



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

TRANSPORT WORKERS UNION
OF AMERICA

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

involving employees of

ATLANTIC SOUTHEAST
AIRLINES, INC. AND
EXPRESSJET AIRLINES, INC.

38 NMB No. 52

CASE NO. R-7294
(File No. CR-7008)

FINDINGS UPON
INVESTIGATION

June 15, 2011

This determination addresses the application filed by the Transport Workers Union of America (TWU). TWU requests the National Mediation Board (NMB or Board) to investigate whether Atlantic Southeast Airlines, Inc. (ASA), and ExpressJet Airlines, Inc. (ExpressJet) (collectively the Carriers) are operating as a single transportation system.

The investigation establishes that ASA and ExpressJet constitute a single transportation system.

PROCEDURAL BACKGROUND

On December 3, 2010, ASA notified the Board that on November 12, 2010, ExpressJet Holdings, Inc., the parent company of ExpressJet “became a wholly-owned subsidiary of Atlantic Southeast” and stated that “[i]t is intended that the operations of ExpressJet and Atlantic Southeast will...be combined.” On February 4, 2011, TWU filed an application alleging a representation dispute involving the craft or class of Flight Dispatchers at the Carriers.

Flight Dispatchers at ASA are represented by the Professional Airline Flight Control Association (PAFCA) pursuant to certification under NMB Case No. R-6278. Flight Dispatchers at ExpressJet are represented by TWU pursuant to NMB Case No. R-4284.

The Board assigned TWU's application NMB File No. CR-7008. The Board assigned Norman L. Graber to investigate and requested that the Carriers provide information regarding their operations. The Carriers submitted a position statement on February 22, 2011 and provided further information, as requested by the Investigator, on March 15, 2011. PAFCA filed a position statement on February 7, 2011. TWU filed a position statement on March 1, 2011.

ISSUE

Are ASA and ExpressJet operating as a single transportation system? If so, what are the representation consequences?

CONTENTIONS

TWU

TWU filed its application alleging a representation dispute in response to the Carriers' December 3, 2010 Notice of Merger filed with the NMB. TWU contends that ASA and ExpressJet constitute a single transportation system for the purposes of the Flight Dispatchers craft or class.

PAFCA

PAFCA responded to TWU's application by agreeing with TWU's contention that ASA and ExpressJet constitute a single transportation system for the purposes of the Flight Dispatchers craft or class.

ASA and ExpressJet

The Carriers state that ASA and ExpressJet comprise a single transportation system for the craft or class of Flight Dispatchers. According to the Carriers, the objective of the November 12, 2010 purchase of ExpressJet was the creation of a single airline operating under the ASA name, and the Carriers are pursuing that goal. The Carriers are now commonly owned. They have formed a merged executive management team, including labor relations

and personnel functions. The Carriers have been and will continue to be regional carriers performing services for other mainline airlines under the brand, code, and livery of their mainline partners. Accordingly, the Carriers do not hold themselves out to the public as individual airlines under their own liveries and logos. But the Carriers already hold themselves out as a single entity to their mainline partners. The Carriers are pursuing a single operating certificate from the FAA, and will fully integrate operations once the single operating certificate is obtained. The Carriers have begun the process of converting all corporate insignia and logos to the ASA insignia and logos. Accordingly, the Carriers stated that they now constitute a single transportation system within the meaning of the NMB's case law.

FINDINGS OF LAW

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

I.

ASA and ExpressJet are common carriers as defined in 45 U.S.C. § 181, First.

II.

TWU and PAFCA are labor organizations and/or representatives as defined in 45 USC § 151, Sixth, and § 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 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.”

STATEMENT OF FACTS

Background

Prior to the merger, ASA was a wholly-owned subsidiary of SkyWest, Inc., headquartered in Atlanta, Georgia, and operating as a regional air carrier for its two mainline partners, Delta Airlines and United Airlines. ASA operates under its contracts with its mainline partners by transporting the mainline partners’ passengers under the mainline partners’ brand, code, and livery using ASA aircraft and crews. ExpressJet is also a regional carrier, operating flights for United Airlines and Continental Airlines.

On December 3, 2010, ASA notified the Board that “on November 12, 2010, SkyWest, Inc. announced the acquisition of ExpressJet. . . . As a result of this transaction, ExpressJet . . . became a wholly-owned subsidiary of Atlantic Southeast Airlines, Inc. . . . Atlantic Southeast is a wholly-owned subsidiary of SkyWest, Inc. It is intended that the operations of ExpressJet and Atlantic Southeast will, subject to regulatory approval, be combined.” The Carriers notified all labor organizations representing employees at ExpressJet and ASA about the acquisition and the pending operational merger.

