



NATIONAL MEDIATION BOARD

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Re: NMB Case No. R-6977
USA Jet Airlines

Gentlemen:

This determination addresses the January 13, 2004 appeals filed by USA Jet Airlines (USA Jet or Carrier) and the International Union, United Auto Workers (UAW or Organization) of Investigator Susanna C. Fisher's eligibility rulings. For the reasons discussed below, the appeals are denied.

I.

Procedural Background

On November 13, 2003, the UAW filed an application pursuant to the Railway Labor Act (RLA)¹, 45 U.S.C. § 152, Ninth (Section 2, Ninth), seeking to represent the craft or class of Pilots, employees of USA Jet. On November 26, 2003, the Carrier provided the Board with a List of Potential Eligible Voters (List) in this case. The Board authorized a TEV election on December 2, 2003. Also on December 2, 2003, the Investigator sent a letter to the Carrier and the UAW setting a schedule for challenges and objections and the election period.

On December 10, 2003, the UAW challenged the inclusion of 13 “Part 91” pilots on the List. The UAW also challenged four individuals as management officials. In support of its contentions, the Organization submitted the following documents from USA Jet’s General Operations Manual, General Policies and Organization: Organizational Flow Chart; a list of Required Management Personnel, and; a list of “Other Key Management Personnel.” The Organization also submitted job descriptions for the following positions: Vice President, Director of Operations, Chief Pilot, and Director of Standardization. On December 12, 2003, the UAW challenged an additional individual as a management official. The UAW submitted a job description for the Director of Training position in support of its contention.

On December 22, 2003, the Carrier responded to the UAW’s objections. USA Jet asserted that the 13 “Part 91” pilots are correctly included on the List and should remain on the List. The Carrier also asserted that the five individuals the UAW challenged as management officials do not meet the Board’s criteria as set forth in the Board’s Representation Manual (Manual) Section 9.211.

¹ 45 U.S.C. § 151, *et seq.*

On January 9, 2004, the Investigator ruled that the 13 “Part 91” pilots were eligible to vote. The Investigator also ruled that the Directors of Flight Standardization, Assistant Director of Operations, Chief Pilot, and the Director of Training were management officials and would be removed from the List.

The Carrier appealed the Investigator’s ruling regarding the management officials on January 13, 2004. Also on January 13, 2004, the UAW appealed the Investigator’s ruling regarding the “Part 91” pilots. The Organization also stated that if the Board determines that the “Part 91” pilots are eligible, then the Chief Pilot, Mark Benware should be removed from the List. The UAW also asserted that Fred Testa, Chief Pilot, should be removed from the List. The UAW also challenged the eligibility of four additional individuals.

The Carrier filed a response on January 15, 2004. The UAW did not file a response.

II.

Investigator’s Ruling

A. Management Officials

The UAW challenged the eligibility of the following individuals alleging that they are management officials: (1) William Church and Ralph Nozar (Directors of Flight Standardization); (2) Ralph Hotton (Assistant Director of Operations); (3) Jahaziah Webb (Chief Pilot), and; (4) Kevin Otten (Director of Training). Based on the evidence, including position descriptions and the Organizational Flow Chart, the Investigator determined that these positions were management positions and ruled Church, Nozar, Hotton, Webb, and Otten ineligible.

B. “Part 91” Pilots

The UAW also challenged the inclusion of 13 “Part 91” pilots. The Organization argued that these individuals do not

share a community of interest with the “Part 121” pilots and should be removed from the List. The Carrier asserted that the UAW’s claims were without merit and submitted a declaration from Ramon Mundt, Vice President/Director of Operations, stating that the “Part 91” and “Part 121” pilots receive the same benefits and are covered by the same policy manual. In addition, Mr. Mundt stated that several pilots have flown both “Part 91” and “Part 121” aircraft.

The Investigator determined that both “Part 91” pilots and “Part 121” pilots operate both revenue and non-revenue flights and share a work-related community of interest. Therefore, the Investigator ruled the 13 “Part 91” pilots eligible.

III.

USA Jet’s Appeal

In its January 13, 2004 appeal, the Carrier asserts that William Church (Director of Flight Standardization), Jahaziah Webb (Chief Pilot), and Kevin Otten (Director of Training) are not management officials and should be included on the List.

The Carrier also appealed the Investigator’s ruling that Ralph Hotton (Assistant Director of Operations) is a management official. USA Jet stated:

The Investigator determined that Ralph Hotton was a management employee and, therefore, excluded him from the craft or class based on the assumption that he held the Assistant Director of Operation position. However, Ralph Hotton has worked as the Carrier’s Operations Project Manager since November, 2002.

The Carrier submitted a declaration from Ramon Mundt stating that Hotton “ceased acting in his position as Director of Training and became Operations Project Manager” effective November 14, 2002. USA Jet also submitted a Payroll Change

Notice for Hotton dated November 13, 2002 and an Operations Project Manager position description.

