

Date-of-Hire Precedent

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With the prospect of the United merger very much on the minds of US Airways pilots, it would be useful at this time to review the various methods by which pilot groups and arbitrators have merged pilot seniority lists. In this article, we will discuss a sampling of pilot seniority integrations that have been accomplished primarily through a date-of-hire or length-of-service methodology. We will also address some of the factors that lean in favor of adoption of a date-based methodology in a seniority integration of the United and US Airways pilot groups.

As we explained in our recent article about prior seniority integrations at US Airways and its predecessor carriers, the US Airways pilot group has a long and successful history of seniority integrations based on date of hire. In an unmerged scenario, seniority means length of service, as the term itself implies. Those who are hired first, i.e., those with the greatest seniority, are at the top of the list; those hired last are at the bottom. Pilots understand these arrangements for consolidating seniority lists in a merger to be sensible and fair and generally favor date-of-hire integrations if they do not materially interfere with unmerged career expectations or cause other significant inequities.

As Arbitrator David Feller explained in the *Air New Zealand-NAC* pilot seniority integration case in 1980, date-based integrations are appropriate in situations where it is reasonable to conclude that service at one of the pre-merger airlines is "at least in part in some way equivalent to service in the other." This does not mean that the merging carriers need to be of

the same size or financial strength. Rather, in Arbitrator Feller's view, the carriers should engage in roughly the same kind of service or, absent that factor, should each contribute something of value that the other lacks. Examples of the latter situation include the United-Capital and Eastern-Mackey mergers in which the larger, more successful carrier contributed desirable aircraft and the smaller, less successful carrier contributed desirable routes. A factor Arbitrator Feller also deemed important in determining comparability was whether the pilot groups were subject to similar hiring criteria in terms of qualifications and experience so that "both parties to the merger fished from the same pool."

Under ALPA Merger Policy, the goal of any pilot seniority integration is a merged list that is fair and equitable. In the cases discussed below, the arbitration panels or pilot representatives determined that a date-based integration achieved a fair and equitable result. In each case, however, fairness and equity also required that the date-based list operate with at least some conditions and restrictions.

Northwest-Republic

The Northwest-Republic seniority integration was accomplished with a date-of-hire merged list, subject to extensive conditions and restrictions. In 1989, an ALPA Arbitration Board chaired by Thomas T. Roberts created the merged seniority list, which determines the results of bidding for monthly flying schedules, open time, vacations, and the like. However, the arbitration award's conditions and restrictions establish the procedure for allo-

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cating Captain and First Officer positions each month on each aircraft type in the merged carrier’s fleet. The conditions and restrictions do not expire until January 1, 2006.

Arbitrator Roberts noted the differences between the two pre-merger carriers. Northwest mainly operated long-haul and international flights while Republic flew shorter segments and did not have any widebody aircraft in its fleet. This disparity was offset, however, by several factors. While Republic had only recently returned to profitability and labored under a heavy debt burden, Northwest had problems of its own in the form of increased competition from United, which had recently purchased Pan American’s Pacific Division. Thus, although Northwest was in a strong economic position, it needed to develop a domestic route structure to provide feed for its international operations. Republic provided precisely that, including three hubs, in Memphis, Detroit and Minneapolis. Arbitrator Roberts commented as well that both pre-merger lists included trained, experienced pilots. It is interesting to note that although the two pre-merger groups were roughly the same size, Arbitrator Roberts does not discuss that fact anywhere in his Opinion, which may cast some doubt on its significance.

The Roberts Award is notable both for the complexity of the conditions and restrictions as well as their prolonged duration. Their purpose was to preserve the jobs each pilot group brought to the merger in each aircraft type and to divide any growth equally between the two pilot groups. This goal was to be accomplished by a quota and ratio system. A quota was set for each aircraft and seat for each pre-merger pilot group corresponding to the number of positions each of the two pre-merger airlines “brought” to the merged carrier in aircraft on hand or on firm order (option aircraft were excluded from the quota calculation). The ratio for additional positions was 1:1, that is, positions in excess of the quotas were to be allocated equally.