PAFCA is the certified representative of ASA’s Flight Dispatcher employees. *Atlantic Southeast Airlines, Inc.*, 27 NMB 192 (2000). According to the Carriers, there are 37 employees in the craft or class at ASA.

The craft or class of Flight Dispatchers at ExpressJet is represented by the TWU. ExpressJet began in 1986, operating as Continental Express, when Continental Airlines purchased a series of small regional airlines. In 2002, the company spun off as ExpressJet Holdings. TWU was initially certified as the representative of the craft or class of Flight Superintendents at Continental Air Lines. *Continental Air Lines, Inc.*, 5 NMB 152 (1972). Following a finding that Continental Airlines and Continental Express constituted a single transportation system, the Board certified TWU as the representative of that Carrier’s craft or class of Flight Dispatchers. *Continental Airlines and Continental Express*, 20 NMB 580 (1993). According to the Carriers, the collective bargaining agreement between TWU and ExpressJet covers 64 employees working as aircraft dispatchers, ATC coordinators, hub coordinators, senior hub coordinators, and lead dispatchers.

Common Corporate Ownership

ASA is a wholly-owned subsidiary of SkyWest, Inc. On November 12, 2010, SkyWest announced the acquisition of ExpressJet Holdings, Inc., the parent company of ExpressJet. Based on the acquisition, ExpressJet is now a wholly-owned subsidiary of ASA.

Management and Labor Relations

According to the declaration of Lisa LaRue, ASA Director of Labor Relations, a merged executive management team has been formed. Brad Holt is the President and Chief Operating Officer, Ken Ashworth is Vice President – Maintenance, Cathy Harris is Vice President – People Resources, Brandee Reynolds is Vice President – Inflight Services, Charlie Tutt is Vice President – Flight Operations, Terry Vais is Vice President – Customer Care, Kevin Wade is Vice president – Administration, and Lisa Walker is Vice President – Operational Support.

The Carriers have integrated labor relations. LaRue oversees all labor relations matters at both ASA and ExpressJet. All labor relations staff at ASA and ExpressJet report to LaRue.

According to the declaration of Steve Strickland, Director of Operations Control, the Carriers are in the process of integrating Flight Operations management, which includes the Flight Dispatcher group. Tutt is the merged company's corporate Vice President – Flight Operations. Strickland; Scott Hall, Director of Flight Operations; Jennifer Junger, Manager of Operations Performance; Gregory Wooley, Director of Flight Training; and Charles Durham, Director of Crew Resources all report directly to Tutt.

Labor Protection Provisions and Interim Agreements

According to LaRue, all of the affected employees are covered by labor protective provisions. The PAFCA collective bargaining agreement and the TWU collective bargaining agreement are in effect at ASA and ExpressJet, respectively. Both agreements contain provisions that the carrier will require that, following any operational merger, the surviving company will provide for fair and equitable integration of the pre-merger dispatch seniority list in accordance with Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions. The Carriers state that they intend for the dispatcher seniority lists to be integrated.

Personnel Policies

The personnel functions of ASA and ExpressJet have been combined under the leadership of Cathy Harris, Vice President – People Resources. All human resources staff at ASA and ExpressJet report to Harris.

FAA Operating Certificate

Strickland states that ASA is currently pursuing a single operating certificate from the FAA. Once the single operating certificate is received, ASA will fully integrate and combine the operations of ASA and ExpressJet.

Routes and Schedules

Strickland stated that routes and schedules to be flown by ASA and ExpressJet are determined and published by the mainline partners subject to the terms of their contracts with the mainline partners. The routes and schedules that are flown by the Carriers for the applicable mainline partners are not combined with those of other mainline partners. This practice will continue after complete operational merger and the issuance of a single operating certificate.

Corporate Name, Insignia, and Logos, and Livery

ASA has announced that the merged Carrier will be known as Atlantic Southeast Airlines. All ExpressJet insignia and logos will be changed to the ASA insignia and logos. The process of converting all corporate insignia and logos has begun.

Aircraft will continue to be the livery of the mainline partner for which it is being operated. Once the FAA issues a single operating certificate, ASA will be the carrier identified as operating all flights. Although the Carriers do not hold themselves out to the public as individual airlines under their own liveries and logos, they do hold themselves as a single entity to their mainline partners.

