

EXHIBIT DD

DOCKET No. 5376
(E-7214)

BRANIFF-MID-CONTINENT MERGER CASE

Adopted March 9, 1953

OPINION AND ORDER DENYING REQUEST TO DISMISS COMPLAINT

On January 19, 1953, the Air Line Dispatchers' Association, A. F. of L. (ALDA), filed a complaint with the Board to resolve a dispute concerning the integration of seniority lists for dispatchers employed on the systems of Braniff Airways, Inc. (Braniff), and Mid-Continent Airlines, Inc. (Mid-Continent). ALDA complains, *inter alia*, that the Braniff and Mid-Continent groups of dispatchers have been unable to agree on an integrated seniority list; that ALDA has submitted to Braniff a proposed list, based on strict historical seniority; that Braniff has rejected the list because it was not approved by the Braniff dispatchers; and that Braniff has declined to arbitrate the seniority question. ALDA contends that the action of Braniff and the Braniff dispatchers has frustrated the intent of sections 3 and 12 of the Board's order approving the Braniff-Mid-Continent merger, wherein the Board provided for negotiating the integration of seniority lists and for ultimate resort to arbitration.¹

The complaint urges that the Board provide for a hearing of the parties interested, including Braniff, ALDA, and all the dispatchers employed by both Mid-Continent and Braniff; and following such proceedings, the Board should direct that a list be agreed on within a limited time, or failing such agreement, arbitration proceedings should ensue. ALDA also requests that the order of the Board include directions concerning the selection of the arbitrator, the wording of the arbitration question, the time and place of arbitration, and the payment of expenses (with ALDA offering to pay a reasonable portion thereof, up to one-half).

¹Section 3 of the Board's order, 15 C. A. B. 708 (1952), provides that "Insofar as the merger affects the seniority rights of Braniff and Mid-Continent employees, provision shall be made for the integration of seniority lists on the basis of an agreement between the carriers and the representative of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 12."

Section 12 of the order provides that "In the event that any dispute or controversy * * * arises with respect to the protection provided herein, which cannot be settled by the carrier and the employee or his authorized representative, within 30 days after the controversy arises, it may be referred, by either party, to an arbitration committee for consideration and determination, the formation of which committee, its duties, procedure, expenses, etc., shall be agreed upon by the carrier and the employees, or the duly authorized representatives of the employees."

On January 27, 1953, Braniff filed an answer, requesting that the complaint be dismissed by the Board as presenting a matter which does not fall within the jurisdiction of the Board under sections 3 and 12 of the order approving the merger. Braniff points out that there is a current dispute among the dispatchers as to who shall be the certified "representative" of such employees within the meaning of the Railway Labor Act, and that that controversy is now the subject of a representation proceeding before the National Mediation Board. Braniff argues that there is a question whether ALDA is "the representative of the employees affected" within the meaning of section 3 of the Board's order, and that resolution of this question must await action by the National Mediation Board under the Railway Labor Act. Braniff claims that until it knows who is "the representative of the employees affected," it cannot negotiate an agreement. Stated somewhat differently, Braniff argues that there can be no arbitration under section 12 of the Board's order until a controversy exists; there can be no controversy until negotiations under section 3 fail; there can be no negotiations until "the representative of the employees affected" is known; that the designation of the "representative" lies exclusively with the National Mediation Board, and that Braniff is prohibited by law from negotiating with anyone who is not a "true representative." Thus, Braniff argues that there is no basis for the complaint herein.

On January 29, 1953, ALDA filed a reply, wherein it is asserted that ALDA, under the provisions of the Railway Labor Act, remains the duly authorized and certified representative of the dispatchers, insofar as the Railway Labor Act is concerned, until some action is taken by the National Mediation Board changing the certification. ALDA urges that arbitration is the fair, just, and equitable way of determining the seniority question.

The undisputed allegations in the pleadings herein disclose a three-cornered controversy involving Braniff, the Braniff dispatchers and the Mid-Continent dispatchers. ALDA, as the previously certified bargaining representative under the Railway Labor Act for all the dispatchers, apparently had an established policy at the time of the merger calling for integration of seniority lists based on strict historical seniority. The Braniff dispatchers, who feel that such a policy will place them at a disadvantage in relation to the Mid-Continent dispatchers, have seceded from ALDA and have formed an Association known as "Air Transport Dispatchers Association (ATDA) and are seeking certification as the representative of all the Braniff dispatchers (including the Mid-Continent dispatchers) under section 2 (ninth) of the Railway Labor Act. As a result of the internecine conflict among the dispatchers, Braniff claims that it is unable to negotiate with a "representative" of the employees affected, and has refused to arbitrate.