For example, the arbitration panel determined that the B-757 aircraft on hand or on firm order at Northwest and Republic at the time of the merger generated 204 and 50 captaincies, respectively. Thus, the first 254 B-757 Captain positions were allocated 204 to the pre-merger Northwest pilots and 50 to the pre-merger Republic pilots. When the merged carrier reaches 354 jobs in this category, the additional 100

will be allocated equally, with the totals for the respective pre-merger pilot groups then becoming 254 and 100.

Northwest brought no MD-80 or DC-9 aircraft to the merger and Republic had no widebodies on hand or on order. Thus, only one group has a quota for Captain and First Officer positions on each of these aircraft types. When the merged company exceeds the quota in one of these positions, it allocates additional jobs beyond that one-for-one.

Captain and First Officer positions on new aircraft types are allocated equally to the two pre-merger pilot groups under the conditions and restrictions. The Northwest and Republic pilots are thus sharing A320 Captain jobs on a one-for-one basis. Because replacement aircraft types are restricted in the same manner as the equipment they replace, all Captain and First Officer positions at the airline are to be allocated according to the conditions and restrictions until January 1, 2006.

To date there have been 20 “supplemental” arbitrations to resolve disputes concerning the proper interpretation of the conditions and restrictions. Seventeen have been between the two pilot groups and three were between ALPA and Northwest. There have also been three jurisdictional or “traffic cop” arbitrations to determine whether the proper forum for deciding the dispute in question was the System Board of Adjustment or an arbitration before an arbitrator appointed under the Roberts Award dispute resolution agreement.

The pace of supplemental arbitrations has slowed considerably over the last several years and the pilot groups’ representatives have not litigated one for approximately four years. It is possible, however, that more will be convened before the conditions and restrictions run their full course.

The Merger Representatives for the pre-merger Northwest pilots were dissatisfied with the results of several of the supplemental awards and filed suit in federal district court in Minnesota to overturn the arbitrator’s rulings. That court dismissed their complaint without a trial, and the United States Court of Appeals for the Eighth Circuit affirmed the dismissal. The petition to the United States Supreme Court to hear the case was denied.

TWA-Ozark

The TWA and Ozark pilots negotiated a seniority integration agreement in 1986. Senior-

ity lists were consolidated based on each pilot's date of hire with either TWA or Ozark, without any deduction for furloughs or leaves of absence, subject to a complex series of conditions and restrictions.

One set of conditions and restrictions gradually allowed Ozark pilots access to widebody Captain and B-747 First Officer positions. Ozark pilots achieved access to B-767 Captain positions in 1990. Access to L-1011 Captain positions became available to Ozark pilots in 1993. B-747 First Officer positions opened up in 1992 and B-747 captaincies became available for bid by Ozark pilots in 1997.

However, in securing access to widebody Captain and B-747 First Officer positions, the Ozark pilots were limited by several provisions of the conditions and restrictions. One such limitation was that a pilot have sufficient seniority based on the merged list to hold the position in question. Another limited the Ozark pilot group to a maximum of 16 percent of the captaincies on any widebody equipment type. A further restriction limited the Ozark pilots to one-third of the initial qualification training slots for an aircraft at a base during the first year of their access to that equipment type and to 16 percent of these training slots in any subsequent year. There was no specific expiration date on the 16 percent limits on training slots and bids that can be held by Ozark pilots, but they all appear to have expired with respect to TWA's current widebodies by virtue of a provision that stated that they lasted only until the junior 1986 TWA pilot was trained for the positions in question.

