Precedent Based on Ratios

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In the November/December 2000 issue of *US AIRWAVES*, we described a sampling of pilot seniority integrations based primarily on date of hire or length of service methodologies. In this edition, we will review several pilot seniority integrations in which arbitration boards or the parties integrated the pre-merger seniority lists through the use of ratios. We will then consider some reasons why a date-based rather than a ratio methodology might be fairer in the event of an integration of the pilot seniority lists of United and US Airways.

Most commonly, ratios are based on status and category. Status refers to rank, *i.e.*, captain, first officer, or second officer. Category refers to aircraft type. The general goal of a status and category ratio is to group pilots with similar jobs together in the same part of the merged list. Status and category ratios are most often employed when there are sharp differences in the stability, age and hiring patterns of the carriers and in the compensation and pre-merger career expectations of the pilot groups. The use of a status and category ratio often results in an integrated system-wide list in which pilots from the group deemed to have the superior jobs and job prospects are placed senior to pilots from the other pre-merger group with earlier dates of hire or greater lengths of service. One justification cited for discounting length of service as a factor in such cases is that the pilot group disadvantaged by such discounting stands to gain far more by virtue of the merger itself than the other group in terms of job stability, pay, and advancement opportunities. Moreover, it is contended in such cases, recognition of date of hire or length of service as the controlling principle would award positions and prospective promotions rightfully belonging to one pre-merger pilot group to the other pilot group, providing windfalls to the "have-not" pilot group at the expense of the "have" group.

In the cases discussed below, the decision-makers determined that a ratio methodology, together with conditions and restrictions as appropriate, yielded a fair and equitable integration.

Flying Tiger—Slick Airways

An Arbitration Board chaired by Arbitrator Benjamin Aaron integrated the pilot seniority lists of the two freight carriers in an Opinion dated May 7, 1954. The proceedings were convened pursuant to the order of the Civil Aeronautics Board approving the merger, which included then-standard labor protective provisions providing for integration of seniority lists in a "fair and equitable manner." ALPA merger policy did not apply; ALPA represented the 303 Flying Tiger pilots subject to the proceedings, but not the 148 Slick pilots.

The Slick pilots' representatives proposed an integration based on length of service. The Flying Tiger pilots' representatives' proposal incorporated a ratio methodology. The Arbitration Board chaired by Arbitrator Aaron adopted the proposal of the Flying Tiger pilots' representatives, with a few modifications.

The record established that Flying Tiger's financial condition had improved over the last several years while Slick's had deteriorated. Over the same period, Flying Tiger had increased the scope of its operations as well as

the size of its fleet. Slick, conversely, had not kept pace with Tiger's rate of growth and its fleet had shrunk rather than expanded. These factors translated into secure jobs and favorable promotional opportunities for the Tiger pilot group and insecure jobs and uncertain advancement prospects for the Slick pilot group. In light of these facts, the Arbitration Board found that the Slick pilots were likely to gain more from the merger than the Tiger pilots.

With one revision, the Arbitration Board adopted the proposal of the Tiger pilots, which included seven categories. Category I consisted of DC-6 Captains, the highest paying position, and was based on Tiger's one aircraft and Slick's two aircraft, resulting in a Tiger-Slick ratio of 1:2 with eleven pilots in the category. Category II included 36 Tiger DC-4 Captains based on Tiger's seven aircraft of this type. Category III included both Tiger and Slick C-46 Captains based on 27 Tiger aircraft and 17 Slick aircraft, resulting in a Tiger-Slick ratio of 1.826:1. Categories IV through VI were the first officer categories corresponding to Categories I through III. Category VII included 41 surplus Tiger pilots and 34 surplus Slick pilots for a Tiger/Slick ratio of 1.206: 1.

The Arbitration Board's revision to the Tiger pilots' proposal was that the ratios the Arbitration Board adopted excluded six DC-6 aircraft that the Tiger pilots' representatives had sought to include in the calculation. The Slick pilots' representatives had vigorously opposed the inclusion of these aircraft, four of which had been leased to Northwest Airlines and two of which were on order. The Arbitration Board agreed with the representatives of the Slick pilots about the importance of constructing ratios on the basis of aircraft on hand, noting that there is a clear distinction between jobs currently held and those that might be acquired.

Continental—Texas International

In 1983 an ALPA Arbitration Panel chaired by Marcia L. Greenbaum constructed the merged CAL-TXI list in nine sections. The Arbitration Board composed these nine groupings by reference to the pilots' dates of hire, lengths of service and "job equities," such as CAL's pre-merger widebody flying.

The top portion of the merged list consisted of 71 pre-merger Continental pilots corresponding to the 66 widebody captain positions generated by Continental's fleet of 11 DC-10 aircraft, plus five positions for pilots on the list who were in disability retirement status. The second section of the list ratioed on a 2:1 basis approximately 450 Continental and Texas International pilots corresponding to the senior (top 3/4) B-727 and DC-9 captain positions brought to the merger by the two pilot groups. Category three was composed of pilots from both carriers ratioed in numbers representing the junior (bottom 1/4) narrowbody captains and widebody first officers (161:47). The fourth category ratioed 21 Continental and three Texas International pilots (plus one disability retiree from each group) as a transition to a larger ratioed group.

The fifth category consisted of 384 Continental and 28 Texas International pilots who were ratioed because the ALPA Arbitration Panel observed that their dates of hire and lengths of service were very close. Another group of 36 Continental and 26 Texas International pilots with "compatible DOH/LOS" was then ratioed. The remaining Continental pilots who were working at the time of the arbitration (260 in number) were ratioed in group seven with 115 of the junior Texas International pilots, "based on DOH/LOS, bringing of jobs to the merger, and furlough vulnerability."

