IN THE MATTER OF ARBITRATION BETWEEN

Air Line Pilots Association, International,
Association or Union,

OPINION AND AWARD

and

Grievance No. ARW 10-07 (MEC Group)

Air Wisconsin Airlines Corporation,
Company.

RE: Section 25. P. 1.

SYSTEM BOARD OF ADJUSTMENT:	Gerald E. Wallin, Esq., Neutral Chair Capt. Matthew L. Chadwick, Association Member Capt. Edward Spry-Leverton, Company Member
DATE OF AWARD:	January 24, 2012
HEARING SITE:	Bloomington, Minnesota
HEARING DATE:	June 15-16, 2011
POST-HEARING BRIEFS RECEIVED:	September 9, 2011
EXECUTIVE SESSION:	January 4, 2012
REPRESENTING THE ASSOCIATION:	Matthew E. Babcock, Esq. Air Line Pilots Association, International 535 Herndon Parkway Herndon, VA 20170
REPRESENTING THE COMPANY:	Thomas J. Kassin, Esq. Ford & Harrison 271 17th Street N.W., Suite 1900 Atlanta, GA 30363

JURISDICTION

The undersigned was selected to serve as Neutral Chairperson of the System Board of Adjustment ("System Board") pursuant to the terms of the parties' 2003 collective bargaining agreement ("Agreement"). A hearing was held on June 15-16, 2011 to receive evidence concerning the grievance dated March 26, 2010. Both parties were represented by counsel to present their evidence. Witnesses were sworn and their testimony was subject to cross-examination. Post-hearing briefs were received on or before September 9, 2011, which closed the record and the matter was taken under advisement.

QUESTIONS AT ISSUE

The Association's Submission lists the following questions to be at issue:

> Whether the Company violated Section 25.P. and related provisions of the Agreement by requiring reserve pilots to fly trips that begin and end in another domicile before using all of the reserves who are based in the domicile in which the flying commences? If so, what relief shall be granted?

RELEVANT AGREEMENT PROVISIONS

SECTION 1
RECOGNITION AND SCOPE

* * *

J. Management Rights

Subject to the provisions of this Agreement, the work direction of pilots, the right to plan, direct and control operations, the right to introduce new and improved methods or facilities, the right to determine the amount of supervision necessary, schedules, establishment of qualifications and performance standards, increase or decrease in employment, the making and enforcing of reasonable rules to assure orderly and efficient operations, and the right to hire, transfer, demote and discharge or suspend for cause are rights vested in the management of the Company insofar as such matters concern wages, hours, or conditions of employment. Any of the rights the Company has prior to the signing of this Agreement are retained by the Company except those specifically modified by this Agreement.

* * *

SECTION 25
SCHEDULING

* * *

P. Assignment of Open Time

1. After the Initial Award of Open Time (as described in 25.I.), open flying will be awarded or assigned in the following order of priority.

    a. A pilot designated pursuant to the terms of this Agreement as having a right to the flying such as a pilot with an LC day(s) on his line, a green pilot, or a pilot in need of consolidation time.

    b. A pilot who has expressed a desire to add trips, provided the pilot has submitted his request to add trips in writing. This provision shall not be construed to mean that a pilot must be available or accept the trip if contacted by Crew Scheduling.

    c. A management pilot, at Company option, but not before forty-eighty (48) hours from the scheduled departure of the trip.

    d. A reserve pilot in domicile who is scheduled for reserve duty, but not before 1800 Central Time on the day before the scheduled departure of the trip.

    e. A reserve pilot from another domicile who is scheduled for reserve duty, but not before 1800 Central Time on the day before the scheduled departure of the trip.

    f. The most junior qualified pilot available in domicile, but no sooner than twenty-four (24) hours prior to the scheduled departure of the trip.

    g. The most junior qualified pilot available in the system, but no sooner than twenty-four (24) hours prior to the scheduled departure of the trip.

* * *

BACKGROUND AND SUMMARY OF THE EVIDENCE

The instant grievance raises a very narrow clash between Agreement language and management rights. At issue is the propriety of a method by which the Company manages the use of its reserve pilots to protect open flying to avoid canceling or delaying flights.

Although the hearing before the System Board consumed two full days, only one relatively minor factual dispute emerged from the evidentiary presentations. That is the state of the Association's past knowledge of the method in controversy. The precise facts of the Company's controversial method are free of conflict. That said, the parties have diametrically opposed views about whether the method violates Section 25.P.1. or is a retained management right that does not violate any provisions of the Agreement.

