



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the
**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**
alleging a representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended
involving employees of
**WORLD AIRWAYS/
NORTH AMERICAN AIRLINES**

40 NMB No. 12

CASE NOS. R-7344
AND R-7345
(FILE NOS. CR-7059
AND CR-7060)

FINDINGS UPON
INVESTIGATION-
DISMISSAL

November 16, 2012

This determination addresses applications filed by the International Brotherhood of Teamsters, Airline Division (IBT). IBT requests the National Mediation Board (NMB or Board) to investigate whether World Airways (World) and North American Airlines (North American) (collectively the Carriers) are operating as a single transportation system.

The investigation establishes that World and North American do not constitute a single transportation system for representation purposes under the Railway Labor Act¹ (RLA or Act).

PROCEDURAL BACKGROUND

On June 14, 2012, IBT filed applications alleging a representation dispute involving the following crafts or classes: Flight Attendants and Pilots.

¹ 45 U.S.C. § 151, *et seq.*

IBT represents the craft or class of Flight Attendants at both World and North American. IBT also represents the craft or class of Pilots at World. At North American, the Pilots craft or class is represented by the Air Line Pilots Association (ALPA).

IBT asserts that World and North American constitute a single transportation system for representation purposes. The applications were assigned NMB File No. CR-7059 (Pilots) and NMB File No. CR-7060 (Flight Attendants). The Board assigned Maria-Kate Dowling to investigate and requested that the Carriers provide information regarding their operations. The Carriers submitted a position statement on July 20, 2012. IBT filed a response on August 24, 2012. ALPA responded to IBT's submission on August 10, 2012 and the Carriers filed a response to the IBT on September 26, 2012.

ISSUE

Are World and North American operating as a single transportation system? If so, what are the representation consequences?

CONTENTIONS

IBT

Acknowledging that since both World and North American are charter carriers with a large portion of their work coming from military contracts with the United States Government, ACMI (Aircraft, Crew, Maintenance and Insurance) air transportation contracts, and/or contracts from freight operations, IBT states that many of the Board's traditional indicia of single carrier – combined routes or schedules, frequent flyer programs, clubs or credit card programs or customer service operations – are not relevant. IBT asserts, however, that the Board has found a single carrier to exist based on the significant degree of control exercised by a parent company over its subsidiaries. Accordingly, IBT states that World and North American constitute a single carrier since they are wholly owned by Global Aviation Holdings, Inc. (Global); share common management at the executive level through Global and a sister company Global Shared Services, Inc.; and service the same customer, the United States military. IBT also states that work groups at both World and North American participate in the same group medical, prescription drug, and dental insurance programs as well as the same 401K plan. Finally, IBT notes that the Carriers' representations in bankruptcy proceedings, to the Securities and Exchange Commission (SEC) and to investors, establish that World and North American are highly integrated operations.

WORLD AND NORTH AMERICAN

The Carriers assert that they have a long history of separate and independent operation despite common ownership by the same holding company for more than seven years. The Carriers note that they have wholly separate workforces, aircraft, and flying as well as no plan to integrate their operations or interchange their workforces. The Carriers also assert that each carrier is responsible for directing and administering its own labor relations and human resources function without either the involvement of or coordination with the other and that their respective employees have different terms and conditions of employment. The Carriers note that there has been no transaction to create a new entity and that there is no plan to fundamentally change the way in which the two carriers have operated. The Carriers further assert that the joint administration of World's and North American's bankruptcy cases is for procedural purposes only and does not establish a single transportation system.

ALPA

ALPA states that there is no basis for a single carrier finding. According to ALPA, World and North American continue to operate separately and independently during the bankruptcy proceedings initiated by Global and eight of its subsidiaries including World and North American. ALPA asserts that whether Global and its airline and non-airline subsidiaries operate as an integrated business with common ownership and control for purposes of obtaining relief from their creditors is irrelevant to the Board's single carrier determination. In this regard, ALPA notes that North American and World maintain entirely separate flying operations and independent labor relations. Neither Global nor World has any involvement in any aspect of North American's labor relations with its pilot group. There are numerous differences between North American and World pilots' working conditions, pay, and benefits. North American pilots have different scope and job security protections than the World pilots. North American also has its own medical and 401(k) plans, neither of which involves World in any way.

