F. Cody Kahoe, *on the brief*), O'Melveny & Myers LLP, Los Angeles, California, New York, New York, and San Francisco, California, *for* United Airlines, Inc.

RACHEL REKOWSKI (Edward M. Gleason, Jr., *on the brief*), Herzfeld Suetholz Gastel Leniski & Wall, PLLC, Cincinnati, Ohio and Washington, District of Columbia, *for* International Brotherhood of Teamsters and Teamsters Local Union No. 210.

Appeal from a judgment of the United States District Court for the Eastern District of New York (Nina R. Morrison, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court, entered on December 11, 2025, is **AFFIRMED**.

Plaintiff-Appellant Frederick Figuereo appeals from the district court's dismissal of his complaint against Defendants-Appellees International Brotherhood of Teamsters ("IBT"), Teamsters Local Union No. 210 ("Local 210") (collectively, the "Union"), and United Airlines, Inc. ("United") for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Figuereo secured the Union's representation to challenge his termination from his job as an airline technician for United, but after advocating for his claim through the initial steps of the grievance process, the Union ultimately concluded that his grievance was not meritorious and declined to pursue it further. In this declaratory judgment action, Figuereo argues that the district court erred in determining that he did not separately have the individual right to pursue that grievance in arbitration pursuant to the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.*

We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision.

BACKGROUND

Figuerero was employed by United as an airline technician in Newark, New Jersey, for almost 25 years before he was fired for timekeeping violations on June 11, 2024. During his employment, he was a member of IBT's affiliated local union, Local 210. The IBT and Local 210 constitutions contain substantially similar language regarding the relationship between the member and the Union for purposes of employment grievances. IBT's constitution provides:

Every member covered by a collective bargaining agreement at their place of employment authorizes the Local Union to act as his or her exclusive bargaining representative with full and exclusive power to execute agreements with the employer governing terms and conditions of employment and to act for him or her and have final authority in presenting, processing, and adjusting any grievance, difficulty, or dispute arising under any collective bargaining agreement or out of their employment with such employer in such manner as the Local Union or its officers deem to be in the best interests of the Local Union, all subject to Article XII and other applicable provisions of the International Constitution relating to such matters. The Local Union and its officers, business representatives, and agents may decline to process any grievance, complaint, difficulty, or dispute if in their reasonable judgment such grievance, complaint, or dispute lacks merit.

App'x at 60; *see also id.* at 66 (Local 210 constitution).

IBT and United are parties to the Airline Technicians' Collective Bargaining Agreement ("CBA"), which details the terms and conditions of member employment and sets forth procedures for their discharge and discipline, including grievance and arbitration procedures. Under the CBA, "[i]f the decision of the Company's representative is not acceptable to the Union, the decision may be appealed by the Union to the System Board of Adjustment," which is composed of two members designated by United and two members designated by the Union. *Id.* at 38–39. If the System Board of Adjustment ("SBA") reaches a deadlock, "the Union may

appeal the case to arbitration.” *Id.* at 39.

On June 17, 2024, following Figuereo’s termination, the Union filed a grievance with United on his behalf pursuant to the CBA’s grievance procedures. The grievance form, signed by Figuereo, states, “I hereby authorize the Union to settle my grievance as they deem proper, and I agree to accept and be bound by the settlement agreed to by the Union or its designees.” *Id.* at 49. Three months later, the Union notified him that after a “full legal review” of Figuereo’s grievance, and “based on [the Union’s] attorney’s legal opinion that any grievance on behalf of [Figuereo] will be denied and unlikely to be sustained in a board of arbitration,” the Union “declined to pursue this grievance.” *Id.* at 50.

Over the following two months, Figuereo and his counsel contacted United on three occasions to advise that he “intended to individually represent himself regarding his grievance in front of the System Board of Adjustment, and to request that United Management process his grievance to the System Board of Adjustment so that he may do so.” *Id.* at 10–11. Figuereo received no response.

