



NATIONAL MEDIATION BOARD
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Re: NMB Case No. R-6898 (File No. CR-6741)
Mesa Airlines, Inc./CCAir, Inc./Air Midwest, Inc./ALPA

Gentlemen and Ms. Kalfus:

This determination addresses the July 3, 2002, Motion for Reconsideration filed by CCAir, Inc. (CCAir). CCAir seeks reconsideration of the National Mediation Board's (Board) July 1, 2002, determination that Mesa Airlines, Inc. (Mesa), Air Midwest, Inc. (Air Midwest) and CCAir, collectively the Carriers, constitute a single transportation system. *Mesa Airlines, Inc., CCAir, Inc., Air Midwest, Inc.*, 29 NMB 359 (2002).

On July 24, 2002, the Air Line Pilots Association (ALPA) responded opposing CCAir's motion. On August 1, 2002, CCAir and Mesa replied to ALPA's opposition. For the reasons discussed below, the Board grants reconsideration and denies relief.

I.

CONTENTIONS

CCAir

CCAir's Motion for Reconsideration claims that the Board's determination overlooks substantial record evidence, misapplies the "single carrier standard" and resolves disputed issues of fact solely on the basis of conflicting affidavits without a hearing. CCAir argues that the Board's determination of a single transportation system is based on factors that are inconsistent with precedent. CCAir also raises a claim of improper *ex parte* communication between Board personnel and ALPA representatives.

For all these reasons, CCAir asserts, the Board should reconsider the determination that CCAir, Mesa, and Air Midwest constitute a single transportation system and, at a minimum, hold a fact-finding hearing.

Mesa

Mesa responded to the July 24, 2002, ALPA opposition to CCAir's Motion for Reconsideration. Mesa argues that CCAir is not part of a single transportation system with Mesa and/or Air Midwest. Mesa contends that the Board overlooked and misapplied relevant facts and legal principles in the determination. Mesa shares CCAir's concern that improper communications between ALPA and Board personnel about the investigation may have occurred. Mesa contends that ALPA's opposition to CCAir's motion for reconsideration is wholly procedural and provides no basis for denying CCAir's Motion for Reconsideration.

For these reasons, Mesa argues that the Board should reconsider its determination and, at a minimum, hold a fact-finding hearing.

ALPA

ALPA argues that CCAir's Motion for Reconsideration must be denied pursuant to the Board's Representation Manual (Manual) Section 17.0¹ because CCAir has failed to meet the high standard required to prevail on a reconsideration motion. CCAir has not demonstrated a material error of law or fact, and has not shown that a modification of the determination is important to the public interest, ALPA claims.

ALPA also argues that the Board has total discretion over the form an investigation will take. Therefore, ALPA argues the Board's decision not to hold a hearing is not grounds for reconsideration.

ALPA contends that CCAir merely reasserts arguments presented in the investigation which Manual Section 17.0 states is insufficient grounds for reconsideration. In addition, ALPA claims that CCAir presents no new factual evidence.

ALPA asserts that CCAir's final claim regarding improper *ex parte* communications is "desperate," "frivolous," and "meritless" speculation. ALPA asserts that all its communications with the Board complied strictly with the Board's policies and procedures.

¹ Effective November 1, 2002, Motions for Reconsideration are governed by Manual Section 11.0.

II.

DISCUSSION

The Board finds that CCAir has stated sufficient grounds to grant reconsideration pursuant to the Board's Representation Manual (Manual) Section 17.0.

Manual Section 17.0 states, in part:

Motions for Reconsideration of Board decisions...will be given consideration...[when] the motion states with particularity the points of law or fact which the movant believes the NMB has overlooked or misapplied and the detailed grounds for relief sought.

The Board grants relief on Motions for Reconsideration in limited circumstances. Manual 17.0 further states:

Upon consideration of a Motion for Reconsideration, the NMB will decline to grant the relief sought absent a demonstration of material error of law or fact or under circumstances in which the NMB's exercise of discretion to modify the decision is important to the public interest. The mere reassertion of factual and legal arguments previously presented to the NMB generally will be insufficient to obtain relief. Reconsideration may not be sought from the Board's certification or dismissal.