STATEMENT OF FACTS

Background

World has been flying since 1948 and began providing military airlift in 1951. World provides non-scheduled, long-range passenger and cargo

charter and ACMI air transportation for customers including, the United States government, international freight and passenger airlines, and tour operators. World currently operates a fleet of nine aircraft: three MD11 aircraft configured to carry passengers and operated for military flights; four MD11F aircraft for transporting cargo for military and ACMI customers; and two B747-400 aircraft also used to transport cargo for military and ACMI customers.

North American, founded in 1989, has provided domestic and international charter service to a variety of customers in addition to providing services for agencies of the United States government. The majority of its current revenue is generated through the flying it performs for the United States Government, both military and non-military. North American operates a fleet of five B767 aircraft.

Corporate Transactions

In 2005, World became a subsidiary of a newly-formed holding company, World Air Holdings, Inc. Also in 2005, World Air Holdings, Inc. acquired North American. In 2007, World Air Holdings, Inc. was acquired by Global giving it three airline subsidiaries: World, North American and ATA Airlines. ATA subsequently filed voluntary petitions in bankruptcy proceedings and ceased operations in 2008. In February 2012, Global, World, and North American, as well as several other related entities, filed voluntary petitions to reorganize their finances under Chapter 11 of the United States Code (Bankruptcy Code).

Joint Administration of Bankruptcy Cases

Global and eight debtor affiliates, including World and North American (collectively Debtors),² each filed a voluntary petition under Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York (Bankruptcy Court). The Debtors sought and the Bankruptcy Court granted approval to consolidate the cases for procedural purposes only and to jointly administer their Chapter 11 cases.

Representation

At World, IBT represents the employees in the Flight Attendant craft or class pursuant to a voluntary recognition. IBT and World have a collective

² The other debtor affiliates are new ATA Investment Inc., New ATA Acquisition Inc., Global Aviation Ventures SPB LLC, World Air Holdings, Inc., Global Shared Services, Inc. and World Airways Parts Company, LLC.

bargaining agreement (CBA) covering the Flight Attendant craft or class that became amendable on September 30, 2012. IBT also represents North American's Flight Attendants craft or class pursuant to a Board certification in NMB Case No. R-7052. *North American Airlines*, 32 NMB 228 (2005). IBT and North American have yet to negotiate a first contract for the Flight Attendant craft or class. As of July 10, 2012, World employed 180 flight attendants plus 290 on furlough and North American employed 193 flight attendants plus 39 on furlough.

IBT also represents World's pilots pursuant to a voluntary recognition and the parties' CBA covering the Pilots craft or class became amendable on March 1, 2009.³ At North American, ALPA represents the Pilots under a certification issued in NMB Case No. R-7219. *North American Airlines*, 37 NMB 79 (2009). The CBA between North American and ALPA covering Pilots will become amendable on November 1, 2012. As of July 10, 2012, there were 263 Pilots plus 195 on furlough at World and 119 Pilots plus 40 on furlough at North American.

The Carriers state that throughout the bankruptcy process, World has been negotiating with the IBT for both the pilots and flight attendants and North American has been negotiating with ALPA for voluntary modifications to the collective bargaining agreements.

Management and Labor Relations

The Carriers state that there is no single Board of Directors for Global, World, and North American. Global has a six-member Board of Directors; World and North American each have a three-member Board of Directors. One of Global's Directors, Rob Binns, is also a director at North American and World. Charlie McDonald, Global's president, is also a Board Member of both World and North American. Some management officials of Global provide services such as legal and marketing services to World and North American pursuant to a management services agreement. Under their respective agreements, each carrier is charged their share of the costs of their services.

