

In the Matter of the Arbitration Between:

TRANSPORT WORKERS UNION OF AMERICA, LOCAL 545

AND

TRANSPORT WORKERS UNION OF AMERICA, LOCAL 542

Hearing Held October 30, 2006
Before Robert B. Harris, Esq.¹

Appearances:

For the Local 542:
Regina C. Hertzog Esq.

For the Local 545:
Steven K. Hoffman Esq.
Katie B. Feiock Esq.

OPINION

Facts

This proceeding arises by agreement of Locals 542 and 545 of the TWU to resolve the question of how the respective seniority lists of Flight Dispatchers of U. S. Airways, Inc. and America West Airlines, Inc. are to be combined so as to result in a “fair and equitable” merged list.² The so-called Allegheny-Mohawk

¹ Arbitrator Harris subsequently withdrew from the case for health reasons. The parties agreed to present the record to Richard I. Bloch Esq. for decision.

² See Joint Ex. 7, which poses the Issue Presented as “How are the respective seniority lists of the flight dispatchers of U.S. Airways Inc. and America West Airlines, Inc. to be ‘combined’ or ‘merged’ in a manner that is ‘fair and equitable?’”

labor protective provisions have been incorporated in both locals' collective bargaining agreements³. The America West (hereinafter "AWA", occasionally) workforce is composed of 37 active Dispatchers whose employment conditions were established under a collective bargaining agreement between Local 542 of the Transport Workers Union of America and America West. The U.S. Airways ("Airways") workforce consists of 130 active Dispatchers operating under a contract between that company and TWU Local 545.⁴ As will be discussed in further detail below, the merged workforce will operate under the U.S. Airways/Local 545 collective bargaining agreement.

The Respective Proposals⁵

Locals 542 and 545 (also "West" and "East," respectively, for ease of reference) present dramatically differing versions of a merged seniority list. West contends that, but for AWA's having merged with U.S. Airways and thereby bringing a host of new investors, Airways could not have survived. In furtherance of its argument that Airways would have been liquidated, with a consequent loss

³ See Article 1, Section D in both local 545's and 542's CBA.

⁴ See Joint Ex. 2 and 3.

⁵ U.S. Airways, the surviving contract signatory, has no dog in this fight. It has, however, set forth certain restrictions applicable to the integration, and the two Locals have accepted them. As such, the integration:

- a. May not cause any furloughed Employee to bump/displace any active Employee;
- b. May not cause any active Employee to bump/displace any other active Employee except through the normal processes associated with reduction in force; and
- c. May not endtail or "staple" all the Employees of one Airline Party to the bottom of the seniority list of the other Airline Party. (See Joint Exhibit 6).

of all bargaining unit jobs, West proposes an algorithm⁶ that results, generally, in West Dispatchers being slotted in after every third or fourth east Employee.⁷

East, for its part, says a straight date of hire methodology is fair, equitable and appropriate under the circumstances.

Standard of Integration

It is surely true, as West argues, both that this case requires a determination of “fair and equitable”, under the circumstances, and that “dovetailing” (the shorthand employed in this case for integration by date of hire) is not always fair and equitable.⁸ In this case, however, the record reflects a history (1) of two carriers whose merger worked to the relative advantage of each, and (2) of respective bargaining unit members, both of whose employment situations were bettered by the combination. If, on the one hand, Airways Dispatchers were the beneficiaries of new life in general, it is also true that the AWA inherited a labor agreement that treats them better; in many cases, substantially so. Without question, a date of hire approach will, as noted below, operate to the disbenefit of West workers. In part, however, that is the natural

⁶ 1/37 times the current rank on the West seniority rank times 157 (the total number of Dispatchers on the combined list.) By limiting the bargaining unit member count to active employees, the West approach ensures that all its members are placed on the currently active work rolls.

⁷ “[L]ocal 542 submits that the currently furloughed East Dispatchers should not be placed on the seniority list in a sequence that would allow them to be recalled ahead of currently Employed West Dispatchers in the event of any future furloughs.” Were this to occur, it is argued, “it would be paramount to a seniority windfall for the East furlougheds.” West post hearing brief, at p. 2.

