

In the matter of the Seniority List Integration Arbitration between:

**THE PRE-MERGER VIRGIN AMERICA, INC.  
FLIGHT DISPATCHERS SENIORITY INTEGRATION COMMITTEE**

AND

**THE PRE-MERGER ALASKA AIRLINES, INC.  
FLIGHT DISPATCHERS SENIORITY INTEGRATION COMMITTEE**

Arbitrator: Linda S. Byars

Seattle, Washington, November 6 - 7, 2018

Appearances:

For the Virgin America Flight Dispatchers: Marilyn Pearson, McDermott Will & Emery

For the Alaska Airlines Flight Dispatchers: David Watsky, Lyon, Gorsky & Gilbert

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## BACKGROUND

On November 29, 2017, representatives of the Pre-Merger Virgin American, Inc. Flight Dispatchers Seniority Integration Committee (VSIC) and the Pre-Merger Alaska Airlines, Inc. Flight Dispatchers Seniority Integration Committee (ASIC) signed the Seniority Integration Process Agreement (SIPA), agreeing to a process to facilitate compliance with the requirements of the McCaskill-Bond Amendment to the Railway Labor Act. [VSIC Exhibit No. 1, ASIC Exhibit No. 22.] As with the Statute on which it is based, the SIPA provides the “fair and equitable” standard for the integration of seniority among the Flight Dispatchers of the two carriers. Section 5 of the SIPA provides for the selection of an arbitrator if the Committees are unable to agree on the integration.

Section 6 of the SIPA states the arbitrator’s authority as follows:

- c. The arbitrator shall have the authority to resolve any dispute arising out of the interpretation or application of this Agreement.
- d. The arbitrator shall conduct the hearing and schedule any post-hearing briefing so that the proposed award may be made within 30 days after the hearing commences, unless the parties agree to an extension of the date for the issuance of an award.
- e. Unless during the hearing process the parties reach an agreement as to the manner in which the Flight Dispatchers seniority is to be integrated, the integration, including any conditions thereto, shall be devised by the arbitrator.
- f. The arbitrator shall retain jurisdiction over any dispute that arises involving an interpretation of the award, the arbitrator, upon request by a party to this Agreement, shall interpret the award in light of the dispute. [VSIC Exhibit No. 1, ASIC Exhibit No. 22.]

The Committees submitted pre-arbitration briefs electronically on November 2, 2018 and presented evidence and argument at a hearing on November 6 and 7, 2018 in Seattle, Washington. The Committees submitted post-hearing briefs and the record closed February 5, 2019.

## THE PROPOSALS

### The VSIC

1. April 4, 2016, the date the carriers publicly announced their merger, will be the Constructive Notice Date (CND).
2. All dispatchers hired after the CND will be integrated based on straight date of hire (DOH). Any ties will be resolved based on the last four digits of the dispatchers' social security numbers.
3. Alaska dispatchers with 20 or more years of service on the date of integration (Alaska 20-Year Dispatchers) will be integrated based on their Alaska seniority, i.e. they will retain their premerger seniority numbers.
4. The remaining Alaska dispatchers (Alaska Under 20-Year Dispatchers) will have their relative rank recalculated based on the Alaska seniority list excluding the AS 20-Year Dispatchers.

5. The seniority lists for the Alaska Under-20 Dispatchers and Virgin Dispatchers will be integrated based on the dispatchers' relative rank on their respective pre-merger seniority list. All ties will be broken using date of hire.<sup>1</sup>

#### The ASIC

1. The seniority lists for Alaska and Virgin Dispatchers will be integrated based on pre-merger date of hire with a four-year adjustment in favor of Alaska Dispatchers.

2. The date of the merger closing, December 14, 2016, will be the CND.<sup>2</sup>

#### OPINION

With opening statements and cited cases, the parties provided a history of airline worker protections beginning with the Civil Aeronautics Act in 1938 and the evolution of employee seniority integration rights under the Act, the evolution of the "fair and equitable" standard in the 1972 Allegheny-Mohawk merger, and the evolution of the 2007 McCaskill-Bond seniority integration Statute. Neither the SIPA, nor the Statute on which it is based, defines "fair and equitable." However, the Committees provided, with their pre-hearing and post-hearing briefs, the well-established principals that guide an analysis based on the "fair and equitable" standard.