The question is thus raised as to whether Braniff is required under section 3 of the Braniff-Mid-Continent order to arbitrate the dispatchers' seniority dispute. The language of section 3 does not give a clear answer to this question. Section 3 speaks of integration on the basis of "an agreement between the carriers and the representative of the employees affected" and looks to arbitration "in the event

of failure to agree." Nowhere in section 3 or elsewhere in the Board's order or opinion is there any definition of the word "representative." Accordingly, we must look to the basic intention of the Board in promulgating section 3, in order to determine how section 3 should be applied.

At the time of the Braniff-Mid-Continent merger, there was available some of the experience gained in working out the Pan American-AOA merger. In particular, the Board was aware of the disputes that had arisen over the integration of seniority lists. Therefore, when the Board had before it the question of imposing protective labor conditions in the Braniff-Mid-Continent merger, the Board decided that it could not safely ignore the problem of seniority integration. The Board stated in its opinion that "experience has shown that the subject of seniority integration can often be a thorny one and we find that a protective condition on this subject is necessary." The opinion announced that it would "impose a condition similar to that suggested by the Brotherhood."² The actual condition inserted in the Board's order was taken from the Brotherhood Proposal, but excluded certain provisions that would have covered the question of "assignment of forces" as distinguished from seniority integration.

In general, it can be said that the Board's objective was to give the interested parties an opportunity to agree upon the integration of seniority lists and in the event of disagreement to place the whole matter into arbitration. Stated somewhat differently, the Board recognized that seniority integration was likely to be a controversial subject, that the working out of seniority problems would involve details with which the Board should not concern itself any more than necessary, and that the best method for handling the whole situation would be to use arbitration as the ultimate means for settling disputes over seniority integration where the interested parties could not come to an agreement.

In this context, we interpret section 3 of the Board's order as requiring Braniff to negotiate with the two groups of dispatchers, and to submit to arbitration in the absence of a negotiated agreement.³ For the purpose of carrying out the provisions of section 3 of the order, it is immaterial as to who is the certified representative, within the meaning of the Railway Labor Act. For, regardless of which representative is certified, there will still remain a dissident group, and we are unwilling to allow our protective conditions to be used as a means for allowing one group to dominate the other.

The very purpose of the protective condition regarding integration of seniority lists is to insure that the merger will not unduly interfere with the seniority rights of the affected employees. Where, as here, Mid-Continent has disappeared as an entity, it would frustrate our protective condition if the Braniff dispatchers were permitted to dictate the seniority rights of the Mid-Continent dispatchers. Similarly, our protective condition would be defeated if we were to permit

² Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

³ It makes no difference whether we reach this conclusion by interpreting section 3 of our original order, or by modifying that section to cover the situation presented, here specifically. For, our original order expressly reserved jurisdiction "to make such amendments, modifications, and additions to the protective labor conditions * * * as circumstances may require."

the Mid-Continent group of dispatchers to dictate seniority integration for the Braniff dispatchers. Accordingly, we have provided for negotiation and ultimate resort to arbitration, so as to protect the rights of both groups of employees.

In the light of the foregoing, we are unable to interpret the word "representative" in section 3 of the Board's order, as requested by Braniff, so as to import the meaning of that term under the Railway Labor Act. The negotiations referred to in section 3 (as applied to the present controversy) are to be negotiations involving Braniff, the Mid-Continent dispatchers, and the Braniff dispatchers, and failing an agreement satisfactory to all three factions, the problem should be submitted to arbitration. Accordingly, we will deny the request of Braniff to dismiss ALDA's complaint.

IT IS THEREFORE ORDERED, That the request of Braniff Airways, Inc., to dismiss the complaint of the Air Line Dispatchers' Association, A. F. of L., filed January 19, 1953, in docket No. 5376, be and it hereby is denied.

Ryan, Chairman, Lee, Adams, and Gurney, Members of the Board, concurred in the above opinion and order.

17 C. A. B.—19