



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the  
Application of the

TRANSPORT WORKERS UNION  
OF AMERICA, AFL-CIO

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

involving employees of  
FRONTIER AIRLINES, INC.

41 NMB No. 20

CASE NO. R-7390  
(File No. CR-7118)

FINDINGS UPON  
INVESTIGATION-  
AUTHORIZATION OF  
ELECTION

May 28, 2014

This determination addresses the application filed pursuant to the Railway Labor Act (RLA)<sup>1</sup> by the Transport Workers Union of America, AFL-CIO (TWU or Organization) to represent the Fleet Service Employees at Frontier Airlines, Inc. (Frontier or Carrier). This application requires the National Mediation Board (NMB or Board) to investigate whether Frontier is a separate system from the other carriers that compromised the Republic Airlines, et al./Frontier single system. *See Frontier Airlines, Inc.*, 41 NMB 31 (2014) (finding Frontier separate from Republic Airways Holdings (RAH) system for craft or class of Pilots); *cf. Republic Airlines, et al./Frontier*, 38 NMB 138 (2011) (single system determination finding Frontier part of a single transportation system for the craft or class of Pilots, including Republic Airlines (RA), Shuttle America (Shuttle), and Chautauqua Airlines (Chautauqua) (collectively known as RAH)).

The current investigation establishes that Frontier is operating as a single transportation system for the craft or class of Fleet Service Employees.

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<sup>1</sup> 45 U.S.C. § 151, *et. seq.*

## PROCEDURAL BACKGROUND

On December 3, 2013, RAH completed the sale of all of the outstanding shares of its wholly-owned subsidiary, Frontier Airlines Holdings, Inc. (which owns Frontier) to the Falcon Acquisition Group, Inc., an affiliate of Indigo Partners, LLC.

On March 12, 2014, the TWU filed an application alleging a representation dispute involving the craft or class of Fleet Service Employees at Frontier. The Fleet Service Employees at Frontier are currently unrepresented. Cristina Bonaca was assigned as the Investigator.

The TWU filed its initial position statement on March 26, 2014, and Frontier filed its initial position statement on March 27, 2014. In response to questions asked by Investigator Bonaca, TWU filed a statement on April 11, 2014, and Frontier filed a statement on April 16, 2014. At the direction of the Board, Frontier filed an additional statement on April 24, 2014.

## ISSUES

Is Frontier operating as a separate transportation system for the craft or class of Fleet Service Employees? If so, what are the representation consequences?

## CONTENTIONS

### TWU

The TWU states that the Fleet Service Employees at issue are solely employees of Frontier and there is a more than sufficient showing of interest to move forward with a representation election. TWU asserts that no RAH carrier has any role in the labor relations, personnel functions, or general operations at Frontier.

Declarants for the TWU stated that labor relations and personnel functions at Frontier are administered by Frontier management for the Fleet Service Employees. Further, Frontier's supervisors oversee the Fleet Service Employees' ramp work. In addition, all administrative functions for the Frontier Fleet Service Employees such as payroll, human resources, benefits, and training, are provided by Frontier at the Frontier Airlines' general office located in Denver, Colorado. All email accounts, computers, training material, and company correspondence related to Frontier's Fleet Service Employees are

provided by Frontier. Frontier's Fleet Service Employees wear uniforms with the Frontier logo and carry Frontier identification badges.

### Frontier

Frontier asserts that it is a single transportation system for the craft or class of Fleet Service Employees as evidenced by its December 2013 sale from RAH to Indigo Partners, LLC. As a result of that transaction, RAH no longer holds any ownership interest in Frontier nor shares any common directors or managers with those of Frontier. Further, Frontier is held out to the public as a separate entity and is no longer included in RAH's consolidated reporting. The operations of Frontier's Fleet Service Employees are completely separate from that of RAH and its carriers. Frontier's Fleet Service Employees do provide ground handling services to RAH carriers under an International Air Transport Association Standard Ground Handling Agreement (Frontier-Republic IATA Agreement); however, this work is minimal and on average consists of providing ground service for two RAH charter flights per month. Because Frontier is no longer under common control or ownership with any other air carrier, Frontier asserts that it is operating as a single transportation system for the craft or class of Fleet Service Employees.

### FINDINGS OF LAW

Determination of the issues in this case is governed by the RLA, as amended, 45 U.S.C. §§ 151-188. Accordingly, the Board finds as follows:

#### I.

Chautauqua, Shuttle, RA, and Frontier are common carriers as defined in 45 U.S.C. § 181.

#### II.

TWU is a labor organizations as provided by 45 U.S.C. § 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 the 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

#### Corporate Transactions and Management

On December 3, 2013, RAH completed the sale of all of the outstanding shares of its wholly-owned subsidiary, Frontier Airlines Holdings, Inc., to the Falcon Acquisition Group, Inc., an affiliate of Indigo Partners, LLC. On the same day of Frontier’s sale to Indigo Partners, LLC, David Siegel, President and CEO of Frontier, resigned from RAH’s Board of Directors. RAH no longer holds any ownership interest in Frontier, and has no common ownership of, nor any common directors or managers with, any affiliate of Frontier, including Indigo Partners, LLC.

As of the eligibility cut-off date of March 3, 2014, Frontier employed 404 Fleet Service Employees.

#### Labor Relations/Personnel Functions

Frontier’s senior management team, including those responsible for personnel functions and labor relations, is wholly separate from and does not overlap with that of RAH or the remaining RAH carriers. Frontier’s senior labor relations official is Director of Human Resources and Labor Relations Jacalyn Peters. Frontier maintains separate hiring, a separate employee handbook, and separate personnel policies.

