

In the Matter of Arbitration:

US AIRWAYS, INC.

and

CWA-IBT PASSENGER SERVICE
ASSOCIATION

Grievance No. 01-03-14

Non-Rev Boarding

US AIRWAYS-CWA-IBT SYSTEM BOARD OF ADJUSTMENT

Kimberly Barboro, Union Appointed Member
Lucretia D. Guia, Esq., Carrier Appointed Member
Ira F. Jaffe, Esq., Neutral Referee

APPEARANCES:

For the Union:

Judiann Chartier, Esq.
(CWA Headquarters Counsel)
Velvet Hawthorne, CWA Staff Representative
Colleen Campbell, CWA Law Fellow

For the Carrier:

Mark W. Robertson, Esq.
Sloane Ackerman, Esq.
(O'Melveny and Myers, LLP)
Allen Hemenway, Vice-President, Labor Relations
Cari Ulrich, Managing Director, Labor Relations
Ronald L. Harbinson, Managing Director, Labor Relations (Retired)
Darin N. Lee, Ph.D., Compass Lexecon

BACKGROUND

An arbitration hearing was held in this matter on January 23, 2015. The Parties were unable to agree on the verbiage of the issue presented for decision, but there was no dispute regarding the substance of the issue presented to the Board for decision. The Parties further agreed that the Board could formulate the statement of the issue, if necessary, as part of its decisional process. A transcript was prepared and was agreed

to constitute the official record of the hearings. Post-hearing briefs were received on March 26, 2015.

This matter arises under the Parties' current collective bargaining agreement ("Agreement"), effective January 6, 2005. The grievance challenges the implementation of a new travel policy applicable to the combined operations of American Airlines ("Legacy American") and US Airways ("Legacy US Airways"). The merged organization is referred to hereinafter as the "Carrier."

Legacy American maintained a travel policy that used time of check-in, rather than date of hire seniority as previously was applicable at Legacy US Airways, as the secondary factor for determining boarding priority for active employees, certain retirees, and family members of active employees engaging in on-line non-revenue space available travel. The Carrier adopted a single travel policy that became applicable to Legacy American and Legacy US Airways employees and that provided for the use of time of check-in as a means of determining boarding priority within categories or "buckets" of on-line non-revenue travel. The Union asserts that Article 8.A.1.b. of the Agreement precluded the Carrier from changing its non-revenue space available travel priorities to provide that time of check-in would be substituted for date of hire seniority as the basis to determine priority within each boarding category. The Carrier asserts that Article 8 does not restrict its managerial prerogative to apply to the bargaining unit the same non-revenue space available travel priorities that it applies to all of its other employees and that Article 8.A.1.b., must be read in context with Articles 3.H. and 34.C., and is limited to identifying the type of seniority that is to be applied when the travel policy provides for seniority to be utilized for boarding priority.

Relevant Contractual Provisions

Article 3, Recognition and Scope, of the Agreement states in relevant part that:

H. The Union recognizes that the Company shall have sole jurisdiction, subject to the terms of this agreement, over the management and operation of its business, the direction of its working force, the right to establish rules and regulations, to maintain efficiency in its place of employment, and the right of the Company to hire, promote, demote, select for training, discipline and discharge employees for just cause. It is agreed that the rights listed here shall not be deemed to exclude other rights of management not listed which do not conflict with other provisions of this agreement.

Article 8, Seniority, of the Agreement states in relevant part that:

A. Date of Hire Seniority is defined as continuous US Airways, Inc. service in any department.

1. Date of Hire Seniority is applied to:

- a. Vacation accrual
- b. boarding for on-line non-revenue space available travel
- c. service awards

2. Passenger Service Seniority is defined as continuous service in a CWA covered position within the Passenger Service Organization. Concurrent with the effective date of this agreement, employees occupying a CWA covered position shall be awarded a Passenger Service Seniority date equal to their Date of Hire Seniority or equal to their Bidding Date Seniority where applicable. Passenger Service Seniority shall be applied to:

- a. bidding of shifts/days off
- b. bidding of vacation periods
- c. filling of vacancies
- d. reductions in force/displacements/recalls
- e. overtime assignment where seniority is used

...