Another set of conditions and restrictions gradually phased in the TWA pilots' access to DC-9 Captain and First Officer positions that were held at the time of the merger by Ozark pilots who were junior on the merged list to TWA pilots who desired to promote into these positions. The "seniority adjustment" provisions of the conditions and restrictions created Captain and First Officer "protective cells." These provisions reserved a gradually diminishing number of DC-9 Captain and First Officer positions for the Ozark pilot group from 1987 until 1990, when the "protective cells" were dissolved and the "seniority adjustment" process was completed. This process resulted in the displacement each year of a number of Ozark pilots who were too junior on the merged list to continue to hold their DC-9 Captain or First Officer positions. Beginning in 1990,

access to DC-9 Captain and First Officer positions at TWA has been governed by the date of hire merged list and the general seniority and bidding provisions of the collective bargaining agreement.

Eight arbitrations were conducted before five different arbitrators to determine how to apply the various conditions and restrictions of the TWA-Ozark seniority integration agreement. These arbitrations resolved disputes between the two pilot groups about who was in the "protective cells" each year, whether the Ozark pilots received the proper number of B-767 Captain training slots in 1990, whether TWA can treat the B-757 and B-767 as one aircraft type for bidding purposes, and other such matters.

Some of the Ozark pilots brought a class action suit in federal district court in Chicago to set aside the seniority integration agreement. The case was dismissed in 1991 without a trial and the federal appeals court in Chicago upheld that ruling the following year. In rejecting the Ozark pilots' objections to the agreement, the appeals court explained: "Adult pilots, of sound mind and well aware of the consequences of their acts, must expect to keep their contracts, even when they wish they could have made better deals." The seniority integration agreement between the pre-merger TWA and Ozark pilots survived legal challenge and continues to govern the allocation of jobs at TWA.

Thus, in TWA-Ozark and Northwest-Republic, date-of-hire merged lists were tempered by complex and lengthy conditions and restrictions designed to ensure that jobs were fairly allocated as between the two merging pilot groups until the actual lists could perform that function on an equitable basis. Significantly fewer conditions and restrictions accompanied the date-based list in the USAir-Piedmont case, which we review next.

USAir-Piedmont

We discussed the USAir-Piedmont seniority integration case in some detail in our recent article about the prior seniority integrations affecting our list. As we explained in that article, an ALPA Merger Policy arbitration panel chaired by Arbitrator Sam Kagel integrated the pre-merger lists based on date of hire with relatively minimal conditions and restrictions. Arbitrator Kagel noted that the two carriers were similar in many respects. They were both healthy companies, with similar fleets and nearly

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the same number of pilots. Both carriers had grown, but from 1981-1985 Piedmont grew more rapidly, purchasing large numbers of aircraft and hiring pilots on an accelerated basis. This resulted in pilots advancing to Captain positions more rapidly at Piedmont than at USAir. To account for this difference, one of the conditions and restrictions to the date of hire integration provided to pre-merger Piedmont B-727 and B-737 Captains hired in 1983 through 1985 an additional job credit of four years for equipment bidding purposes. The credit expired on December 31, 1992.

Because only Piedmont contributed B-767 aircraft to the merger, the conditions and restrictions also provided a career-long guarantee of B-767 positions for those holding the positions as of the date of the operational merger. They further reserved those positions to the pre-merger Piedmont pilots for two years, and pilots filling B-767 vacancies during that period likewise received a career-long guarantee to those positions. Additional conditions and restrictions addressed domicile consolidation and continued previously-established protections for the former Empire pilots.

There were only three interpretive arbitrations relating to the Kagel Award, the first concerning its effective date, the second concerning displacement and related rights, and the third concerning B-757 and B-767 flying. The relatively small number of interpretive arbitrations, compared to those following the Northwest-Republic arbitration and the TWA-Ozark agreement, is attributable in large part to the fact that the USAir-Piedmont conditions and restrictions are fewer and less complex than those relating to the other two mergers. Moreover, the straightforward date-based solution embodied in the Kagel award was accepted by the combined pilot group and has never been the subject of a court challenge.

