

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC

Application of)

NORWEGIAN AIR INTERNATIONAL)
LIMITED)

for an exemption under 49 U.S.C. § 40109)
and a foreign air carrier permit pursuant to)
49 U.S.C. § 41301 (US-EU Open Skies))

Docket No. OST-2013-0204

JOINT ANSWER OF AIR LINE PILOTS ASSOCIATION, TRANSPORTATION
TRADES DEPARTMENT, AFL-CIO, EUROPEAN COCKPIT ASSOCIATION,
ASSOCIATION OF FLIGHT ATTENDANTS-CWA, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AND
TRANSPORT WORKERS UNION OF AMERICA TO MOTION FOR EXPEDITED
TREATMENT BY NORWEGIAN AIR INTERNATIONAL LIMITED

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Dated: June 10, 2015

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U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC**

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JOINT ANSWER OF AIR LINE PILOTS ASSOCIATION, TRANSPORTATION TRADES DEPARTMENT, AFL-CIO, EUROPEAN COCKPIT ASSOCIATION, ASSOCIATION OF FLIGHT ATTENDANTS-CWA, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AND TRANSPORT WORKERS UNION OF AMERICA TO MOTION FOR EXPEDITED TREATMENT BY NORWEGIAN AIR INTERNATIONAL LIMITED

The Air Line Pilots Association, the Transportation Trades Department, AFL-CIO and the European Cockpit Association¹ hereby submit this Answer to the motion of Norwegian Air International Limited (“NAI”) for expedited treatment. Attached to the motion is a letter from Bjorn Kjos, the CEO of Norwegian Air Shuttle (“NAS”), NAI’s parent company, in which Mr. Kjos purports to make two commitments and suggests that these commitments provide the basis for DOT to approve NAI’s application for a

¹ The Air Line Pilots Association (“ALPA”), the Transportation Trades Department, AFL-CIO (“TTD”), the European Cockpit Association (“ECA”), the Association of Flight Attendants-CWA, International Association of Machinists and Aerospace Workers, and Transport Workers Union of America are referred to jointly as the “Labor Parties.”

foreign air carrier permit. As we will show, the alleged “commitments” are without substance, certainly with respect to pilots, and serve to further demonstrate why approval of NAI’s application would be at odds with Article 17 *bis* of the U.S.-EU Air Transport Agreement. For all the reasons previously identified by opponents to NAI’s application² and because, as shown below, the new alleged “commitments” change nothing, the Department should deny NAI’s application. However, if the Department believes that additional information is necessary to make a determination in this proceeding it should issue information requests to Norwegian³ to obtain that information or hold a hearing at which representatives of Norwegian may be examined about the founding and structure of NAI, including the compensation and laws that will apply to NAI’s air crew.

DISCUSSION OF THE MOTION

The first “commitment” is that NAI will “use only European and U.S. pilots and crews on NAI transatlantic flights.” Letter at 1. With respect to pilots, this is no commitment at all. The citizenship of pilots has never been at issue in this case. From the inception of its existing transatlantic services, Norwegian has used pilots with EU

² See, e.g., Docket Nos. DOT-OST-2013-0204-0002, -0011, -0034, -0044, -0148 and -0161 (Labor Party and ALPA filings). Hereafter, “(Doc. No. -####)” will refer to the document number of the referenced document as identified in this Docket. The arguments made in those submissions are fully incorporated herein. See also footnote 4 for some of the many other opponents to NAI’s application.

³ NAS, and its subsidiaries, including Norwegian Long Haul AS, NAI and the NAS wholly-owned staffing companies, will be referred to as the “Norwegian Group” or “Norwegian.”

passports and EU pilot licenses. What is at issue are the laws and the terms and conditions of employment that apply to NAI's pilots and flight attendants and the "commitment" makes no statement about that. The pilots continue to be employed by Global Crew Asia PTE Limited, a Singapore hiring company, on fixed-term individual employment contracts with total compensation and labor protections substantially inferior to pilots employed by Norwegian. *See* Declaration of Jack Netskar ("Netskar Dec.") ¶¶ 15-22 (filed with ALPA's Answer dated Dec. 17, 2013 (Doc. No. -0002)).

The flight attendants have been employed in a like manner. They continue to be employed by an external hiring company on fixed-term contracts. The laws, terms, and conditions of employment that apply to them are unclear. Such laws, terms, and conditions have been the core concern of the Labor Parties with NAI from the outset.

The second "commitment" is that NAS will offer NAI pilots and cabin crew "the opportunity to transfer their employment to a company in the Norwegian Group at the end of [a 24 to 36 month] transitional period." This would be in keeping with NAS' so-called "firm policy" with respect to flight crew whose services it utilizes but who are initially employed at employment agencies. Letter at 2.

