



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the  
Application of the  
  
INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, AIRLINE  
DIVISION  
  
alleging a representation dispute  
pursuant to Section 2, Ninth, of  
the Railway Labor Act, as  
amended  
  
involving employees of  
  
REPUBLIC AIRLINES, ET  
AL./FRONTIER

41 NMB No. 24  
  
CASE NO. R-7302  
  
FINDINGS UPON  
INVESTIGATION -  
DISMISSAL  
  
June 24, 2014

This determination addresses the application filed pursuant to the Railway Labor Act (RLA)<sup>1</sup> by the International Brotherhood of Teamsters, Airline Division (IBT). The National Mediation Board (NMB or Board) issued a determination in October 2011, finding that Republic Airlines, et al./Frontier was operating as a single system for the craft or class of Flight Attendants. See *Republic Airlines, et al./Frontier*, 39 NMB 3 (2011) (single system included Republic Airlines (RA), Shuttle America (Shuttle), Chautauqua Airlines (Chautauqua) and Frontier Airlines (Frontier)).<sup>2</sup> At the joint request of the IBT and the Association of Flight Attendants-CWA (AFA-CWA), the investigation did not proceed to address the representation of the craft or class.

On November 6, 2013, AFA-CWA sent a letter to the Board asking it to initiate the process for conducting a representation election for the Flight

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

<sup>2</sup> This system also included the former Lynx Aviation and Midwest Airlines Flight Attendants.

Attendant craft or class at the Republic Airlines, et al./Frontier single transportation system. This request raised the issue of whether Frontier was still a part of the single transportation system for the craft or class of Flight Attendants.

The current investigation establishes that the Republic Airways Holdings' (RAH) subsidiaries (RA, Shuttle, and Chautauqua) and Frontier are operating as two separate single transportation systems for the craft or class of Flight Attendants. The RAH Flight Attendants are covered by IBT's certification in R-6225, and the Frontier Flight Attendants are covered by AFA-CWA's certification in R-7238. Therefore, the Board dismisses the application.

### PROCEDURAL BACKGROUND

On May 5, 2011, IBT filed an application alleging a representation dispute involving the craft or class of Flight Attendants at RAH. The IBT represented the Flight Attendants at Chautauqua, Shuttle, and RA. *Republic Airlines*, 37 NMB 174 (2010). The Frontier Airlines Flight Attendants were represented by AFA-CWA. *Frontier Airlines*, 37 NMB 202 (2010).

On October 12, 2011, the Board found Republic Airlines, et al./Frontier to be a single transportation system for the craft or class of Flight Attendants and directed the Carrier to provide a list of potential eligible voters, cut-off date information, and signature samples so as to proceed with a representation election. *Republic Airlines, et al./Frontier*, 39 NMB 3 (2011). On October 27, 2011, the AFA-CWA and IBT jointly filed a letter with the Board asking it to postpone commencement of the representation election while they attempted to negotiate an alternative representation agreement. The Carrier notified the Board, on November 3, 2011, that it did not object to the postponement of the investigation. Accordingly, the Board agreed to stay the representation election.

On November 6, 2013, AFA-CWA submitted a letter to the Board where it stated that it had exhausted all attempts to resolve the dispute outside the NMB, and believed it was time to move forward with the processing of the representation election. In its letter, the AFA-CWA also asked the Board to modify the cut-off date for determining eligibility to the last day of the last RAH payroll period prior to November 6, 2013. The AFA-CWA stated that the significant changes in the Flight Attendant workforce since 2011 and corporate restructuring warranted "extraordinary circumstances" necessary to modify the cut-off date. AFA-CWA provided a copy of its collective bargaining agreement (CBA) with Frontier as well as signed authorization cards from the Flight

Attendants currently employed at the Republic carriers.

On November 7, 2013, IBT filed a letter with the Board providing evidence that Frontier was to be sold to a private equity firm by the end of 2013. IBT requested that the Board conduct an investigation of Republic Airlines, et. al./Frontier on the “essential question” of whether a single carrier still exists for the Flight Attendant craft or class.