As the VSIC points out, arbitration decisions have produced a myriad of different methods for integrating seniority, sometimes different methods even in the same merger.<sup>3</sup> Some of the cited

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<sup>1</sup> The VSIC's proposed integrated list is at Virgin Exhibit No. 8.

<sup>2</sup> The ASIC's proposed integrated list is at Alaska Exhibit No. 1.

<sup>3</sup> As an example of different methods in the same merger, the VSIC points to the merger of *Delta & Northwest*. The differences between the Delta and Northwest merger and the one between Alaska and Virgin are discussed

cases turn on circumstances very different from those in the instant case and make comparisons too cumbersome and time-consuming to be worthwhile.<sup>4</sup> However, the Arbitrator considered them all as instructive background. Where case comparisons are made, they are necessarily simplistic. The more relevant cases are discussed below.

Each airline merger is unique and the “fair and equitable” standard requires an analysis of the unique facts and circumstances of each pre-merger group, as the VSIC asserts. The Arbitrator is responsible for integrating the lists fairly and equitably by weighing the competing considerations. While the Arbitrator considered all the criteria and equities brought out through the parties’ evidence and arguments, the following discussion is a summary. The parties identify similar, if not identical, comparison factors and guidelines for seniority integration, which are discussed below beginning with longevity.

Longevity

The VSIC maintains that its proposal methodology gives greatest weight to dispatcher longevity and uses relative seniority only as a secondary factor by providing that the Alaska 20-Year Dispatchers remain on the top of the merged list. The VSIC further maintains that its proposal has no negative impact on the Alaska Dispatchers, even those few who might have a Virgin Dispatcher move ahead of them on the list, since Alaska Dispatchers have gained substantial relative seniority

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elsewhere. As the VSIC notes, however, dispatchers affected by the *Delta & Northwest* merger agreed to use relative seniority in accordance with the longstanding practice of PAFCA, not as a result of an arbitration decision.

<sup>4</sup> For example, a pilot case cited by the VSIC in its pre-hearing brief, the 1988 *Bar Harbor/Provincetown-Boston* pilots Award decided by Arbitrator Richard Kasher is so unlike the instant case in every respect as to make a comparison virtually useless.

as a result of Virgin Dispatcher attrition since the merger. The VSIC submits that its proposal, which also includes breaking all ties using date of hire, gives greatest weight to longevity.

There can be no dispute that Alaska Dispatchers come to the merger with many more years of seniority than Virgin Dispatchers. The seniority lists provided by the Committees demonstrate that, at the time of the merger, the most senior Alaska Dispatcher (Betsy Sherpa) had over 35 years of seniority, and the most senior Virgin Dispatcher (Sandra Cea) had approximately ten years of seniority. As the ASIC points out, the seniority lists show that 31 or 32 of the 50 Alaska Dispatchers, depending on the appropriate CND, had more than ten years of seniority compared to one of the Virgin Dispatchers at the time of the merger. The VSIC does not dispute the average seniority year difference between the two groups, as reflected in the Alaska exhibits, 13.6 years for Alaska Dispatchers as compared to 4.6 years for Virgin Dispatchers.

Eliminating from the comparison Alaska Dispatchers with more than 20 years of seniority, as the VSIC proposes, there remains a significant longevity disparity between the two groups. There are 19 Alaska Dispatchers (over 40%) with less than 20 years of seniority but more years of seniority than the most senior Virgin Dispatcher. [Virgin Exhibit No. 2.] Neither the grandfathering of 20-year Alaska Dispatchers nor breaking ties by seniority recognizes the substantial difference in longevity between the two groups.

### Career Expectations

Career expectation begins with a consideration of the history, size, operations, health, and expectations for the future of each carrier. The Committees emphasize the positive evidence associated with their carriers and their standalone futures while diminishing that of the other carrier.

For example, the ASIC emphasizes the difference in size of the two carriers, comparing Alaska's 155 aircraft flown to Virgin's 63 aircraft and Alaska's 112 destinations to Virgin's 24 destinations. The VSIC emphasizes its unique culture, awards for customer service, healthy margins and liquidity beginning in 2013, evidence demonstrating Alaska's limited opportunity for growth without acquiring Virgin, and the premium price paid for Virgin by Alaska. It is not necessary or fair to disparage Virgin, as the VSIC submits, to make the comparisons in this case. The Arbitrator can conclude that Virgin was not a failing airline and that Alaska paid a premium price for Virgin while also concluding, as the record demonstrates, that Alaska was an older, larger, and more successful carrier, acquiring a younger, smaller and less successful carrier into its operations. The Arbitrator can conclude that the merger benefitted Alaska, whether it was to eliminate competition and/or to grow faster than it could organically, without concluding that career expectations were overall equal.