The Board does not reverse prior decisions on reconsideration except in the extraordinary circumstances where, in its view, the prior decision is fundamentally inconsistent with the proper execution of the NMB's responsibilities under the Railway Labor Act. *Virgin Atlantic Airways*, 21 NMB 183, 186 (1994).

The record establishes that the Board conducted a complete investigation and found no need to conduct an evidentiary hearing. During the investigation, ALPA consistently requested a hearing in nearly all of its submissions. CCAir never requested a hearing. Under the Railway Labor Act (RLA), “the Board has broad discretion to tailor its investigation to the facts and circumstances of each case.” *Petroleum Helicopters, Inc.*, 25 NMB 197, 226 (1998).

CCAir argues that the Board ignored evidence that the three airlines do not constitute a single transportation system. Specifically, CCAir asserts that the Board’s finding that CCAir is held out to the public as a single transportation system with Mesa and Air Midwest runs contrary to the evidence presented by CCAir. CCAir also contends that its labor relations are not controlled by MAG because CCAir enters into its own collective bargaining agreements, is responsible for conducting its own negotiations, and has separate hiring, training and human resources departments. Lastly, CCAir argues that the Board failed to conduct an analysis of the overwhelming evidence that CCAir submitted to support its contention that there is no substantial integration of operations between itself, Mesa, and Air Midwest.

As stated above, the Board conducted a complete investigation. Furthermore, while CCAir may disagree with the Board’s assessment of the evidence, there is ample evidentiary support for the Board’s conclusions and determination. Contrary to CCAir’s assertions, there is record evidence of integrated control over labor relations and hiring. For example, there is evidence in the record that MAG Chief Executive Officer Jonathan Ornstein was significantly involved in the recent CCAir/ALPA contract negotiations. In addition, the MAG website invites job applicants for all three airlines to submit inquiries and resumes to MAG. CCAir’s claims merely reassert factual and legal arguments previously presented to and considered by the Board, and therefore, are insufficient to obtain relief pursuant to Manual Section 17.0.

Finally, CCAir alleges “that ALPA may have had improper *ex parte* communications with Board personnel . . . apparently in violation of [Manual] Section 1.1.”² This claim is based on two events: a discussion between the Board’s Investigator and Joseph L. Manson, Esq., CCAir’s counsel, of an ALPA request for a stay in the investigation, and the release of the determination just before a court hearing in a CCAir pilot’s lawsuit against ALPA, which CCAir claims is evidence of improper communication between the Board and ALPA.

Manson’s conversation on procedural matters with the Investigator is specifically permitted pursuant to Manual Section 1.104. There was no improper *ex parte* communication between the Board and ALPA in the investigation.

CCAir’s claim concerning the timing of the issuance of the determination lacks evidentiary support. The determination was published without regard to the timing of the litigation involving ALPA.

² At the time of the communications at issue, Manual Section 1.1 provided, in pertinent part:

1.104 No ex parte communications subject to this Section may be conducted with the Members of the Board or their Confidential Assistants. No ex parte communications subject to this Section involving substantive matters may be conducted with the Case Manager assigned to the particular case or proceeding which is the proposed topic of the communications. However, ex parte communications are permitted with the Investigator who is assigned to the case

The Board revised the Manual effective November 1, 2002. *Ex parte* communications are now governed by Manual Section 1.3. The Manual revision does not affect this determination.

The Board finds that CCAir and Mesa's claims are insufficient to obtain relief pursuant to Manual Section 17.0.

CONCLUSION

The Board has reviewed the CCAir, Mesa, and ALPA submissions. CCAir has failed to demonstrate a material error of law or fact, or circumstances in which the Board's exercise of discretion to modify the decision is important to the public interest. CCAir merely reasserts arguments made in previous submissions. CCAir's claim of improper *ex parte* communications with the Board and the date of issuance of the determination lack evidentiary support. Therefore, relief upon reconsideration is denied.

By direction of the NATIONAL MEDIATION BOARD.

Benetta M. Mansfield

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Chief of Staff

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