On November 19, 2013, RAH filed a brief statement which confirmed that Indigo Partners, LLC was scheduled to acquire full and separate ownership of Frontier in December 2013. On January 16, 2014, the Board requested that RAH provide further evidence about the acquisition of Frontier and the status of the other RAH entities. On February 5, 2014, RAH provided additional information in the form of a declaration from Rose Doria, Vice President of Labor Relations at RAH. On February 21, 2014, the AFA-CWA filed an additional statement with the Board. IBT filed a response on March 7, 2014.

### ISSUES

Is Frontier separate from the Republic Airlines, et al. system for the craft or class of Flight Attendants? If so, what are the representation consequences?

### CONTENTIONS

#### AFA-CWA

AFA-CWA initially requested the Board to proceed with the representation election of all Flight Attendants at the Republic Airlines, et al./Frontier single transportation system. AFA-CWA provided the Frontier/AFA-CWA CBA as well as authorization cards from Flight Attendants currently employed at the Republic carriers. AFA-CWA asserted that the large passage of time and growth of the Flight Attendant group since the issuance of the initial decision amount to “extraordinary circumstances” necessitating a change in the eligibility cut-off date. AFA-CWA noted that the parties worked diligently and in good faith to come up with a mutually agreeable resolution, and the Flight Attendants should not be “penalized” for their effort to resolve the dispute amicably. AFA-CWA requested that the Board modify the eligibility cut-off date to the last day of the RAH payroll period prior to November 6, 2013.

In light of the fact that Frontier was sold to Indigo Partners, LLC in December 2013, AFA-CWA modified its request to the Board. AFA-CWA now seeks the Board to find Frontier a separate transportation system, and then proceed with a representation election for the Flight Attendants at the remaining Republic carriers (RA, Chautauqua, and Shuttle). Further, AFA-CWA states that the original eligibility cut-off date is now moot since that date was based upon the Board's finding of a single transportation system that no longer exists.

### IBT

After the AFA-CWA's November 6, 2013 letter to the Board, the IBT notified the NMB of the expected sale of Frontier to Indigo Partners, LLC, and asked the Board to conduct an investigation of Frontier and the Republic carriers on the issue of whether a single transportation system still exists for the craft of class of Flight Attendants.

The IBT then responded to AFA-CWA's request to "convert" its "application"<sup>3</sup> to represent the Republic Airlines, et al./Frontier Flight Attendants into an application to represent solely the Flight Attendants at the Republic system. IBT contends that if the AFA-CWA wishes to represent the Republic system Flight Attendants, it must file an application to represent them and provide authorization cards that clearly specify that the signatories want an election at the Republic system with the AFA-CWA on the ballot. IBT argues that the NMB cannot assume that authorization cards intended for an election on the Republic Airlines, et al./Frontier system would authorize an election on the newly created Republic system which no longer includes Frontier.

The IBT states that if the Board should conclude that Frontier is now separate from the RAH system, the NMB must then dismiss the AFA-CWA's November 6 petition to represent the Flight Attendants at Republic Airlines et al./Frontier.

### RAH

RAH responded to the Board's request for information through its Vice President of Labor Relations, Rose Doria. She stated that since February 2012,

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<sup>3</sup> The AFA-CWA did not actually file a new application on November 6, 2013. Rather, it submitted a letter asking the Board to proceed with the election in R-7302 that originated from the IBT's May 5, 2011 application.

there has been no centralized control of labor relations, human resources or operations between Frontier and the other RAH entities. The Flight Attendants at Frontier are on a separate seniority list from the Republic Flight Attendants and there have been no efforts or plans to integrate those lists. Inflight operations at RAH and Frontier are administered separately and there is no centralized or shared oversight of those operations.

RAH confirmed that on December 3, 2013, it 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.