Comparatively, Alaska's long and exceptional history of stability and profitability weigh in its favor. The comparisons demonstrate that the integration of Virgin into Alaska's long and well-established operation increased the career expectations of Virgin Dispatchers more than it increased the career expectations of Alaska Dispatchers.

#### Terms and Conditions of Work

The Committees compare the pre-merger pay, vacation, productivity staffing, 401(k) and profit sharing, health and welfare plans, schedules and work rules, highlighting the differences favorable to their respective positions. For example, the VSIC emphasizes the higher pay rates in the first



four years and comparable pay rates in the fifth year of Virgin Dispatchers as well as data showing that Virgin Dispatchers' wages per block hour were higher than for Alaska Dispatchers. The ASIC emphasizes the higher rate of pay at the later steps where Dispatchers would be for most of their careers and the mature collective bargaining agreement brought to the merger by Alaska, the product of a collective bargaining relationship more than thirty years old. The VSIC emphasizes that Virgin Dispatchers also enjoyed excellent work rules, pay and benefits and without having to pay the two hours of pay per month in union dues.

The presumption, that Alaska Dispatchers were in all ways better off than the Virgin Dispatchers, would be incorrect, as the VSIC submits. However, it is undisputed that Alaska brought to the merger guaranteed protections and benefits, contrasted with the non-contractual benefits and policies at Virgin. As the ASIC maintains, such a finding is another factor weighing overall in favor of the Alaska Dispatchers.

#### Avoiding A Windfall

Both Committees recognize the concept of avoiding a "windfall," citing the *Northwest/Delta* Pilot award. The arbitrators in *Northwest/Delta* adopted the ALPA merger policy that included the admonition, "Avoid windfalls to either group at the expense of the other." [*Northwest Airlines/ Delta Air Lines*, Arbitrator Richard Bloch, Chair (2008), p. 13.]

The VSIC maintains that with the ASIC proposal, the Alaska Dispatchers gain 11% relative seniority/bidding power, while the Virgin Dispatchers lose 25 % of relative seniority/bidding power (a 36% spread). The VSIC maintains that such a result is unfair and provides a seniority windfall to the Alaska Dispatchers.

Citing the integration of pilots for *US Airways/America West*, the VSIC maintains that where there is a significant disparity in seniority between the merging groups, arbitrators will look at whether an adjustment to seniority based on date of hire is fair and equitable in order to maintain the relative seniority of the group with less seniority. However, clearly distinguishing *US Airways/America West* from the instant case, is the arbitrator's findings that the older carrier was the weaker of the two carriers and that the pilots of the older carrier had more to gain from the merger than the pilots of the smaller, younger carrier. [*US Airways and America West Airlines, Inc.*, Arbitrator George Nicolau, Chair (2007), p. 25.]

The VSIC also cites as on-point the decision in the *Pan American/National Flight Attendants* case, where the arbitrator found a "compromise attempt" appropriate that used both "length of service and ratio rank." [*Pan American and National Flight Attendants*, Richard Kasher, (1981), p. 66.] After weighing and assessing the economic evidence, Arbitrator Kasher concluded that the economic health of the two carriers was not so dissimilar as to justify one group of flight attendants benefitting substantially over the other. [*Pan American and National Flight Attendants*, p. 56.] Earlier in his decision, Arbitrator Kasher concluded that neither carrier was "on the brink of bankruptcy" at the time of the merger and that neither carrier was among the most profitable of the carriers at the time of the merger. [*Pan American and National Flight Attendants*, p. 48.]

Although, in the instant case, the Committees have a difference of opinion concerning the profitability of Virgin at the time of the merger, there is no dispute that Alaska's history shows it to be among the most profitable carriers at the time of the merger. When it comes to economic history, Virgin and Alaska were not equals, and such disparity distinguishes it from the *Pan*

*American/National* merger.<sup>5</sup> Arbitrator Kasher's compromise approach of using both length of service and ratio rank was also based on his finding concerning leaves of absence, which was not an issue in the integration of Alaska/Virgin Dispatchers.

