

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES - SAN FRANCISCO BRANCH**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**Case 28-CA-250860**

**and  
INTERNATIONAL GAME TECHNOLOGY PLC**

**ORDER DENYING RESPONDENT'S MOTION TO POSTPONE HEARING**

On June 9, 2020, the complaint in this case was issued and since October 15, 2020, the current hearing date of March 23, 2021 was noticed and set for Zoom for Government videoconference or live trial in Las Vegas, Nevada.

Consequently, having received more than 5 months' notice of next week's hearing, the Respondent Union waited until Wednesday, March 17, 2021 to file a motion to postpone the March 23, 2021 hearing for "a minimum of 60 days" (the Motion). The Motion argues that:

Union Representative Kevin Million is a material witness as he was present for and attended numerous bargaining sessions between the Union and the Employer. His unavailability due to being on a medical leave makes it impossible for the Union to present its defenses, as it would need to rely on hearsay testimony from other Union representatives. Moreover, the Region has indicated that Mr. Million is its chief 611(c) witness and anticipated calling him for its case in chief. Given his importance as a pertinent witness to the allegations herein, the matter should be rescheduled.

Additionally, the Region has proposed a settlement that the Union is considering. Due to the proximity in time to the hearing, if further negotiation

is needed in reaching a settlement, rescheduling the hearing would aid in that effort.

Finally, the Employer has expressed a desire to hold the hearing in “one sitting” rather than having to start with some witnesses and then adjourn until Mr. Million is available to testify. The Union agrees with the Employers position and believes it would be beneficial to all parties and witnesses.

Holding the hearing, which is estimated for one day, on one day will also support judicial economy and save on the resources of the Board, the Region, and the parties....

As of the date of this Motion, Mr. Million is expected to be absent through the end of March 2021. There is no further information. The Union would propose a 60 day continuance as it should have a better idea of Mr. Million’s availability by then. There have been no previous continuances for the hearing.

Also, on March 17, 2021, I issued an Order to Show Cause asking the parties to respond to the Motion no later than noon today as why the Motion should not be granted.

Today before noon, the Charging Party Employer filed its response to my OSC providing that:

... Charging Party International Game Technology PLC affirms that it does not oppose Respondent’s Motion to Reschedule the hearing. Further, as stated that, as noted in the Motion, Charging Party would prefer for the complete hearing to be conducted at one time rather than proceeding piecemeal, which would be required in the absence of the requested adjournment due to the apparent unavailability of a key witness.

Also, today before noon, Counsel for the Acting General Counsel (AGC) filed his opposition to the Motion (“AGC Opposition”) arguing that the Motion should be denied because:

Respondent requests that the hearing be postponed for a minimum of 60 days due to the unavailability of a witness, Kevin Million (Million). However, Respondent fails to articulate a legitimate reason as to why the hearing should be delayed for at least 60 days. Respondent avers that Million will be absent through the end of March but neglects to indicate an approximate return to work date for Million. Thus, Respondent arbitrarily selected 60 days as the minimum amount of time that this hearing, which is scheduled to last no more than two days, should be postponed. Accordingly, the Acting General Counsel requests that the Motion be denied in regard to the length of the continuance requested.

I am informed by the trial judge in this case that on March 17, 2021, all three sides met recently for a status conference call before the filing of the Motion wherein Mr. Million’s alleged unavailability for at least 30 days as AGC’s lead 611(c) witness was first discussed with the judge and, at that time, Region 28 Regional Director’s position was that, while the Region was unwilling to agree to a postponement, the AGC planned on moving for a postponement either immediately after the record was opened or after presenting a few quick witnesses. Apparently, at that time, Respondent voiced no objection to this, and Charging Party’s counsel stated that he believed that presenting the case in one session would be preferable.

Having fully considered the pleadings, I find that good cause has not been shown to grant Respondent’s motion to postpone the March 23 hearing in light of its 11<sup>th</sup>-Hour vague

and uncertain Motion filing without any supporting evidence. I further find that ongoing settlement negotiations do not provide good cause to postpone a hearing unless the Acting General Counsel/Regional Director agrees as this matter has been noticed for hearing since last October 2020 and serious settlement discussions can still go forward between now and the trial date. In addition, the Acting General Counsel told the trial judge in this case at a status conference that if this case does not settle, he is prepared to present his case if his key witness cannot attend using Zoom for Government videoconferencing technology. I also find the Motion was not filed in a timely manner as Respondent's counsel had more than 5 months to file its motion after receiving notice of the 3/23/21 hearing date. Respondent has waited too long to inform me of its alleged witness problem and no doctor's note, or appropriate medical evidence accompanied the Motion or was provided to the Region to convince the Acting General Counsel of the medical incapacity of the key witness. In addition, there are no open hearing dates on the Division of Judges master calendar until late May 2021. Such dilatory conduct should not be encouraged. Finally, if this case can be resolved through further settlement negotiations, it can also settle ahead of the March 23 trial date if all sides make a good faith effort to settle this case in the 4 days that remain before hearing. Keeping the March 23 hearing date in place provides good motivation to exchange, agree, and/or sign settlement proposals as soon as possible. Therefore, the Respondent's Motion to Postpone Hearing is **DENIED**.

Dated: March 19, 2021



Gerald M. Etchingham,  
Associate Chief  
Administrative Law Judge

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