This "commitment," which is not even mentioned in the motion, does not withstand scrutiny. To our knowledge, NAS' firm policy does not appear in any company handbook. Declaration of François Ballestero ("ETF Dec.") ¶ 9 (attached hereto). Nor does it appear in the company's intranet. *Id.* Nor is it publicly available

through established company channels. *Id.* Nor does it appear in the individual employment contracts of the Singapore-contract pilots who operate long-haul services on behalf of NAS and NAI. Netskar Dec. Attachment A. And, to our knowledge, no agency-hired pilot or flight attendant who has worked on board a Norwegian 787 has been hired by another Norwegian Group company.

The other “compan[ies] in the Norwegian Group” to which Mr. Kjos refers are purely staffing company subsidiaries: essentially, the equivalent of wholly-owned employment agencies. Netskar Dec. ¶14. The employment terms and conditions offered by these internal employment agencies are not comparable to those of pilots employed by Norwegian under Norway’s laws. ETF Dec. ¶¶ 3-6. Moreover, the alleged “firm policy” to transfer pilots from agencies to the Norwegian Group companies has not been respected by Norwegian in the past. Rather, NAS’ actions show that such a policy is frequently honored only in the breach. *Id.* ¶ 8. In addition, the percentage of unionized pilots at NAS has dropped from over 90 percent to less than 50 percent in the last 4 years. *Id.* ¶ 10; Parat Answer to DOT Notice, dated Feb. 13, 2014 (“Parat Answer”) ¶ 4 and Appendix 2 (Doc. No. -0031). NAI has failed even to address, much less contest, this evidence.

Mr. Kjos’ alleged “commitments” are the latest -- but not the only -- attempt by NAI to shift the focus of the Department to inapposite or misleading matters throughout this proceeding. NAI asserted that traffic rights to non-U.S. destinations,

and access to better financing and insurance under OECD rules and the Cape Town Convention, were the reasons NAS established NAI outside of Norway. The opponents to the application showed why this assertion appears to be untrue.⁴ NAI has also asserted that Norwegian has no tradition of discouraging unionization; ALPA, TTD, ECA, and the Norwegian union Parat demonstrated how Norwegian's actions belie such alleged friendliness to labor.⁵ NAI has asserted that the individual employment contracts were governed by the law of Thailand, the country of the pilot base; ALPA, TTD and ECA showed how this could not possibly be true because Singapore law applied.⁶ NAI also asserted that the Singapore-contract pilots' "dollarized average gross payments" (an undefined term) were on par with those of Norwegian pilots; ALPA illustrated that this opaque term hid the tax and social costs for which a Singapore-contract pilot, but not a Norwegian pilot, would be responsible.⁷

In short, none of the previous explanations or assertions hold up to scrutiny.

Neither do the alleged "commitments."

⁴ See ALPA Answer to DOT Notice, dated Feb. 14, 2014 at 2-6 (Doc. No. -0034); Joint Reply of ALPA, TTD, and ECA, dated Feb. 21, 2014 at 3-4 (Doc. No. -0044); Joint Reply of Delta, United, and American, dated Feb. 21, 2014 at 1-2 (Doc. No. -0042); Joint Reply of Air France and KLM, dated Feb. 21, 2014 at 2-3 (Doc. No. -0041); Joint Reply of Lufthansa and SAS, dated Feb. 21, 2014 at 3-4 (Doc. No. -0040); Parat Answer Appendix 1 at 2 (Royal Norwegian Ministry of Transport and Communication letter (translation)).

⁵ Joint Reply of ALPA, TTD, and ECA, dated Feb. 21, 2014 at 7-8; ECA Answer to Application of NAI, dated Dec. 17, 2013 at 5-8 (Doc. No. -0010); Parat Answer at 6-7 and Appendix 2.

⁶ Joint Reply of ALPA, TTD, and ECA, dated Feb. 21, 2014 at 8-9.

⁷ *Id.* at 6-7.

The asserted facts in the record compel an adverse decision by DOT. As we argued before, NAI's application continues to "undermine the labor standards or the labor-related rights and principles" of Norway and the United States. *See* ALPA Answer to Application of NAI, dated Dec. 17, 2013 at 2 (Doc. No. -0002); U.S.-EU agreement, Article 17 *bis*.

Given that the alleged "commitments" change nothing, DOT should issue a show cause order stating that it proposes to deny NAI's application for a foreign air carrier permit. If the Department believes that it would benefit from having more information before it issues such an order, including information about Mr. Kjos' alleged "commitments," it should issue document production requests, and/or should hold a hearing at which representatives of Norwegian may be examined about the founding and structure of NAI, including the compensation and laws that will apply to NAI's air crew. *See* Joint Reply of ALPA, TTD and ECA, dated Aug. 25, 2014 (Doc. No. -0161).

CONCLUSION

For the foregoing reasons, as well as those in our earlier pleadings in this proceeding, the Department should deny the motion for expedited treatment, and issue a show cause order proposing to deny the permit application.