The VSIC's proposal to integrate Virgin Dispatchers based on relative seniority would result in Virgin Dispatchers placed above Alaska Dispatchers. For example, Virgin Dispatcher Sandra Cea, who as most senior Virgin Dispatcher with a December 4, 2006 DOH, appears on the VSIC proposed integrated list above 17 of the Alaska Dispatchers with more seniority than Ms. Cea. [Virgin Exhibit No. 8.] The loss of competitive relative strength is a factor affecting bidding power and job security, as the VSIC maintains. However, the only way to integrate the list using relative seniority is to significantly weaken the bidding power and job security of Alaska Dispatchers. Although such an integration method would preserve the bidding power Virgin Dispatchers had prior to the merger, it would also ignore the considerable equities brought to the merger by Alaska.

The attrition of Virgin Dispatchers, which the VSIC mentions as offsetting the loss of relative position to Alaska Dispatchers, would be insufficient to render the VSIC proposal fair and equitable.<sup>6</sup> Contrary to the VSIC arguments, the record demonstrates that its proposal would not give sufficient weight to longevity, would not be balanced, and would create a windfall for Virgin Dispatchers.

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<sup>5</sup> Similarly, although the difference in longevity between the two groups favored the Pan American flight attendants; the average difference between the two groups (13.4 months) was not nearly as significant as in the instant case (nine years).

<sup>6</sup> The evidence demonstrates that there has also been attrition in the group of Alaska Dispatchers.

Also, contrary to the position of the VSIC, the record fails to demonstrate that the four-year adjustment proposed by the ASIC constitutes a windfall to Alaska Dispatchers. Although the VSIC compares the four-year adjustment to its relative seniority proposal, it does not dispute the testimony concerning the actual impact of the ASIC's proposed four-year adjustment.

The ASIC's expert witness, Daniel Akins, testified that the four-year adjustment proposed by the ASIC results in an "effective impact" of about "2.3 years on average." [Transcript p. 350.] As example, Mr. Akins explained the impact of the four-year adjustment on the top two Virgin Dispatchers as two and three positions respectively and generally described the effect of the four year adjustment as follows:

So the important thing is, is that if the person ahead of you is 20 years more senior and you're adjusting things by four years, there's no adjustment. You have to look at it relative to where they're moving on the scale. It's not four years. It's really where does that four years adjust your position on the scale, because a four-year doesn't really mean much on the scale in terms of bidding. . . . we're not talking about taking it away from pay scale or vacation attrition or accrual. [Transcript p. 351.]

As Mr. Akins also testified, comparing the actual effect of the ASIC proposal with the effect of the VSIC proposal demonstrates the relative fairness of the Alaska proposal. Given the equities involved, the evidence does not demonstrate that the four-year adjustment produces a harsh result or a windfall to Alaska Dispatchers.

With a straight dovetailing integration and no adjustment, seniority at Virgin would be treated as equal to seniority at Alaska. For example, Ms. Cea, with a Virgin seniority date of December 4, 2006 and only a two-month seniority advantage over Jessica

Henricksen, with an Alaska seniority date of February 3, 2007, would be positioned above Ms. Henricksen on a merged list using straight DOH. If the factors of career expectation and terms and conditions were equal for the merged carriers, dovetailing would be considered fair and equitable. Because they are not equal, dovetailing is not fair and equitable.

The ASIC proposal provides Virgin Dispatchers credit for their years working as dispatchers in the airline industry while also recognizing the significant differences in the two carriers. As a group, Virgin Dispatchers will be at the bottom of the list but that is due, in significant degree, to the fact that Virgin Dispatchers are joining a much older and more established carrier. Considering the fact that the merger also means that Virgin Dispatchers are joining an unusually successful carrier where they will have guaranteed terms and conditions of employment, the adjustment proposed by the ASIC cannot be considered unfair or inequitable.

The ASIC proposes a CND of the closing date rather than the announcement date, as proposed by the VSIC. The record demonstrates that the ASIC's proposal would result in a windfall for Dispatchers hired by Alaska between the announcement and closing dates, as discussed below.

#### Constructive Notice Date

The Committees disagree on the appropriate date for charging dispatchers with constructive notice that they will be integrated on a date of hire basis, regardless of the seniority integration method used for those hired before that date. The VSIC maintains that the date of the merger announcement, April 4, 2016, is the appropriate CND; while Alaska maintains that the closing date of the merger, December 14, 2016, is the appropriate CND.

