



NATIONAL MEDIATION BOARD

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Re: NMB Case No. R-6945
Continental Airlines, Inc.

Gentlemen:

This determination addresses the September 3, 2003 appeal filed by the Transport Workers Union of America (TWU or Organization) of Investigator Susanna F. Pequignot's eligibility rulings. For the reasons discussed below, the appeal is denied.

I.

Procedural Background

On June 4, 2003, the TWU filed an application pursuant to the Railway Labor Act¹ (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), seeking to represent the craft or class of Fleet Service Employees on Continental Airlines (Continental

¹ 45 U.S.C. § 151, *et seq.*

or Carrier). On June 10, 2003, Continental provided a List of Potential Eligible Voters (List) which included Fleet Service Employees at Continental and ExpressJet Airlines, Inc. (ExpressJet). The TWU requested an extension of time in which to file an initial position statement and also noted its intent to assert that Continental and ExpressJet are not currently a single transportation system.² The request for an extension was granted until July 3, 2003. On June 25, 2003, the Investigator requested that any challenges to the List be filed by July 9, 2003, and that any responses be filed by July 16, 2003.

On July 3, 2003, TWU filed an initial position statement and asserted that Airport Sales Agents, Cargo Sales Agents, Lead Cargo Sales Agents, Customer Service Representatives, Cargo Reservation Specialists, Hub Operations and Operations Coordinators, Services Assistants, System Baggage Agents, Connect Agents, Customer Care Agents, Aircraft Appearance Coordinators, and Operations Load Planners should be excluded for purposes of assessing TWU's showing of interest and they should not be eligible voters in an election.

On July 14, 2003, Continental responded to the initial position statement and challenges and objections filed on July 3 and 9, 2003. The Carrier stated that Customer Service Representatives, Customer Care Agents, Services Assistants, System Baggage Agents and Cargo Reservations Specialists were not included on the List. Continental also stated that Cargo Sales Agents and Leads, Hub Operations Agents, Operations Coordinators, Operations/Load Planners, Aircraft

² Although Continental initially filed a position statement asserting that it continues to own a majority interest in and controls ExpressJet, after ExpressJet's repurchase of common stock from Continental, the Carrier agreed that Continental and ExpressJet no longer constitute a single transportation system for representation purposes. Based on this information, the Investigator did not address the issue of whether Continental and Continental Express constitute a single transportation system.

Appearance Coordinators and cross-utilized Airport Sales Agents are part of the Fleet Service Employees craft or class. Additionally, Continental noted that Connect Agents were inadvertently included on the List and should be removed. Continental also addressed TWU's remaining challenges. Finally, Continental asserted that 36 individuals not included on the List should be added.

On July 18, 2003, the Investigator requested that Continental provide additional information. Continental complied with this request on July 22 and August 5, 2003.

On August 8, 2003, TWU responded to Continental's August 5, 2003, submission. On August 12, 2003, the Carrier submitted a response to TWU's August 8, 2003, submission. The Carrier submitted documentation for five employees previously challenged by TWU on August 13, 2003.

Investigator's Ruling

On August 15, 2003, the Investigator ruled on all challenges.³ Based on the submissions by TWU and Continental, the Investigator ruled Connect Agents and Continental Express Agents ineligible. The Investigator also ruled that Airport Sales Agents (ASA), Cargo Sales Agents/Lead Cargo Sales Agents (CSA), Agent Ops./Load Planners,⁴ and Aircraft Appearance Coordinators (Cockpit Cleaners) would remain on the List. In addition, the Investigator ruled

³ Contrary to TWU's assertions, employees in the following positions did not appear on the List: Customer Service Representative, Cargo Reservations Specialist, Services Assistants, System Baggage Agent, and Customer Care Agent. Therefore, the Investigator did not address employees in these positions in the August 15, 2003 eligibility ruling.

