



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the
Application of the

AIR LINE PILOTS ASSOCIATION

alleging a representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended

involving employees of

FREEDOM AIRLINES, INC.

30 NMB No. 40

CASE NO. R-6939
(File No. CR-6771)

FINDINGS UPON
INVESTIGATION-
DISMISSAL

April 22, 2003

This determination addresses an application filed by the Air Line Pilots Association, International (ALPA). ALPA requests the National Mediation Board (Board) to investigate whether Freedom Airlines, Inc. (Freedom) is operating as part of the single transportation system which includes Mesa Airlines, Inc. (Mesa), Air Midwest, Inc. (Air Midwest), and CCAir, Inc. (CCAir). *Mesa Airlines, Inc., CCAir, Inc., Air Midwest, Inc.*, 29 NMB 359 (2002). All four carriers are wholly-owned subsidiaries of Mesa Air Group, Inc. (MAG).

ALPA represents Flight Deck Crew Members at CCAir. *CCAir, Inc. (d/b/a Piedmont Commuter Airlines)*, 14 NMB 190 (1987). ALPA also represents Flight Deck Crew Members at Mesa and Air Midwest. *Mesa Airlines, Inc.*, 22 NMB 4 (1994); *Air Midwest, Inc.*, 14 NMB 333 (1987).

For the reasons discussed below, the Board finds that Freedom is operated as part of the existing MAG single transportation system which includes Mesa, Air Midwest, and CCAir.

PROCEDURAL BACKGROUND

On November 13, 2002, ALPA filed an application alleging a representation dispute involving the Freedom Pilots. ALPA's application asserted that Freedom is part of the single transportation system which includes Mesa, Air Midwest and CCAir, all wholly-owned subsidiaries of MAG. (R-6898). The application was assigned NMB File No. CR-6771.

The Board assigned Sean J. Rogers to investigate.

On November 13, 2002, the Board requested that the four carriers provide information concerning their operations. On December 13, 2002, CCAir responded that since it had "suspended all service, and is now a non-operating carrier, the response to each . . . question is 'Not Applicable.'" Freedom also responded to the Board's request for information and questions on December 13, 2002, and MAG filed a joint response on behalf of Mesa and Air Midwest on that same date.

On January 10, 2003, ALPA replied to the carriers' responses and on January 24, 2003, MAG responded on behalf of Mesa and Air Midwest.

On March 25, 2003, MAG and ALPA filed a joint stipulation. The MAG/ALPA joint stipulation incorporated a MAG/ALPA Collective Bargaining Agreement (CBA) negotiated in March 2003, and a February 5, 2003, Letter of Agreement (LOA) between the four MAG subsidiaries and ALPA.

ISSUE

For representation purposes under the Railway Labor Act (RLA), is Freedom part of the single transportation system composed of Mesa, Air Midwest, and CCAir, for the Flight Deck Crew Members craft or class?

CONTENTIONS

MAG/ALPA Joint Stipulation

MAG and ALPA state that the purposes of their joint stipulation are:

[t]o resolve NMB [File] No. [CR]-6771 with a finding that a single transportation system exists with regard to Mesa Airlines, Air Midwest, CCAir, and Freedom Air, and [to certify ALPA] as the representative of the pilots at Freedom Air.

Pursuant to the LOA, the joint stipulation incorporates a single, executed CBA covering the Mesa, Air Midwest, CCAir, and Freedom Flight Deck Crew Members. Based on this CBA and the single Flight Deck Crew Members seniority list for all four carriers, MAG and ALPA assert that the Board should “declare a single Mesa Air Group transportation system, including Freedom Air [exists].” Further, the joint stipulation requests,

[i]n light of the incomparability of the sizes of the much larger Mesa, Air Midwest and CCAir pilot groups with the much smaller Freedom Air pilot group, that the Board apply its representation rules to extend ALPA’s existing certification at Mesa, Air Midwest and CCAir to cover the Freedom Air pilots.

MAG and ALPA have agreed, consistent with the adoption of the CBA, that Flight Deck Crew Members at the four MAG carriers will operate as a single unit, exercising common seniority and bidding across all MAG carriers. MAG and ALPA assert that the four MAG carriers are operated as a single transportation system with common labor relations and personnel functions, with respect to the Flight Deck Crew Members of the four MAG carriers.

FINDINGS OF LAW

Determination of the issues in this case is governed by the RLA, as amended, 45 U.S.C. § 151, *et seq.* Accordingly, the Board finds as follows:

I.

