



A bold voice for transportation workers

U.S. REGULATORS MUST REJECT NORWEGIAN AIR INTERNATIONAL'S FLAG OF CONVENIENCE SCHEME

At TTD's 2013 fall meeting, the Executive Committee condemned an emerging "Flag of Convenience" business model being pursued by Norwegian Air Shuttle (NAS). This operating scheme – now referred to as Norwegian Air International (NAI) – is a poorly disguised attempt to expand transatlantic air service by gaining an unfair competitive advantage and undercutting air carriers and employees in both the U.S. and Europe. Even worse, this new air service violates the existing U.S.-EU Air Transport Agreement (ATA).

Last fall the Executive Committee warned against a Norwegian air carrier seeking to create a corporate subsidiary in Ireland (although it will not serve Ireland), and using flight crews based in Thailand covered by the laws of Singapore with employees being "rented" through individual employment contracts. We also warned that this operating scheme was being pushed at the expense of Norway's social laws and the collective bargaining rights of Norwegian's own employees.

Since our last meeting, the economic threats posed by the NAI scheme have only increased as more details about the carrier's plans have emerged and opposition from the labor movement on both sides of the Atlantic has intensified. Most significantly, NAS's Irish subsidiary, NAI, has applied to the U.S. Department of Transportation for a foreign air carrier permit. What has become clear in this proceeding is that the pending application violates both U.S. law and the ATA and must be rejected by this Administration.

Article 17 bis of the ATA explicitly states that the air service opportunities created by the Agreement "are not intended to undermine labour standards or the labour-related rights and principles contained in the Parties' respective laws." It is clear that NAI would not be able to service the U.S. absent the ATA and it is likewise clear that its scheme will significantly undermine labor standards. Furthermore, granting the NAI application would violate the statutory requirement that regulatory decisions made by the DOT, including the granting of air carrier certificates, must promote the public interest and encourage fair wages and working conditions.

The NAI business model also raises a significant safety and oversight issue. While NAI is incorporated in Ireland, it will operate flights entirely outside of that country. A recent report issued by the Irish Air Accident Investigation Unit (AAIU) regarding a 2011 accident in Cork, Ireland highlights the problems associated with this type of operation. An aircraft, registered in Spain and operated under a Spanish air operators certificate (AOC) but not operating from or through Spain, crashed in Cork while attempting to land. The AAIU found that the lack of proper oversight of the carrier by the regulator that issued the AOC was a factor in the accident. This tragic incident demonstrates the challenge posed by regulating an operator that does not provide air services to the territory of the regulator.

Over the objections of U.S. and European labor, Irish authorities recently granted NAI an Air Operator Certificate and an Air Carrier Operating License, effectively making NAI an Irish airline. The company will still need to obtain a Federal Aviation Administration (FAA) FAR 129 Foreign Airline Operating Certificate in order to begin servicing U.S. airport. This certificate is designed to ensure the safety of airline operations and compliance with accepted international safety standards.

Given the recent decision by the Irish government, the choices now facing the U.S. DOT will set an important precedent that will have far reaching implications for the global aviation industry, U.S. and European airlines and airline employees. NAI's application is a critical test case for how the U.S.-EU air services agreement will be implemented, and whether the Article 17 labor protections will be enforced as intended. If NAI is granted authority to operate it will be yet another example of broken promises made by trade negotiators as poor enforcement will once again harm middle class workers – in this case, on both sides of the Atlantic.

TTD has and will continue to support market opening aviation trade pacts that expand service and middle class airline jobs. Transportation unions have always stood for trade fairness and a level playing field. The NAI scheme fails on both counts. It is a flag of convenience scheme that has no place in the ever-expanding aviation trade relationship between the U.S. and EU. If approved, it will set a standard that airlines can only compete for international routes by scouring the globe for the lowest labor standards. The Obama Administration must reject the NAI application, and send a clear message that Flag of Convenience models will not be rewarded with expanded access to the U.S. aviation market.

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