Both Committees cite the decision in *Federal Express/Flying Tiger* as instructive on the CND issue. While the VSIC emphasizes the arbitrator's opinion that the appropriateness of the merger announcement date as the CND is "widely recognized," the ASIC points to the arbitrator's opinion that "special circumstances" may make another date more appropriate. [Virgin Pre-Hearing Brief, Appendix A, Exhibit No. 10, *Federal Express/Flying Tiger* Pilot Award, Arbitrator George Nicolau (1990), p.2.]

The ASIC maintains that there are two "special circumstances" that justify using the closing date rather than the announcement date as the CND. First, the ASIC maintains that using the announcement date as the snapshot date would give an unfair advantage to Henry Chi, a Dispatcher Virgin hired on October 24, 2016 but Alaska rejected after interviewing. [Transcript pp. 506-507, 509-510.] If date of announcement is used as the snapshot date, Mr. Chi would leapfrog the Dispatchers hired by Alaska during the round of interviews where he was rejected. The ASIC maintains that such an unfair result is a sufficient "special circumstance" that makes the closing date more appropriate than the announcement date.

The ASIC also submits that another reason for finding the closing date more appropriate than the announcement date is the delay that occurred between the announcement date and the closing date. ASIC Member Aaron Glorioso provided the following explanation for believing the merger might not go through as a result of the delay:

They were targeting a September date for closing and everything was leading up to that. And there was a big celebration planned and it took us all off our shifts and we were all going to go to San Francisco to celebrate. And two or three days before that, everything was canceled, and closing was not going to happen. And then there was lots of speculation in the news and around the office that maybe

this wasn't going to happen. And it wasn't until -- it was left to linger until December, things finally started to maybe come together as far as what was going to need to happen to get DOJ approval. And so it's not done until it's done. [Transcript pp. 502-503.]

The ASIC submits that this delay and the uncertainty it created for at least two months is another “special circumstance” that necessitates using the closing date as the snapshot date for integrating the seniority lists.

In the case cited by the Committees, Arbitrator Nicolau provided the following direction on the circumstances that could justify a date later than the announcement date: “Usually, the choice of a later date has come about because of particular circumstances: an agreement by all concerned; substantial doubt that the merger would ever occur, principally because of government opposition to the transaction or open hostility of one proposed partner to the other; the sheer complexity of the transaction as in *Continental/People’s Express*, etc.” [Virgin Pre-Hearing Brief, Appendix A, Exhibit No. 10, *Federal Express/Flying Tiger*, p. 1.] Contrary to the ASIC’s argument, however, Mr. Glorioso’s testimony fails to demonstrate that the delay created substantial doubt that the merger would ever occur. Mr. Glorioso’s conclusion that “it’s not done until it’s done” could be said about any merger.

The ASIC cited no case as an example of “special circumstances” that resulted in the closing date becoming the CND. In the *Federal Express/Flying Tiger* case, Arbitrator Nicolau concluded that the appropriate CND was the announcement date of the merger, explaining that the circumstances convinced him the consummation of the merger was “only a matter of time.” [Virgin Pre-Hearing Brief, Appendix A, Exhibit No. 10, *Federal Express/Flying Tiger*, p. 3.]

Similarly, in the instant case, the evidence fails to demonstrate circumstances to show that, despite the delay, the merger was anything other than a matter of time.

The ASIC's proposal to correct a perceived "unfair advantage" to one Virgin Dispatcher by using the closing date as the CND would create an unfair advantage for Alaska Dispatchers hired after the announcement. Four Alaska Dispatchers hired on November 14, 2016 would be higher on the integrated list than eight Virgin Dispatchers, five of whom had a year or more of seniority with Virgin before the merger announcement. [Alaska Exhibit No. 1.] As the VSIC points out, using the announcement date as the CND is consistent with the *Jet America/Alaska* Pilot decision, where the arbitrator found the announcement date, rather than a later date, as the appropriate CND, because a later date would have granted as much as a year's seniority to new hires over pilots who had already been working. [*Jet America/Alaska* Pilot Award, Arbitrator Richard Bloch (1989), p. 16.]

Contrary to the position of the ASIC, the record fails to demonstrate a special circumstance justifying the use of the closing date rather than the announcement date as the CND.<sup>7</sup> Accordingly, the April 4, 2016 announcement date is the CND.

