



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

TRANSPORT WORKERS UNION
AND ASSOCIATION OF FLIGHT
ATTENDANTS

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

involving employees of

SOUTHWEST AIRLINES AND
AIRTRAN AIRWAYS

43 NMB No. 25

NMB Case No. R-7457

(File No. CR-7150)

FINDINGS UPON
INVESTIGATION

May 17, 2016

This determination addresses the joint application filed by the Transport Workers Union of America, AFL-CIO (TWU) and the Association of Flight Attendants-CWA, AFL-CIO (AFA) pursuant to the Railway Labor Act (RLA).¹ The Organizations request the National Mediation Board (NMB or Board) to investigate whether Southwest Airlines (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 Flight Attendants.

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. Since that time AirTran has been integrated into Southwest and no longer operates.

On April 20, 2016, TWU and AFA filed an application alleging a representation dispute involving the craft or class of Flight Attendants. The Flight Attendant craft or class at the former Southwest is represented by TWU. The National Labor Relations Board certified the TWU as the representative in

¹ 45 U.S.C. § 151, *et seq.*

Case No. 16-RC-6826 in 1975. The Flight Attendant craft or class at the former AirTran is represented by the AFA pursuant to NMB case R-6359. *AirTran*, 25 NMB 429 (1998).

The Board assigned the application as NMB File No. CR-7150. The Board assigned Angela I. Heverling to investigate and requested that the Carrier provide information regarding their operations. The Carrier submitted a position statement on April 27, 2016. AFA submitted a response on May 11, 2016.

ISSUE

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

CONTENTIONS

Southwest and AirTran

The Carrier states that Southwest and AirTran are a single transportation system under the RLA for the craft or class of Flight Attendants.

TWU & AFA

The Organizations agree that Southwest and AirTran are a single transportation system under the RLA. TWU seeks to be certified as the representative of the craft or class of Flight Attendants and AFA does not object.

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.

TWU and AFA 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.” By the end of 2014, AirTran was integrated completely into Southwest.

At the time of Southwest’s acquisition of AirTran, TWU represented approximately 9,691 flight attendants at Southwest and AFA represented approximately 2,257 flight attendants at AirTran. As a result of the merger and the Seniority Integration Agreement discussed below, Southwest reports that this application covers 14,074 employees, 14,070 of whom are Southwest employees. The remaining four AirTran flight attendants are inactive, on leave of absence status, and have not transitioned to Southwest.

Management and Labor Relations

Following Southwest's acquisition of AirTran, Southwest converted and integrated all AirTran aircraft, routes, facilities, and operations into Southwest. This process was completed at the end of 2014. There was a complete integration of all management. All labor relations and personnel functions are administered by Southwest's Labor Relations Department and Southwest's People Department, respectively.

Labor Protections Provisions and Interim Agreement

In December of 2011, both Carriers and both organizations entered into a Seniority Integration and Transition Agreement (Agreement) that was ratified by both groups of flight attendants. The Agreement stated the following with regard to AirTran flight attendants:

Upon successful completion of SWA Special Merger Training for service as a SWA Flight Attendant, Flight Attendants on the (AirTran) System Seniority List shall transition to and become Employees of SWA and will be subject to and covered by the SWA-TWU 556 collective bargaining agreement ("SWA-TWU 556 CBA"), including all rates of pay, scheduling provisions, insurance, retirement, and benefits, in accordance with the transition and implementation provisions of this Agreement.

FAA Operating Certificate

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

Routes and Schedules

All routes and schedules were combined in 2014 and are currently operated by Southwest.

Marketing

The new entity created from the merger of Southwest and AirTran is held out to the public and marketed only as Southwest. There is only one website for Southwest and all marketing materials reference Southwest.

Corporate Name, Livery, and Logos

Following the completion of the merger, there is one Carrier under the Southwest name and logo, using Southwest corporate insignia. All AirTran aircraft have been converted to Southwest livery and markings.

Common Uniforms and Insignia

AirTran flight attendants were provided with Southwest uniforms and currently all flight attendants wear Southwest uniforms.

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 certain actions by the Carriers indicate 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 & Valley Flying Serv., Inc., d/b/a Northeast Express Reg'l Airlines*, 20 NMB 619 (1993).

There is no doubt that Southwest and AirTran have combined all of their senior management and labor and personnel functions. There has been a single operating certificate since 2012. 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). The Board subsequently found a single transportation system for the craft or class of Pilots in 2014. *Southwest Airlines/AirTran Airways*, 41 NMB 164 (2014). By the end of 2014, AirTran was completely integrated into Southwest and it is no longer operating. All routes and schedules were taken over by Southwest, the system is marketed exclusively as Southwest, and all livery and other branding has been converted into Southwest


The flight attendants at both Carriers entered into an agreement for seniority integration and according to the provisions of that agreement, are now covered by the collective bargaining agreement between Southwest and TWU.

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 Flight Attendants 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, the application in File No. CR-7150 is converted to NMB Case No. R-7457. 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 a requisite 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.


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