Common Uniforms

According to LaRue, flight dispatchers do not wear uniforms, and no standardization is necessary. Pilot uniforms will be standardized; and flight attendants uniforms will be standardized, but they will continue to wear the accessories of the mainline partner for whom the particular flight is being operated.

Representation of Flight Dispatchers

As noted above, PAFCA is the certified representative for 37 flight dispatchers at ASA. TWU is the certified representative of 64 flight dispatcher employees at ExpressJet.

DISCUSSION

I.

The Board's Authority

45 U.S.C. § 152, Ninth, authorizes 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. *General Comm. of Adjustment v. M.K.T. R.R.*, 320 U.S. 323 (1943); *Switchmen's Union of N. Am. v. Nat'l Mediation Bd.*, 320 U.S. 297 (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

Manual Section 19.4 provides that: "Any organization or individual may file an application, supported by evidence of representation or a showing of interest . . . seeking a determination whether a single system of transportation exists."

In *Trans World Airlines/Ozark Airlines*, the Board cited the following 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.

14 NMB 218, 236 (1987).

The Board finds a single transportation system only when there is substantial integration of operations, financial control, and labor and personnel functions. *Delta Air Lines, Inc./Northwest Airlines, Inc.*, 36 NMB 36 (2009); *Burlington N. Santa Fe Ry. Co.*, 32 NMB 163 (2005); *Huron & Eastern Ry. Co., Inc.*, 31 NMB 450 (2004); *Portland & Western R. R., Inc.*, 31 NMB 71 (2003).

Further, the Board has noted that a substantial degree of overlapping ownership, senior management, and boards of directors is critical to finding a single transportation system. *Precision Valley Aviation, Inc., d/b/a Precision Airlines and Valley Flying Serv., Inc., d/b/a Northeast Express Reg'l Airlines*, 20 NMB 619 (1993).

In the instant case, ExpressJet's parent company became a wholly-owned subsidiary of ASA's parent company. ASA and ExpressJet have a single board of directors and a common senior management group in place. There is a single group of officers responsible for labor relations and human resources at the Carriers. The Carriers are in the process of obtaining a single operating certificate from the FAA.

Because the Carriers are regional carriers operating flights for mainline partners, they do not hold themselves out to the public as individual airlines. Although the public has no knowledge of the change in the status of the two Carriers, they now hold themselves out to their mainline partners as a single entity. The Carriers' operations are headquartered in Atlanta, Georgia. The Carriers have begun the process of converting all corporate insignia and logos

to the ASA insignia and logos. The Carriers' Flight Dispatchers do not wear uniforms. The Carriers have begun the process of transitioning to common uniforms in other crafts or classes, although parts of the uniforms are related to the mainline partners.

The Board's criteria for substantial integration of operations do not require total integration of operations. *US Airways/America West Airlines*, 33 NMB 49 (2006). Although there is not yet a total integration of operations at ASA and ExpressJet, those cases where the Board has failed to find a single transportation system for that reason are distinguishable. In *AirTran Airways*, 25 NMB 24 (1997), the Board found no single transportation system where the merger had not been consummated and there was insufficient evidence that crews would be integrated even after the merger was effected. In *GoJet Airlines, L.L.C. and Trans States Airlines, Inc.*, 33 NMB 24 (2005), the Board found there was no single transportation system where the two carriers continued to operate under separate management, separate labor relations and terms and conditions of employment, and separate hiring and recruitment. The Board also noted that each carrier retained its own website with no links or information about the other.

In this case, however, plans are underway for further integration in every area where it has not yet occurred. Further, the Carriers have informed their mainline customers of the merger. There is little doubt that integration of operations will continue.

Based upon the application of the principles to the facts established by the investigation, the Board finds that ASA and ExpressJet operate as a single transportation system for representation purposes in the craft or class at issue in this case. The Carriers share common management and hold themselves out to their mainline partners as a single entity.

CONCLUSION

The Board finds that ASA and ExpressJet are operating as a single transportation system for representation purposes under the RLA. Accordingly, TWU's application in File No. CR-7008 is converted to NMB Case No. R-7294. Pursuant to Manual Section 19.6, the investigation will proceed to address the representation of this craft or class. Any Intervenor has 14 days from the date of this determination to file an application supported by a showing of interest of at least 35 percent of the single transportation system in accordance with Manual Sections 19.601 and 19.603. The participants are

reminded that under Manual Section 19.7, existing certifications remain in effect until the Board issues a new certification or dismissal.

By direction of the NATIONAL MEDIATION BOARD.

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

Mary L. Johnson
General Counsel

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