B. Pay Date Seniority is defined as continuous service within the Passenger Service Organization. . . .

Article 34, General and Miscellaneous, of the Agreement states in relevant part that:

C. Employees covered by this agreement and their immediate families will be granted the same transportation privileges on the Company's system as may be established by Company regulations for all personnel.

Evidence Regarding the Carrier’s Pre-Merger Boarding Procedures for On-Line
Non-Revenue Space Available Travel

The material facts in this matter are not in dispute. The bargaining unit consists of Passenger Service Employees, including Reservations staff (including Sales Agents, City Ticket Office Agents, and City Ticket Office Lead Agents), Customer Service Agents, Customer Assistant Representatives, and Customer Service Supervisors.

US Airways and the Union have enjoyed a collective bargaining relationship for many years. In or about December 2013, the Carrier was created from the combination of Legacy American and Legacy US Airways.

Prior to the Carrier’s merger with Legacy American, boarding priority for on-line, non-revenue space available travel at US Airways was determined on the basis of three factors. The first determination of priority for available seats was made on the basis of certain tiers, or “buckets” – e.g., one bucket was for active employees of US Airways and its wholly owned subsidiaries, another bucket was for retired employees of US Airways and its wholly owned subsidiaries, and yet another bucket was for employees of non-wholly owned subsidiaries of US Airways and unaccompanied dependents of US Airways and wholly owned subsidiary retirees. Within some buckets, the secondary method of determining priority was determined on the basis of date of hire seniority. Other buckets utilized the traveler’s time of check-in as a secondary method. Where a tertiary method of determining priority was used, it would generally be the traveler’s check in time. There were 11 buckets of boarding priorities for employee travel at the US Airways prior to the merger. Each category had a secondary method for determining priority if there were multiple individuals within the category who were seeking to travel on a particular flight. The buckets and boarding priority methods in effect for Legacy US

Airways employees (including, but not limited to, the members of the bargaining unit), retirees, and eligible dependents, prior to the changes that were grieved in this case were as follows:

Priorities	Eligible Persons	Boarding Method
SA1P	<ul style="list-style-type: none"> Personal travel for active/retired employees (mainline or wholly-owned subsidiaries) and their accompanying eligible family members traveling on a Vacation pass (SA1P pass) electronically credited in travel profile. This does not include guest pass travelers or family members traveling with working crew members or with employees flying P52B for company business. Pre-approved business travel for Union officials. 	Boarding by date of hire (year/month/day), then check-in time
SA2P	<ul style="list-style-type: none"> Emergency travel for retired employees. 	Boarding by check-in time.
SA3P	<ul style="list-style-type: none"> Personal travel for active employees (mainline or wholly-owned subsidiaries) and their accompanying eligible family members and/or Guest Pass riders. This includes eligible family/guest pass travelers accompanying working crew members or employees flying P52B for company business. 	Boarding by date of hire (year/month/day), then check-in time
SA4P	<ul style="list-style-type: none"> Personal travel for retired employees and their accompanying eligible family members and/or Guest Pass riders. Unaccompanied eligible family members (spouse, domestic partner dependents, registered guest, parents) of active mainline or wholly owned subsidiary employees. Employees on leave/furlough. Survivors under the survivor travel program. 	Boarding by date of hire (year/month/day), then check-in time
SA5A	<ul style="list-style-type: none"> American mainline and wholly-owned subsidiary employees, retirees and accompanied or unaccompanied eligible family members 	Boarding by time of check in.
SA5P	<ul style="list-style-type: none"> Unaccompanied family members of retired employees. US Express non-wholly owned active or retired employees flying on a US mainline flight.* Unaccompanied family members of employees on leave/furlough. 	Boarding by date of hire (year/month/day), then check-in time
SA6P	<ul style="list-style-type: none"> Unaccompanied family members of non-wholly owned US Express active or retired employees. 	Boarding by date of hire (year/month/day), then check-in time

Priorities	Eligible Persons	Boarding Method
SA6O	<ul style="list-style-type: none"> Authorized OAL employees flying for company business. 	Boarding by time of check in.
SA7P	<ul style="list-style-type: none"> Unaccompanied Guest Pass travelers of mainline and Express (wholly owned and non-wholly owned) employees and retirees. 	Boarding by time of check in.
SA8P	<ul style="list-style-type: none"> Star Alliance carrier employees and eligible pass travelers flying non-revenue/space available on an interline agreement. 	Boarding by time of check in.
SA9P	<ul style="list-style-type: none"> Applicants, interviewees, and new hires of US Express non-wholly owned subsidiaries. OAL employees and their eligible family members flying on an interline agreement (including vendor employees supporting US in Caribbean and Latin America Regions). 	Boarding by time of check in.

