



NATIONAL MEDIATION BOARD

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35 NMB No. 10

December 14, 2007

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Re: NMB Case No. R-7126
Compass Airlines

Participants:

This determination addresses the issues raised by Compass Airlines (Compass or Carrier) in response to the challenges to the Eligibility List (List) filed by the Association of Flight Attendants-CWA (AFA or Organization). On November 29, 2007, the National Mediation Board (NMB or Board) found that a representation dispute exists among Flight Attendants of Compass Airlines sought to be represented by AFA and authorized an election using a cut-off date of November 1, 2007. *Compass Airlines*, 35 NMB 14 (2007). By letter dated December 5, 2007, AFA asserted that "at least six (6) and possibly more" of the Flight Attendants listed on the Eligibility List (List) did not complete their initial operating experience (IOE) on or before the November 1 cut-off date and were therefore ineligible to vote. On December 7, 2006, Compass Airlines (Compass or Carrier) submitted a response opposing AFA's challenges to the Eligibility List and seeking reconsideration of the Board's November 29, 2007 decision. AFA filed a response on December 10, 2007. On December 13, 2007, in response to the Board's request, the Carrier filed additional information.

PROCEDURAL HISTORY

On August 22, 2007, AFA filed an application with the Board, alleging a representation dispute among Compass' Flight Attendants. On November 29, 2007, following requests for extensions of time from both participants, the Board rejected Compass' argument that the NMB should apply National Labor Relations Board (NLRB) case law and dismiss the application until a substantial and representative complement of employees had been hired. *Compass Airlines*, 35 NMB 14 (2007). The NMB determined that a representation dispute exists among Flight Attendants of Compass Airlines, but that extraordinary circumstances warranted modification of the cut-off date for determining eligibility. In its decision, in order to strike "the appropriate balance between the statutory mandates to expeditiously resolve representation disputes and to ensure that a majority of the craft or class has the opportunity to select a representative," the Board authorized an election using November 1, 2007 as the cut-off date. 35 NMB at 21. Following receipt of the List using November 1 as the cut-off date, AFA filed its challenge.

CONTENTIONS

AFA

AFA alleges that the List contains the names of Flight Attendants who did not complete their IOE on or before the November 1, 2007 cut-off date. Citing *Executive Jet Aviation, Inc.*, 28 NMB 467 (2001), AFA asserts that prior to completion of the IOE, Flight Attendants remain ineligible trainees.¹

COMPASS

Compass both opposes AFA's challenges to the List and requests that the Board reconsider, withdraw and reverse its findings issued on November 29, 2007. Compass argues that the Flight Attendants who completed their IOE after the November 1, 2007 cut-off date should be eligible to vote because as of November 1 they were on the payroll and subject to direction by Compass as to the completion of their IOE and scheduling for other duties.

¹ In its December 10, 2007, submission, AFA also alleges that the Carrier is "padding the list" and that many of the Flight Attendants are not flying regular schedules. In its December 13, 2007, response, Compass states that while it is behind in its original schedule for Flight Attendant hiring, its hiring plan was fixed before AFA's application was filed and is driven by its fleet delivery schedule.

DISCUSSION

To the extent that Compass' response to AFA's challenges can be considered a request for reconsideration of the Board's November 29, 2007 decision, such request is denied as untimely. Section 11.0 of the Board's Representation Manual provides that "Any Motions for Reconsideration of Board determinations must be received by the General Counsel within two (2) business days of the decision's date of issuance." As noted above, the Board's decision issued on November 29, 2007 and Compass' response was not received by the Board until December 7, 2007, more than 2 days after issuance of the underlying decision. Therefore, the Board will not reconsider the Carrier's arguments previously addressed by the Board.²

The issue before the Board in this case is whether or when a representation dispute exists in a craft or class on a start-up carrier where the employee complement is expanding. In its November 29 decision, the Board found that AFA filed a valid application and presented a sufficient number of valid authorization cards at the appropriate time in the proceeding. The employee complement continued to expand during the period required for the participants to brief and for the Board to investigate the novel issue presented.³ The Board, mindful of the statutory mandates regarding both expeditious resolution of representation disputes and ensuring that a majority of eligible employees in the craft or class have the opportunity to select a representative, struck the appropriate balance between these competing statutory interests by modifying the cut-off date, as it has in other instances of extraordinary circumstances.

² As explained *infra*, the Board will address separately the IOE eligibility issue.

³ Compass contends that a Board investigator erred by contacting the Carrier directly to ascertain the number of employees in the craft or class as of November 1, 2007. The Board finds no merit in that contention. First, as the Supreme Court noted in *Railway & Steamship Clerks v. Association for the Benefit of Non-Contract Employees*, 380 U.S.650, 661 (1965) (citations omitted), the Board's duty to investigate is a duty to make such investigation as the nature of the case requires and that its investigation is essentially informative rather than adversarial and is not required to take any particular form. Second, the Board decision states that as of November 1, Compass had 70 active Flight Attendants. Compass does not dispute that it had that number of employees on its payroll as of November 1. The declaration of John Bendoraitis, Compass' President filed on December 7, 2006 states that "As of November 1, Compass's flight attendant workforce, payroll and seniority list consisted of seventy flight attendants." Third, as the plain language of the decision makes clear, the Board's decision was predicated on the general evidence of an expanding employee complement and the need to balance its mission under the Railway Labor Act (RLA).

CONCLUSION

The Carrier's request for reconsideration of the Board's November 29 decision is denied as untimely.

The election will proceed as scheduled using a cut-off date of November 1, 2007. The eligibility issues raised by Compass and AFA, including the IOE issue, will be addressed separately and will be resolved before the tally. The Investigator will contact the Participants immediately regarding further proceedings.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Mary L. Johnson".

Mary L. Johnson
General Counsel