



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the
**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**

alleging representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended
involving employees of
**FLIGHT OPTIONS, LLC/FLEXJET,
LLC**

42 NMB No. 31

CASE NO. R-7443

(FILE NO. CR-7140)

FINDINGS UPON
INVESTIGATION

September 30, 2015

FINDINGS UPON INVESTIGATION

This determination addresses the application filed pursuant to the Railway Labor Act (RLA or Act)¹ by the International Brotherhood of Teamsters (IBT). IBT requests the National Mediation Board (NMB or Board) to investigate whether Flight Options, LLC (Flight Options) and Flexjet, LLC (Flexjet) (collectively the Carriers) are operating as a single transportation system.

The investigation establishes that Flight Options and Flexjet constitute a single transportation system.

PROCEDURAL BACKGROUND

On July 6, 2015, IBT filed an application alleging a representation dispute involving the craft or class of Pilots at the Carriers.

¹ 45 U.S.C. § 151, et seq.

The Pilots craft or class is represented by IBT at Flight Options under the Board's certification in NMB Case No. R-7072. *Flight Options*, 33 NMB 91 (2006). The Pilots craft or class at Flexjet is currently unrepresented.

IBT asserts that Flight Options and Flexjet constitute a single transportation system for representation purposes under the RLA. The Board assigned Maria-Kate Dowling to investigate and requested that the Carriers provide information regarding their operations. On July 27, 2015, the Carriers submitted the requested information and their initial position statement. On July 29, 2015, IBT filed a response.

ISSUE

Are Flight Options and Flexjet operating as a single transportation system? If so, what are the representation consequences?

CONTENTIONS

Flight Options and Flexjet

The Carriers state that Flight Options and Flexjet constitute a single transportation system for purposes of collective bargaining under the RLA and that the Board should conduct an election among the Pilot craft or class at the merged carrier to determine the representative of that craft or class.

IBT

IBT states that it agrees with the Carriers' position that Flight Options and Flexjet presently constitute a single carrier and that the IBT has demonstrated the showing of interest necessary to trigger a representation election.

FINDINGS OF LAW

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

I.

Flight Options and Flexjet are common carriers as defined in 45 U.S.C. § 181, First.

II.

IBT is a labor organization and/or representative 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

Flight Options is a fractional ownership² business jet carrier that was founded in 1997 and is headquartered in Cleveland, Ohio. Flexjet is a fractional ownership business jet carrier with business operations in Dallas, Texas and Cleveland, Ohio.

As of July 6, 2015, the total number of pilots covered by IBT’s application was approximately 698. Flight Options employed 279 active pilots, excluding ten management pilots. In addition, as of that date, Flight Options had 53 pilots on furlough status, 56 pilots on personal leaves of absence from Flight Options while working for Flexjet, and 10 pilots on various other leaves of absence. As of July 6, 2015, Flexjet employed approximately 356 line pilots including 292 active pilots and 8 pilots on leave and the 56 Flight Options

² Fractional ownership allows individuals or businesses to buy a “fraction” of a business jet and have the fractional program operator arrange for pilots, maintenance, ground service, and related requirements.

pilots on personal leave. As of July 20, 2015, the total number of pilots at Flexjet was 362 including another 6 Flight Options pilots on personal leave.

Common Corporate Ownership

Flight Options and Flexjet are wholly owned subsidiaries of OneSky Flight, Inc. (OneSky). Prior to 2013, Flight Options was a wholly owned subsidiary of Flight Options Holdings II, Inc., and Flexjet was a division of a subsidiary of Bombardier, Inc., a manufacturer of business jets. In December 2013, in anticipation of the acquisition of Flexjet, the holding company was reconstituted as OneSky. OneSky is now the holding company of Flight Options, Flexjet and certain other aviation-related companies. It is headquartered in Cleveland. OneSky's Chairman and Chief Executive Officer is Kenneth Ricci, the founder of Flight Options.

Common Management and Labor Relations

With the exception of flight operations, all management functions of Flight Options and Flexjet have been combined under OneSky. These combined functions include marketing, finance, legal, reporting, sales, corporate strategy, brand strategy, contracts, and owner experience.

Personnel functions for the Carriers have been integrated under OneSky Chief Administrative Officer Bob Sullivan. Sullivan also serves as the most senior human resources professional for Flight Options and Flexjet. He is responsible for developing and administering Flight Options and Flexjet's employment policies and procedures and employee benefit plans. OneSky has published a single set of personnel policies and procedures, known as the OneSky Employee Guide, applicable to employees at both Flexjet and Flight Options.

Labor relations have also been partially integrated. Sullivan is primarily responsible, in consultation with flight operations management, for the administration of individual employment agreements between Flexjet and its individual pilots. With regard to Flight Options' unionized pilots, Sullivan shares responsibility with Joseph Salata, Vice President of Flight Operations for Flight Options. Salata is primarily responsible for negotiation and administration of the collective bargaining agreement between Flight Options and IBT. Sullivan serves as a member of the Carrier's bargaining team. Sullivan also works with Salata on issues involving the Carrier's personnel policies and procedures.

