What is FAIR AND EQUITABLE

Seniority Integration and Arbitration

In the airline industry, seniority integration must be done on a fair and equitable basis. Prior to deregulation, this premise was covered by the Civil Aeronautics Board in the Allegany Mohawk labor protective provisions, or LPPs. Section 3 and 13 of the LPPs are generally cited in the mergers and acquisitions provisions of current collective bargaining agreements. This is true for both the AA mechanics contract as well as the US Airways mechanics contract. Sections 3 and 13 of the LPPs are now included in principle in the McCaskill-Bond amendment governing airline mergers. But what is the accepted definition of "fair and equitable"?

When considering airline seniority cases involving specific mergers and various crafts and classes of employees, arbitrators frequently consider the following approaches or methods that advocate for one or more of the parties involved in the arbitration:

1. The surviving group principle, where the acquiring company's employees receive seniority preference over the acquired employees;
2. The follow-the-work-principle, were seniority is allocated by a ratio of what assets each individual airline contributed to the combined company;
3. The absolute-rank principle, where employees retain their respective rank on the newly merged seniority list;
4. The ratio-rank principle, where a ratio of the employees of each group to be merged are assigned places on the combined seniority list according to a ratio of total employees;
5. The length-of-service principle, where all employees are combined by their current seniority date, regardless of which airline they work for today.

These methods are described in the book, How Arbitration Works (Sixth Edition Elkouri, Reuban; BNA Books).

If two groups are represented by separate unions and those unions can't agree on how to integrate seniority, they move the process to arbitration. In arbitration, a neutral third party (the arbitrator) decides the method of seniority integration for the affected craft and class, not the membership nor the unions that represent them. Sometimes the affected parties simply accept the arbitrator's decision even if the arbitrator's approach differs dramatically from their own sense of what is fair and reasonable. Other times, one or more affected parties to the arbitration seek to vacate the arbitrator's decision in federal court. Federal court litigation to overturn an arbitration decision can be – and usually is – a costly and time-consuming process, and at the end of the day the court almost always upholds the arbitrator's decision.

The five methods identified above create a number of glaring concerns for mechanics working at American. Consider, for example, the application of method No. 1 above (the surviving group principal). American has just been acquired through a stock deal in bankruptcy. An arbitrator easily could determine that because US Airways is the acquiring carrier, the US Airways mechanics therefore deserve more seniority than the American mechanics.

The same result could also arise if an arbitrator decided to apply method No. 2 (the follow-the-work method). In this regard, American's assets were purchased by US Airways in bankruptcy, and an arbitrator could decide that, as a result, US Airways brought a lot more to the merger table than bankrupt American, thereby justifying a seniority list favoring US Airways mechanics over American mechanics.

Now let's consider Methods 3 and 4, namely, the absolute-rank and rank-ratio methods. If an arbitrator used either of those methods here, it would result in a number of mechanics for both mechanic groups having less seniority than they had under their prior, stand-alone seniority lists, based on a decision as to the amount of "value" that the carrier (not the mechanics) brought to the merger. For example, using the absolute-rank ratio, consider a US Airways mechanic who has, say, ten years of seniority but is at 50% on the stand-alone US Airways mechanics seniority list. Consider also a mechanic at American who has, say, fifteen years but is at 49% on his stand-alone American mechanics seniority list. In this example, the US Airways mechanic would be senior on the combined list. The same outcome would happen in a rank-ratio using a formula of two-for-one or three-for-one or whatever ratio an arbitrator may consider fair.

Such results wouldn't have happened under the fifth method identified above (length-of-service). Application of the length-of-service method results in the integration of seniority lists based on the dates of hire/dates of entering the craft, and – unlike the first four methods – focuses first and foremost on the affected employees, not the fortunes and misfortunes of their carriers.

The best way to protect your seniority is simply to protect your date of entering the craft. The Teamsters strongly believe that no one should get an unfair advantage using any of the first four methods. Those methods focus primarily on the economic plight of the carriers, while the employees are simply the beneficiaries or victims of their employers' business decisions – some of which may have been good and others of which may have been bad, but all of which had little or nothing to do with what was best for their employees and their futures.

Look at the stated positions of the unions in this campaign. Which groups are advocating a reckless path that would lead to arbitration and disadvantage many members, and which union is looking to the future in a responsible manner to protect your seniority? The answer is clear: only the Teamsters will protect your seniority in the fairest way possible.

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