United-US Airways

In addressing the possibility of a United-US Airways pilot seniority integration, it is useful to turn again to some pertinent observations from Arbitrator David Feller in his decision in the *Air New Zealand-NAC* case. In the airline industry, Arbitrator Feller explained:

[S]eniority is calculated on the basis of service with the employer, but because of the similarity of conditions, skills and the availability pools it is given heavy consideration in determining the relationship between employees of different employers

when they merge. Where those conditions do not obtain, however, it is not.

Such conditions were wholly absent in the Air New Zealand-NAC situation, thereby necessitating the rejection of a date-based methodology. NAC was a purely domestic airline, operating F-27 and B-737 aircraft. NAC hired pilots with relatively little experience and would not hire any pilot over the age of 30. Air New Zealand was an international airline that recruited experienced pilots, largely from other airlines or the armed forces. Its fleet consisted of higher-paid DC-8 and DC-10 aircraft. Most NAC pilots would not even have qualified for employment at Air New Zealand. A pilot joining NAC could only promote to aircraft flying domestically. New hires at Air New Zealand had different career expectations, and higher pay, premised on Air New Zealand's predominantly international route structure. Under such circumstances, Arbitrator Feller concluded that it was unreasonable to view service at one of the merger partners as substantially equivalent to service at the other. He observed as well that a date-based list would have grouped together pilots earning drastically different salaries.

The *Air New Zealand-NAC* case provides an interesting contrast to a potential *United-US Airways* pilot seniority integration. Both United and US Airways serve domestic and international destinations and both, to borrow Arbitrator Feller's phraseology, fish from the same hiring pool, unlike Air New Zealand and NAC.

United and US Airways became international carriers at roughly the same time. United instituted its first significant international operations in 1986 when it purchased Pan Am's Pacific Division. By that time, nearly half of the current US Airways seniority list already had been hired at US Airways' predecessor carriers. All of those US Airways pilots were thus hired at a time when United, too, was almost exclusively a domestic carrier. In 1987, the year after United inaugurated service on Pan Am's Pacific routes, Piedmont began its scheduled transatlantic service to London. Nearly three years later, in 1990, United offered its first scheduled transatlantic service, and it began serving London the following year.

To be sure, US Airways and United differ in some respects, but both would make significant and unique contributions to a merged enterprise. As the *Wall Street Journal* reported on May 24, 2000, the day of the merger announcement: "United sees this acquisition as filling a

geographic void United has long considered itself weak in the East" In his testimony before the United States Senate Committee on Commerce, Science and Transportation on June 21, 2000, United's Chairman and CEO, James Goodwin echoed this sentiment:

[L]et me explain our decision to acquire US Airways. Like a chain, an airline's network is only as strong as its weakest link. As United examined its ability to respond fully to our valued customers, we considered whether we could improve our efficiency and the sustained level of service we provide. What we discovered was that United's weakest link was US Airways' strongest link and vice-a-versa United has an extensive east-west system in the U.S. with hubs in the Midwest and the West. In contrast, US Airways has a comprehensive north-south route system along the East Coast anchored by hubs in Pittsburgh, Philadelphia and Charlotte. Together, the two networks are highly complementary.

Moreover, with the airline industry experiencing a shortage of trained pilots and distant delivery dates on orders for new aircraft, United's acquisition of US Airways will provide it with a turn-key expansion that provides more than 400 aircraft and over 6,000 trained

and highly experienced pilots. US Airways' dominant East Coast presence and loyal business customers will likewise provide United with valuable feed for the combined carrier's transcontinental and international operations.

The United and US Airways pilot groups are both well compensated. In fact, at the time of the merger announcement, the US Airways' pilot contract offered superior retirement, compensation, and working conditions for flying on most aircraft. This advantage continued until the announced merger finally gave the United pilots the leverage they needed to improve their collective bargaining agreement. Thus, the United pilots have already begun to reap the benefits of the proposed merger.

Based on all of these factors, numerous and compelling reasons would support the position that service at US Airways is sufficiently similar to service at United to justify a date-based integration. In our next article for *US AIRWAVES*, we will examine past pilot seniority integrations based on ratios and discuss their implications, if any, for the proposed United-US Airways merger.



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