Finally, the Carrier asserts that Richard Nozar (Director of Flight Standardization) was not a management official and should be eligible. USA Jet stated:

The Investigator determined that Richard Nozar was a management employee and, therefore, excluded him from the craft or class based on the assumption that he held the Director of Flight Standardization position. However, Richard Nozar has not been the Director of Flight Standardization since May, 2003, when he began working as a Line Pilot.

USA Jet submitted a declaration from Mundt stating that: “[E]ffective May 16, 2003, Mr. Nozar ceased acting in his position as Director of Flight Standardization . . . and returned to the position of Pilot in Command” The Carrier also provided a Pilot Payroll Change Notice for Nozar.

UAW’s Appeal

The UAW appealed the Investigator’s ruling that the 13 “Part 91” pilots are eligible. The Organization asserts that “Part 91” pilots “should be considered a separate class because they lack a community of interest with the DC9/Falcon Part 121 pilots.” The Organization submitted an Organizational Flow Chart, Seniority List, and Telephone List in support of its contentions.

The UAW also asserts that if the Board rules the “Part 91” pilots eligible, then the Board should rule Mark Benware, Chief Pilot, ineligible. The Organization submitted a position description for the Chief Pilot position in support of its contentions.

The Organization also contends that Mark Creswell, William Hoffer, and Jonathon Roberts are ineligible since they

do not appear on the “Corporate Flight Department list or on the DC9/Falcon Part 121 seniority list.”

Finally, the Organization asserts that effective January 5, 2004, the Carrier announced that Fred Testa had been promoted to Chief Pilot². The UAW argues that pursuant to Manual Section 9.211, Testa should be removed from the List. The UAW submitted a USA Jet Memorandum stating that Testa is the Chief Pilot.

IV.

USA Jet’s Response

The Carrier filed a response to the UAW’s appeal on January 15, 2004. The Carrier asserts that: (1) the 13 “Part 91” pilots are properly included in the Pilots craft or class; (2) the UAW’s objection to Mark Benware, Chief Pilot, is untimely, and should be rejected, and, furthermore, the Chief Pilot position is not a management position; (3) Mark Creswell, William Hoffer, and Jonathon Roberts are part of the Pilots craft or class, and, therefore, eligible, and; (4) Fred Testa, Chief Pilot, should be included in the Pilot craft or class. The Carrier also submitted a Payroll Change Notice stating that Jahaziah Webb was promoted from Chief Pilot to Director of Safety.³

² Fred Testa’s eligibility will be addressed as a status change in a letter from the Investigator.

³ Jahaziah Webb’s eligibility will be addressed as a status change in a letter from the Investigator.

UAW's Response

The UAW did not file a response to USA Jet's appeal.

V.

Discussion

A. Management Officials

Manual Section 9.211 details factors to be considered in determining whether an individual is a management official. These factors include:

- (1) the authority to dismiss and/or discipline employees or to effectively recommend the same;
- (2) the authority to supervise;
- (3) the ability to authorize and grant overtime;
- (4) the authority to transfer and/or establish assignments;
- (5) the authority to create carrier policy, and;
- (6) the authority to commit carrier funds.

The Board also considers:

- (1) whether the authority exercised is circumscribed by operating and policy manuals;
- (2) the placement of the individual in the organizational hierarchy of the carrier, and;
- (3) any other relevant factors regarding the individual's duties and responsibilities.

When the Board applies these criteria, the Board considers various individual elements and factors which might not be decisive if considered separately, but considered cumulatively, would remove a particular position from the status of an employee or subordinate official. *Pan American World Airways, Inc.*, 5 NMB 112 (1973).

1. William Church

According to the position description, the responsibilities of the Director of Flight Standardization position include:

- ensuring conformity with Standard Operating Procedures (SOP);
- documenting SOP for classroom instruction;
- attending monthly training meetings;
- recommending changes to manuals and handbooks to ensure training and operating compatibility;
- evaluating standardization level of all Instructor Pilots and Check Airmen;
- observing Instructors and Check Airmen in performance of their duties;
- providing feedback to the Director of Training, and;
- assisting the Director of Operations, Chief Pilot and Director of Training in special projects as required.

On the Organizational Flow Chart, the Director of Standardization reports directly to the Vice President, Director of Operations. The Director of Standardization: recommends changes to manuals and handbooks; observes and evaluates Instructors and Check Airmen; advises the Chief Pilot and Director of Training on any need for improvement, and; documents Standard Operating Procedures for classroom training. Furthermore, this position is listed in USA Jet's General Operations Manual, General Policies and Organization, as "Other Key Management Personnel."

The cumulative evidence establishes that the Director of Standardization is a management official. Therefore, the Investigator's ruling is upheld and William Church is ineligible.

2. Kevin Otten

According to the position description, the Director of Training's duties include:

- ensuring compliance with USA Jet's training requirements;
- scheduling and assigning training;
- supervising the USA Jet pilot recruiting and selection program;
- acting as Chairperson on Check Airmen meetings, monthly training meetings and schedule meetings;
- maintaining and recommending changes to certain manuals, and;
- assisting the Director of Operations on special projects as required.

