



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

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In the Matter of the  
Application of the

SOUTHWEST AIRLINES PILOTS  
ASSOCIATION

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

involving employees of

SOUTHWEST AIRLINES CO. AND  
AIRTRAN AIRWAYS

41 NMB No. 39

CASE NO. R-7403  
(File No. CR-7125)

FINDINGS UPON  
INVESTIGATION

August 5, 2014

This determination addresses the application filed pursuant to the Railway Labor Act (RLA)<sup>1</sup> by the Southwest Airlines Pilots Association (SWAPA). SWAPA requests the National Mediation Board (NMB or Board) to investigate whether Southwest Airlines Co. (Southwest) and AirTran Airways (AirTran) (collectively the Carriers) are operating as a single transportation system.

The investigation establishes that Southwest and AirTran are operating as a single transportation system for the craft or class of Pilots.

PROCEDURAL BACKGROUND

On May 2, 2011, Southwest Airlines Co. acquired one hundred percent of the outstanding stock of AirTran Holdings, Inc., the former parent company of AirTran. AirTran operates as a wholly-owned subsidiary of Southwest. The integration process is expected to be finalized by the end of 2014, at which time AirTran will no longer exist.

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

On June 3, 2014, SWAPA filed an application alleging a representation dispute involving the craft or class of Pilots. The Pilot craft or class at Southwest is represented by SWAPA pursuant to voluntary recognition. Pilots at AirTran are represented by the Air Line Pilots Association (ALPA) under the Board's certification in NMB Case Nos. R-6515 and R-6643.

The Board assigned SWAPA's application NMB File No. CR-7125. The Board assigned Angela I. Heverling to investigate and requested that the Carriers provide information regarding their operations. The Carriers submitted a position statement on June 18, 2014. Both SWAPA and ALPA submitted position statements in response on June 25, 2014.

### ISSUES

Are Southwest and AirTran operating as a single transportation system for the craft or class of Pilots? If so, what are the representation consequences?

### CONTENTIONS

#### Southwest and AirTran

The Carriers state that Southwest and AirTran are a single transportation system under the RLA for the craft or class of Pilots.

#### SWAPA & ALPA

SWAPA asserts that the Carriers have taken actions sufficient to create a single transportation system. ALPA also agrees that the Carriers have taken sufficient action to create a single transportation.

### 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.

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

## II.

SWAPA and ALPA 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

On May 4, 2011, Southwest notified the Board that on May 2, 2011, it had acquired one hundred percent of the outstanding stock of AirTran Holdings, Inc., the parent company of AirTran. Southwest stated that “during the process of integration AirTran continues to operate remaining AirTran flights and schedules as an indirect wholly-owned subsidiary of Southwest. The integration process is expected to be completed by the end of the calendar year 2014, at which time AirTran operations will cease.” Prior to Southwest’s purchase of the entire outstanding stock of AirTran, Southwest had been headquartered out of Dallas, Texas, while AirTran had been headquartered in Orlando, Florida.

SWAPA currently represents 7,143 pilots on Southwest, while ALPA currently represents 764 pilots on AirTran.

#### Management and Labor Relations

Southwest reports that while AirTran is a separate wholly-owned subsidiary, management of the Carriers has been integrated. Robert Jordan,

who is Executive Vice President and Chief Commercial Officer at Southwest, is also the President of AirTran. Craig Drew is in charge of Flight Operations at both AirTran and Southwest in his position as Southwest's Vice President-Flight Operations.

Mike Ryan, Vice President Labor Relations, oversees labor relations at both Southwest and AirTran. Additionally, Jeff Lamb, Southwest's Executive Vice President and Chief People and Administrative Officer, is in charge of personnel policies and employment benefits at both Carriers. According to Southwest, labor relations for both Carriers will be handled by Southwest's Labor Relations Department and Southwest's People Department.