During the hearing, both parties provided examples of actual past open flying assignments to reserve pilots to illustrate their respective points of view. Some of the examples involved unique facets that may have been contrary to other Agreement provisions. For example, one of the Association's examples involved a pilot who wanted to be assigned an open trip that departed one day before his reserve days began. He was denied the assignment. In one of the Company's examples, an assignment was made to a reserve pilot at 14:42 (2:42 p.m.) on the day before the trip was to begin. The Agreement appears to prohibit the Company from making such assignments before 18:00 Central time. While such details in the examples might contravene certain provisions of the Agreement, those kinds of issues are not within the scope of the grievance. During the hearing, the Neutral Chair's several questions confirmed that the grievance is limited to the narrow scope involving the propriety of the Company's method of managing the use of reserve pilots to cover open flying.

Both parties introduced extensive documentation in support of their respective positions. In addition, their post-hearing briefs were comprehensive and equally extensive. No useful purpose would be served by summarizing the entire record of evidence and the many contentions advanced in the post-hearing briefs. They have all been carefully reviewed and considered. Instead, the following summary of the evidence attempts to confine itself to those considerations that are instrumental in resolving the Questions at Issue.

For purposes of this dispute, the term "open flying" simply refers to a planned trip that is

missing one or both of the flight deck crew members. Such vacancies can arise from a variety of sources. An assigned pilot may call in sick and create the vacancy. The assigned pilot may have had the trip on his line of flying but had to drop the trip into open time because he had to report for military duty. Similarly, the trip may have been dropped from a pilot's schedule because it conflicted with his scheduled vacation days.

The reason for the trip being open is not of consequence to the instant dispute. Instead, the dispute focuses solely on the means by which the Company assigns a replacement pilot to fill a vacancy in an open trip.

In Section 2.OO., the Agreement defines a Trip as follows:

> "TRIP" or "TRIP PAIRING" means a flight or series of flights beginning at the pilot's domicile and continuing until check-out at his domicile.

Section 2.M. provides further:

> "DOMICILE" means a geographical location where a pilot is based and from which a pilot's trips will originate and terminate.

Two more definitions will round-out the terminology for this background section. A flight or series of flights may be either "flown" or "deadheaded." For our purposes, when a flight is flown by a pilot, it means he or she occupies a cockpit seat and operates the controls of the aircraft in flight. For our purposes, this also includes the terms "fly" and "flying." When, however, a flight is deadheaded by the pilot, he or she occupies a passenger seat in the cabin of the aircraft and is not a member of the cockpit crew. For purposes of this Opinion and Award, deadheading is used to move a pilot from his or her domicile to another airport for the purpose of positioning him or her to perform flying as a cockpit crew member or to return the pilot to his or her domicile after completing all of the flying in his or her trip.

At the time the grievance arose, the Company had five pilot domiciles at these airports: Philadelphia (PHL), Norfolk (ORF), Washington Reagan (DCA), Raleigh-Durham (RDU), and New

York La Guardia (LGA). All of the example trips in evidence began and ended at one of these domiciles.

Section 25.P.1. contains a seven-step priority order for the Company's crew scheduling personnel to follow when filling open flying vacancies. The first three steps are not involved in the grievance. The next two steps are the focus of the instant grievance. They are repeated here again for ease of reading:

> d. A reserve pilot in domicile who is scheduled for reserve duty, but not before 1800 Central Time on the day before the scheduled departure of the trip.
>
> e. A reserve pilot from another domicile who is scheduled for reserve duty, but not before 1800 Central Time on the day before the scheduled departure of the trip.

These two steps are located in the priority order where they are to minimize the need to resort to the sixth and seventh steps. If the Company's crew schedulers are not able to fill an open trip via "d" or "e" above, then they must resort to the last two "junior manning" steps. For purposes of this Opinion and Award, "junior manning" means finding the junior pilot in the domicile who is on his or her days off and forcing the pilot to fill the vacancy. Both the Company and Association agree that junior manning is to be avoided for at least two important reasons: First, it interrupts and disrupts the day-off plans of the pilot and, second, it tends to create another open trip later in the month. When a pilot flies a junior manning trip, the additional flying time accrued often causes the pilot to exceed the applicable time limitations for the month. As a result, the pilot must often drop another trip from his or her remaining schedule, which just adds another open trip to the crew scheduling burden. On balance, junior manning solves one problem but often causes another.

Every day, the Company's flight operations and crew scheduling personnel examine the status of open trips at each domicile for the next day and compare them with the number of available reserve pilots at each domicile. This is the point in the Section 25.P.1. priority order where it is likely that the use of reserve pilots will be necessary to fill the open trip. For purposes of this part of the discussion, it is referred to as "Day 1."