Mesa, Air Midwest, CCAir, and Freedom are common carriers as defined in 45 U.S.C. § 181.

II.

ALPA is a labor organization as provided by 45 U.S.C. § 152, Ninth.

III.

45 U.S.C. § 152, Fourth, gives employees subject to its provisions, “the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and to designate who may participate as eligible voters in the event an election is required. In determining the choice of the majority of employees, the Board is “authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives . . . by the employees without interference, influence, or coercion exercised by the carrier.”

STATEMENTS OF FACT

I.

MAG/ALPA Collective Bargaining Agreement
and Letter of Agreement

The MAG/ALPA joint stipulation incorporates a MAG/ALPA CBA, and a February 5, 2003, LOA between the four MAG subsidiaries and ALPA. The investigation establishes that the CBA was ratified by the Flight Deck Crew Members of all four MAG carriers on or about March 18, 2003. The CBA, Section 1, Recognition, provides that Mesa, Air Midwest, CCAir, and Freedom, collectively “the Company,” recognize ALPA “as the duly authorized representative of the pilots in the employ of the Company for the purposes of the Railway Labor Act as amended.”

The LOA states that the Company and ALPA agree “to integrate the Mesa Airlines/Air Midwest Pilot System Seniority List and the CCAir Pilots System Seniority List and to provide for the incorporation of Freedom Air pilots into a single combined Mesa Air Group Pilot System Seniority List.” A system-wide MAG Pilot System Seniority List dated February 4, 2003, is attached to the CBA.

II.

Mesa Airlines, Inc., Air Midwest, Inc. and CCAir, Inc.

Mesa, founded by MAG, and Air Midwest, acquired in July 1991, are MAG wholly-owned subsidiaries. Mesa and Air Midwest perform substantial revenue flying pursuant to code-share agreements with other carriers. Mesa flies out of the US Airways Express hubs in Charlotte, Philadelphia, New York (LaGuardia), and Washington (Reagan National). Air Midwest flies out of the US Airways Express hubs in Pittsburgh, Philadelphia, Kansas City, and Tampa. Mesa has code-share agreements with America West Airlines, Inc. Mesa flies under its own corporate name out of Albuquerque.

CCAir is a wholly-owned MAG subsidiary, acquired in June 1999. CCAir's corporate headquarters, principal hub, and only domicile is Charlotte. All CCAir revenue flying was pursuant to US Airways Express code-share agreements. On December 13, 2002, CCAir counsel stated that "CCAir had suspended all service, and is now a non-operating carrier."

III.

Freedom Air, Inc.

Freedom was organized as a Nevada corporation on December 3, 2001. On December 18, 2001, Freedom filed an application with the Department of Transportation requesting a certificate authorizing it to provide interstate scheduled air transportation of persons, property, and mail. On October 26, 2003, Freedom flew its inaugural passenger revenue flight from Phoenix to Fresno.

IV.

Indicators of Operating as a Single Transportation System

According to the MAG/ALPA joint stipulation, Freedom operations are consistent with finding a single transportation system exists composed of Freedom and the MAG subsidiaries, Mesa, Air Midwest, and CCAir.

V.

A.

Combined Schedule

All MAG revenue flying is for America West Airlines, Inc. (America West), US Airways, Inc. (US Airways), or Frontier Airlines, Inc. (Frontier), with the exception of independent Mesa operations which fly only within New Mexico.¹ America West, US Airways, or Frontier establish and publish the schedules for this MAG feeder flying. Mesa publishes the schedule for its independent operations in New Mexico.

B.

Jointly Advertised Services

Each code-share partner, America West, US Airways, and Frontier, advertises the services offered on its behalf by the MAG carriers. Mesa advertises its services for its independent flight operations in New Mexico.

C.

Combined Reservations System

The MAG carriers do not operate reservations systems. Reservations systems are provided to the MAG carriers by its code-share partners. However, Mesa operates its own reservation system for its independent flight operations in New Mexico.

¹ Mesa's independent flight operations in New Mexico are flown by Air Midwest.

D.

Common Ticket Stock

All MAG carrier tickets are issued on the code-share partners' ticket stock, except the independent New Mexico Mesa operations.

E.

Signs, Logos and other Publicly Visible Indicia

The MAG carriers do not have common signs, logos or other publicly visible indicia of common ownership. However, the aircraft that MAG carriers operate are painted in the code-share partners' colors and livery.

F.