Figuereo then filed the instant lawsuit, seeking (1) a declaratory judgment that, as an airline employee, he has the right to arbitrate his grievance as an individual, with or without the Union’s participation, pursuant to the RLA, and (2) an order compelling such arbitration before a single arbitrator on the SBA. In granting Defendants’ motions to dismiss, the district court concluded that the RLA does not provide an individual right for airline employees to arbitrate a grievance and, therefore, dismissed the complaint under Rule 12(b)(6). *See generally Figuereo v. Int’l Bhd. of Teamsters*, 811 F. Supp. 3d 411 (E.D.N.Y. Dec. 10, 2025).

DISCUSSION

On appeal, Figuereo argues that the text, history, and purpose of the statute all confirm

that the RLA provides airline employees with an individual right to arbitrate grievances with their employer. Defendants maintain that the RLA provides no such right and, even if it did, Figuereo waived it by entrusting the Union to settle his grievance in this case.

We review legal questions arising from a district court's dismissal for failure to state a claim under Rule 12(b)(6) *de novo*, "accepting as true all factual allegations in the complaint and drawing all reasonable inferences in favor of the plaintiff." *Buon v. Spindler*, 65 F.4th 64, 76 (2d Cir. 2023). Dismissal is proper "on the basis of an affirmative defense only when facts supporting the defense appear on the face of the complaint." *United States v. EZ Lynk, SEZC*, 149 F.4th 190, 198 (2d Cir. 2025) (internal quotation marks and citations omitted). Under this standard, we may consider "any written instrument attached to [the complaint] as an exhibit or any statements or documents incorporated in it by reference," and "matters of which the court may take judicial notice." *In Re: Nine West LBO Sec. Litig.*, 87 F.4th 130, 142–43 (2d Cir. 2023) (internal quotation marks and citation omitted).

One of the RLA's stated purposes, as codified at 45 U.S.C. § 151a, is "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." Figuereo argues that the RLA's statutory framework provides airline employees with an individual right to arbitrate such disputes with or without a union as a party because the Supreme Court in *Elgin, J. & E. Ry. Co. v. Burley*, 325 U.S. 711 (1945) ("*Elgin I*") recognized that a railroad worker may, under certain circumstances, bring grievances individually before the National Railroad Adjustment Board under 45 U.S.C. § 153. Defendants argue that the RLA does not confer such a right to airline employees like Figuereo because the subchapter of the RLA covering carriers by air, 45 U.S.C. §§ 181–188, while incorporating all other provisions in

the railroad subchapter, explicitly excepted 45 U.S.C. § 153.¹ Additionally, Defendants argue that the remedy for an airline employee dissatisfied with a union’s decision to stop pursuing his grievance is to bring a claim for breach of the union’s duty of fair representation.

Without deciding whether the RLA confers an individual right to arbitrate, we agree with Defendants in concluding that Figuereo waived any such right to individually pursue his grievance in this case by ceding it to the Union.²

Waiver “is the intentional relinquishment or abandonment of a known right.” *Morgan v. Sundance, Inc.*, 596 U.S. 411, 417 (2022) (internal quotation marks and citation omitted). The Supreme Court has recognized that it is “possible for [a] union to secure authority [to settle member grievances] within well established rules relating to unincorporated organizations and their relations with their members, by appropriate provisions in their by-laws, constitution or