#### Evidence Not Relevant to Decision

ASIC Member Aaron Glorioso testified that "people would be very upset" and there would be "chaos" in the office if the VSIC's proposal were to be implemented by the Arbitrator. [Transcript p. 498.] As the VSIC asserts, a fair and equitable solution is not based on appeasement

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<sup>7</sup> Although during opening arguments the ASIC relied in part on the *Alaska/Virgin* Pilot decision (Transcript p. 37), the ASIC did not carry forward the argument. Moreover, as the VSIC asserts, the Pilot's Protocol Agreement set the merger announcement date as the CND in the Pilot seniority integration. [*Alaska/Virgin* Pilot Award, p. 3.]



of one side's emotional reaction to the integration.

Also, contrary to the ASIC's argument, the opinion of its expert witness, undisputed by the VSIC's expert, that the ASIC's proposed seniority list is fair and equitable is to be expected and does not influence the outcome in this case. Similarly, and contrary to the VSIC argument, the agreement of the ASIC expert on cross-examination that relative seniority is the most accurate measure of a person's competitive bidding strength (Transcript p. 392) is unpersuasive that a seniority integration based on relative seniority is fair and equitable in this case.

#### Virgin/Alaska Pilot Decision

Both Committees cite the October 11, 2018 *Virgin/Alaska* Pilot Award as supporting their respective proposals.<sup>8</sup> As the VSIC points out, the pilot board of arbitrators adopted a formula for integration of the seniority lists that assigned a 60% weight to longevity and a 40% weight to status and category. However, contrary to the position of the VSIC, the results are not comparable to the VSIC's proposal for integrating Dispatchers.

In the pilot case, the arbitrators found that, because there is a significant increase in pay for a first officer upgrading to captain and because Virgin pilots upgraded in approximately five years as compared to approximately twelve years for Alaska pilots, the disparity created an important equity for Virgin pilots. [*Alaska/Virgin* Pilot Award, p. 15.] The pilot board concluded that "When job security and upgrade opportunities are taken together, the career expectations for

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<sup>8</sup> As both groups were represented by ALPA, the April 2009 ALPA merger policy governed the seniority list integration. The April 2009 ALPA merger policy required the arbitrators to consider three factors: longevity, pilot career expectations, and status and category. [*Alaska/Virgin* Pilot Award, Fredric Horowitz (Chair), Stephen Crable and Dennis Nolan, p. 12.]

pilots at both airlines were good, but those of the Alaska pilots were better, more secure and more predictable.” [*Alaska/Virgin Pilot Award*, p. 15.] As a result of finding that longevity was more important than status and classification in constructing a merged list, the pilot board assigned a 60% weight to longevity and a 40% weight to status and category. [*Alaska/Virgin Pilot Award*, pp. 16-18.]

The counterbalancing equity in the pilot case is not present in the instant case. As the ASIC maintains, the record fails to demonstrate an equity consideration similar to status and category for integrating the seniority of Dispatchers.

The VSIC also submits that the ASIC’s expert witness, who was also the expert in the pilot case, agreed on cross-examination that, as a result of the integration model used in the pilot case, there could be a junior Virgin captain, a person who has less length of service overall, operating a captain’s position while a pilot with more service on the Alaska side is sitting in the co-pilot’s seat earning less money. [Transcript p. 388.] However, such a result is the product of factoring substantial weight for status and category, a factor not relevant to the integration of the Virgin and Alaska Dispatchers. Although considering such an equity would be similar to considering relative seniority, as the VSIC maintains, such a consideration would be baseless for integrating groups of employees where there are not categories.

There are findings in the pilot case similar to the findings here. For example, the pilot board concluded, as here, that Alaska was in a “stronger economic position, with a far longer history of stability and profitability” as compared to Virgin. [*Alaska/Virgin Pilot Award*, p. 15.] As the

pilot board also concluded, “Relative seniority contradicts the concept of longevity.”

[*Alaska/Virgin Pilot Award*, p. 16.]<sup>9</sup>

### Virgin/Alaska COPS Integration

The VSIC compares the integration of Dispatchers with the case involving the integration of Alaska and Virgin Clerical, Office and Passenger Service (COPS) Employees. [*Alaska/Virgin*, Neutral’s Report and Recommendations, Joshua Javits (2017).] As in the instant case, Virgin COPS employees were unrepresented before the merger.<sup>10</sup> However, unlike the instant case, the seniority integration involved, for the most part, the application of the internal policy of the International Association of Machinists and Aerospace Workers (IAM). [*Alaska/Virgin COPS Report and Recommendations*, p. 1.] The Report notes that, “In seniority integrations, the IAM’s long-established internal policy is to merge seniority according to date of entry into classification. [*Alaska/Virgin COPS Report and Recommendations*, p. 15.]<sup>11</sup> The Report goes on to specify by example the many seniority integrations where the IAM consistently advocated and applied its seniority integration policy based on entry date regardless of the details of the merger. [*Alaska/Virgin COPS Report and Recommendations*, p. 16.]