³ On June 18, 2012, IBT filed suit against the NMB with respect to the negotiations with World's pilots. *IBT v. NMB*, Case No. 1:12-cv-00983-RBW (D.D.C). IBT asserted that the NMB had improperly docketed World's application for mediation because "a period of ten days ha[d] elapsed after termination of conferences without request for or proffer of the services of the Mediation Board." Railway Labor Act, 45 U.S.C § 156.

Global provides no services to the Carriers with respect to labor relations. According to the Carriers, labor relations functions -- including collective bargaining, union contract administration and grievance handling -- are performed by each carrier independently of the other, under the direction of that carrier's Chief Operating Officer ("COO"). All labor relations functions are carried out at the carrier level, including collective bargaining, contract administration, and grievance handling. The North American COO is Steve Harfst and the COO of World is James Cassboro. There is no communication between the COOs regarding coordination of negotiation between the two carriers. Global may give the Carriers economic parameters within which they must operate but each carrier has the autonomy and authority to reach its own agreements with its unions within those parameters.

North American has announced that it will move much of its corporate operations⁴ from John F. Kennedy International Airport (JFK) to Peachtree City, Georgia, where Global and World are headquartered. The Carriers state that this is a cost saving move that became possible because of recent events, namely the significant downsizing that has occurred at the Carriers in the last few months creating excess office space in Peachtree City and North American's bankruptcy filing which allowed it to reject the expensive, long term lease it had at JFK for its corporate headquarters.

Personnel Policies and Employee Benefits

The Carriers state that the personnel functions of North American and World are entirely independent from each other. The pilots and flight attendants have different wage rates, monthly guarantees, and work rules for their respective carriers. Pilot and flight attendant recruiting, interviewing, and hiring are handled by each carrier individually. Both pilots and flight attendants are subject to different employment policies and handbooks; each carrier has its own pilot and flight attendant manuals, procedures, and checklists, which are very different from those at the other carrier. North American and World also perform their own background checks and drug and alcohol testing and its employees are subject to discipline differently, through the relevant department, with assistance from that carrier's own Human Resources personnel.

⁴ The management of North American's maintenance department will not relocate to Peachtree City. Instead, that management team will move to Tampa where North American's primary maintenance facility is located.

The benefits are also entirely different for the pilots and flight attendants of the different carriers. The World pilots have a separate medical plan from the North American pilots, and the World flight attendants have different health insurance contribution rates and a different contribution structure from that which applies to the North American flight attendants. The World pilots and the World flight attendants each have negotiated a profit-sharing bonus plan in their union contracts. The North American pilots do not have a bonus program at all and the North American flight attendants remain subject to the bonus program that applies generally to North American's non-union employees.

The schedules of the pilots and flight attendants are created through application of their own scheduling rules that vary significantly from carrier to carrier. The scheduling is maintained through the Carriers' different software systems, which are not compatible, and are used for flight operations, crew tracking, and crew scheduling. Each Carrier's pilots and flight attendants fly very different schedules in terms of the number and length of trips per month, average number of credit hours, the length of duty day and rest periods, the duration and location of overnights, and the number of days off. The Carriers state that they do not intend to integrate scheduling or dispatch operations.

The Carriers' pilots and flight attendants are not based at the same locations, rarely fly out of the same airports, do not share break rooms, and do not interact with each other on a regular basis. For example, the North American flight attendants are based out of JFK, while the World flight attendants are effectively based from their own homes.

Routes and Schedules

World and North American are part of the Alliance team that has been awarded contracts for military flying from USTRANSCOM but this team also includes American Airlines, US Airways, Evergreen International Airlines, and Ryan International Airlines (in 2013). In addition, the entitlements that World and North American have are different based in large part on the differences in the aircraft they fly and the Carriers cannot and do not interchange the flying awarded to them. World and North American also deal with USTRANSCOM separately through different personnel within the agency. Accordingly, there will be no combined flying performed by the Carriers.

