

MEMORANDUM

To: All ExpressJet Flight Attendants

From: Joshua M. Javits, Neutral

Date: March 19, 2019

Subject: Seniority Integration

I am Joshua M. Javits and I have been asked by the IAM and ExpressJet to oversee the seniority integration review process for the combination of seniority lists resulting from the merger of Atlantic Southeast Airlines (“ASA”) and ExpressJet. By way of brief background, I am a full-time professional mediator and arbitrator. I am a member of the National Academy of Arbitrators, a roster arbitrator for the American Arbitration Association and Federal Mediation and Conciliation Service, and a former Chairman and Member of the National Mediation Board. By agreement between the IAM and the Company, I was appointed as a Neutral to assist in the protest review process arising from the initial seniority list integration. A copy of this initial integrated list is attached to this letter, which is available online and will be included in the ratification materials for the recently negotiated tentative joint collective bargaining agreement.

At the end of 2010, ExpressJet Holding, Inc., the parent company of ExpressJet became a wholly-owned subsidiary of ASA and announced that the two carriers would merge. Pre-merger ExpressJet Flight Attendants were represented by the IAM, while pre-merger ASA Flight Attendants were represented by another union. In October 2011, the National Mediation Board found that ASA and ExpressJet were operating as a single carrier. 39 NMB 5 (2011). A representation election was conducted in accordance with the procedures of the Railway Labor Act and the IAM was certified as the bargaining representative for Flight Attendants at the combined carrier. 39 NMB 259 (2011).

According to federal law, known as the McCaskill-Bond Amendment, in airline mergers the integration of seniority must be fair and equitable. The law further provides that when the same union represents the employees of the crafts and classes of the two merging carriers, the merger policy of that union, in this case the IAM, shall be applied. The IAM’s longstanding policy in mergers is to integrate seniority lists by date of hire into the classification, as the IAM has done here in creating the initial Flight Attendant seniority list. This method of seniority integration by date of entry into classification, commonly referred to as “dovetailing,” is widely recognized as a fair and equitable method of seniority integration. As the Supreme Court found in *Humphrey v. Moore*, dovetailing is “. . . neither

unique nor arbitrary. On the contrary, it is a familiar and frequently equitable solution to the inevitably conflicting interests which arise in the wake of a merger.” 375 U.S. 335, 347 (1964); *see also In re ABF Freight System, Inc., Labor Contract Litig.*, 988 F. Supp. 556, 566 (D. Md. 1997) (“Case law has recognized that dovetailing is an appropriate and fair way to resolve the problem presented when seniority rights are affected by the combining of the operations of two or more companies . . .”); *Wheeler v. Bhd. of Locomotive Firemen & Enginemen*, 324 F. Supp. 818, 827 (D.S.C. 1971) (recognizing dovetailing as method “to distribute the work opportunities on an equal basis throughout the merged system”); *Nat’l Airlines Acquisition*, 94 C.A.B. 433 (1982) (dovetailing seniority lists satisfies fair and equitable standard).

I understand that seniority for both pre-merger groups was generally comparable and, therefore, the integration to create the initial list appears to have been relatively straightforward. Integration was done based on the Flight Attendants’ existing seniority dates with their pre-merger carriers, which are the dates they were assigned when they started in the classification, and any new ties on the list resulting from the integration process were broken by date of birth, with the older employee listed first. My initial review of the list revealed that pre-merger seniority order of the pre-merger work groups was maintained during this process, which is consistent with a basic tenet of seniority integration that the relative seniority order of each pre-merger group should generally not be disturbed.

I also understand that there were some differences between the pre-merger groups in seniority accrual and retention for employees who, for example, went to work for management, transferred outside the department, or were furloughed. Additionally, some employees were credited with training time and others were not. As part of this process, however, the IAM did not go back and retroactively adjust any existing seniority dates. This is also a well-accepted practice of seniority integration. It is generally viewed as inappropriate to retroactively alter the product of past seniority practices during an integration because this too may disturb the relative order of pre-merger lists. Likewise, it is improper and potentially chaotic to delve into prior seniority integrations in a manner that would undo or alter the seniority determinations made during past airline mergers and consolidations. Additionally, it is often impractical, if not impossible, to re-write years of history based on records that may not be accurate or may not exist for all employees. *See Arbitration among Delta and Comm. of Former Western Flight Attendants and Original Delta Flight Attendants*, (Thomas T. Roberts, 1990) (rejecting proposal that training date should be used instead of date of hire because it involved too much “guesswork and estimates” which “render[ed] too many of the dates unreliable to serve as a valid benchmark of seniority integration”).

The initial seniority list is being published and distributed in conjunction with the ratification materials for the recently reached tentative joint collective bargaining agreement. By agreement of the parties, the initial list will go into effect on the date of

ratification, subject to corrections made through a protest review process overseen by myself. The ratification vote is scheduled to conclude on April 5, 2019, with results announced by the end of the following week. Accordingly, the 30-day protest window will commence on Monday, April 15, 2019, and conclude on Wednesday, May 15, 2019. As agreed between the IAM and the Company, affected employees may submit for my determination individual protests regarding their placement on the integrated seniority list by no later than May 15, 2019. All protests should be sent by mail or email addressed as follows:

Attn: Neutral Joshua M. Javits
c/o Guerrieri, Bartos & Roma, P.C.
1900 M Street, N.W., Suite 700
Washington, DC 20036
JavitsSeniority@geclaw.com

Each protestor must include the following information: full name, employee number, job title, station, and a clear statement of the basis for the protest. The failure to include this information may prevent me from conducting a complete investigation of the protest. Employees should also include any documents which they believe are relevant to their seniority protests. I will consider all timely and complete protests received by the deadline and issue a final and binding determination with respect to each. At the conclusion of the protest process, I will issue a final integrated seniority list, incorporating any necessary changes resulting from my protest determinations.

I look forward to continuing to work with the IAM and the Company to successfully finalize this seniority integration process.