The COPS analysis addresses relative seniority order within each pre-merger group as it relates to avoiding re-shuffling that changes the relative positions of employees within their pre-

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<sup>9</sup> The pilot board considered and rejected relative seniority chart evidence, concluding that relative seniority was not a significant consideration in determining a method for merging the pilot lists. [*Alaska/Virgin Pilot Award*, p. 16.]

<sup>10</sup> The IAM became the representative of the Virgin COPS employees pursuant to a voluntary recognition on December 14, 2016. [*Alaska/Virgin COPS Report and Recommendations*, p. 5.]

<sup>11</sup> The Report also notes the difference between such “dovetailing” and “end tailing” where one group is simply added to the end of the seniority list of the other group. [*Alaska/Virgin*, COPS Report and Recommendations,, p. 15.]

merger groups. [*Alaska/Virgin*, COPS Neutral’s Report and Recommendations, p. 20.] The Report does not support an integration that would preserve relative position, as the VSIC proposes for the Dispatchers.

#### Other Cases Cited

In support of its position, the ASIC cites the *AirTran/Southwest* Flight Dispatcher Award.<sup>12</sup> [*AirTran/Southwest*, TWU Local 540 and 550, John Barnard (2011), p. 20.] As the VSIC submits, however, there are many facts that distinguish the *AirTran/Southwest* case from the instant case. For example, both groups of dispatchers in *AirTran/Southwest* were represented by Transport Workers Union of America (TWU), but by different locals. The parties’ primary disagreement was whether or not the TWU airline merger policy, which called for dovetailing the seniority lists, was controlling. As the VSIC maintains, the arbitrator’s decision to implement the Southwest proposal demonstrates that he based his comparison on the evidence submitted by Southwest Airlines.<sup>13</sup> The comparisons summarized by the arbitrator and based on the evidence provided by Southwest show that there are many similarities between the *AirTran/Southwest* flight dispatcher case and the instant case. For example, the differences in longevity and career expectations between the merging groups favored Southwest, as they favor Alaska Dispatchers in the instant case.<sup>14</sup>

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<sup>12</sup>The VSIC points out in its post-hearing brief (p. 5) that prior to arbitration the ASIC’s proposal was based on one comparison case, the *AirTran/Southwest* decision of Arbitrator John Barnard but only shortly before arbitration added other cases. VSIC did not present the allegation in the form of an objection; therefore, no ruling is necessary. However, in the Arbitrator’s experience, the addition of cites at arbitration is not unusual.

<sup>13</sup>AirTran relied solely on its argument concerning TWU merger policy and did not compare itself with Southwest.

<sup>14</sup> The average length of service for AirTran dispatchers was 6.9 years as compared to 12.3 years for Southwest dispatchers. [*AirTran/Southwest* , TWU Local 540 and 550, p. 20.]

As the VSIC's expert witness, William Swelbar, testified, there were differences in the financial statistics for Southwest and AirTran, as compared to those of Alaska and Virgin, as well as differences in the reasons for the Southwest/AirTran merger, as compared to the reasons for the Alaska/Virgin merger. Also, contrary to the testimony of Mr. Glorioso, the Southwest/AirTran case is not "precedent" (Transcript p. 500) in the instant case. However, the evidence demonstrates, as Mr. Glorioso testified (Transcript p. 500), that in some respects the ASIC's case is even stronger than the Southwest case.

The VSIC maintains that another case cited by the ASIC, the 1989 *Northwest Airlines/Republic Airlines* Pilot Award, actually supports the VSIC proposal rather than the methodology proposed by the ASIC. As the VSIC points out, Arbitrator Thomas Roberts rejected the proposals of both groups and concluded that an integrated date of hire list with some conditions and restrictions was fair and equitable.<sup>15</sup> A consideration of economic factors affecting the two carriers caused Arbitrator Roberts to conclude that each pilot group contributed substantially to the security and advancement of their combined career opportunities, distinguishing it from the instant case. Also, unlike the instant case, there is no indication in the *Northwest Airlines/Republic Airlines* case to suggest that there was the wide disparity with respect to longevity that is the factor fundamentally distinguishing the two groups in the instant case.