The Carrier utilized a software package known as “Shares” to administer its non-revenue travel bookings. Previously, it had used a software package known as “Sabre” for the same purpose.

Allen Hemenway, Vice President of Labor Relations for the Carrier and, previously, Vice President of Labor Relations for US Airways, testified that he had been involved in the negotiations between the Parties that had resulted in the Parties’ 1999 collective bargaining agreement, which was both the immediate predecessor to the

current Agreement and the first collective bargaining agreement between these Parties. He stated that the language of Article 8.A.1.b. had originated from a US Airways promulgated Personnel Policy Guide that had predated the 1999 Agreement. He noted that the language had initially been developed to integrate the non-revenue travel policies of the US Airways, PSA, and Piedmont Airlines when those three airlines had merged. Mr. Hemenway stated that he had also been involved in the negotiation of Article 34.C. of the Agreement and noted that the language of Article 34.C. had been proposed by the US Airways in order to protect its right to establish non-revenue travel policies. He noted that US Airways had agreed that it would be required to grant to members of the bargaining unit and their immediate families the same transportation privileges made available to other US Airways employees.

Mr. Hemenway testified that these provisions, along with the management rights provision found at Article 3.H. had remained unchanged from the 1999 Agreement to the current Agreement. He testified further that he did not recall any discussions or comments during contract negotiations regarding any restriction on the ability of US Airways to change its secondary boarding priority methodology to something other than date of hire seniority. He stated that he would have viewed such a restriction as a significant issue and noted that, because of the resulting impact on boarding priority for other bargaining units, US Airways would not have agreed to be restricted to the use of date of hire seniority for boarding priority.

Violet Hawthorne, a Passenger Service Employee for the Carrier and a Staff Representative for the Union, testified that she had been part of the Union's bargaining team for the negotiations that had culminated in the Agreement.

The record reflects that US Airways had used date of hire seniority as a secondary basis for determining boarding priority since at least 1999 and that US Airways used date of hire seniority for all employees, represented or not, who were classified into one of the buckets listed above which based boarding priority on date of hire. US Airways had long used date of hire seniority as a basis for determining boarding priority, although the Legacy America West operations had used time of check-in instead. Upon the merger of those two airlines, the travel policy of the much larger US Airways operations were applied system wide. Mr. Hemenway testified that US Airways had done so because the US Airways employees who formed the majority of the combined airline workforce had been accustomed to that method.

In or about 2007, US Airways began to utilize year of hire seniority, rather than date of hire seniority, as a secondary boarding priority because of limitations in the reservations management software then being used. The Union subsequently grieved the failure to use date of hire seniority, and the grievance was withdrawn the following year after the reservation management system was reprogrammed to utilize date of hire seniority as a secondary boarding priority.

Legacy American had used time of check-in, rather than date of hire seniority, as a basis for determining boarding priority. The Passenger Service Workers employed by Legacy American had not been represented until September 2014, when those workers voted to join the CWA-IBT Association.

Evidence Regarding Post-Merger Pre-Integration Boarding Procedures for On-Line Non-Revenue Space Available Travel

In January 2014, the Carrier announced that it would apply a single on-line non-revenue space available travel policy to its Legacy US Airways and Legacy American

flights and that the same travel policy would be applicable to all employees regardless of whether prior to the combination they were US Airways or American employees.

Further, the Carrier announced that, with some modifications not relevant to this dispute, the former American system which used time of check in as a way of determining priority within buckets or tiers would be applied. The practical effect was to eliminate date of hire seniority as a basis for prioritization of boarding such that those individuals falling within the same bucket would in all cases now be entitled to board according to the earliest check-in for the flight (with the ability to check-in beginning 24 hours prior to scheduled departure). Prior to the effective date of the change, Carrier employees were given boarding priority within tiers for on-line non-revenue space available travel on US Airways flights based on date of hire seniority and on Legacy American flights based on time of check-in.