⁴ The Carrier noted that the job title code "Agent-Ops./Load Plan" falls within the Hub Ops. Coordinator and Ops. Coordinator positions.

pursuant to the Board's Representation Manual (Manual) Sections 9.2, 9.203, 9.204 and 9.205, that 288 employees TWU challenged as ineligible would remain on the List. The Investigator also ruled five individuals ineligible pursuant to Manual Section 9.203. The Investigator further ruled two individuals whose leave of absence expired prior to the cut-off date would be removed from the List. The TWU challenged four individuals whose names did not appear on the List; therefore, the Investigator ruled that these individuals would not be removed from the List. Finally, the Investigator ruled 36 ASAs would not be added to the List for purposes of determining showing of interest. Based on the Investigator's ruling, the total number of employees on the List of Eligible Voters is 7,336.

On August 19, 2003, the TWU requested an extension until September 3, 2003, to appeal the Investigator's rulings. The TWU appealed the Investigator's rulings regarding ASAs, CSAs, and Agent Ops./Load Planners on September 3, 2003. The Carrier responded to the appeal on September 9, 2003.

II.

Contentions on Appeal

TWU

Although noting the Board's previous determination that ASAs were included in the Fleet Service Employees craft or class because these employees were cross-utilized and a preponderance of their work was Fleet Service work, TWU asserted that ASAs do not currently perform CSA and Fleet Service work. In its July 3, 2003, submission, the Organization attached declarations from three CSAs. Each declarant stated "In my experience, Airport Sales Agents, Cargo Sales Agents, Lead Cargo Sales Agents, . . . Hub Ops. and Ops. Coordinators . . . do not perform the work I do, and they do not perform fleet service work."

The Organization asserted that the employees in the positions of ASA, CSA and Agent Ops./Load Planner are not properly included on the List. TWU contended that “the Investigator’s reliance on prior Board determinations was improper after it was concluded that Continental and Continental Express/ExpressJet are no longer a single carrier.” The TWU noted that the Board’s prior findings that employees in a number of positions were in the Fleet Service craft or class relied heavily on cross-utilization at Continental Express, “a now irrelevant consideration.” The Organization also contended that “the Investigator erred by including Airport Service Agents, Cargo Sales Agents/Lead Cargo Service Agents and Agent Ops./Load Planners in the Fleet Service craft or class on Continental without conducting any independent assessment of the actual duties performed by persons in those positions.”

Continental

In Continental’s July 22, 2003, submission, the Carrier asserted that the facts and circumstances have not changed since the Board’s determination in *Continental Airlines, Inc./Continental Express, Inc.*, 24 NMB 196 (1997) in which the Board found that cross-utilized ASAs predominantly perform fleet service work. Continental submitted position descriptions for ASAs, CSAs, and Agent Ops./Load Planners and declarations from Ryan Price, Managing Director, Human Resources, Field Services; James Moody, Director, Operations Planning; and Richard A. Paegel, Managing Director, Cargo Services, in support of its position.

Continental asserted that the work performed by Continental employees has not changed since Continental’s divestiture of majority ownership in Continental Express. The Carrier contended that “the day-to-day work performed by Continental employees today is the same work they have performed since 1997” when the Board determined that these employees were part of the Fleet Service Employees craft or class.

DISCUSSION

I.

Airport Sales Agents

According to the position description provided by Continental, ASAs' responsibilities include:

- Guiding arriving and departing A/C/Jet Ways/Kitchen Trucks;
- Loading and unloading baggage/freight materials;
- Storing/removing/loading/unloading materials from storage bins/pallets/vehicles;
- Moving materials from assembly area to A/C and preparing for shipping;
- Pulling materials from cart and placing on conveyor belt;
- Issuing tickets/tagging luggage/determining proper fare and routing to assure passengers travel plans are efficient and correct; and
- Performing routine housekeeping tasks to maintain work area and mechanical equipment.

The Carrier provided an additional position description stating that ASAs' duties include "providing assistance to the traveling public by performing various customer service duties . . . ASAs staff the ticket counter, boarding gates and baggage service area . . . [ASAs] must be able to perform the essential functions of the job including lifting up to 75 lbs." In addition, the Carrier submitted a declaration from Ryan Price, Managing Director, Human Resources, Field Services, stating that at Continental's cross-utilized airport services stations, "ASAs are cross-trained and cross-utilized to perform baggage, ramp, cargo, operations, ticketing and gate functions. As in 1997 and 1999, these agents predominantly perform work traditionally considered fleet service work."