### 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.

AFA-CWA and IBT are 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

RAH, based in Indianapolis, Indiana, is an airline holding company which offers scheduled passenger service through its subsidiary airlines (RA, Shuttle, Chautauqua), each of which has its own operating certificate. Frontier and Lynx were acquired most recently, on October 1, 2009. Lynx was subsequently shut down in 2011.<sup>4</sup>

When Frontier was acquired by RAH, it was operated in a different manner than the other RAH subsidiaries. Frontier provided “branded” service using its own brand, code, and distinct livery on aircraft, and it held its own Federal Aviation Administration (FAA) operating certificate and website. *Republic Airlines et al./Frontier*, 39 NMB 3, 15-17 (2011). The Board found Frontier to be part of the single transportation system as it was wholly-owned and controlled by RAH, management, personnel functions, and labor relations between the carriers were integrated, and Frontier was held out to the public as being part of the RAH system. *Id.*

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.

### Labor Relations/ Personnel Functions

RAH no longer has any involvement in the labor relations or personnel functions of Frontier. Frontier has separately maintained responsibility for these functions since approximately February 2012.

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<sup>4</sup> Midwest Airlines was acquired July 31, 2009. On November 3, 2009, all Midwest aircraft were removed from service and Midwest ceased operations.

### Seniority Lists

The Flight Attendants at Frontier are on a separate seniority list from the RAH Flight Attendants, and there have been no efforts or plans to integrate those lists.

### 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](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.

### Flight Operations and Equipment

RAH operates an aircraft fleet consisting of Embraer 145, 170/175, and 190 jets and Q-400 turboprops under contracts with its mainline partners, US Airways, American Airlines, Delta Airlines, and United Airlines. RAH's fleet is staffed exclusively by RAH Flight Attendants.

Frontier operates a fleet of Airbus 318, 319, and 320 jet aircraft, staffed exclusively by Frontier Flight Attendants. Flight Attendants at Frontier do not fly any combined routes or schedules with any RAH carriers. Frontier has a separate operational structure, independent flight operations, separate operational control, and maintains a separate FAA operating certificate.

Frontier's fleet is painted with the Frontier livery.

### Uniforms

Flight Attendants at RAH wear uniforms as directed and coordinated with its mainline partners. Frontier Flight Attendants wear Frontier uniforms.

### 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, the Board must look to see whether a prior single transportation system was extinguished. 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 flight operations, holding its own FAA operating certificate, flying its aircraft under the Frontier livery and code, with Flight Attendants wearing Frontier uniforms. Frontier additionally controls all aspects of its labor relations and all personnel policies. Frontier is held out to the public as separate from the RAH carriers, both on its website and in financial reporting. Finally, the Flight Attendants at Frontier are on a separate seniority list from the RAH Flight Attendants, and there have been no efforts or plans to integrate those lists. As such, there are no longer any indicia of a combined Republic Airlines, et al./Frontier single transportation system for the craft or class of Flight Attendants. *See 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 RAH (RA, Shuttle, and Chautauqua) and Frontier are operating as two separate single transportation systems for the craft or class of Flight Attendants.

### CONCLUSION

RAH (RA, Shuttle, and Chautauqua) and Frontier are operating as two separate single transportation systems for the craft or class of Flight Attendants. Notwithstanding the Board's previous finding that Frontier was part of the RAH single transportation system for the Flight Attendants, IBT remains as the certified representative of the Flight Attendants on the RAH system (including RA, Chautauqua, and Shuttle) and AFA-CWA remains as the certified representative of the Flight Attendants on Frontier. *Republic Airlines*, 37 NMB 174 (2010) (R-6225); *Frontier Airlines*, 37 NMB 202 (2010) (R-7238); see also NMB Representation Manual Section 19.7 Status of Representation Certifications ("Existing certifications remain in effect until the NMB issues a new certification or dismissal.").

The Board finds that RAH's Flight Attendants are covered by the certification in R-6225 and Frontier's Flight Attendants are covered by the certification in R-7238. As there is no basis for further investigation, NMB Case No. R-7302 is dismissed.<sup>5</sup>

By direction of the NATIONAL MEDIATION BOARD.



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<sup>5</sup> As such, there is no need for a discussion of the appropriate cut-off date.

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