⁸ See West brief, p. 4.

result of the fact the East unit is manifestly more senior. And, adoption of the West algorithm results in a marked windfall for West employees, featuring seniority advances that are nowhere justified by the record in this case. ⁹

The Financial Picture

From the evidence, it is clear enough that the merger with AWA was a meaningful factor in U.S. Airway's emergence from bankruptcy. Together, the two companies were able to attract investments that, operating alone, they might not have secured. However, West's claim that U.S. Airways emerged from bankruptcy "only because it [was] acquired by a stronger enterprise"¹⁰ is reflected neither in the KPMG audit report (cited by West)¹¹ nor in any other portion of the evidence. Instead, each carrier had something to contribute. Airways, for example, was much larger. It served almost twice as many destinations as AWA and carried twice the number of passengers.¹² Airways has substantially more cash on hand, following the merger agreement. AWA, for its part, brought

⁹. This is not to say one could not construct some sort of mid-ground that would attempt to incorporate a methodology utilizing both a mechanical and a date of hire approach. Several factors militate against this. First, these are relatively small units. The West group is comprised of 37 individuals. The East local has 120 active employees with 32 currently on furlough (as of the date of the hearing.) It is logistically difficult to mold a hybrid list, given this small a unit. Moreover, unlike pilot mergers, which often involve companion considerations including aircraft types, differing status and categories and a variety of additional distinctions, the instant case is considerably more basic. These employees, on the other hand, perform the same functions, in essentially the same manner and will operate under a combined agreement that features no fence or any of the other arcane elements peculiar to pilot cases.

¹⁰ West post-hearing brief, p. 8.

¹¹ West Ex. E.

¹² Joint Ex. 1.

relative success as a low cost carrier operation with a meaningful presence in the Western United States.

Airways' "fresh start"¹³ included a series of steps designed to strengthen Airways' financial situation. Among other things, it entered into concessionary bargaining with its unions, ultimately securing some \$1 billion dollars per year in cost reductions.¹⁴ Termination of certain existing defined benefit and other post-retirement benefit plans generated substantial savings.¹⁵ A 35 percent decrease in labor cost¹⁶ taken together with other cost saving measures, resulted in a positive net operating income for the second and third quarters of 2005, prior to approval of the merger agreement in September of 2005.¹⁷ AWA, for its part, while not in bankruptcy, was attempting to confront what it regarded as a troubled and potentially perilous future, absent the merger, in the face of rising fuel costs and depressed unit revenues as a result of over capacity, among other things. It, too, needed cash.

West characterizes the merger decision on AWA's part as a one-way economic bailout. But there is no support for this in the record; surely, the respective companies did not endorse that view. AWA concluded, according to the statements of its CEO, that "...when we looked out at our future, what we saw

¹³ See the various references to the accounting and reporting techniques involved with this assumption, in the "Notes to the Financial Statements", Ex. E, pp. 212 *et seq.*

¹⁴ See transcript, p. 79.

¹⁵ See n. 7(a) to the Financial Statement, West Ex. E p. 239, for example.

¹⁶ See Local 545 ex. 1, p. 24, 43.

¹⁷ West Ex. E, at 208.

wasn't good.... Assuming we couldn't go out and restructure or raise cash, it is possible that AWA would have been facing its own Chapter 11 at some point.

Employees may like to think we "saved" US but the fact is we saved each other...¹⁸

The June 10, 2005 issue of "Plane Deal", an AWA publication, touted some of the benefits of joining fleet forces:

When merged, the combined airline will become the nation's 5th largest airline, as measured by domestic available seat miles (ASMs). The combined airline is expected to operate a mainline fleet of 361 planes (supported by 239 regional jets and 57 turbo props for feed into the mainline system), down from a total of 419 mainline aircraft operated by both airlines at the beginning of 2005....¹⁹

In the context of a "Town Hall" Q&A, the company noted the prospect of a combined airline was more enticing to investors:

The money is being raised for the combined airline, because investors see the value in the merged entity. Frankly, airlines in their current state don't look appealing to investors, who are savvy to know industry change needs to take place. The proposed merger represents the kind of change that investors believe will be successful. So, unfortunately, we wouldn't garner this kind of interest if we were seeking funding for America West "as is."²⁰

Much of West's claimed superiority over East, in terms of what it brought to the merger, is speculative. There is, for example, scant support for West's claim that, post-merger, "the focus of lender anxiety is clearly on the side of U.S.

¹⁸*about Us*, November 25, 2005. Local 545 ex. 5, p. 5. The quote is derived from CEO Doug Parker's published answer to a question of why it was necessary for AWA to integrate when "it wasn't AWA that needed the merger in order to survive?" At the hearing, Arbitrator Harris properly overruled AWA's hearsay objection. The *about US* publication is not, as East counsel suggests, a business record. However, the statement may be accepted not for the purpose of proving the truth of the matter asserted - - that AWA was facing imminent bankruptcy -- but rather, that AWA Executives *perceived* a rocky future as justification for pursuing the merger.

¹⁹ West Ex. 3, p. 2.

²⁰ *Id.*, p. 3.