The Union filed the instant grievance on January 3, 2014. The record reflects that the US Airways fleet services bargaining unit, represented by the International Association of Machinists, had also filed a grievance regarding the elimination of seniority based boarding priority, but that such grievance had not yet been arbitrated as of the date of the hearing in this matter.

In or about September 2014, the Carrier implemented the new check-in based pre-integration boarding priorities. Ms. Hawthorne testified that the Union had requested that the Carrier delay implementation of the change pending the resolution of the instant grievance, but that the Carrier had declined to do so. Cari Ulrich, Managing Director of Human Resources for the Carrier, testified that the change had been implemented once the Carrier had standardized the boarding priority buckets applicable to the US Airways

and Legacy American workforces.

The record reflects that the total Legacy US Airways workforce consists of approximately 40,000 employees, while the Legacy American workforce consists of approximately 75,000 employees. The bargaining unit represented by the CWA-IBT Association consists of approximately 6,500 employees employed by the Carrier; the Association also presently represents another 11,500 Passenger Service Employees employed by Legacy American. Ms. Ulrich testified that the Carrier had determined that secondary boarding priority would be determined on the basis of time of check-in because the larger employee group – the Legacy American workforce – had traditionally used that method and was already accustomed to it. The process thus mirrored in that respect the decision to apply to the much smaller America West the then existing US Airways travel policy following the combination of those two carriers.

The Carrier plans to eventually use an updated version of the Sabre software package to administer its non-revenue travel bookings. In the interim, bargaining unit employees use the Shares software to check and list themselves for flights operated by the Carrier and use a web based program to do the same for flights operated by Legacy American. The Carrier plans to implement a version of its existing NRTP software as an interim integrated employee travel solution in the fall of 2015. Ms. Ulrich testified that it would be an extremely difficult undertaking to program the iteration of Sabre to be used by the Carrier to utilize a seniority based boarding priority system.

Ms. Hawthorne explained that, with a date of hire boarding priority and her hire date of April 15, 1985, she had been able to review the number of seats sold and the passenger boarding totals for any flight and, days or weeks before the flight's scheduled

departure, determine with a reasonable degree of accuracy whether she (and any travel companions) would be able to board the flight while in non revenue travel status and could plan her hotel and rental car arrangements based on the likelihood that she would be able to take the flight. She noted that, under the change to time of check-in, she has no idea of whether she will get on a flight until the check-in period begins. Ms. Hawthorne also noted that, if a member of the bargaining unit is in duty status (or is traveling on Carrier business (e.g., for training)) when the 24 hour check-in window begins for a flight that the employee wishes to take, the employee will not be able to check in promptly for the flight, leaving that employee in a worse position than that which he or she might have enjoyed with seniority-based boarding priorities.

Darin N. Lee, Ph.D., a statistician employed by Compass Lexecon called by the Carrier to testify in this matter, analyzed data provided by the Carrier regarding on-line non-revenue space travel. He explained that, in reviewing over one million individual flights, he determined that 80% of those flights departed with at least one empty seat, meaning that it was likely that any employees who wished to travel on those flights on a non-revenue basis should have been able to do so regardless of bucket, seniority, or time of check-in. He admitted, however, that he did not know for any of the flights in question whether seats had been left empty due to weight restrictions, mechanical issues, or reasons other than lack of demand by passengers. He also acknowledged that his data was nearly one year old as of the date of the hearing in this matter and preceded the September 2014 change in policy.

Dr. Lee further testified that more than half of space available passengers were those utilizing buckets of lower priority than those used by members of the bargaining

unit, further indicating that, in the aggregate, bargaining unit members would have been able to board flights regardless of seniority in the majority of instances.

Dr. Lee also noted that, of the 1,088,510 flights that he reviewed, records indicated that for 696,740 flights no one in the SA3P bucket – e.g., active employees (and accompanying eligible family members) on personal travel – had attempted to board.