¹ Circuits are split on the issue of whether airline employees have an individual right to arbitration under 45 U.S.C. § 184. The Eighth Circuit has held that the RLA does not provide airline workers with an individual right to arbitration before an airline’s system board of adjustment. *See Martin v. Am. Airlines, Inc.*, 390 F.3d 601, 608–09 (8th Cir. 2004) (“The RLA provides *railroad employees* the right to pursue arbitration individually before the National Railroad Adjustment Board. . . . However, the RLA specifically provides that § 153 is not applicable to air carriers.”) (emphasis in original). The Fifth Circuit has held that an airline employee lacks standing to compel arbitration absent a viable claim for breach of duty of fair representation. *See Mitchell v. Cont’l Airlines, Inc.*, 481 F.3d 225, 233–34 (5th Cir. 2007). The First Circuit has expressed skepticism as to the existence of an individual right. *See Bryan v. Am. Airlines, Inc.*, 988 F.3d 68, 76 (1st Cir. 2021). In a duty of fair representation case brought by an airline employee, the Ninth Circuit observed that employees have no absolute right to have their cases taken to arbitration. *See Singer v. Flying Tiger Line Inc.*, 652 F.2d 1349, 1355 (9th Cir. 1981). On the other hand, the Third Circuit has stated that a judicial order compelling arbitration was an available remedy for an airline employee if the adjustment board refused to entertain the employee’s claim. *See Capraro v. United Parcel Serv. Co.*, 993 F.2d 328, 336–37 (3d Cir. 1993). The Eleventh Circuit has noted in a footnote that “individual airline employees *are* entitled to convene special boards of adjustment as a matter of statutory right,” *Pyles v. United Air Lines, Inc.*, 79 F.3d 1046, 1052 n.9 (11th Cir. 1996) (emphasis in original), though a later opinion of the same court characterized that statement as dicta, *see Whitaker v. Am. Airlines, Inc.*, 285 F.3d 940, 945 (11th Cir. 2002).

² Although the district court did not address this alternative argument, we “may affirm on any basis for which there is sufficient support in the record.” *See EZ Lynk*, 149 F.4th at 201 (internal quotation marks and citation omitted).

other governing regulations, as well as by usage or custom.” *Elgin, J. & E. Ry. Co. v. Burley*, 327 U.S. 661, 663 n.2 (1946) (“*Elgin II*”).³ The relevant standard for authorization in the union member context is whether there is an “unequivocal intention to surrender the individual’s right to participate in the settlement and to give the union final voice in making it together with exclusive power to represent him before the [b]oard,” *Elgin I*, 325 U.S. at 744, or, put differently, whether “the employees had finally committed the whole matter of their claims into the union’s hands in such manner as to constitute a surrender of their individual rights to concur in any agreement of settlement,” *id.* at 747. Once a union has such authority, it “must be free to sift out wholly frivolous grievances which would only clog the grievance process.” *Humphrey v. Moore*, 375 U.S. 335, 349 (1964); *see also Simberlund v. Long Island R. Co.*, 421 F.2d 1219, 1225 (2d Cir. 1970) (“It is not . . . the function of the court to inquire into the merits of appellants’ grievance.”).

In applying *Elgin II*, we have found that language in a union constitution can be sufficient to vest it with authority to withdraw a member’s grievance. *See Simberlund*, 421 F.2d at 1225 (“There is no question in this case of the authority of the Firemen to act as appellants’ agent. The Firemen had the authority to settle or withdraw appellants’ grievances by virtue of Article 9, Section 16(b) of the Firemen’s constitution. This section provides that upon joining the Firemen, each member authorizes the Union and its officials to act as his agent in settling, adjusting or compromising all his claims, grievances, and disputes. This provision was

³ *Elgin II* expounded on the issue that was left open in *Elgin I*, 325 U.S. at 733, in which the Supreme Court had noted, with respect to railroad workers covered by 45 U.S.C. § 153, that collective bargaining agreements cannot lightly abrogate statutory rights in analyzing whether the RLA established an individual right to settle grievances, but “expressly refrained from undertaking to make a definitive statement” on when a union has authority to settle grievances. *Elgin II*, 327 U.S. at 663.

sufficient to vest authority in the Firemen to act in appellants' behalf.”).