Group eight consisted of 400 Continental pilots who were furloughed prior to the merger or after the merger, and who were hired prior to 1980. The final group comprised five Texas International pilots hired in 1980 or later with very brief length of service as of the date of the merger.

Prior to the arbitration a variety of conditions and restrictions had been agreed to by representatives of the two merging pilot groups in negotiations with management. These provisions minimized the company's training cost exposure by, for instance, limiting the pilots' rights to cross-bid from the B-727 to the same seat in the DC-9. The arbitration board adopted these provisions as part of its award. In addition, the arbitration board included a few additional restrictions of its own, assuring that for three years the pre-merger Continental pilots would have the first 66 widebody captaincies and prior rights to the Hawaiian, South Pacific and Air Micronesia flying that they had brought to the merger.

The two pilots from group nine who continued in Continental's employ after the 1983 bankruptcy and strike sued ALPA for allegedly violating its duty of fair representation. In 1989 the federal district court in Houston held that ALPA

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had violated its duty of fair representation based on evidence that the plaintiffs were among a group of twelve pilots identified as having been hired as potential strikebreakers. The court ordered Continental to move the two pilots to the bottom of group seven, ahead of the 400 pre-merger Continental pilots in group eight. A three-judge panel of the appeals court in New Orleans upheld the trial court's ruling in a split decision.

Continental—People Express

In 1991 Arbitrator Jerome H. Ross modified a merged list which management had constructed and imposed several years earlier. He employed a ratio methodology in advancing 295 People Express captains, whom management had placed in a block immediately junior to a block of 162 Frontier captains, who in turn were junior to the junior Continental captain. Arbitrator Ross moved the 295 People Express captains up the list past all 162 of the Frontier captains. Arbitrator Ross inserted the most senior People Express captain into the Continental list adjacent to the Continental pilot with the same length of service, including strike time but excluding furlough time. He then ratioed the next 294 People Express captains with all of the other Continental pilots who were senior to the junior Continental captain (and senior to the block of 162 Frontier pilots).

The next group of approximately 500 People Express pilots was likewise advanced up the Continental list, some by almost a thousand numbers, using a ratio methodology. This contrasts with Continental's placement of them in a block junior to all Continental pilots working on the day of the announcement of the merger.

Arbitrator Ross rejected emphatic contentions of the Continental and Frontier pilot representatives to move the remaining 200 or so People Express pilots down the list. He left them instead where Continental had placed them, senior to approximately 1,000 Continental pilots hired after the announcement of the merger.

Conditions and restrictions were extremely limited. One required the prospective implementation of the revised list. Another provided for arbitration of future disputes regarding the Award's interpretation, implementation, or application.

The representatives of the Frontier pilot group challenged the Ross Award. However, the federal bankruptcy court in Wilmington, the federal district court in Newark, the federal court of appeals in Philadelphia and the United States Supreme Court let the Award stand, and it has remained in effect since 1991.

Delta—Western

The merger representatives for these two pilot groups concluded a seniority integration agreement under ALPA Merger Policy in May of 1987. A series of ratios were used to construct the list according to the following methodology. Positions held by each pilot group were determined as of September, 1986, the month of the merger announcement. Positions were combined based on similar equipment type. The first equipment grouping included only Delta L-1011-500s, because Western did not fly any comparable equipment. The second grouping included Delta L-1011-1s and Western DC-10-10s. The third, fourth and fifth groupings were composed respectively of Delta's B-767s, DC-8-71s, and B-757s, again with no comparable equipment from Western. The sixth grouping included B-727 aircraft from both carriers, and the seventh grouping included B-737s and DC-9s from Delta and B-737s from Western. In order to allow for a more even distribution of Western pilots throughout the list, Western pilots were added to groupings to which Western had not contributed equipment. Because there was uncertainty over whether former Western pilots over age 60 would be provided employment at Delta as second officers, the merger representatives agreed on two lists, one including the older Western pilots and one excluding them.

The seniority integration agreement included several conditions and restrictions designed to protect pre-merger flying and expectations. Delta pilots within three years of retirement were protected from displacement by Western pilots to prevent a diminution of retirement income based on final average earnings. European and Pacific flying within the then-current Delta system was reserved for Delta pilots for three years. All West Coast and Hawaii flying as well as new international flying were available to all pilots based on system seniority. The parties agreed as well that the pre-merger Delta pilots would be guaranteed all positions awarded in 1987 on pre-merger or newly delivered Delta aircraft.

The parties also provided for the conversion and protection of all positions and entitlements held by pre-merger Western pilots under their previous annual system bids. Pilots from both

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pre-merger groups were protected in the positions they held at the end of 1987, and could not be displaced by pilots of the other group until July 31, 1990. Until that date, Western pilots were guaranteed at least 1,261 pilot positions at former Western bases, barring circumstances beyond Delta's control.

Implications for United—US Airways

As we explained in our article on date-based integrations, we believe that numerous and compelling reasons support the use of a date-of-hire methodology of the United and US Airways pilot groups should the merger occur as planned. These reasons include the turnkey expansion opportunity US Airways presents to United in the form of aircraft and trained and highly experienced pilots as well as valuable feed from US Airways' loyal business customers and dominant East Coast presence. Moreover, both United and US Airways serve international as well as domestic destinations, both operate widebody as well as narrowbody aircraft, and both pilot groups are well compensated. In our view, service at US Airways or at United is sufficiently similar to mandate a date-based integration and to militate against the adoption of a ratio methodology.

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