Journal of Air Law and Commerce

Volume 35 | Issue 3 Article 7

1969

Exclusive Work Jurisdiction Clauses in Airline Contracts

Terrell S. Shrader

LUNCHEON

EXCLUSIVE WORK JURISDICTION CLAUSES IN AIRLINE CONTRACTS

BY TERRELL S. SHRADER†

WHILE THERE are many issues in current collective bargaining, the one with which Braniff has been most concerned is the continual pressure by the unions for a reduction in productive hours worked, coupled with demands for excessive increases in pay and direct cost benefits. Of paramount concern is the economic impact on both labor contract rules that credit an employee for time not worked and exclusive work jurisdiction clauses.

It will be beneficial to describe the general makeup of the operating costs implicit in the airline industry. The figures I cite are those applicable to Braniff and may vary slightly with other carriers; however, for our purposes they may be considered representative of all carriers. Of each dollar spent, 35 percent is attributable to employee costs. This figure provides vivid contrast with certain manufacturing concerns where employee costs represent only 20 percent or less of the total operating expenditures.

Why is this discrepancy so, and why is it important to our discussion? It's so because of the nature of the air transportation business. Airlines sell only transportation services in accordance with a previously determined schedule; there are no products on the shelves or stock piles of inventory which can be mass produced for dispensing at a later date as demand requires. From the airline's point of view, the act of production is also the act of dispensing. A 150-seat airplane leaving point A for point B at 8:30 produces 150 seats at 8:30 and dispenses 150 seats at the same time. Those seats not filled are lost; they become nonsaleable with the flight. Thus, this product is probably more perishable than that of any other industry. Airplanes represent only *potential* products. It takes numerous employees to actually produce the real product—the passenger seat.

High employee cost as a percent of total expense is important to our discussion because of the excessive impact which results from applying percentage wage or benefit increases to the already high base which employee costs represent to the airlines. For example, assume that manufacturing plant A has a total operating expense of $300 million of which 20 percent, or $60 million, represents employee costs. Assume further that this manufacturing company settles a union negotiation for six percent additional costs. The actual dollar increase will be $3.6 million.

† LL.B., University of Miami Law School; Vice President, Personnel Relations, Braniff International.

Applying that same set of figures to an airline whose total operating costs are also $300 million, the employee costs would represent 35 percent of the total, or $105 million. Increase that figure by the same six percent union settlement and the astounding result is a $.3 million increase, which is a 72 percent greater increase in dollar cost than that applicable to the manufacturing company. A similar result occurs in settlements that give employees additional time off with pay, such as added vacations, holidays, sick leave and so forth.

There exists one additional aspect of this dilemma that the airlines face at the bargaining table. There is a total civilian work force in the United States of 79.5 million employees as contrasted with only 300,000 employees in the entire airline industry. Therefore, it seems logical that "break through" or settlement patterns would be established by industries other than the airlines. Thus, those on whom the economic impact will be least are setting the trends. The steel, automotive or aerospace industries establish a pattern usually expressed as a percentage which, with a little frosting on top, immediately become the objectives of the unions in airline settlements. The foregoing points suggest the position in which the airlines approach the bargaining table. Even though it is of great concern, I will intentionally omit discussion of wages as a current issue because beyond the definition of wages the only element left to discuss is amount. At this point I want to focus on what seems to be a basic trend once again receiving direction from the unions in the current round of negotiations. This trend, and the philosophy behind it, is best defined by the rule under which an employee may receive work time credit for time not worked.

Some of the current demands are:

1. Increased vacations
2. More holidays off with pay
3. Pay and credit for the normal meal period
4. Longer coffee breaks—morning and afternoon
5. Shorter work days at full pay
6. Longer time off with pay when a death or serious illness occurs in the family (with an expanded definition of "the family")
7. Automatic time off with pay for unused sick leave
8. Tightening of jurisdictional scope rules so that employees may perform only specified work, resulting in extra employees while others have little or nothing to do and receive full-time work credit
9. Tightening the rules by which pilots get flight-time credit for time not flown.

Of these, I will discuss only one—the continual tightening of work jurisdiction and scope rules. Under the Railway Labor Act, which governs labor relations in the airline industry, employees have a right to organize and bargain collectively with the carrier. The act further states that a "majority of any craft or class . . . shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."[1] The National Mediation Board is the administrative agency which is given broad

[1] Railway Labor Act, § 2, Fourth, 44 Stat. 577 (1926), *as amended*, 45 U.S.C. 151(a), 152 (1964).

discretionary powers in determining the rules to be applied in handling an application for representation.

In the exercise of its discretionary power, the Board has consistently followed a course of restricting representation elections to specified classes and crafts of employees. Thus, all the employees in the "pilot" classification with a carrier are deemed to be within a single craft and class, and, accordingly, they may elect a representative. Therefore, the pilots of a company at station A could not elect a representative (for purpose of the Act) other than the representative of the pilots at other stations. Thus, an "all or nothing proposition" with respect to a class and craft has been defined by the Board.

Historically, the Board has developed certain criteria to be applied in determining the boundaries of a class or craft. I will not discuss all of them; however, I do want to mention one rule which has a bearing on the issue of scope and work jurisdiction. Under the rule, referred to as the "majority of work" rule, Ramp Service employees who spend most of their time performing Ramp Service duties are included in the craft or class covering Ramp Service employees for representation purposes. Accordingly, they have a right to vote on, and will be covered by, an ensuing agreement. At this point no great problem exists. However, the remainder of the Ramp Service man's time is spent performing duties which are designated in the class and craft of Clerical and Office personnel. If this latter group is not itself represented by a union, there is still no great problem. However, assume both group are represented and, moreover, by *different* unions. At this point the jurisdictional problem begins. Initial difficulty begins during the election itself, which determines within a more or less integral group which specific employees are deemed to be in one craft or class and which in the other. The solution to this problem rests in the application of the "majority of work" rule which, in turn, creates a base for the continual fomenting of pressure moves by the opposing unions. The company is left in the middle of this dispute.

Understanding how these pressures are brought to bear on the company requires a realization that the entire group functions operationally as a unit necessitating the cross assignment of personnel. In turn, this cross assignment results in administrative disputes, grievances and pay claims. Next, the issue is brought to the bargaining table in the form of a demand that the company agree to describe certain duties as belonging exclusively to the group "normally" performing these duties. However, what is normal varies from station to station. Unfortunately, where the union has greater bargaining power, concessions have been extracted. As is to be expected, pressures build because success seems to feed the appetite. Thus, more recent demands have attempted to extend the application of intra-company exclusive-work jurisdictional clauses to prevent the company from obtraining services from other companies where such services involve work normally included in the job description of a covered position, even though such services can be obtained more economically. "No farm out of work"

clauses then become the emotional issues. The most immediate and direct result is that the company must necessarily hire more employees to perform the work than is required under good administrative practices. The ultimate result is more employees at greater cost to the company but with no direct benefit to the employees. Of course, an indirect benefit to the union is implicit since more employees equal more potential members.

The solution to the above problems can be summed up in two words—education and maturity. Both employees and their representatives must understand that burdensome, costly contract rules which do not directly benefit the employee's pay check and which do not produce a comparable benefit to the employer can only defeat the objective of security which is sought. Business failures, with the terrific personal loss to the employees and stockholders alike, are possible and probable unless reasoning and understanding overtake this current trend. In a young and vigorous industry, such as the airline industry, financial stability and growth produce the only lasting security. Maturity must be coupled with the knowledge of the impact and probable results that irresponsible actions by either party can produce. The "guts" to act firmly and affirmatively are necessary.