Four principal factors come into play to generate the typical situation that led to the grievance. We will use the PHL domicile to illustrate how the grievance arises. The first factor is that the PHL domicile has a significant number of trips that begin the following day, which is "Day 2." This increases the risk that a sick call or other like circumstance will create another open trip on short notice that will deplete reserve coverage. Second, there are existing open trips beginning on Day 2 that already look like they will need reserve coverage from within the PHL domicile. Third, the number of available reserves within the PHL domicile on Day 2 matches the number of open trips or leaves little surplus in the total number of reserve pilots at PHL available to cover open trips for the day. This presents that risk that some open trip will go uncovered or be significantly delayed if there are any short notice sick calls or the like to create more open trips. Fourth, at least one other domicile has what appears to be a surplus of reserve pilots available for Day 2 (fewer trips departing, few or no open trips, and several reserve pilots available).

Rather than face exhaustion of the reserves for Day 2 at the PHL domicile, the Company changes the domicile of one or more of the open trips at PHL. In short, the Company moves the open trip from PHL to one of the other domiciles. For discussion purposes, assume the Company chooses to change the domicile from PHL to DCA, where it appears the DCA domicile will have surplus reserves and can more easily cover the trip. The Company uses the terms "reallocation" or "reallocation of flying" to describe this change-of-domicile method for covering open trips.

The Company crew schedulers do the reallocation by building a new trip that originates at DCA by deadheading one of its reserve pilots in that domicile to PHL to pick up and fly the rest of the trip. When the reserve pilot has flown all of the flying segments that terminate at PHL, the reserve pilot is deadheaded back to DCA to end the trip. Thus, reallocation of the trip means that a deadhead segment is added as the first leg of the open trip as well as the last leg of the trip. Once the trip has been reallocated, or, in other words, reconstructed, it becomes an open trip for the DCA domicile. Once it is an open trip for the DCA domicile, the Company assigns it to one of the reserve pilots in the DCA domicile pursuant to Section 25.P.1.d. In this way, the Company maintains that it is fully in compliance with the Agreement; it has assigned a "... reserve pilot in domicile ..." as the Agreement requires. Thus, a previously open PHL trip becomes an open DCA trip and is assigned to a DCA reserve pilot while reserve pilots at PHL remain unassigned to the remaining open trips at PHL.

The Association sees the reallocation process as a violation of Section 25.P.1. because it effectively takes a PHL domicile trip and assigns it to a reserve pilot from outside of the PHL domicile while reserve pilots within the PHL domicile remain available but are not assigned the trip. The Association sees reallocation as reversing the priority order of Section 25.P.1.d. and e. When the Company's reallocation process became evident to the Association, the instant group grievance was filed.

The Company's reallocation method is not without increased cost. The DCA pilot receives additional pay for the time spent deadheading. In addition, the DCA pilot is paid a per diem allowance for expenses for all of the time spent away from the DCA domicile while on the trip. Finally, the increased length of the trip, due to the two deadhead segments added to it, might also lead to more pay time based on the total time the DCA reserve pilot spends on the trip away from the DCA domicile. In some situations, the Company may be obligated to provide the pilot with a hotel room as well. Provisions outside of Section 25 generate these additional costs when they are triggered.

Both parties provided testimony about the history of the bargaining relationship through the years. The Association's testimony began in the 1993-94 time frame. The Company's history began with testimony from 1973.

The Company began operations as a small regional airline headquartered at Appleton, Wisconsin. In those early days, the flight schedule was given to the sole crew scheduling person in a manner that was described as "... just above the napkin stage." The Company had few airplanes and few destinations. The lines of flying for pilots were prepared by the one person using paper and pencil. There were no computerized capabilities to assist in performing the task.

The same person also did all of the crew scheduling on a day-to-day basis. There were few pilots and few domiciles. In addition, the pilots tended to reside in the same area as their domicile. Covering an open trip often meant just calling a pilot in the local area to take the trip. The pilot group was not unionized in those early days.

The first labor agreement with the Association was signed in 1982. Section 8.I. of that contract read as follows:

> I. After the beginning of the month, open flying will be awarded or assigned

in the following order of priority:

1. Pilots with low projected time who have expressed a desire to add trips.

2. Other pilots who have expressed a desire to add trips.

3. Reserve pilots in the domicile or management pilots but not before twenty-four (24) hours from the scheduled departure of the trip, except that trips with a scheduled departure on the weekend or Monday may be assigned on the preceding Friday.