He explained that he had determined that on only 39,878 flights had one or more SA3P passengers traveled where the flight departed with no empty seats and on which no passengers traveled in lower priority buckets, and stated that only in these situations could a secondary boarding priority – whether seniority or time of check-in – potentially have made any difference in terms of whether a passenger was able to engage in space available non-revenue travel.

Dr. Lee engaged in speculation as to the outcome of the pending seniority integration for the Passenger Service Employees of the Carrier and as to how that might relate to the issue of boarding priority. He noted that the median length of service among the employees in the US Airways Passenger Service Employee group was less than the median length of service among employees in the Legacy American Passenger Service Employee group, and suggested that most of the Carrier's employees would be better off with a boarding priority based on time of check-in than with a seniority based system.

CONTENTIONS OF THE UNION

The Carrier violated the plain language of the Agreement when it shifted from determining secondary non-revenue travel boarding priorities via date of hire seniority to determining such secondary priorities on the basis of time of check-in. The Agreement clearly restricts the Carrier's ability to change how it determines boarding priorities, and

the unilateral modification at issue here violates those restrictions. This improper unilateral change deprived bargaining unit employees of the ability to plan their travel in advance by predicting the likelihood of obtaining a seat on the basis of their seniority.

The clear and unambiguous language of Article 8.A.1.b. requires the Carrier to utilize date of hire seniority as a basis for determining boarding priority. Absent a negotiated change to that language, the Carrier must abide by that requirement. To the extent that the Carrier argues that it intended to retain the right to modify its non-revenue travel policy, such argument has no merit. The Carrier clearly understood the restrictions regarding non-revenue travel boarding priority determinations that were embodied in the Agreement. Mr. Hemenway, in his testimony, acknowledged that US Airways had accepted limitations on its Article 34.C. right to unilaterally change its non-revenue travel policy. There is no record evidence supporting the notion that, during bargaining, the Parties discussed that either Article 34.C. or Article 8.A.1. might permit the Carrier to unilaterally change its employee travel policy. Rather, the language of Article 8.A.1.b. clearly requires that date of hire seniority be used as a basis for determining boarding priority for on-line non-revenue space available travel. The Carrier and the Union are sophisticated bargaining parties, and this language, to which US Airways agreed, should be enforced as written by the Board.

To the extent that the Carrier has asserted that bargaining unit employees or even other employees might prefer to have boarding priorities determined on the basis of time of check-in rather than date of hire seniority, such preference is irrelevant. The record contains no evidence of any contractual restrictions having been negotiated by other employee groups at either Legacy American or at US Airways that conflicts with the date

of hire seniority mandate negotiated by the Parties. Moreover, even if it were shown that the Carrier entered into conflicting contractual provisions, the evidence is clear that the Carrier is obligated to abide by the terms of the US Airways-CWA Agreement. In addition, to the extent considered relevant by the Board it should be noted that a number of other unions representing Carrier employees have also challenged the Carrier's abandonment of the use of date of hire seniority for determining boarding priority and there was no record evidence of the preferences of the former American employees beyond the Carrier's unverified assumption that they preferred to continue the secondary priority system that they were used to.

Dr. Lee's testimony was irrelevant to this grievance. While the grievance relates to the Carrier's contractual obligations to the Union and the importance of seniority, Dr. Lee's testimony centered on an attempt to quantify the degree of harm to the bargaining unit caused by the change to time of check-in. However, Dr. Lee's testimony and analysis indicate that, in the vast majority of cases of employees engaging in non-revenue travel, secondary boarding priorities – e.g., date of hire seniority or time of check-in – are not necessary. Therefore, even if his testimony is credited, there is no reason to believe that Legacy American employees would be adversely affected were the Carrier to employ boarding by date of hire seniority for all employees.

In addition, the Carrier refused the Union's request to delay implementation of time of check-in boarding priority. The fact that it might be expensive and/or difficult for the Carrier to undo the changes made in September 2014 in order to comply with an Award sustaining this grievance should have no bearing on the outcome of this matter.

For all of these reasons, the grievance should be sustained in its entirety.

CONTENTIONS OF THE CARRIER

The Carrier did not violate the Agreement when it chose to utilize time of check-in, rather than date of hire seniority, as a basis for determining boarding priority. Despite the Union's assertions to the contrary, neither Article 8.A.1.b. nor Article 34.C. of the Agreement prohibit such action.