In *Continental Airlines, Inc.*, 24 NMB 196 (1997), the Board found that ASAs working at “cross-utilized stations” predominantly perform fleet service work. The cross-utilized stations were not Continental Express stations. In its appeal, TWU argues that the Investigator’s decision to include the ASAs in the Fleet Service Employees craft or class “without an actual investigation based on the past Board determinations was error because of a material change in circumstances since the prior decisions: the separation of Continental Express/ExpressJet from Continental.” This argument is without merit as ASAs at issue perform work at cross-utilized stations rather than Continental Express stations.

Cargo Sales Agents/Lead Cargo Sales Agents

According to the position description submitted by the Carrier, CSAs “are responsible for providing exceptional customer service to domestic and international cargo customers by assisting with all aspects of cargo shipping. . . .” In addition, James Moody, Director, Operations Planning, submitted a declaration stating that “Hub Operations Agents, Operations Coordinators, and Agent Operations/Load Plan all perform work traditionally considered fleet service work. They perform gate management tasks, coordinate the arrival and departure of aircraft for purposes of gate assignment, make in-range calls, complete delay coding, determine ETAs (Estimated Time of Arrival) and ETDs (Estimated Time of Departure), and coordinate the downloading and uploading of cargo.”

In *Continental Airlines, Inc.*, 24 NMB 196 (1997), CSAs were found to be part of the Fleet Service Employees craft or class.

Agent Ops./Load Planners

The Carrier submitted job duties for Agent Ops./Load Planners which include, “preplanning, daily flight, accuload generation, fuel accounting, gate assignment, coordination and revision of local emergency response plan, local flight schedules, and coordinating flight processing activities.”

Richard A. Paegel, Managing Director, Cargo Services, submitted a declaration stating,

The duties and responsibilities of Cargo Sales Agents and Lead Cargo Sales Agents have not changed since 1999. These employees continue to perform the work of receiving and inspecting freight at the loading dock, weighing, tagging and identifying freight in the warehouse, and moving freight within the warehouse. They also perform customer contact duties at the cargo service counter primarily with truck drivers and shipping agents, and they prepare the paperwork required for shipment.

Paegel also stated that at “non-cargo-dedicated” stations, CSAs “perform all the fleet service functions, including the packaging, transfer, inventory, tracking and movement of cargo within the warehouse, as well as customer contact and documentation duties.”

In *Continental Airlines, Inc.*, 24 NMB 196 (1997), Agent Ops./Load Planners were found to be part of the Fleet Service Employees craft or class.

II.

Prior decisions of the Board in regard to craft or class on the same carrier are relevant to this determination. In determining the appropriate craft or class on a particular carrier, the Board examines a number of factors. These factors include functional integration, work classifications, terms and conditions of employment, and work-related community of interest. *Continental Airlines, Inc./Continental Express, Inc.*, 26 NMB 143 (1999). The factor of community of interest is particularly important. *Continental, above*.

Based on the record in this case, the Board concludes that there is insufficient evidence of any material change in circumstances since the Board’s decision in *Continental, above*.

Furthermore, TWU has not presented sufficient evidence to persuade the Board that ASAs, CSAs, or Agent Ops./Load Planners, which have been held to be part of the Fleet Service Employees craft or class on Continental should be removed from the List. Therefore, the Investigator's ruling is upheld, and the ASAs at cross-utilized Continental stations, CSAs, and Agent Ops./Load Planners are part of the Fleet Service Employees craft or class.

CONCLUSION

The burden of persuasion required to overrule an Investigator's ruling rests with the carrier or organization appealing that ruling. TWU failed to present sufficient evidence or persuasive argument to warrant overruling the Investigator or further investigation. Therefore, the Board upholds the Investigator's rulings that Airport Service Agents, Cargo Sales Agents/Lead Cargo Sales Agents, and Ops./Load Planners are part of the Fleet Service Employees craft or class.

Based on the foregoing, the Board finds that the TWU has failed to support its application with the required number of authorization cards from the employees in the Fleet Service Employees craft or class as set forth in Part 1206.2(b) of the National Mediation Board Rules. Therefore, the Board finds no basis upon which to proceed in this matter, and the application is dismissed subject to Part 1206.4 of the Board's Rules.

By direction of the NATIONAL MEDIATION BOARD.

Benetta M. Mansfield
Chief of Staff