Labor Protection Provisions and Interim Agreements

As previously noted, IBT is the certified representative of the Flight Options pilots. Flight Options and IBT negotiated a collective-bargaining agreement in March 2010. This agreement is currently amendable, and the parties are in Section 6 negotiations. Section 1.5 of the Flight Options Pilot Agreement contains a number of provisions addressing mergers and acquisitions. Section 1.5 (c), titled "Pilot Protections in the Event of an Acquisition of an Air Carrier," addresses Flight Options acquisition of another carrier in the fractional business jet industry. Section 1.5(c)(1) provides that the two pilot groups may not be integrated until the seniority lists have been combined in a "fair and equitable manner" as defined by Sections 3 and 13 of the Civil Aeronautics Board's Allegheny-Mohawk Labor Protective provisions. Section 1.5(c)(2) requires that the parties must negotiate a mutually-agreeable "fence agreement" to govern the interaction between the Carriers pending various steps required for an operational integration, including a single carrier determination by the NMB and certification of IBT pilot representative on the single carrier, integration of seniority lists, and negotiation of a single agreement governing both pilot groups. Section 1.5(c)(2) also provides that if the parties do not reach agreement within 60 days, either party may seek interest arbitration to resolve the outstanding issues. Although the parties began fence negotiations in February 2014 and have not reached agreement, neither side has sought arbitration.

Marketing and Branding

According to Sullivan, the business plan adopted by OneSky following the acquisition of Flexjet was to maintain two "store fronts," or brand names. The Flexjet brand is being sold as the personalized, high-end private jet and the Flight Options brand is being used as the more affordable product.

Equipment, Routes and Uniforms

The primary difference between Flexjet and Flight Options is the age, price, and quality of their respective fleets. Flexjet has primarily purchased new aircraft which, until recently, came from Bombardier's three product brands: Lear, Challenger, and Global. Like most fractional ownership business jet operators, Flexjet has a specific livery that it uses for its aircraft and a specific uniform worn by its flight crews. Because the goal is to create the appearance of a "private jet," however, the livery and uniforms are understated and do not contain the Flexjet name.

Flight Options entered the fractional ownership business in 1997 by purchasing used, refurbished business jets, and the only new aircraft in its fleet were purchased in 2007. Like Flexjet, Flight Options has a specific livery and uniform but they do not contain the Flight Options name.

Neither Flight Options nor Flexjet has a fixed schedule. The nature of the fractional ownership business is that the carrier makes the aircraft available upon request up to the number of annual flight hours attributable to the fractional owner's ownership interest. For instance, a one-quarter interest entitles the owner to 200 flight hours each year but the timing and itinerary are determined by the fractional owner.

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 Brd.*, 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

Section 19.4 of the Board's Representation Manual (Manual) 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/Northwest Airlines*, 36 NMB 36 (2009); *Burlington N. Santa Fe Ry. Co.*, 32 NMB 163 (2005); *Huron and 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 *AtlasAir, Inc. and Polar Air Cargo Worldwide, Inc.*, 35 NMB 259 (2008), the Board found a single transportation system even though the carriers had separate operating certificates and separate crews; the Carriers did not combine their routes or schedules; and the Carriers equipment did not have conformed markings, uniform insignia, or logos. The Board relied instead on the substantial overlap among Directors and senior management, the consolidated human resources and labor relations and the fact that employees at both carriers were subject to the same personnel policies and employee handbook. *Id.* at 269. The Board also noted that the employees were cross-utilized. *Id.*

Because of the nature of the fractional ownership carriers in the instant case, there are no published schedules and no holding out to the public

through uniforms, livery, or insignia. Flight Options and Flexjet are commonly owned and commonly managed by OneSky. The Carriers have integrated almost all management functions and share the same Chief Executive Officer and Executive Vice President of Operations. Personnel functions have been consolidated under the OneSky Chief Administrative Officer and the Carriers have already implemented common personnel policies. The Carriers' labor relations have been partially integrated, with OneSky's Chief Administrative Officer and Flight Options' Vice President for Flight Operations sharing that responsibility. Finally, more than 60 Flight Options pilots on personal leaves of absence are currently working for Flexjet.

Based upon the application of the principles to the facts established by the investigation, the Board finds that Flight Options and Flexjet are a single transportation system for representation purposes in the Pilots craft or class.

CONCLUSION

The Board finds that Flight Options and Flexjet are operating as a single transportation system for representation purposes under the RLA. Accordingly, IBT's application in File No. CR-7140 is converted to NMB Case No. R-7443. Pursuant to Manual Section 19.6, the investigation will proceed to address the representation of this craft or class. Any Intervenor has 30 days from the date of this determination to file an application supported by a showing of interest of at least 50% 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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