The language of Article 8.A.1.b. does not require the Carrier to use seniority as a basis to determine boarding priority. Instead, it requires only that, should the Carrier utilize seniority as a basis to determine boarding priority, then it must utilize date of hire seniority, as opposed to passenger service seniority or pay date seniority. Article 8.A. identifies when date of hire seniority (as opposed to other types of seniority) is to be used. Whether the Agreement actually obligates the Carrier to use seniority at all is determined by other provisions of the Agreement. For example, Article 8.A.1.a. of the Agreement provides (in language similar to that of Article 8.A.1.b.) that the Carrier must use date of hire seniority if seniority is used to determine vacation accruals; however, the obligation to utilize seniority to determine vacation accruals is set forth separately in Article 20. The uses for seniority set forth in Article 8, then, are contingent upon other language in the Agreement specifically addressing those uses.

Moreover, when Article 8.A.1.b. is read together with Article 34.C., it is clear that Article 8.A.1.b. does not require that the Carrier utilize seniority as a basis for determining boarding priority. Article 34.C. provides that the bargaining unit will be granted the same transportation privileges provided by the Carrier's regulations for all of its personnel. The only restriction on the Carrier's ability to alter the travel privileges of bargaining unit members and their families is that it similarly alters travel privileges for

other employee groups. The management rights clause set forth at Article 3.H. clearly encompasses the Carrier's right to establish and alter its policies governing employee travel. Were the Board to find that the Carrier was constrained from modifying the bases for determining boarding priority pursuant to Article 8.A.1.b., then the right provided to the Carrier in Article 34.C. would be rendered meaningless. In addition, Article 34.C., which specifically addresses changes to the employee travel policy, should be read to control over provisions of Article 8, which, as noted above, addresses simply the particular type of seniority that is applicable in those situations in which the Carrier's travel regulations provide for seniority to be used.

Furthermore, in two prior cases before this System Board, the Board rejected similar arguments and found that changes made by US Airways to non-revenue travel benefits did not violate the Agreement. In both cases, the Board determined that, where all employee groups had been subject to the same treatment, no violation of Article 34.C. had occurred. In CWA and US Airways, Inc., Case #06-1283 (Bonnie Siber Weinstock, Neutral Chairperson) (July 31, 2008), the System Board held that the Carrier did not violate the Agreement when it moved retirees to a lower boarding priority bucket. In CWA and US Airways, Inc., Case #US3-06-003 (Bonnie Siber Weinstock, Neutral Chairperson) (December 19, 2008), the System Board held that the Carrier did not violate the Agreement when it changed the boarding priority bucket for family members traveling separately from employees. The Board noted in that case that, "Reading these two clauses [Article 34.C. and Article 3.H.] together, it is clear that the Carrier has the right to establish policy regarding transportation privileges, which is precisely what it has done in this case."

In US Airways, Inc. and AFA-CWA, Grievance No. 2014-001-30-99-02 (Amended Travel Policy) (Joshua M. Javits, Neutral Chairperson) (2014), a system board found that although the collective bargaining agreement between the Carrier and its Flight Attendants provided in its seniority article that “Seniority for competitive bidding among Flight Attendants and for passes shall begin on the first (1st) day of initial training on the adjusted seniority integration list (SID) as determined during the seniority integration process,” this language addressed how the term “seniority” should be defined and understood for purposes of competitive bidding and for passes rather than guaranteeing that a seniority-based system would be used to determine priority for Flight Attendant travel benefits. This System Board should reach the same conclusion with regard to Article 8.A.1.b. of the Agreement.

Moreover, although Ms. Hawthorne testified that she had been involved in the Parties’ bargaining sessions concerning Article 8, neither she nor the Union provided any additional evidence as to the substance of those negotiations. The Board should infer from the Union’s failure to provide evidence as to bargaining history that any such evidence would have been adverse to the Union’s position. The testimony from Mr. Hemenway regarding his recollection of the bargaining sessions regarding both Article 8 and Article 34, and his testimony that both provisions were proposed by US Airways and that US Airways never agreed to utilize a seniority system as a basis for determining boarding priority for the whole of the term of the Agreement, as well as his recollection that the Union did not articulate such an understanding during bargaining, are all un rebutted. There should, therefore, be no doubt that the intent of the Parties, when these provisions were agreed to, was that US Airways retained the historic ability to modify its

employee travel policies, but that to the extent seniority was used to determine boarding priority, date of hire seniority (as opposed to another type of seniority) would be used.