Marketing and Advertising

The Carriers have no plans to change how each is held out to the public or marketed. Each of the Carriers has its own dedicated website. Global has a web page that directs customers who seek employment and information from the Carriers to the individual websites. North American's website, <http://www.flynaa.com>, has a "Careers" section, which directs interested applicants to view current openings and apply for them online. World's website, <http://www.worldairways.com>, directs interested applicants to apply for available positions on the employee website. There is also a link that directs interested applicants to apply to the parent company, Global, at <http://www.glah.com>, which offers its own independent positions but also has links to the North American and World websites where an individual can apply to each Carrier separately.

Global does provide quotes for the services provided by North American and World, but its website also includes a disclaimer stating:

The Global Aviation Holdings Web Site may contain links to other Web Sites ("Linked Sites"). The Linked Sites are not under the control of Global Aviation Holdings and Global Aviation Holdings is not responsible for the contents of any Linked Site, including without limitation any link contained in a Linked Site, or any changes or updates to a Linked Site. Global Aviation Holdings is not responsible for webcasting or any other form of transmission received from any Linked Site. Global Aviation Holdings is providing these links to you only as a convenience, and the inclusion of any link does not imply endorsement by Global Aviation Holdings of the site or any association with its operators.

Seniority Integration Process and Labor Protection Agreements

According to the Carriers, the pilot seniority lists and flight attendant seniority lists are not integrated and there are no plans to integrate them. The Carriers state there is "no transaction" between them and that they will continue to do business wholly separate from one another.

Operating Certificates

North American and World have always had their own Certificates of Public Convenience and Necessity from the Department of Transportation (“DOT”). The Carriers also have their own individual Air Carrier Certificates from the Federal Aviation Administration (“FAA”). The Carriers perform wholly separate flying which is not interchangeable, both because of the different size aircraft operated by the Carriers and because their DOT and FAA operating authority prohibit the Carriers from swapping aircraft. The Carriers have separate relationships with the FAA, including different Flight Standards District Offices and Principal Operations Inspectors.

Uniforms, Insignia and Logos

The Carriers state that neither pilot nor flight attendant uniforms will be standardized. There will be no change to the markings on the aircraft or other equipment operated by the Carriers. The World and North American aircraft have their own distinct livery and markings and will continue to do so. The Carriers also state that no changes in corporate insignia or logos are envisioned. North American and World each have their own trademark and logo.

DISCUSSION

I.

The Board’s Authority

45 U.S.C. § 152, Ninth, authorizes the Board to investigate disputes arising among carrier’s employees over representation and to certify the duty 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, 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 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, 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, 655 (1993). The Board's substantial integration of operations criteria does not, however, require total integration of operations. *Allegheny Airlines, Inc. and Piedmont Airlines, Inc.*, 32 NMB 21, 28 (2004).

North American and World are wholly-owned subsidiaries of holding company Global and the Carriers share common directors. The Board's focus in merger cases, however, also includes the elements of labor relations and operational control to determine if a single transportation system exists. In the instant case, there is little evidence of common control over labor relations or operational integration. Each Carrier has its own COO who directs that Carrier's labor relations functions including collective bargaining, contract administration, and grievance handling. The Flight Operations or Inflight Departments at North American and World are run by completely different management teams. These management teams oversee the employees of that Carrier alone and the heads of those departments report to the COO of their Carrier. Management of those departments rarely interact with their counterparts at the other carrier, other than socially.

The pilot and flight attendant workforces of the Carriers are wholly separate from each other. There is no interchange of pilots or flight attendants between the Carriers and there are differences in the working conditions, pay, and benefits between the pilots and flight attendants at World and the pilots and flight attendants at North American. Each Carrier has developed its own training programs for its pilots and flight attendants. The Carriers do not share training facilities, and pilots and flight attendants do not attend training with their counterparts from the other Carrier. Pilot and flight attendant recruiting, interviewing, and hiring are handled by each Carrier individually, not jointly. The Carriers each perform their own background checks and drug and alcohol testing.