Respectfully submitted,



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Dated: June 10, 2015

CERTIFICATE OF SERVICE

I certify that I have, on this 10th day of June, 2015, served the foregoing Joint

Answer by causing a copy to be sent by electronic mail or fax as identified below:

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Longway

ATTACHMENT

**BEFORE THE
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)	

**DECLARATION OF FRANÇOIS BALLESTERO, POLITICAL SECRETARY FOR
CIVIL AVIATION OF THE EUROPEAN TRANSPORT WORKERS FEDERATION
(ETF), IN SUPPORT OF JOINT ANSWER
OF AIR LINE PILOTS ASSOCIATION, TRANSPORTATION TRADES
DEPARTMENT, AFL-CIO, AND THE EUROPEAN COCKPIT ASSOCIATION, TO
MOTION FOR EXPEDITED TREATMENT BY NORWEGIAN AIR
INTERNATIONAL LIMITED (NAI)**

1. My name is François Ballestero. I am the Political Secretary for Civil Aviation of ETF. The ETF represents more than 2000 pilots and cabin crew in Norwegian, thru our affiliate Parat, based in Norway.

2. The following responds to Mr. Bjorn Kjos' letter filed by Norwegian Air International (NAI) with DOT.

3. As a general rule, pilots hired through an agency have inferior job protection than pilots employed directly, and permanently, with a Norwegian

company. This is especially true with regard to lay-offs, where hired personnel in most European countries are considered “temporary workers” and will therefore be laid off before permanent employees, regardless of seniority or time of service. In addition, the temporary contracts we have seen typically describe a significantly shorter notice period (only 30 days) compared to most national laws which typically describes notice periods of 3 months and up.

4. Also, we can mention that while some of the temporary contracts offered by agencies providing pilots for Norwegian describe a 60-day notice period for base changes, numerous pilots have reported that instead of the 60-day notice period, they receive a cancellation of their current contract and their current base with a 30-day termination notice, only to receive a new contract and base assignment, often in the same email, thus repeatedly circumventing the contractually agreed upon 60-days base change notice.

5. Agency-employed pilots are also reporting problems being accepted into their base-country’s social security systems due to the number of countries involved in their employment. For example, pilots may be hired by an agency located in one country, employed by an agency who rents them to Norwegian, which is based in Norway, and based in a third country, such as Spain.

6. To our knowledge, agency-pilots are not enrolled in any pension scheme. Most European countries require a mandatory pension schemes for employees of a

company, while agency-pilots fall outside of the laws because of their “temporary” status.

7. It is our impression that Norwegian, once again is playing with words due to their new and very complex corporate structure. For example, the pilots at the Helsinki base in Finland, along with a small group of pilots based in Spain, have been offered “employment” in a “company in the Norwegian Group.” The reality is that, while technically employed by a Norwegian company, all employee-related functions, including human resources functions, have been outsourced back to the same agencies through which the pilots were hired (Proffice Aviation and OSM, respectively).

8. We also wish to address Mr. Kjos’ statement in his letter about a “transitional period” for pilots to move from an employment agency to a company within the Norwegian Group. The 24-36 month “transitional period” is a result of hard negotiations with the Norwegian Pilot Union (NPU) which represents Scandinavia-based short haul pilots. The agreement describes a maximum period of 24 months for the contract pilots before being hired by Norwegian. The additional 12 months were agreed upon for the sole purpose of closing down a base, which after 24 months of service proves not to be economically viable. We have consistently experienced that Norwegian has exceeded the 24-month “transitional period” without any intention to close down the base and has continued to employ agency-pilots. In the case of Helsinki,

more than 40 months passed before pilots were offered employment in one of the Norwegian Group companies, a clear breach of the employment agreement.

9. We do not possess any information indicating the long-haul pilots have been informed of this so-called “transitional period” agreement with the NPU. Furthermore, it is our clear understanding that neither this agreement with NPU, nor any company policy, is publicly known. Nor is it included in any company policy handbook. Nor is it available through established company channels. Nor can it be found on the Norwegian Group intranet. Nor does it appear, according to our understanding, in any individual employment contracts signed by the long-haul pilots. In addition, in an attempt to pursue the policies stated in the employment agreement, the Spain-based pilots have organized themselves under SEPLA, the Spanish pilots’ union, and have made repeated attempts to engage Norwegian, or representatives of Norwegian, for the purpose of constructive talks. For the past six months, these repeated attempts have been completely ignored by Norwegian. As a reply to these efforts made by pilot representatives, Norwegian has stated that it does not have any pilots in Spain, but OSM does. What Norwegian apparently means by this is that OSM, the local hiring agency for the Spanish pilots, is the employer.

10. Lastly, we want to reiterate a point that our affiliate Parat made in their earlier filing to the DOT about the state of unionization among pilots at Norwegian. In that filing, Parat stated, “Norwegian Air Shuttle and its affiliate companies have gone

from having about 96% organized pilots just a few years ago to having about 48% at the moment. The rate of unionized pilots is dropping at an accelerated pace. The Company is actively working to make it harder for the unions, as they have taken direct action to split up and weaken unions, to offer individual contracts to pilots and to move and split up the company in any affiliates." Answer of Parat to DOT Notice, 5. This state of affairs has gotten worse, not better, since our earlier filing.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my belief.



François Ballestero