

-----X	
In the Matter of the Arbitration	:
	:
Between	:
Allied Pilots Association	:
- and -	:
Air Line Pilots Association	:
and	:
American Airlines, Inc.	:
and	:
American Eagle Airlines, Inc.	:
	:
(SuppW/Letter 3; Grv. FLO-0108 Remedy)	:
-----X	

**OPINION  
AND  
AWARD**

**APPEARANCES**

**For the Air Line Pilots Association:**

Wayne M. Klocke, Esq.  
Arthur Luby, Esq.  
James Lobsenz, Esq.

**For American Eagle Airlines, Inc.:**

Paul, Hastings, Janofsky & Walker, LLP.  
By: Jack Gallagher, Esq.  
Intra L. Germanis, Esq.  
Cathy McCann, Esq.

**For the Allied Pilots Association:**

James & Hoffman P.C.  
By: David P. Dean, Esq.  
Emilie S. Kraft, Esq.

**For American Airlines, Inc.:**

Morgan, Lewis & Bockius, LLP.  
By: Harry A. Risetto, Esq.  
Michelle A. Peak, Esq.

On March 29, 2008, ALPA filed a grievance in which it claimed that American Eagle CJ Captains with AA seniority numbers as a result of the flow-through provisions of the now expired Supplement W/Letter 3 were entitled to attend AA training classes beginning June 6, 2007 instead of those TWA-LLC pilots designated by Arbitrator LaRocco in FLO-0903 as “equivalent to new hires.”

That same question was raised before Arbitrator LaRocco in the remedy phase of FLO-0903, but his ruling was that he lacked jurisdiction to provide an answer because the Parties' previously stipulated remedy question did not encompass that issue. He also said:

The Arbitrator's remarks herein should not be construed to express any opinion on whether ALPA and/or AE waived any right to seek the additional relief it requested herein in any subsequent case.

(FLO-0903, 10/28/08, PP.31-32)

As a result of that determination, this grievance was moved forward and was placed before me on June 1, 2009. At that hearing, the Parties agreed on what I have characterized as a narrow question, i.e.:

Were American Eagle pilots who hold American Airline seniority numbers entitled to attend AA training classes beginning in June 2007?

They also agreed, if this question was answered in the affirmative, that the question of remedy was to be returned to them for determination, with the arbitrator retaining jurisdiction in the event a resolution was not reached.

By the time the June 1, 2009 hearing had taken place, there had been 20 training classes at AA in the period between June 6, 2007 and March 18, 2009. No Eagle Captains with AA seniority numbers were in those classes. However, there were 244 TWA "new hire" pilots, all of whom had been "recalled" from furlough along with AA pilots who had

previously been furloughed from active AA positions.<sup>1</sup>

In my October 18, 2009 decision, I stated that there were, as in previous cases, equities on both sides of the dispute. I also said that I understood and fully appreciated those arguments, but that the first question was whether what the Parties had agreed to in SuppW/Letter 3 answered the question at hand. If it did, consideration of the competing equities, as Arbitrator LaRocco had previously noted, were best left to the Parties, particularly when they had the foresight of leaving any remedy, if the question was answered in the affirmative, in their hands.

For reasons fully set forth in the Opinion, I did answer the submitted question in the affirmative, stating in the Award:

As stated in the foregoing Opinion, American Eagle pilots who hold American Airline seniority numbers were entitled to attend AA training classes beginning in June 2007.

In accordance with the instructions of the Parties, the matter is remanded to ALPA, AE, AA and APA to formulate an appropriate remedy.

Jurisdiction will be retained for a period of one year, a period that may be extended by agreement of the Parties. In the event that agreement on an appropriate remedy is not reached during the period of retained jurisdiction, any Party may, by motion, request that jurisdiction be exercised over the question of remedy. However, such request shall not be made within ninety days of the date of this Award.

---

<sup>1</sup> Only one TWA-LLC pilot entered training in the June 6, 2007 class. At the time this occurred, there were 155 Eagle Captains with AA seniority senior to that pilot. As the classes continued the number of TWA-LLC pilots attending them increased, with their numbers filling the bulk of the class seats during the nine classes held during first six months of 2008.

As it was, the Parties could not agree on a remedy and that question was returned to me, with hearings held on February 25 and 26 and March 30, 2010. Prior to those hearings, position statements were filed setting forth the views of the Parties on the remedy question. All agreed on one thing, that the question was complex and the answer difficult.

Upon studying those positions and arguments in detail and reviewing the earlier proceeding as well as my October 18, 2009, Award and the prior awards, I opened the remedy hearings by advising that I did not intend to require an Eagle pilot to go to American who does not wish to do so and did not intend, whatever award I might render, that any pilot flying for American end up on the street as a direct result of the required transfer of Eagle Captains. I reinforced that view as the hearings continued so that the Parties would be well aware of my considered views.

During the hearing, in addition to lengthy opening statements and continued presentations of the respective views of the two airlines and the two unions, I heard testimony from James Anderson, Senior Principal, Employee Relations, Flight at American, Kye Johanning, Lead Economic Analyst at ALPA, Eagle Captain Robert Higgins, Michael Burtzlaff, a Principal in American's Finance Group, Cathy McCann, Vice President, People at Eagle, Captain Bill Couette, an Eagle Captain and Vice President, Administration at ALPA, American Captain Ralph Hunter

and First Officer Steven Salter, American Captains Douglas Gabel, Jeff Hefley and Glen Morris, former TWA employees, and Kenneth Cooper, former Assistant Director in ALPA's Representation Department.