If the Parties intended in bargaining to agree that these provisions should be interpreted in the manner argued by the Union in this matter – which would have represented a significant change from what would have been the status quo and which would have been viewed as an overly broad interpretation of the language ultimately agreed to – one would have expected members of at least one bargaining team to have recollection of some discussion to that effect. The record, however, reflects no evidence of any such discussions.

It is also noteworthy that the non-revenue travel policy at US Airways was never a strict seniority system – for example, an employee on his first day of work traveling on a vacation pass would have priority over an employee with 20 years of service traveling without a vacation pass. The Union, however, does not here and has not ever challenged that aspect of the policy.

In addition, the Union's proposed interpretation of Article 8.A.1.b. would produce a harsh result without furthering its own interest and should, therefore, be rejected.

Ms. Ulrich noted the significant difficulty and expense required to create an employee travel system that would utilize seniority as a basis for boarding priority, as well as the fact that the Legacy American employee group is accustomed to boarding on the basis of time of check-in. Despite the Union's apparent willingness to utilize a seniority based system without regard for how other employee groups are boarded, it would be practically impossible for the Carrier to utilize one secondary basis for boarding priority for one employee group and a different basis for the others. Dr. Lee's analysis made

clear, moreover, that the use of a secondary boarding method (such as seniority or time of check-in) matters only in a very small percentage of flights and that because the median length of service of the members of this bargaining unit is less than the median length of service of the Legacy American Passenger Service Employee group, many members of the bargaining unit would be disadvantaged under a seniority-based secondary boarding method compared to a seniority-neutral method, such as time of check-in.

For all of these reasons, the grievance should be denied in its entirety.

DISCUSSION AND OPINION

After careful consideration of the entire record, a majority of the Board is persuaded that the Carrier did not violate the Agreement when it changed its employee travel policy to eliminate date of hire seniority as a secondary basis upon which to determine boarding priority for on-line non-revenue space available travel. Accordingly, the grievance is denied in its entirety. A summary of the principal reasons for this holding follows.

There is no dispute that, for well over a decade prior to the merger with Legacy American and even before entering into the 1999 Agreement with the Union, the Carrier's travel program regulations provided for the use of date of hire seniority to determine boarding priority within boarding categories. There is likewise no dispute that the Carrier announced in January 2014 that, at some point in the future, it would no longer use seniority as a basis for determining boarding priority for any of its employee groups, and would apply to the bargaining unit the same non-revenue travel policy that was applied to other employees of the combined Carrier. That change was implemented in September 2014. After the change, time of check-in rather than date of hire seniority

was used to determine boarding priority within category. The dispute in this case focuses upon whether that change was prohibited by the Agreement.

There are several reasons why the Board cannot find that the Agreement restricted the Carrier's ability to apply the new travel policy to the bargaining unit. First, Article 34.C. is specific and provides that the bargaining unit employees are entitled to receive "the same transportation privileges on the Company's system as may be established by Company regulations for all personnel." That provision recognizes the reality that the method to determine priority within the same tier must apply uniformly to all individuals in that tier. Were it otherwise, then there would be no mechanism for determining the relative priority of individuals in the same tier in those cases where there are insufficient seats to accommodate all who wish to fly on a non-revenue space available basis on a particular flight. There is no dispute that the Carrier complied with the provisions of Article 34.C. in this case. The new travel regulations that are applicable to the bargaining unit are the same identical provisions applicable to all employees of the Carrier. The right of US Airways to revise its travel policy and regulations pursuant to Section 3.H. and Section 34.C. of the Agreement was explicitly recognized by the System Board in Case No. 06-1283, supra, (changes were made to both the category in which certain retirees were placed and also to the charges made for retiree on-line, space available travel) and in Case No. US3-06-003, supra, (changes were made to the category accorded to unaccompanied immediate family member travel).

