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Re: NMB Case No. R-7230 (CR-6959)
Delta Air Lines, Inc./IAM

Participants:

This determination addresses the February 16, 2010 appeal filed by Delta Air Lines, Inc. (Delta) of Investigator Cristina Bonaca's eligibility rulings. For the reasons discussed below, the appeal is denied.

I.

Procedural Background

On August 13, 2009, the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM), filed an application pursuant to the

Railway Labor Act¹, 45 U.S.C. § 152, Ninth (Section 2, Ninth), alleging a dispute involving the Flight Simulator Technicians of Delta and Northwest Airlines, Inc. (Northwest). The Board issued a decision on December 22, 2009, finding the carriers to be a single system known as Delta for the craft or class of Simulator Technicians. *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 88 (2009). The Board found a dispute to exist and authorized an election. The tally is scheduled to take place at the Board's offices on February 25, 2010. Delta and IAM each filed challenges to the List of Potential Eligible Voters (List) on January 26, and 27, 2010. The IAM filed a response on February 2, 2010, and Delta filed a response on February 3, 2010.

On February 11, 2010, the Investigator ruled on the various challenges submitted and held that: 1) the cut-off date would remain July 31, 2009, and therefore not include the two individuals, Brian Furry and Paul Spencer, who were hired after that date; and 2) that the Training Technician and Lead Technician employees (Ronny Anderson, Ricky Moore, Lesley Sumner, and Jeffrey Strain) did not share a community of interest with the Simulator Technicians, and would be removed from the List.

On February 16, 2010 Delta appealed the Investigator's ruling. The IAM filed a response on February 18, 2010.

II.

Challenges and Objections

Cut-off Date

Delta first challenged the cut-off date for eligibility and asked the Board to change it to run from the last payroll period prior to the issuance of the single system decision, rather than from the filing of the initial application. Delta cited to several older Board decisions supporting this proposition. See *CSX Transportation, Inc.*, 20 NMB 601 (1993); *US Air, Inc./Piedmont Aviation, Inc.*, 16 NMB 412, 429 (1989).

The IAM cited to the Board's *current* procedure in merger cases, as well as the Board's most recent discussion regarding the changing of cut-off dates which was articulated in *Compass Airlines*, 35 NMB 14 (2007), and concluded that there was no viable rationale for changing the cut-off date.

¹ 45 U.S.C. § 151, *et seq.*

In the February 11, 2010 ruling, the Investigator ruled that the facts of this case were not analogous to the “extraordinary or unusual” situations where the Board changed the cut-off date to account for a five year delay between the original cut-off date and the election, or a 100 percent employee turnover. See *USAir*, 10 NMB 495 (1983); *Piedmont Airlines*, 9 NMB 41 (1981). In addition, the Investigator referred to our current practice in all representation matters, including system determinations, to make the cut-off date for eligibility “the last day of the payroll period ending before the day the NMB received the application.” Board Representation Manual (Manual) Section 2.3. Finally, the Investigator relied on the recent merger decision involving the Flight Dispatchers on the Delta/Northwest system, where the cut-off date ran from the filing of the application rather than from the issuance of the single system decision. See *Delta Air Lines, Inc. and Northwest Airlines, Inc.*, 36 NMB 36 (2009). Based on the evidence presented, Manual Section 2.3, and the Board’s current practice, the Investigator ruled that the cut-off date would remain July 31, 2009. Accordingly, Furry and Spencer were removed from the List.

Training Technicians and Lead Technician

The IAM challenged the eligibility of three Training Technicians and one Lead Technician, and argued that these employees were not appropriately in the Simulator Technicians craft or class. The IAM produced a declaration from a former Northwest Simulator Technician as evidence. The IAM stated that the Training employees: do not maintain or repair flight simulators; do not work with or train Pilots; and their primary responsibility is to build and maintain door trainers and cabin trainers. While the former Northwest Flight Simulator Technicians repair door trainers, the IAM’s declarant stated this is a “de minimis” portion of the job where the preponderance of their duties consists of maintaining and repairing flight simulators. Further, Training Technicians are not required to have knowledge of aerodynamics or advanced computer/technical skills, and they are located in a different department and report to different managers than the Simulator Technicians. In addition, they were not included in Delta’s Flight Simulator Technicians Seniority Integration Proposal – a proposal submitted by the appointed Delta Committee. In sum, the IAM argued that the Training Technicians did not share a community of interest with the Simulator Technicians and should be removed from the List.

Delta responded that not all employees in a craft or class must share the exact skill set and the Training Employees have technical training and share a community of interest with the Simulator Technicians. See *Continental Airlines, Inc./Continental Express, Inc.*, 26 NMB 343 (1999) (eligibility ruling pertaining to the scope of Flight Simulator Engineers/Technicians craft or

class). Delta provided evidence through a declaration from its Director of Technical Operations and Support, Michael Wysocki. Delta stated that the Training Technicians perform maintenance and repair on training devices and equipment used to train Pilots and Flight Attendants, in particular on cabin and door training devices. Delta relied on a collective bargaining agreement from 1999 and grievances (all pre-2006) filed on behalf of the Northwest Simulator Technicians who asserted that technical support work on Door and Cabin Trainers was properly their work. Delta stated that the former Northwest Simulator Technicians continue to perform maintenance on door and cabin training devices, and have recently been trained by Training Technicians on the operation of a Cabin Trainer in Minnesota. In sum, Delta believes that to remove the four Training Employees from the List would constitute a fragmentation of the craft or class.²

The Investigator focused on the craft or class of Simulator Technicians at Delta that were found separate from the Mechanics and Related Employees because of their sophisticated technical skills, their knowledge of aerodynamics, and their close interaction with the Pilots. *See Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 88, 111 (2009). Training Technicians at the merged carrier are located in different departments, report to different supervisors, have different core duties, and different technical requirements – factors which did not establish a community of interest with the Simulator Technicians craft or class. *See Delta Air Lines, Inc.*, 26 NMB 391 (1999). As such, the Investigator ruled that the four Training Technicians (Ronny Anderson, Ricky Moore, Lesley Sumner, and Jeffrey Strain) would be removed from the List.

III.

Appeal

In its February 16, 2010 appeal, Delta reiterates its position that the Board has the discretion to change the cut-off date for eligibility especially within the context of merger cases. Delta contends that, “in this case the Board did not assign a representation case designator (“R”) and number in this matter until the Board entered its decision on the single carrier issue on

² In its February 3, 2010 response, Delta also mentions two other persons on the List, who it alleges mainly handle inventory control, and not the maintenance of Flight Simulators. The Board did not consider the eligibility of these two individuals because *neither participant* raised their eligibility during the initial challenges, and it was raised in the final objections filed by Delta in a footnote. As such, the IAM did not have an opportunity to respond and there was insufficient evidence presented to make a ruling on their eligibility. *See Continental Airlines, Inc.*, 37 NMB 121, 124 (2010).

December 22, 2009 Only on that date did the Board begin to treat this matter as an ‘application’ to investigate a representation dispute.” Delta states that it is not aware of when the Board changed its practice with respect to the cut-off date in merger cases, and urges the Board to return to its old practices.

With respect to the eligibility of the Training Technicians, Delta cites again to *Continental Airlines, Inc./Continental Express, Inc.*, 26 NMB 343 (1999) and contends that the Investigator failed to consider the precedential value of this decision. In addition, Delta urges the Board to consider other craft or class decisions showing that the presence of overlapping job duties establishes a functional community of interest among employees with different job titles and responsibilities. Delta also asks the Board to consider the work of the Northwest Flight Simulator Technicians between 1999 and 2005, where these employees performed work on cabin and door trainers, as well as pre-merger contract language. Delta again reminds the Board of its policy against fragmentation and asks the Board to consider the future craft or class placement of the Training Technicians.

The IAM filed a statement on February 18, 2010. On the issue of the eligibility cut-off date, the IAM again cites to Section 2.3 of the Board’s Representation Manual, and *US Airways/America West*, 33 NMB 321, 331 (2006), as evidence of the Board’s current practice with respect to cut-off dates in merger determinations. In addition, the IAM noted that Delta does not address the fact that “it has had two elections since the merger in which the Board followed its consistent practice of using a cut-off date determined by the filing of the application in those cases.” Further, the IAM articulates one of the reasons behind the NMB’s cut-off date rule, that is to dissuade carriers from tampering with the lists in an effort to defeat the union. Finally, the IAM notes that Delta itself has acknowledged that no extraordinary circumstances exist in this proceeding to justify changing the cut-off date.

The IAM reiterates its argument that Training Technicians are not properly in the Simulator Technician craft or class, as these employees do not share a sufficient community of interest despite some marginally overlapping duties. Manual Section 9.1. The IAM contends that the evidence does not support inclusion in the Simulator Technician craft or class. “Training Technicians are in a different Department from Simulator Technicians; they have a different management reporting structure; they log into a different Deltanet page each morning; they have different work rules; different bidding for vacation or schedules; they have different pay schedules; and they have different core responsibilities and technical requirements.” Further, and most important in the IAM’s estimation, the four Training Technicians never perform Simulator Technician work, are not required to be qualified to perform

Simulator Technician work, and do not train with the Simulator Technicians.

The IAM also asserts that the recent decision of Delta not to include the Training Technicians in the Simulator Technician Seniority Integration Proposal is evidence that “Delta has never considered the Training Technicians to be Simulator Technicians.” Finally, the IAM argues that the *Continental Airlines/Continental Express*, *above*, decision relied upon so heavily by Delta is in fact *supportive* of the Investigator’s decision not to include Training Technicians in the Simulator Technician craft or class. *Id.* at 351-53 (Training Device Engineers included in the Simulator Technician craft or class because they shared similar wages, benefits, worked in the same department with the same second-level supervisor, and performed work on flight simulators). The IAM states that: “The Investigator’s ruling is squarely in line with Board precedent and should be upheld.”

IV.

Discussion

The burden of persuasion in an appeal from an Investigator’s eligibility ruling rests with the participant appealing the determination. *Continental Airlines, Inc.*, 37 NMB 121, 123 (2010); *Amerijet Int’l, Inc.*, 35 NMB 152, 154 (2008); *American Airlines*, 31 NMB 539, 553 (2004); *Northwest Airlines, Inc.*, 26 NMB 77, 80 (1998).

Cut-off Date

Section 2.3 of the Board’s Manual describes the eligibility cut-off date and provides:

For determining eligibility to vote, the cut-off date is the last day of the payroll period ending before the day the NMB received the application.

The Board made its most recent pronouncement on the circumstances warranting the changing of cut-off dates in *Compass Airlines*, 35 NMB 14 (2007), describing “extraordinary or unusual” circumstances of significant employee turnover or a significant delay (years not months) between the cut-off date and the election. *Id.* at 20; *USAir*, 10 NMB 495 (1983); *Piedmont Airlines*, 9 NMB 41 (1981). Neither situation has occurred here.

Delta also makes the argument that the Board did not treat the application as a representation dispute until it converted the application to an

R-Case number in the December 22, 2009 single system decision. *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 88 (2009). This argument has no merit. A “CR-File” number means that the representation application requires a pre-docketing investigation, but it is still the investigation of a representation dispute triggered by the filing of an application. Manual Section 1.01-9.

The Board has also articulated its policy regarding cut-off dates in merger cases, both in decisions and through our current practice including recent merger decisions involving Delta. *See Delta Air Lines, Inc./Northwest Airlines, Inc.*, 36 NMB 90 (2008); *Delta Air Lines, Inc./Northwest Airlines, Inc.*, 36 NMB 88 (2009); *US Airways/America West*, 33 NMB 321, 330-32 (2006).