4. Reserve pilots from another domicile, but not before twenty-four (24) hours from the scheduled departure of the trip, except that trips with a scheduled departure on the weekend or Monday may be assigned on the preceding Friday.

5. The most junior pilot available in the domicile.

6. The most junior pilot available in the system.

Whether Section 8.I. of the 1982 contract was a Company or Association proposal is not established in the evidentiary record. Its existence pre-dates the Association's history of bargaining. The Company's witness could not recall which party proposed it.

The parties' second labor agreement came in 1985 after the Company merged with Mississippi Valley Airlines. Section 8.I. of that contract eliminated the first priority step from the 1982 contract but kept the rest of the section without substantive change.

The parties' third labor agreement was signed in 1990. Although it expanded to six steps in the priority order, the final four remained intact without substantive change.

According to the testimony of the Company's history witness, the Company did use the reallocation method for covering open trips notwithstanding the text of Section 8.I. in the various labor agreements between 1982 and 1990. He maintained that the Association representatives were aware of the use of reallocation and effectively ratified its use to avoid junior manning situations. To buttress his testimony, the Company's witness noted that the early pilot contracts (1982, 1985, and 1990) contained a 5% limit on the amount of open time that could exist at a domicile after the completion of schedule bidding for each month. He had to reallocate the open trips to other

domiciles to comply with the percentage limit and the Association accepted his method of moving open trips from one domicile to another as a means of compliance with the 5% limit.

As previously noted, the Association's history testimony begins with the negotiations for the 1994 contract. According to its witness, the 1994 contract did not represent any substantive change from Section 8.I. of the 1990 contract.

The state of the Association's knowledge of the reallocation method is in dispute from this point forward until the autumn of 2009, when the Company's method became clear. Prior to this time frame, neither the Association nor individual pilots had meaningful information about the status of reserve pilot numbers and numbers of open trips at each domicile. The Company began providing this information, by domicile, in mid-2009 via internet access to its Crew Trac system. Reserve pilots began to see clearly that open trips thought to be identified with one domicile were being assigned to reserve pilots at a different domicile. This led reserve pilots to file inquiries and complaints about the propriety of the method the Company used to make these assignments. As previously noted, the instant grievance was filed in March of 2010. In support of its grievance, the Association devoted considerable testimony to the bargaining history surrounding the parties' contract signed September 11, 2001.

The parties' 2001 contract was a complete overhaul of the pilot labor contract. All sections were re-numbered to conform to the standard format for an ALPA contract. The language of Section 8.I. was modified without substantive change from how it read in the 1994 contract to how it reads in the current Agreement. According to the testimony of both parties, Interest Based Bargaining was used. This process led to detailed discussions about how the Section 25.P.1. priority order was to operate. There was no confusion about how the priority order worked. However, it is undisputed that there were no discussions whatsoever about the reallocation process the Company was using to cover open trips. The subject never came up. It was never explored at all in that round of bargaining.

The current Agreement is essentially a re-iteration of the 2001 contract without any substantive changes. Moreover, once again, the evidence does not show that the reallocation process was discussed at all during the meetings that led to the current 2003 Agreement.

The Company's history witness retired from the Company on March 31, 2003. According to his testimony, the Company continued to use the reallocation method to manage its reserve pilot

capabilities throughout his entire tenure as a crew scheduler. He trained his replacement to use the same method. According to the testimony of the Company's other witnesses, the reallocation method has been used continually since 2003 where appropriate.

The Association also presented considerable testimony about another Agreement provision to manage the use of reserve pilots. Section 25.N.5. was added to the 2001 contract. The provision permits the Company to move reserve pilots from domiciles where there appears to be a surplus for up to five consecutive days to a domicile where there are concerns about a shortage of reserve pilots to cover open trips. The provision imposes costs on the Company for reserve pilots so moved such as hotel rooms and pay credit for time away from base.

POSITION OF THE ASSOCIATION

The Association's position is that the Company's reallocation method violates the priority order required by Section 25.P.1. The Association asks that the grievance be sustained. For the remedy, the Association asks that the Company be ordered to cease and desist using the reallocation method. Finally, the Association asks the System Board to retain jurisdiction to determine the appropriate remedy.

POSITION OF THE COMPANY

The Company's position is that its use of open trip reallocation does not violate the Agreement. Accordingly, the Company asks that the grievance be denied.