Holding Out to the Public that Personnel
with Public Contact Work for one Carrier

MAG carrier employees hold themselves out as representatives of their respective employers or as representatives of the code-share partners.

G.

Repainting Planes and Other Equipment
to Eliminate Indication of Separate Existence

Aircraft operated by MAG carriers are primarily painted in the colors and livery of the code-share partners. However, Mesa operates several aircraft with Mesa paint and livery. The aircraft operated by Air Midwest for Mesa's independent New Mexico operations are painted in Mesa Airlines livery.

H.

Combined Management and Labor Relations

Air Midwest relies solely on Mesa for Labor Relations, Payroll, Finance, Accounting, and MIS functions. Air Midwest has separate Maintenance/Maintenance Control, Drug and Alcohol Testing, Customer Service, Parts, Dispatch, Crew Tracking/Scheduling, Training/Training Records, and Crew Qualifications departments.

Prior to revenue flight operations, Freedom was assisted by Mesa in preparing the Freedom Pilot's Handbook. Freedom administered labor relations independently until the MAG/ALPA CBA was executed. This CBA unifies labor relations among all the MAG carriers for Flight Deck Crew Members.

Freedom Airlines relies on Mesa for: Payroll, Financial Management, Accounting, Drug and Alcohol Testing Administration, Human Resources, Maintenance, Maintenance Control, Parts Distribution and Inventory Control, Crew Tracking, Crew Scheduling, Crew Qualifications, Training Records, Customer Service, and Public Relations. In addition, Freedom leases office and hangar space from Mesa in Phoenix.

I.

Handling Labor Relations and
Personnel Functions as one Carrier

All MAG carrier pilots are covered by the single MAG/ALPA CBA, and bid from a unified seniority list. All pilots' bids are awarded based on system-wide seniority for positions on any of the MAG carriers in accordance with the terms of the CBA.

J.

Common Management, Common
Corporate Officers and Interlocking Directors

The four-member Air Midwest Board of Directors shares two members, Michael Lotz and George Murnane, with the three-member Mesa Board of Directors. In addition, Air Midwest and Mesa share three officers: Michael Lotz, Mesa President and Air Midwest Vice President; George Murnane III, Mesa Vice President and Air Midwest Treasurer; and Brian Gillman, Mesa and Air Midwest Secretary. Mesa and Air Midwest do not share operational officers or managers.

The three-member Mesa Board of Directors shares one member, Michael Lotz, with the three-member Freedom Board of Directors. Mesa and Freedom share one common officer, Brian Gillman, Secretary, for both corporations. Although Freedom and Mesa do not have common managers, Freedom contracts a substantial amount of managed services from Mesa.

The four-member Air Midwest Board of Directors shares one member, Michael Lotz, with the three-member Freedom Board of Directors. Air Midwest and Freedom share one officer, Brian Gillman, Secretary, for both corporations. Air Midwest and Freedom do not share managers.

K.

Respective Number of Pilots

Freedom Air currently employs 101 pilots. The other MAG carriers currently employ approximately 1,272 pilots in a single transportation system represented by ALPA.

L.

Movement of Aircraft

Mesa is in the process of transferring Freedom aircraft to the Mesa certificate.

DISCUSSION

I.

The Board's Authority

The provisions of 45 U.S.C. § 152, Ninth, authorize the Board to investigate disputes arising among a carrier's employees over representation and to certify the duly authorized representative of such employees. The Board has exclusive jurisdiction over representation questions under the RLA. *Switchmen's Union v. NMB*, 320 U.S. 297 (1943); *General Comm. of Adjustment v. M.K.T. R.R.*, 320 U.S. 323 (1943). In *Air Line Pilots Ass'n, Int'l v. Texas Int'l Airlines*, 656 F.2d 16, 22 (2d Cir. 1981), the court stated, "the NMB is empowered to . . . decide representation disputes arising out of corporate restructurings."

II.

Single Transportation System

The Board finds a single transportation system only when there is substantial integration of operations, financial control, and labor and personnel functions. *American Airlines and Reno Air*, 26 NMB 467 (1999); *AirTran Airways and AirTran Airlines*, 25 NMB 429 (1998); *Precision Valley Aviation, Inc., d/b/a Precision Airlines/Valley Flying Serv., Inc., d/b/a Northeast Express Reg'l Airlines*, 20 NMB 619 (1993); *Air Wisconsin, Inc./Aspen Airways, Inc.*, 18 NMB 336 (1991).

