



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the Application of the	39 NMB No. 5
ASSOCIATION OF FLIGHT ATTENDANTS - CWA	CASE NO. R-7304 (File No. CR-7020)
alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act, as amended	FINDINGS UPON INVESTIGATION
involving employees of	October 26, 2011
ATLANTIC SOUTHEAST AIRLINES, INC. AND EXPRESSJET AIRLINES, INC.	

This determination addresses the application filed by the Association of Flight Attendants – CWA (AFA) alleging a representation dispute pursuant to the Railway Labor Act (RLA).¹ AFA 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

¹ 45 U.S.C. §151, *et. seq.*

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 July 12, 2011, AFA filed an application alleging a representation dispute involving the craft or class of Flight Attendants at the Carriers.

Flight Attendants at ASA are represented by the AFA pursuant to certification under NMB Case No. R-5811. Flight Attendants at ExpressJet are represented by the International Association of Machinists and Aerospace Workers (IAM).

The Board assigned AFA’s application NMB File No. CR-7020. The Board assigned Norman L. Graber to investigate and requested that the Carriers provide information regarding their operations. The Carriers submitted a position statement and information, including declarations from company executives, on July 26, 2011. AFA filed a position statement on August 1, 2011. IAM did not file a position statement. The Carriers filed an update to their position statement on October 18, 2011.

ISSUE

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

CONTENTIONS

AFA

AFA filed its application alleging a representation dispute in response to the Carriers’ December 3, 2010 Notice of Merger filed with the NMB. AFA contends that ASA and ExpressJet constitute a single transportation system for the purposes of the Flight Attendants 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 Attendants. 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. The Carriers recently decided that, effective December 31, 2011, they will be operating under the ExpressJet name and the legacy ASA branding colors and logo. 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 hold themselves out as a single entity to their mainline partners. The Carriers are pursuing a single operating certificate (SOC) from the Federal Aviation Administration (FAA), and will fully integrate operations once the SOC is obtained, which they anticipate will occur in the fourth quarter of 2011. Effective December 31, 2011, the Carriers will use the ExpressJet name and a uniform corporate insignia and logo which will be based on the legacy ASA branding. Accordingly, the Carriers state that they now constitute a single transportation system for the craft or class of Flight Attendants

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.

AFA and IAM 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.

AFA is the certified representative of ASA’s Flight Attendants. *Re: Atlantic Southeast Airlines, Inc.*, 31 NMB 166 (2004). According to the Carriers, there are 1,084 employees in the craft or class at ASA.

The craft or class of Flight Attendants at ExpressJet is represented by IAM. 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. IAM was initially certified as the representative of the craft or class of Flight Attendants at Continental Air Lines. *Continental Air Lines and Air Micronesia, Inc.*, 18 NMB 40 (1990). Following a finding that Continental Airlines and Continental Express constituted a single transportation system, the Board certified IAM as the representative of that Carrier’s craft or class of Flight Attendants. *Continental Airlines and Continental Express*, 20 NMB 582 (1993). According to the Carriers, IAM and ExpressJet are party to a collective bargaining agreement that covers 1,223 Flight Attendants.

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 Brandee Reynolds, ASA Vice President - Inflight Services, 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, Charlie Tutt is Vice President - Flight Operations, Terry Vais is Vice President - Customer Care, Kevin Wade is Vice President - Administration, Lisa Walker is Vice President - Operational Support, and Reynolds is Vice President - Inflight Services.

The Carriers have integrated labor relations. According to the declaration of Lisa LaRue, ASA Director of Labor Relations, she oversees all labor relations matters at both ASA and ExpressJet. All labor relations staff at ASA and ExpressJet report to LaRue. LaRue states that all personnel functions have been fully integrated under Cathy Harris. All human resource staff at ASA and ExpressJet report to Harris

According to the declaration of Reynolds, she is responsible for all Flight Attendant matters for both ASA and ExpressJet. These matters include Flight Attendant training, discipline, and cabin-service issues. All Inflight management staff and department personnel report to Reynolds.

Labor Protection Provisions and Interim Agreements

According to LaRue, all of the affected employees are covered by labor protective provisions. The AFA collective bargaining agreement and the IAM 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 flight attendant 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

Reynolds states that the Carriers are currently pursuing a SOC from the FAA. The Carriers must integrate and harmonize policies and procedures contained in FAA-required manuals, submitting revisions for FAA review and approval. According to Reynolds, the Carriers anticipate completing this process and obtaining a SOC during the fourth quarter of 2011. Once the SOC is received, the Carriers will fully integrate and combine the operations of ASA and ExpressJet.

Routes and Schedules

Reynolds 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 SOC.

Corporate Name, Insignia, and Logos, and Livery

The Carriers initially announced that the merged Carrier would be known as Atlantic Southeast Airlines. The Carriers have now announced that, effective December 31, 2011, they will be operating under the ExpressJet name and the legacy ASA branding colors and logo.

Aircraft will continue to display the livery of the mainline partner for which it is being operated. Once the FAA issues a SOC, the merged entity 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 hold themselves out as a single entity to their mainline partners.

Common Uniforms

According to Reynolds, 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 Attendants

As noted above, AFA is the certified representative for 1,084 flight attendants at ASA. IAM's collective bargaining agreement with ExpressJet covers 1,223 flight attendants.

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 SOC 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. Effective December 31, 2011, the Carriers will be operating under the ExpressJet name and the legacy ASA branding colors and logo. The Carriers' flight attendants' uniforms will be standardized, 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. The FAA SOC is expected to be obtained in the fourth quarter of 2011, and integration can be completed at that point in time. Further, the Carriers have informed their mainline customers of the merger. There is little doubt that integration of operations will continue. The Board already has found that the Carriers are a single transportation system for representation purposes in the craft or class of Flight Dispatchers. *Atlantic Southeast Airlines, Inc. and ExpressJet Airlines, Inc.*, 38 NMB 224 (2011).

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, AFA's application in File No. CR-7020 is converted to NMB Case No. R-7304. 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.



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