OPINION AND FINDINGS

The approaches to resolving a contract interpretation dispute in arbitration, as we have before us, are well settled. When disputes arise over the proper meaning and application of a collective bargaining agreement, the mission of the arbitration authority is to ascertain and apply what the parties to the agreement intended. The starting point to do this begins with an examination of the words used by the parties to express their mutual intent. If the intent of the parties is clear from the text they used, then the arbitration authority must fully apply the parties' intent as written. If the language is not so clear and is susceptible to plausible but conflicting interpretations, then the

arbitration authority must look to other evidence to determine the parties' intent. Regardless of how it is ascertained, it is the intent of the parties that governs and not any alternative meanings that can possibly be read into the language.

At issue in this dispute is the proper interpretation of Section 25.P.1. of the Agreement and whether it precludes the Company from reallocating open trips as it has. For the reasons to follow, we find that the Company's reallocation method does not, standing by itself, violate Section 25.P. or any other provisions of the Agreement. However, as will be described below, the timing of the Company's reallocation and reserve assignment action may inadvertently produce a violation of Section 25.P.1.

For the Association's position to be correct, the Agreement must explicitly prohibit the Company from reallocating open trips. On its face, Section 25.P.1. establishes only the priority order of steps to be taken to cover open trips in each individual domicile. As written, it does not contain any language that explicitly prohibits the Company from reallocating open trips as it has been doing for many years. The lack of any such restrictive language is not unusual when one recalls that the negotiators never discussed the Company's reallocation method in connection with the operation of Section 25.P.1. The topic was never broached by the parties. Absent any discussion whatsoever, it cannot be concluded that the parties had a meeting of the minds to prohibit reallocation.

Not only is there an absence of any language in Section 25.P.1. to explicitly prohibit the Company from reallocating open trips, no other provisions of the Agreement have been cited that establish such a restriction. Examination of Section 25.N.5. does not reveal any relevant restrictive text. Moreover, it is clear from the evidence that the Agreement does not control how the Company initially attaches a domicile connection to flight segments. Nor have any provisions been cited that explicitly provide for something akin to a "lock-in point" or "freeze point" in time beyond which the Company may not modify the structure of open trips.

The foregoing considerations are entirely consistent with the weight of the evidence dealing with past history. The right to reallocate an open trip was surely a management right before the first pilot contract with the Association came into existence in 1982. The weight of the evidence shows that reallocation of open trips was acceptable to the Association at that time notwithstanding the terms of then Section 8.I. Although Section 8.I. contained a substantively identical set of priority

steps regarding the assignment of reserve pilots, it was not interpreted then to preclude reallocation of open trips. Because the priority steps that evolved into Section 25.P.1. have remained substantively unchanged, it follows that reallocation, if timed correctly, does not violate the requisite priority order.

In view of the foregoing, we must find that the Agreement is effectively silent on the subject of reallocating open trips. Given this silence, our overall finding must be that the Company's reallocation method remains an inherent management right preserved to the Company by Section 1.J.

As previously noted, however, while the reallocation method does not, by itself, violate the Agreement, the timing of its implementation might. The precise order in which the reallocation and reserve assignment is completed is, in our view, of critical importance. To be in compliance with Section 25.P.1., the reallocation of the open trip must be fully completed in the Crew Trac system, with a new pairing identifier code and completion time stamp, *before* a reserve pilot from another domicile is assigned to cover it.

The example scenario we used previously serves to illustrate the timing factor. If the Company fully completes the reallocation of a PHL open trip to DCA before a DCA reserve pilot is assigned to cover it, then the overall process complies with Section 25.P.1.d. The provision requires that a DCA reserve pilot be assigned to the DCA open trip before assigning a reserve pilot from some other domicile. But if the crew scheduler merely intends to reallocate the PHL open trip to DCA when time permits but does not do so before contacting a DCA reserve pilot for the assignment, then, in our view, the crew scheduler has violated Section 25.P.1. because, at the precise moment of the assignment, the DCA reserve pilot is being assigned to cover what still remains as a PHL open trip. Accordingly, in our opinion, it is an indispensable requirement that the trip reallocation be a fully completed act before a reserve pilot from the new domicile is assigned to cover it. Performing the reallocation *after* making the assignment to the DCA pilot would violate Section 25.P.1.d.

None of the actual assignments used as examples in the evidentiary record contained sufficient timing details to establish that they violated Section 25.P.1.

AWARD

The primary Question at Issue must be answered in the negative for the reallocation fact pattern depicted by the evidentiary record. The Company's method of reallocating open trips shown by the evidence does not violate the Agreement as alleged in the grievance. The grievance, therefore, must be denied.

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Gerald E. Wallin, Esq., Impartial Chair

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Captain Edward Spry-Leverton,
Company Member

Concur/Dissent

_____

Captain Matthew L. Chadwick,
Association Member

Concur/Dissent