Here, we conclude that Figuereo ceded his grievance authority to the Union through his membership in the Union and by signing the grievance form, thus waiving any right to pursue arbitration as an individual under the RLA (assuming, without deciding, that such a right exists). The IBT and Local 210 constitutions plainly provide that the Union has the authority to decline to process member grievances it finds to be without merit.⁴ *See* App'x at 60 (IBT constitution) (“The Local Union and its officers, business representatives, and agents may decline to process any grievance, complaint, difficulty, or dispute if in their reasonable judgment such grievance, complaint, or dispute lacks merit.”); *see also id.* at 66 (Local 210 constitution) (same). The CBA interlocks with this provision, providing an appeal to the SBA through the Union and states that, if the SBA deadlocks, “the Union *may* appeal the case to arbitration.” *Id.* at 39 (emphasis added). And, most concretely, Figuereo's signed grievance form, specific to his termination grievance, clearly accepts the Union's authority here, vesting the Union with full authority to act on his behalf. In particular, he agreed to “accept and be bound by” the Union's exercise of its discretion in handling his grievance, and we will enforce that agreement here. *Id.* at 49.

Figuereo's arguments to the contrary are unavailing. First, he argues that we should decline to address this issue and remand for fact-finding regarding the “customs and usages of the workplace,” under *Elgin II*. Appellant's Reply Br. at 15. However, this presumes that there is ambiguity over whether Figuereo authorized the Union to act. Although “custom and usage

⁴ Even though the IBT and Local 210 constitutions were not referenced in the complaint, we can take judicial notice of them because they are filed with the U.S. Department of Labor, *see 1199 SEIU United Healthcare Workers East v. Chinese-Am. Planning Council Home Attendant Program*, 182 F.4th 67, 83 n.19 (2d Cir. 2026), and constitute facts that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned,” Fed. R. Evid. 201(b)(2). Indeed, Figuereo does not object to consideration of these documents in his appellate brief, nor did he do so in the district court.

may be as adequate a basis of authority as a more formal authorization for the union . . . to represent him in settling [a grievance] or in proceedings before the Board,” *Elgin II*, 327 U.S. at 663, we do not resort to evidence of custom and usage where, as here, the formal authorization is unambiguous and demonstrates an “unequivocal intention to surrender” any such right.⁵ *Elgin I*, 325 U.S. at 744; see *Keiler v. Harlequin Enters. Ltd.*, 751 F.3d 64, 69 (2d Cir. 2014) (“[A] written agreement that is complete and unambiguous is to be interpreted without the aid of extrinsic evidence and . . . industry practice may not be used to vary the terms of such a contract.”).

Second, Figuereo contends that the issue of whether he authorized the Union to act on his behalf is “within the exclusive jurisdiction of the System Board.” Appellant’s Reply Br. at 15. Our precedent makes clear that we have jurisdiction to decide that legal question in this context. See *Simberlund*, 421 F.2d at 1225.

Finally, Figuereo asserts that he made it “unmistakably clear” that he wanted to arbitrate his grievance and that he “unequivocally revoked that authority.” Appellant’s Reply Br. at 17. However, those allegations are irrelevant because the face of the complaint demonstrates that he did not attempt to do so until September 30, 2024, weeks *after* the Union wrote to him that it was not pursuing the grievance. As we explained in *Simberlund*, the grievance authority given to the union cannot be withdrawn by the union member after the union has settled the grievance. 421 F.2d at 1225.

In sum, even assuming *arguendo* that an individual right to pursue his grievance is

⁵ Figuereo also relies on *Stevens v. Teamsters Local 2707*, 504 F. Supp. 332, 335 (W.D. Wash. 1980), an out-of-circuit district court case in which, unlike here, the union constitution and the collective bargaining agreement had conflicting terms regarding individual settlement of grievances.

conferred by the RLA, Figuereo waived that right in connection with his termination by ceding it to the Union and, thus, his complaint failed to state a claim under Rule 12(b)(6).

*

*

*

We have considered Figuereo's remaining arguments regarding waiver and conclude that they are without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court