Second, the record failed to establish that, when the Parties agreed to add Article 8.A.1.b. to the Agreement, they intended to prevent US Airways from changing its travel regulations and policy to provide for a time of check-in or some other non-seniority based

mechanism for determining boarding priority within individual categories. Article 3.H. reserves to the Carrier rights of management not listed which do not conflict with other provisions of the Agreement. The right to establish rules and regulations are also recognized in Article 3.H. Article 34.C. also recognizes that the Carrier may establish regulations for its on-line non-revenue space available travel program. The record contains no evidence of any discussions during negotiations and no evidence of any application thereafter that would support a finding that the Parties mutually intended, when they agreed to Article 8.A.1.b., to restrict the Carrier's ability to revise its travel policy to provide for a factor other than seniority to determine boarding priority within one or more categories. If the Parties had agreed to so restrict the Carrier's right to amend its travel policy, particularly as in this case with respect to the ability to revise its travel policy following a merger of carrier operations in which there were different pre-merger travel policies, it is inconceivable that this limitation would not have been the subject of express discussion between the Parties.

The Carrier's proposed construction of Article 8.A.1.b. is sensible when viewed in the context of the total language of Article 8 and the remainder of the Agreement. Article 8 recognizes different types of seniority and reflects which type of seniority is to be used for particular purposes. The question of whether the Agreement mandates use of seniority in those situations is a function of other contractual provisions or commitments. No other contractual provision was shown to require the use of seniority as a component of the Carrier's travel policy. Interpreting Article 8.A.1.b. as requiring date of hire seniority only to the extent that the travel policy itself uses seniority as a means of determining boarding priority would give effect to Article 8.A.1.b. and also to Articles

3.H. and Article 34.C. This construction also is consistent with the disposition of the 2007 grievance that challenged the Carrier's use of year of hire seniority, but which was later withdrawn following the return to date of hire seniority, and the decision of the System Board in US Airways, Inc. and AFA-CWA, Grievance No. 2014-001-30-99-02 (Amended Travel Policy) (Joshua M. Javits, Neutral Chairperson) (2014), in which a system board found under a similarly structured collective bargaining agreement that the Carrier's obligation to apply certain types of seniority to the administration of the rights and privileges referenced in that agreement's seniority article was predicated on the use of seniority in the first instance to determine how those rights and privileges may be exercised.

Read together, therefore, Article 34.C. and Article 8.A.1.b. require that, where the Carrier's regulations specify that if seniority is to be used to determine boarding priority for on-line non-revenue space available travel, then date of hire seniority, rather than passenger service seniority or some other measure of seniority, is to be applied. However, Article 3.H. and Article 34.C. recognize the right of the Carrier to modify its non-revenue space available travel policies to provide for a non-seniority based mechanism to determine boarding priority, including the use of time of check-in.

The Union's complaint that the Carrier should not have assumed that the numerically preponderant Legacy American employee groups preferred to maintain their former time of check-in boarding priority system and was obligated to have taken some sort of poll of employee preference is misplaced. Whether the Carrier's assumption in that regard is correct or not, the question presented in this arbitration is whether their conduct in revising the travel policy yielded a result that violated the provisions of

Article 8.A.1.b. of the Agreement. A majority of the Board, for the reasons noted above, finds that the Agreement did not prevent the Carrier from making the changes in question to the travel program regulations.

Similarly, the assertion that individual employees may prefer or fare better under a date of hire seniority method, on the one hand, or a time of check-in method, on the other, based upon their individual seniority and other factors is irrelevant to the question of whether the language of the Agreement permitted the Carrier to make unilateral changes to the travel program regulations.

For all of the foregoing reasons, the grievance in this case must be denied in its entirety.

AWARD

The Carrier did not violate the Agreement by modifying its non-revenue space available employee travel program to make time of check-in the determinant of boarding priority within category rather than using date of hire seniority for that purpose.

Accordingly, the grievance is denied in its entirety.

August 27, 2015



Ira F. Jaffe, Esq.
Neutral Referee

August 27, 2015



Kimberly Barboro
Union Appointed Member
() Concur (X) Dissent

August 27, 2015



Lucretia D. Guia, Esq.
Carrier Appointed Member
(X) Concur () Dissent