Airways”²¹ or that, following the merger, with the AWA CEO assuming the helm in Phoenix, “the predator king gets to have the top job, to grant fiefs to his chieftains, and to fly the flag over his castle!”²² Rather, what appears from the evidence is that, post-merger, the companies adopted a mixed management team and that, significantly, they adopted the US Airways collective bargaining agreement as applicable to the combined TWU force. Thus, setting aside the respective claims of who came with what, the hard evidence as to what was achieved shows significant parity as between carriers, each of which contributed complementary elements to a combined operation.

Most meaningful are the gains realized by West Dispatchers when operating under the US Airways labor agreement. It is, by most measures, the more generous document of the two. According to the record, AWA Dispatchers, prior to the merger, were the lowest paid among major carriers and worked the greatest number of annual hours.²³ Following implementation of a transition agreement, work hours for AWA Dispatchers will be cut by 133 hours per year. Work days will be reduced from 10 to 8 hours.²⁴ The East contract includes a profit sharing plan in addition to the 401(K) profit sharing; the West agreement has none. Wage rates under the U.S. Airways cba are more generous; AWA Dispatchers will reach top of scale in eleven years instead of fifteen and will enjoy

²¹ West post hearing brief, p. 6.

²² *Id.*, p. 12-13.

²³ Tr., p. 231.

²⁴ East Ex. 11.

wage gains ranging from 16% to 52%.²⁵ On the average, AWA Dispatchers will gain a 36% salary increase.²⁶

Additionally, the Airways contract incorporates special “Planning Unit” positions that provide salary overrides of up to \$300 per month. Significantly, these positions, which were not part of the AWA bargaining unit, may, after three years Dispatcher experience, be bid on without regard to seniority.²⁷ There are other contract elements, including bidding schedules and sick leave banks (accumulating 150 days that can be paid out upon leaving employment, contrasted with AWA’s 40 day maximum, with no pay out) that add to the overall attractiveness of AWA employees’ new contract situation. The West claim that similar gains might have been realized in renegotiating the AWA contract is speculative and ultimately unconvincing.

Finally, one must consider, in terms of fairness and equity, the resulting shape and impact of the merged seniority list. The equities, in this regard, favor the East group. As indicated earlier, the U.S. Airways Dispatchers are considerably more senior than their West counterparts. The arithmetic placement proposed by Local 542 would devitalize the existing Airways seniority list by granting substantial, and in some cases monumental seniority leaps that cannot be justified by the record in this case. For example, senior-most AWA

²⁵ East Ex. 12.

²⁶ *Id.*

²⁷ Tr. 38-39, 42-43.

Dispatcher Brenda Cozzen has an A.D. (occupational) date of January 1985. By the West proposal, she would be slotted directly above an East employee with almost six years greater seniority. This pattern is repeated down through position #81, where Dispatcher Lopez would gain more than ten years' advantage over his counterpart, and so it continues through to the end of the list, with West employees receiving twelve, thirteen and fourteen year advantages.²⁸ As the East notes,²⁹ the junior-most West employee did not begin work as an AWA Dispatcher until November of 2005, after both execution and approval of the merger agreement.

There are other equity considerations. According to the evidence, West Dispatchers were, under their previous agreement, accorded seniority as of their Occupational Dates rather than their date of hire into the class or craft. However, under the Airways contract, and under East's integration proposal, they will receive dates consistent with their date of hire into the class or craft. As such, the first nineteen workers on the AWA seniority list will receive more seniority than they had pre-merger, in some cases as much as thirteen years.³⁰

In summary, based on these findings, the conclusion is that fairness and equity in this case militates strongly toward a date of hire list. On the one hand, this outcome may consign certain West employees to furlough and will, of course,

²⁸ Because the West proposal considers, as a community, only the active employees, the last, and least senior West employee is placed on the work rolls ahead of more than thirty furloughed East employees, all with five years' additional seniority. See Local 542 Ex. J, at p.5.

²⁹ See East closing brief, pp. 22-26.

³⁰ See Tr. 138-139 and the Local 545 integration proposal (p. 3, n. 1).

make them more vulnerable, based on their relative seniority, to later displacements. But that is, after all, the essence of length-of-tenure based seniority, which, in this particular case, heavily favors the older U.S. Airways work force.

That the date of hire approach has been adopted by other unionized groups in both companies is, in and of itself, by no means dispositive ; the facts and relative equities of each of the affected groups ultimately are what will determine a given outcome. In this case, those elements favor the East group, for the reasons set forth above. Accordingly, the finding is that the date of hire method is more fair and equitable and it is hereby awarded.

AWARD

The date of hire method of seniority integration proposed by the U.S. Airways
Dispatchers is awarded.


RICHARD I. BLOCH, ESQ.

April 26, 2007