North American and World each have a DOT Certificate of Public Convenience and Necessity and a FAA Operating Certificate. The Carriers perform wholly separate flying which is not interchangeable, both because of

the different size aircraft operated by the Carriers and because their DOT and FAA operating authority prohibit the Carriers from swapping aircraft. The Carriers have separate maintenance departments and hire and train their own mechanics. The Carriers have not integrated, and do not intend to integrate, essential operations such as scheduling and dispatch. The Carriers also have their own websites and each Carrier is responsible for the operational content of its site. The website is only accessible by the employees of that Carrier. Pilot and flight attendant recruiting, interviewing, and hiring are handled by each carrier individually, not jointly.

IBT contends that Global's representations in Bankruptcy Court and to the SEC and investors establish that Global makes all of the essential labor relations decisions: it establishes the economic parameters within which the Carrier operates and negotiates CBAs; it decided when it was time for it and its subsidiaries to go into bankruptcy; and it stated that the intent of the Chapter 11 proceeding was to use the reorganization process to negotiate and with its unionized workforce to secure "competitive and flexible labor agreements that help position Global Aviation for future success." For the reasons set forth below, the Board finds that this evidence falls short of establishing a single carrier in the absence of common control of day-to-day labor relations and any operational integration.

The issue of when and whether corporate subsidiaries constitute a single transportation system for representation purposes is as old as the Board itself. *Guilford Rail Division*, 18 NMB 413, 434 (1991) (citing FIRST ANNUAL REPORT OF THE NATIONAL MEDIATION BOARD, p. 22 (1935)). The Board has long recognized that it must be flexible in the application of its single carrier criteria in response to contemporary concerns and not allow form to govern substance in its determinations. *Seaboard System Railroad-Clinchfield Line*, 11 NMB 217, 225 (1984). In the instant case, there is no dispute that World and North American are wholly owned subsidiaries of holding company Global, a corporate structure well known in the airline industry. There has been no traditional corporate transaction such as a consolidation, merger, purchase, lease, operating contract, acquisition, or control or similar transaction. As the Carriers point out, World and North American have been wholly owned subsidiaries of Global since 2007 and there has been no significant change in their ownership, management, or operations in that time – except for the

bankruptcy filing. There can be no doubt that the bankruptcy has had an impact on the labor relations at the Carriers. The evidence presented here, however, falls short of that necessary to establish a single transportation system.

For instance, in *Allegheny Airlines, Inc.*, 29 NMB 160 (2002), the Board found no single transportation system existed among three subsidiaries of a holding company even though the holding company, inter alia, elected the board of directors of all three carriers; the same three senior executives of the holding company served on the board of directors of all three carriers; and the holding company approved each carrier's budget. The Board instead noted each carrier handled its own labor relations, hired its own corporate officers and management team, had separate flight operations departments, developed its own training programs, had their own maintenance departments, and hired their own employees. *Republic Airlines*, 39 NMB 3 (2011), cited by the IBT is distinguishable. That case involved the aftermath of the acquisition of Midwest Airlines by holding company Republic Air Holdings, and became a subsidiary of Republic along with Chautauqua Airlines, Republic Airlines, and Shuttle America. The Board determined that a single transportation system existed based on the control over management, labor relations, and human resources functions of all its subsidiaries. Such control is lacking in this case.

The Board's determination is based upon the Board's application of the *TWA/Ozark* criteria to the current and actual operating conditions. Based upon the application of the principles to the facts established by the investigation, the Board finds that North American and World do not operate as a single transportation system for representation purposes. If the relationships at issue in this case change, the Board reserves the right to examine the new relationship.

CONCLUSION

The Board finds that World and North American are not operating as a single transportation system for representation purposes under the RLA for either the craft or class of Pilots or the craft or class of Flight Attendants. Accordingly, IBT's application in NMB File No. CR-7059 is converted to NMB Case No. R-7344, IBT's application in NMB File No. CR-7060 is converted to

NMB Case No. R-7345, and both are dismissed.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in black ink that reads "Mary L. Johnson". The signature is written in a cursive, flowing style.

Mary L. Johnson
General Counsel

Copies to:

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