The VSIC maintains that the 2013 *Continental/United* Pilot Award provides additional support for preserving pre-merger percentile ranking. The class and status factor brings

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<sup>15</sup> Arbitrator Roberts decided the case before him under the January 1985 ALPA merger policy.

relative seniority into the equation, as the VSIC contends. However, as the ASIC maintains, the record fails to show that class and status are relevant to the integration of Dispatchers in the instant case. Moreover, the arbitrators' conclusion in the *Continental/United* case, that neither carrier was clearly superior to the other overall, is also not as fitting in the instant case.

The VSIC cites the 1990 *Delta/Western Flight Attendants Award* decided by Arbitrator Thomas Roberts. The complexities of the case make a thorough comparison impractical. In summary, however, the integration method selected by Arbitrator Roberts, the one proposed and implemented by Delta management, recognized the pre-merger bidding power of groups, who it appears did not have the widely disparate longevity that exists in the instant case, as well as other factors peculiar to flight attendants.

As the VSIC maintains, many of the comparison cases cited by the ASIC (e.g. *Chautauqua/Shuttle America Pilot Award*) bear no resemblance to the Alaska/Virgin merger. However, as the ASIC maintains, the analysis in the *Federal Express/Flying Tiger Pilot Award*, discussed earlier in the section on CND, is useful to the discussion here.<sup>16</sup> As in the instant case, the profitability statistics of the merging carriers were radically different, significantly favoring Federal Express. Although, like Virgin, Flying Tiger was profitable at the time of its merger with Federal Express, its history of profitability was not a match for Federal Express. Arbitrator Nicolau rejected the Flying Tiger proposal, finding that it failed to recognize the difference between the conditions of the two airlines, i.e. finding Flying Tiger

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<sup>16</sup> There are also similarities in the 1989 *Alaska and Jet America Award* cited by the ASIC. However, it is also a pilot case, decided under the ALPA merger policy relevant at the time of the merger, and considers factors not relevant to the integration of the Alaska/Virgin Dispatchers.

not “markedly robust,” and not “the beneficiary of a sustained period of well-being.” [*Federal Express/Flying Tiger Pilot Award*, Arbitrator George Nicolau (1990), p. 29.] The description is also fitting for Virgin at the time of the merger. Arbitrator Nicolau also rejected the Federal Express proposal; however, unlike the integration in the instant case, longevity favored the weaker airline.

The cited cases demonstrate that each carrier and each group of employees bring value to a merger, as the VSIC submits. However, as the ASIC submits, the VSIC proposal cannot be reconciled with any cited decision relating to the fair and equitable standard.

### Conclusions

A relative seniority integration as proposed by the VSIC would provide a windfall to Dispatchers with the younger, less established, weaker airline at the expense of the Dispatchers with the older, more established, stronger airline. Dovetailing affords equal weight to seniority at the pre-merger carriers. Given the equities in this case, affording equal weight to seniority at pre-merger Virgin and Alaska, is not fair and equitable.

Contrary to the VSIC position, the four-year adjustment is not essentially the same as stapling the Virgin Dispatchers to the bottom of the integrated list. The ASIC proposed list shows some Virgin Dispatchers above Alaska Dispatchers. [Alaska Exhibit No. 1.] The proposed lists also show 27 Dispatchers hired by Alaska since the merger (Virgin Exhibit No. 8), further protecting the bidding power and job security of those hired before the merger.

### Miscellaneous Issues

In its pre-hearing brief, the VSIC raised the possibility of two miscellaneous issues, preserving the relative order among employees on each list and a tie-breaking system. The Committees expressed no disagreement on either issue during the hearing or in their post-hearing briefs. Also, each Committee bases its proposed integrated list on Dispatcher hire date, rather than company hire date. Therefore, such matters are not addressed in this decision.



AWARD

As described above, the seniority integration shall be implemented with a CND of April 4, 2016. The four-year adjustment for Alaska Dispatchers shall be implemented with the CND of April 4, 2016, as reflected in Alaska Exhibit No. 2. The Arbitrator retains jurisdiction over any dispute that arises involving an interpretation of the award.

DATED: March 5, 2019

A handwritten signature in cursive script, appearing to read "Stephen D. Lyon".

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Arbitrator