The following are indicia of a single transportation system:

[W]hether a combined schedule is published; how the carrier advertises its services; whether reservation systems are combined; whether tickets are issued on one carrier's stock; if signs, logos and other publicly visible indicia have been changed to indicate only one carrier's existence; whether personnel with public contact were held out as employees of one carrier; and whether the process of repainting planes and other equipment, to eliminate indications of separate existence, has been progressed.

Other factors investigated by the Board seek to determine if the carriers have combined their operations from a managerial and labor relations perspective. Here, the Board investigates whether labor relations and personnel functions are handled by one carrier; whether there are a common management, common corporate officers and interlocking Boards of Directors; whether there is a combined workforce; and whether separate identities are maintained for corporate and other purposes.

Trans World Airlines/Ozark Airlines, 14 NMB 218 (1987).

The Board also reviews whether the systems are held out to the public as a single carrier. *Id.*

III.

Mesa, Air Midwest, CCAir and Freedom

On July 1, 2002, the Board found that Mesa, CCAir, and Air Midwest were operating as a single transportation system for representation purposes under the RLA. *Mesa Airlines, Inc., CCAir, Inc., Air Midwest, Inc.*, 29 NMB 359 (2002). The Board excluded Freedom from consideration in the single transportation

system because at that time Freedom had not yet begun revenue flying. *Id.* at 380.

The record developed by MAG and ALPA establishes MAG operates Freedom as part of the existing MAG single transportation system composed of Mesa, Air Midwest, and CCAir.

Moreover, with the negotiation of the MAG/ALPA CBA, incorporating the February 5, 2003, LOA, MAG has adopted a combined, coordinated, and centralized system-wide MAG Pilot Seniority List and labor relations program among the four MAG carriers.

IV.

MAG's Interlocking Directors and Officers;
Centralized, Coordinated Management
and Labor Relations

The MAG/ALPA joint stipulation establishes that Freedom has numerous interlocking directors and officers with MAG, Mesa, and Air Midwest. In addition, the MAG/ALPA joint stipulation establishes that Freedom contracts a substantial amount of management services from Mesa including: Payroll, Financial Management, Accounting, Drug and Alcohol Testing Administration, Human Resources, Maintenance, Maintenance Control, Parts Distribution and Inventory Control, Crew Tracking, Crew Scheduling, Crew Qualifications, Training Records, Customer Service, and Public Relations. Furthermore, Freedom leases office and hangar space from Mesa in Phoenix.

According to the CBA, management and labor relations for Flight Deck Crew Members are combined among all four MAG carriers. MAG Flight Deck Crew Members bid based on system-wide seniority for positions on any MAG carrier pursuant to the CBA.

V.

Public Image, Schedules, Ticket Stock,
Signs, Logos, and Aircraft Colors and Livery

The public image MAG presents is of a single transportation system composed of its Mesa, Air Midwest, CCAir and Freedom subsidiaries. In addition, the MAG/ALPA joint stipulation establishes that Freedom will be held out as part of this existing single transportation system.

MAG's flights for America West, US Airways, or Frontier are scheduled by the code-share partners. America West, US Airways, and Frontier advertise all MAG carrier code-share flights. Similarly, all MAG carrier tickets are issued on the code-share partner ticket stock. However, Mesa's independent operations in New Mexico are scheduled and advertised by Mesa, and tickets are issued on Mesa ticket stock.

Aircraft operated by the MAG carriers are primarily in the code-share partners' colors and livery. However, Mesa operates several aircraft with Mesa livery and aircraft operated by Air Midwest for Mesa's independent New Mexico operations are painted in Mesa Airlines livery.

CONCLUSION

The Board finds that for representation purposes under the RLA, Freedom is part of the existing MAG single transportation system composed of the MAG subsidiaries, Mesa, Air Midwest, and CCAir, for the Flight Deck Crew Members craft or class. Therefore, ALPA's application in File No. CR-6771 is converted to NMB Case No. R-6939 and dismissed. ALPA's certification at

Mesa, Air Midwest, and CCAir covers the Freedom Air Flight Deck Crew Members.

By direction of the NATIONAL MEDIATION BOARD.

Benetta M. Mansfield

Benetta Mansfield
Chief of Staff

Copies to:

Joseph L. Manson, III, Esq.

Douglas W. Hall, Esq.

Edward J. Gilmartin, Esq.

Deirdre Hamilton, Esq.

Marcus Migliore, Esq.

Julie P. Glass, Esq.