The Director of Training position is listed as "Other Key Management Personnel" in USA Jet's General Operations Manual, General Policies and Organization, and reports directly to the Vice President, Director of Operations. The Director of Training's responsibilities include: supervising the Carrier's pilot recruitment and selection program; scheduling training, and; maintaining and recommending changes to Carrier manuals.

The cumulative evidence establishes that the Director of Training is a management position. Therefore, the Investigator's ruling is upheld and Kevin Otten is ineligible.

3. Ralph Hotton

The information provided by both the Carrier and the Organization stated that Hotton was the Assistant Director of Operations. In its appeal, the Carrier submitted new information stating that Hotton actually works as the Operations Project Manager. Pursuant to Manual Section 10.2, absent extraordinary circumstances, evidence not submitted to the Investigator will not be considered on appeal. There are no extraordinary circumstances to warrant consideration of the information provided by the Carrier on its appeal. Therefore, the Investigator's ruling is upheld and Ralph Hotton is ineligible.

4. Richard Nozar

The information provided by the Carrier and the Organization stated that Nozar was the Director of Flight Standardization. In its appeal, the Carrier submitted new information that Nozar has not been the Director of Flight Standardization since May 2003, when he began working as a Line Pilot. Pursuant to Manual Section 10.2, absent extraordinary circumstances, evidence not submitted to the Investigator will not be considered on appeal. There are no extraordinary circumstances to warrant consideration of the information provided by the Carrier on its appeal. Therefore, the Investigator's ruling is upheld and Richard Nozar is ineligible.

5. Mark Benware

The UAW asserted that if the Board rules the "Part 91" pilots eligible, then the Board should rule Mark Benware, Chief Pilot, ineligible.

According to the position description, the responsibilities of the Chief Pilot include:

- general supervision of all flight deck crew members, check airmen, and Directors of Standardization;
- assisting in the development and execution of Flight Training programs;
- supervision of crewmembers as to their qualifications and compliance with the regulations of the FAA and the Carrier;
- training and development of crewmembers;
- recommending new Flight Operations policies, practices, and procedures;
- designation and supervision of Check Airmen;
- recruiting and interviewing potential crewmembers;
- counseling crewmembers;

- operational control over Part 121/135 flights in the Director of Operations absence and authority to release pilots and aircraft;
- coordinating with the Director of Operations to formulate operational policies and procedures;
- advising the Director of Operations of domicile requirements and pilot staffing, and;
- coordination with the Director of Operations on the administration of all positions, absences, days off, etc.

The Chief Pilot recruits, interviews, trains, and supervises crew members. In addition, the Chief Pilot recommends and coordinates with the Director of Operations to formulate Carrier policy and procedures. The Chief Pilot also has operational control over “Part 121/135” flights in the Director of Operations absence and is authorized to release pilots and aircraft. The Chief Pilot position is listed in USA Jet’s General Operations Manual, General Policies and Organization, as “Required Management Personnel.”

The Chief Pilot’s responsibilities, when viewed cumulatively, demonstrate that this is a management position. Therefore, the Board upholds the Investigator’s ruling that the Chief Pilot position is a management position.

Although the UAW’s challenge came after the December 12, 2003 deadline for filing challenges to the List, since the Investigator’s ruling applied to the Chief Pilot position, the Board will address Benware’s eligibility. Since the Board upholds the Investigator’s ruling that the Chief Pilot position is a management position, as Chief Pilot, Mark Benware is a management official and his name will be removed from the List.

B. “Part 91” Pilots

“Part 91” and “Part 121” pilots receive the same benefits and are covered by the same policy manual. The evidence establishes that USA Jet pilots have flown both revenue and non-revenue flights. See *Executive Jet Aviation, Inc.*, 28 NMB

467 (2001); *Gulfstream Aviation*, 27 NMB 65 (1995). In addition, “Part 91” pilots and “Part 121” pilots share a work-related community of interest. Therefore, the Investigator’s ruling is upheld and the 13 “Part 91” pilots are eligible.

C. Other

The Carrier submitted evidence that Mark Creswell, William Hoffer, and Jonathon Roberts are part of the Pilots craft or class. Therefore, these individuals are eligible and will remain on the List.

CONCLUSION

The Carrier’s appeal of William Church, Kevin Otten, Ralph Hotton, and Richard Nozar is denied. Therefore, Church, Otten, Hotton and Nozar are ineligible.

The UAW’s appeal of USA Jet’s 13 “Part 91” pilots is denied. The Board finds that “Part 91” and “Part 121” pilots share a work-related community of interest. Therefore, the Board upholds the Investigator’s ruling that USA Jet’s 13 “Part 91” pilots are eligible to vote in the Pilots craft or class.

Based on the evidence, Mark Benware is a management official and is ineligible.

The tally will take place as scheduled, at 2 p.m., ET, Tuesday, January 20, 2004.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel