NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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April 21, 2011

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Re: NMB Case No. R-7284 (CR-6995)
Republic Airlines et al./Frontier

Participants:

This determination addresses the April 11, 2011 Motion for Reconsideration filed by the Frontier Airline Pilots Association (FAPA). FAPA seeks reconsideration of the National Mediation Board's (Board or NMB) April 7, 2011 decision finding that Republic Airlines (RA), Shuttle America (Shuttle), Chautauqua Airlines (Chautauqua), Frontier Airlines (Frontier) and Lynx Aviation (Lynx) are operating as a single transportation system for the craft or class of Pilots. *Republic Airlines, et al./Frontier*, 38 NMB 138 (2011).

The United Transportation Union (UTU) filed its opposition to the Motion for Reconsideration on April 14, 2011, and the International Brotherhood of Teamsters, Airline Division (IBT) filed its opposition on April 15, 2011. FAPA filed an additional response on April 18, 2011, reiterating the arguments from its initial Motion. Republic Airways Holdings (RAH) took no position on whether the Motion should be granted or denied, and the Air Line Pilots Association (ALPA) did not submit a position statement. For the reasons discussed below, the Board finds that FAPA's Motion fails to state sufficient grounds to grant the relief requested.

I.

CONTENTIONS

FAPA

FAPA requests the Board to reconsider its decision finding Frontier part of the single transportation system for the craft or class of Pilots. FAPA contends the Board's conclusion was in error primarily because it didn't address certain arguments advanced by FAPA, namely: 1) other crafts or classes at Frontier, like the Flight Attendants, remain separate, and no rationale was articulated for why the Board found the Frontier Pilots part of the Republic system; 2) RAH took no formal position on the single system issue here in contrast to the Flight Attendant decision[*] where it urged a single transportation system finding; 3) the Board overlooked relevant cases cited by FAPA; 4) the decision failed to indicate that Chautauqua and RA operating on the Frontier brand have markings noting they are operating on a code-share

[*] *Chautauqua Airlines*, 37 NMB 148 (2010).

basis; and finally, 5) the Board improperly relied on Arbitrator Eischen's integrated seniority list.

IBT

The IBT asserts that FAPA's Motion for Reconsideration merely reasserts arguments previously presented to the Board and falls short of the Board's standard for relief. IBT contends that the Board's determination recited ample legal and factual authority for its correct conclusion that the Pilots at issue here constitute a single transportation system for representation purposes. The Board did not err by not addressing certain arguments asserted by FAPA. IBT states: "FAPA simply misunderstands the nature of the Board's investigative duty under Section 2, Ninth. The Board is not required to state its findings in any particular manner (or any argument asserted by a party for that matter)." *See Railway Clerks v. Association for Benefit of Noncontract Employees*, 380 US 650, 662 (1965) ("[T]he Board's duty to investigate is a duty to make such investigation as the nature of the case requires. An investigation is 'essentially informal, not adversary'; it is 'not required to take any particular form.'"). In sum, IBT urges denial of FAPA's Motion as it fails to show a "material error of law or fact" in the Board's conclusion.

UTU

The UTU states that the Board properly relied upon existing precedent in determining that RA, Shuttle, Chautauqua, Frontier and Lynx are operating as a single transportation system for the craft or class of Pilots, and that Midwest Pilots are included in this system. As such, the UTU contends that FAPA's Motion should be denied as the Board has not committed a material error of law or fact in finding a single transportation system for representation purposes.

II.

DISCUSSION

A. Motion for Reconsideration

The Board's Representation Manual (Manual) Section 11.0 states:

> 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. . . . The motion must state the points

> of law or fact which the participant believes the NMB has overlooked or misapplied and the grounds for the relief sought. Absent a demonstration of material error of law or fact or circumstances in which the NMB's exercise of discretion to modify the decision is important to the public interest, the NMB will not grant the relief sought. The mere reassertion of factual and legal arguments previously presented to the NMB is insufficient to obtain relief.

B. Decision on Reconsideration

The Board only grants relief on Motions for Reconsideration in limited circumstances:

> The Board recognizes the vital importance of the consistency and stability of the law as embodied in . . . NMB determinations . . . . Accordingly, the Board does not intend to reverse prior decisions on reconsideration except in the extraordinary circumstances where, in its view, the prior decision is fundamentally inconsistent with the proper execution of the NMB's responsibilities under the Railway Labor Act.

Virgin Atlantic Airways, 21 NMB 183, 186 (1994); *see also Portland & Western R.R.,* 31 NMB 193 (2004); *Mesa Airlines, Inc./CCAir, Inc./Air Midwest, Inc.*, 30 NMB 65 (2002).

The Board's Merger Investigation and Determination

Manual Section 19.5 describes Merger Investigations and states: "After an application is filed, the NMB will conduct a pre-docket investigation to determine whether a single transportation system exists. The investigation *may take any form* appropriate to the determination." (Emphasis added).

1. Other Crafts or Classes at Frontier

FAPA reasserts its argument that the Board's decision in *Chautauqua Airlines*, 37 NMB 148 (2010), finding Frontier and Lynx to be a separate system for the craft or class of Flight Attendants, is controlling here. First, in *Railway Labor Executives' Ass'n v. NMB*, 29 F.3d 655, 664 (D.C. Cir. 1994) (RLEA), the court clearly stated that "the Board may investigate a representation dispute

only upon request of the employees involved in the dispute." (Emphasis in original). Therefore, the Board's statutory duty here was to examine the proper system for the applied-for craft or class of Pilots. Second, in rendering its decision the Board focused on changes in the system including the passage of time and the further operational integration of Frontier into the system, as well as the integration of the Pilot groups at the various subsidiaries. *See Republic Airlines, et al./Frontier*, 38 NMB 138, 154-157 (2011); *Chautauqua Airlines, above,* at 167 ("This decision is based on the facts and circumstances of this case. *Future changes on the carriers may lead to a different result.*") (Emphasis added); *see also* Manual Section 19.2, Authority ("Pursuant to Section 2, Ninth, the NMB, upon an Application, has the authority to resolve representation disputes arising from a merger involving a Carrier or Carriers covered by the RLA. *The NMB will consider these representation issues on a case-by-case basis.*") (Emphasis added).

2. Position of RAH

FAPA faults the Board for not addressing RAH's "different position in this proceeding" with respect to Frontier being part of the single transportation system. In the Flight Attendant decision, RAH argued that Frontier was part of the single transportation system. *Chautauqua Airlines, above,* at 152-153. In the Pilot matter, RAH took no formal position as to whether Frontier was part of the single transportation system. *Republic Airlines, et al./Frontier*, 38 NMB 138, 140 (2011).

The Board did not address this specifically, other than where it summarized RAH's contentions at pp. 140-141, *above*, because RAH's position is not determinative. The Board renders decisions based on the facts of each case applied to Board precedent. Participant statements, while informative, are not determinative. Further, the Board has discretion to tailor its investigation and decision as it deems appropriate. *See Railway Clerks v. Association for Benefit of Noncontract Employees*, 380 US 650, 662 (1965); Manual Section 19.2 (representation issues [are considered] on a case-by-case basis); Manual Section 19.5 (The investigation may take any form appropriate to the determination).

3. Cases Cited by FAPA

FAPA contends that the Board overlooked two significant cases cited by it in its briefs, *NJI, Inc./NetJets Aviation, Inc.*, 37 NMB 186 (2010) and *GoJet Airlines, L.L.C. and Trans States Airlines, Inc.*, 33 NMB 24 (2005). *GoJet Airlines, above*, was in fact addressed in the Board's decision. *See Republic Airlines, et al./Frontier*, 38 NMB 138, 154 (2011). While the Board's decision in

NJI, Inc., above, was not addressed, it would not have changed the outcome of the Board's single system finding here. *NJI, Inc.*, 37 NMB 186 (2010) (no single system found because NJI and NJA had not substantially integrated their operations; for example, separate corporate headquarters existed, separate operating certificates existed, no plan was in place for the seniority integration of the Flight Attendants, and flight manuals and policies had not yet been integrated). As stated previously, the Board has discretion to tailor its investigation and determination as it deems appropriate. *See Railway Clerks v. Association for Benefit of Noncontract Employees*, *above*; Manual Section 19.5.

4. Code Sharing Markings

FAPA faults the Board's determination for not addressing with specificity its codeshare argument with respect to the Frontier "branded" operations. The Board, in its single system finding, relied in part on the fact that RA and Chautauqua fly a portion of the "branded" operation under the Frontier livery. These flights are flown in aircraft with Frontier markings, and marketed as Frontier flights. *Republic Airlines, et al./Frontier*, *above,* at 151. The fact that there are markings on the aircraft and in the schedule noting that they are operated as code-share flights, does not alter the propriety of the single system finding. The fact that this argument was not highlighted in the Board's decision is not "a material error" sufficient to grant a Motion for Reconsideration. *See* Manual Section 11.

5. Arbitrator's Decision

FAPA contends that the Board's reliance on Arbitrator Eischen's issuance of an integrated seniority list which included the Frontier Pilots was improper; their inclusion on the list was expressly contingent upon the Board finding Frontier part of the single transportation system.

The Board noted that all the subsidiaries and their respective Pilot groups had entered into an agreement to integrate the Pilots seniority. *Republic Airlines, et al./Frontier, above,* at 155. Further, the Board's analysis of the arbitrator's award at footnote 2, clearly states: "The arbitrator ruled that in the event that the Board finds Frontier not to be part of the single transportation system, the 'integration methodology of the Award will be applied with the Frontier pilots excluded.'" Moreover, the Board cited numerous significant indicia of a single system, including consolidated labor relations and human resources functions, common ownership, overlapping management and Boards of Directors, total operational control, and the fact that the subsidiaries are held out as single carrier on RAH's website and presented on a consolidated basis for both financial reporting and operating

performance. *Id.* at 157. Therefore, the Board did not rely on the issuance of the Award or its inclusion of the Frontier Pilots as the pivotal factor supporting a single transportation system.

CONCLUSION

The Board has reviewed the submissions of FAPA, UTU, and IBT. FAPA has failed to demonstrate a material error of law or fact or circumstances in which the Board's exercise of discretion to modify the decision is important to the public interest. Furthermore, the Board finds that FAPA has failed to show that the prior decision is fundamentally inconsistent with the proper execution of the Board's responsibilities under the Railway Labor Act, 45 U.S.C. § 151, *et seq.* Accordingly, any relief upon reconsideration is denied.

By direction of the NATIONAL MEDIATION BOARD.

Mary L. Johnson
General Counsel