#### Fleet Service Operations

The operations of Frontier with respect to the Fleet Service Employees are completely separate from that of RAH and the remaining RAH carriers. Frontier has a separate operational structure, independent flight operations, separate operational control, and maintains a separate FAA operating certificate.

Frontier's Fleet Service Employees do perform a *de minimus* amount of ground handling services to the RAH carriers under the Frontier-Republic IATA Agreement. The Frontier-Republic IATA Agreement does not specify the number of flights to be handled by Frontier. However, Jeff Campbell, Frontier's Director of Airport Planning, stated that the work that Frontier does for the RAH carriers pursuant to the Agreement is minimal. Campbell states that on average Frontier provides ground services for approximately two RAH charter flights per month.

### Marketing

Frontier is now held out to the public as a separate entity and is no longer included in RAH's consolidated reporting. In addition, Frontier's website, <http://www.flyfrontier.com/who-we-are/company-info/fact-sheet>, provides that their headquarters is in Denver, Colorado. In describing Frontier, the website provides the following:

Currently in its 20th year of operations, Frontier employs more than 3,900 aviation professionals and operates more than 350 daily flights. Its primary hub is at the Denver International Airport. Frontier offers service to more than 75 destinations in the United States, Costa Rica, the Dominican Republic, Jamaica, and Mexico.

In contrast, RAH's website, <http://www.shuttleamerica.com/Who We Are/Airlines.aspx>, states:

Republic Airways Holdings, based in Indianapolis, Indiana, is an airline holding company that owns Chautauqua Airlines, Republic Airlines and Shuttle America.

### Uniforms

Frontier's Fleet Service Employees wear uniforms issued to them by Frontier and which feature the Frontier logo.

### Equipment

Frontier's entire fleet is painted with the Frontier livery.

## Insignia and Logos

Frontier retained its corporate insignia and logos post-merger with RAH and continues to do so.

## 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. Co.*, 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, Inc.*, 656 F.2d 16, 22 (2d Cir. 1981), the court stated, "[t]he NMB is empowered to . . . decide representation disputes arising out of corporate restructurings."

### II.

#### Single Transportation System

The Board's Representation Manual (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 NMB determination that a single transportation system exists." Manual Section 19.501 provides the factors for making 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).

In this case, because of its findings with respect to the Pilot craft or class at the RAH system, the Board must look to see what is the appropriate transportation system for the Fleet Service Employees at Frontier. *See Frontier Airlines, Inc.*, 41 NMB 31 (2014) (Board found Frontier to be a separate transportation system from the RAH carriers for the craft or class of Pilots, in large part due to its sale from RAH to Indigo Partners, LLC); *cf. Republic Airlines, et al./Frontier*, 38 NMB 138 (2011) (Board found Frontier part of the RAH single transportation system for the craft or class of Pilots).

Frontier is now owned by Indigo Partners, LLC and does not share Boards of Directors or other senior managers with RAH. Frontier controls all aspects of its operations, holding its own FAA operating certificate, flying its aircraft under the Frontier livery and code, with Fleet Service Employees wearing Frontier uniforms and reporting to Frontier management. Frontier additionally controls all aspects of its labor relations and all personnel policies. Frontier is also held out to the public as separate from the RAH carriers, both on its website and in financial reporting.

While Frontier does perform some Fleet Service work for the RAH carriers under the Frontier-Republic IATA Agreement, the amount of work is minimal and on average ground service is provided for only two RAH charter flights a month. This minimal link to the RAH carriers pursuant to the Frontier-Republic IATA Agreement is insufficient to support finding Frontier part of the RAH transportation system. *See Republic Airlines, et al./Frontier*, 38 NMB 138, 154 (2011); *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 88 (2009)

(Board finds a single transportation system only when there is substantial integration of operations, financial control, and labor and personnel functions.); *See also 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) (A substantial degree of overlapping ownership, senior management, and Boards of Directors is critical to finding a single transportation system.).

Based upon the application of the principles cited above to the facts established by the investigation, the Board finds that Frontier is operating as a single transportation system for the craft or class of Fleet Service Employees.

### CONCLUSION

The Board finds that Frontier is operating as a single transportation system for the craft or class of Fleet Service Employees for representation purposes under the RLA. Accordingly, the TWU's application in NMB File No. CR-7118 is converted to NMB Case No. R-7390.

The Board finds a dispute to exist in NMB Case No. R-7390, among the Fleet Service Employees at Frontier Airlines sought to be represented by TWU and presently unrepresented. A TEV and Internet election is hereby authorized using a cut-off date of March 3, 2014.

Pursuant to Manual Section 12.1, the Carrier is hereby required to furnish within five calendar days, 1" X 2 5/8", peel-off labels bearing the alphabetized names and current addresses of those employees on the List of Potential Eligible Voters. The Carrier must print the same sequence number from the List of Potential Eligible Voters beside each voter's name on the address label. The Carrier must also provide to the Board the name and sequence number of those potential eligible voters on military leave who are serving in foreign countries or who reside outside of the United States. The Carrier must use the most expeditious method possible, such as overnight mail, to ensure that the Board receives the labels within five calendar days. Tally in Washington, D.C.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson  
General Counsel



Copies to:

Michelle Zeier, Esq.

Jacalyn W. Peter, Esq.

Robert Siegel, Esq.

Steve Roberts

David Rosen, Esq.

Richard Edelman, Esq.