For the above reasons, the Investigator’s ruling is upheld and the cut-off date will remain July 31, 2009.

Training Technicians and Lead Technician

Section 9.1 of the Board’s Manual discusses craft or class determinations and provides:

[T]he NMB considers many factors, including the composition and relative permanency of employee groupings along craft or class lines; the functions, duties, and responsibilities of the employees; the general nature of their work; and the extent of community of interest existing between job classifications. . . .

In *Continental Airlines, Inc./Continental Express, Inc.*, 26 NMB 343 (1999), the Board upheld an eligibility ruling finding, *inter alia*, Training Device Engineers part of the Flight Simulator Technicians craft or class (covering Flight Simulator Engineers). The Investigator found the Training Device Engineers shared a community of interest with the Flight Simulator Engineers for the following reasons: the employees worked in the same department; the employees reported to the same second-level supervisor, and they performed actual work on flight simulators. *Id.* at 349, 351-52.

Delta contends that the *Continental Airlines/Continental Express*, decision, *above*, is supportive of their position – the Board disagrees. In this matter, the Delta Training Technicians do not share the same core job function of *supporting and maintaining flight simulators*. Further, Training Technicians are in a different department from the Simulator Technicians, report to different supervisors, have different work rules, training requirements, and

rates of pay, and most importantly, the Training Technicians perform no work supporting or maintaining flight simulators.

While there is a small amount of overlap between Training Technicians, and the former Northwest Simulator Technicians involving maintenance or support of door or cabin trainers, the Delta Simulator Technicians do not perform this work. In addition, the job description for Simulator Technicians provided by Delta in this matter makes no mention of work maintaining or supporting door or cabin trainers -- making it hard to argue that it is an essential or even tangential function of their job.

Craft or class determinations and the concept of a community of interest are multi-layered and specific to each factual situation. While employees in a craft or class do not need to have identical job titles or duties, a small overlap of job functions is usually not sufficient to establish a community of interest. *See Southwest Airlines*, 35 NMB 139, 147 (2008) (Maintenance Controllers and Field Technician Supervisors communicated with Dispatchers, and shared some paperwork in performing their duties, but that overlap was not sufficient to form a community of interest for inclusion in the craft or class as these employees did not perform the “primary task” of dispatch).

For the above reasons, the Investigator’s ruling is upheld and the Training Technicians and Lead Technician will be removed from the List.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel

Chairman Dougherty, dissenting in part and concurring in part.

I concur with the decision of the Board regarding the cut-off date. I dissent from the decision to exclude the Training Technicians and Lead Technician for the following reasons. I do not believe we have sufficient evidence to determine exactly how much work the pre-merger Northwest Simulator Technicians are performing with cabin and door trainer devices (work identical to that performed by the four excluded employees). Without complete information on this point, the Board should not be making an

eligibility determination that will effectively separate into two different crafts or classes groups of employees who perform the exact same type of specialized, technical work. Although the IAM's declarant states conclusorily that the cabin and door trainer work performed by the pre-merger Northwest Simulator Technicians is "de minimis," he offers no frame of reference from which to determine what "de minimis" means or what amount of this work is actually being performed. "De minimis" is a relative term. What might be "de minimis" to the declarant, might not, in fact, be "de minimis" in the eyes of the Board or others. Moreover, Delta submitted evidence that the pre-merger Northwest Simulator Technicians are performing at least enough cabin and door trainer work to have previously required four full-time employees dedicated to this work. I would have preferred delaying our decision about the eligibility of the Training Technicians and Lead Technician until we had asked the participants to provide more information about the exact amount of cabin and door trainer work actually being performed by the pre-merger Northwest Simulator Technicians. As mentioned above, certainty on this point is particularly important where, as here, the Board's decision has the unusual result of splitting employees who perform identical, specialized work into two distinct crafts or classes.