#### Labor Protections Provisions and Interim Agreement

In April of 2011, both Carriers and both Organizations entered into a Seniority Integration Process Agreement, in accordance with the provisions of the McCaskill-Bond Act. The Seniority Integration Agreement was ratified by both pilot groups. "Side Letter 10," dated September 22, 2011, provided for the transition of all AirTran pilots to Southwest and coverage under the SWAPA collective bargaining agreement and included the final Master Pilot Seniority Integration List.

#### FAA Operating Certificate

The Carriers were issued a single operating certificate by the Federal Aviation Administration (FAA) in March of 2012.

#### Routes and Schedules

The Carriers state that routes and schedules are in the process of being combined. Moreover, these routes and schedules will be operated and flown by Southwest. Southwest has already taken over some routes and schedules originally operated by AirTran and has converted them into Southwest routes and schedules.

#### Marketing

The Carriers report that the marketing and public advertising, including airport signage, will be completed in 2015. Each Carrier's website lists information discussing the merger and integration process. AirTran's website states on the header in large font that AirTran is "now a part of Southwest Airlines®." The website also has links to Southwest rewards programs and other Southwest webpages. Southwest's website also shows that the companies are combined. It has pages explaining the merger and partially

explaining how the schedules and routes will be combined. Additionally, the Chairman of the Board at Southwest, Gary C. Kelly, has had public interviews speaking on the merger and integration.

#### Corporate Name, Livery, and Logos

Following the completion of the merger, there will be one Carrier under the Southwest name and logo. The Carriers report that this should occur by the end of 2014. On both Carriers' websites, there is information discussing the merger and the integration process. Southwest has repainted a majority of the AirTran B-737 aircraft to Southwest livery, with the remaining AirTran planes to be finished by the end of the year.

#### Common Uniforms and Insignia

As AirTrain pilots transition to Southwest and complete training, they are provided with Southwest uniforms with Southwest insignia. All pilots will be given Southwest uniforms by the end of 2014.

### DISCUSSION

#### I.

##### The Board's Authority

Pursuant to 45 U.S.C. § 152, Ninth, the Board has the power 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

The Board determines the existence of a single transportation system based upon Section 19 of the Board's Representation Manual. Section 19.4 provides that "[a]ny 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.” Section 19.501 states that actions by the Carriers constitutes the existence of a single transportation system, such as published combined schedules or combined routes; standardized uniforms; common marketing, markings, or insignia; integrated essential operations such as scheduling or dispatching; centralized labor and personnel operations; combined or common management, corporate officers, and board of directors; combined workforce; and common or overlapping ownership.

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 *Delta Air Lines/Northwest Airlines, above*, the Board found a single transportation system where the FAA had accepted the carriers' plan for transition to a single operating certificate; there was a single board of directors; the carriers and the union had reached an agreement on seniority integration; and management and human resources positions had been integrated.

Southwest and AirTran have combined senior management and labor and personnel functions. AirTran's only director is Gary C. Kelly, Chairman of the Board at Southwest. The Board found Southwest and AirTran to be a single transportation system for the craft or class of Mechanics and Related Employees in 2012. *Southwest Airlines/AirTran Airways*, 39 NMB 523 (2012). Since that time, the Carriers have continued to integrate their functions and businesses, looking to finish the integration process by the end of 2014. The pilots of both Carriers entered into an agreement for seniority integration. The FAA has approved a single operating certificate for the Carriers.

Based upon the application of the principles to the facts established by the investigation, the Board finds that Southwest and AirTran operate as a single transportation system for representation purposes for the Pilots craft or class.

### CONCLUSION

The Board finds that Southwest and AirTran are operating as a single transportation system for representation purposes under the RLA. Accordingly, SWAPA's application in NMB File No. CR-7125 is converted to NMB Case No. R-7403. Pursuant to Manual Section 19.602, the investigation will proceed to address the representation of this craft or class. Any incumbent or intervenor has 30 days from the date of this determination to file an application supported by the requisite 50 percent showing of interest of the single transportation system. 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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