The testimony of APA witness Hunter and ALPA witness Cooper dealt primarily with the question of whether or not it was obligatory under the now expired Supplement W/Letter 3 for a non-Eagle Rights Captain to flow up to American at the time an offered opportunity was available (Tr. 189-214, 315-324, Hunter; 325-339, Cooper).

The testimony of ALPA witness Johanning and American witness Burtzloff dealt with damages issues, affecting those who were unable to flow up to American because they were not given the opportunity to attend the aforesaid training classes, and the so-called ripple or downstream damages for those who were unable to move into higher Eagle positions because of the inability of those ahead of them to move to American. ALPA took the position that both groups were damaged and that such damages should be awarded (Tr. 78-110, 177-181, Johanning; ALPA Ex.1 & 1A). American's analysis was that those whose movement to American was delayed did not suffer a monetary loss in overall compensation (Tr. 118-148, Burtzloff; AA Ex. 1). Both American and Eagle also argued that downstream damages were not just highly speculative, as confirmed through Vice President McCann's testimony as to how and why pilots bid (Tr. 149-164), but were also wholly inappropriate.

The testimony of Captains Gabel, Hefley and Morris, former TWA pilots called by APA, dealt with the purchase of the airline by American, the technicalities, process and progress of the transition, and the status and role of TWA-LLC, the subsidiary created at the time of purchase. The purpose of this testimony, aided by a timeline (APA Ex.4) and other exhibits (APA Ex.1-3,5-9), was to demonstrate that TWA-LLC was a needed vehicle in a large and complicated merger; that all employed at TWA-LLC fully expected to become American pilots as American officials told them they would; that a number of them did so, and that it is not appropriate, when the facts of the transition are objectively viewed, to characterize them as “new hires.” APA also argued, on different equitable grounds, that 292 of the 382 pilots such as First Officer Salter hired by American in 2001 prior to the events of 9/11 are entitled to return before any of the 244 Eagle pilots can attend class. These are pilots furloughed post-9/11, who were placed below all former TWA pilots when the AA/TWA seniority lists were merged.

There was also testimony by Eagle Captain Higgins, who is presently on short-term disability and, as a consequence, is unable to use his first-class medical. The question regarding the status and right of a pilot such as Captain Higgins, who might be unable to move to American because of such an impediment, has been resolved by a Stipulation, one of the few issues on which the Parties have agreed, that will be part of my Award.

**The Positions of the Parties**

Both ALPA and Eagle contend that, in order to remedy the previously found breach, 244 Eagle CJ Captains with AA numbers are entitled to flow-up to AA ahead of any new hires and any AA pilots junior to the TWA “new hires” and that said movement, which is in seniority order, is obligatory for each Eagle CJ Captain. Where they differ is on the pace of that movement. ALPA maintains that the pilots, who have waited long enough, should move without delay. Eagle maintains that a pace as swift as ALPA seeks would cripple the operations of the airline and that, as a consequence, the move should be limited to no more than 20 pilots a month, beginning 60 days after the Award. Twenty a month because that is the maximum Eagle can spare at any one time and 60 days hence because that is the time Eagle needs to train those replacing pilots who are leaving. ALPA says it understands the constraints Eagle advances, but argues that such metering should be ordered only to resolve a remedial issue that cannot be solved by other means, and that, in any event, all affected pilots must continue to be properly compensated during any further period of delay.

APA, as previously stated, is of the opinion that the above mentioned American pilots hired in 2001, the bulk of the so-called “AA Legacy” pilots, come first and that the Eagle pilots must wait. American, because it says it would have recalled those pilots if it had known that recalling TWA “new hires” was improper, takes the same position. In

addition, APA, for reasons of equity, believes an additional 154 furloughed pilots should be recalled before Eagle pilots begin transferring to AA.

The Parties also disagree over the damage issue. Here, the dispute is between the companies and ALPA. The Association contends that each pilot who was unable to flow-up is entitled to every element of compensation and every benefit he would have received if he had moved to American at the time he was entitled to do so, such time to be measured by the presence of the TWA-LLC pilots in the June 6, 2007-March 18, 2009 training classes. ALPA also contends that the compensation and benefits must go beyond seniority credit for pay and pension purposes as Eagle suggests, but must also include AA sick leave, vacation and health insurance differentials; retroactive participation and credit in both American retirement plans, American Airlines, Inc. Retirement Benefit Program-Fixed Income Plan (the "A Plan") and the American Airlines, Inc. Pilot Retirement Benefit Program-Variable Income Plan (the "B Plan"). Other than length of service credit for pay purposes, American, contending that there was no overall compensation loss, insists, as a result, that no other compensation or increased benefit is warranted. Both American and Eagle also forcefully argue that, if damages are awarded, the Companies are entitled to an offset or credit for amounts Eagle flow-through pilots earned at Eagle in

excess of the amounts they would have earned at AA if they had transferred between June 6, 2007 and March 18, 2009.

ALPA also contends that those pilots prevented from moving higher in Eagle's ranks because of the delay occasioned by the breach are also entitled to damages. By ALPA's calculation, these downstream damages, absent requested interest, total \$21.9 million; \$19.7 million in lost wages and \$1.2 million in Company 401(k) contributions. This amount, ALPA says, should not be paid by Eagle, which did not cause the breach, but by American, which had decided to bring the TWA "new hire" pilots into the training classes rather than following the precepts of SuppW/Letter 3. Though not being held responsible for these damages, Eagle asserts they are speculative and unjustified. American vigorously opposes any such downstream damages. Like Eagle, it contends they are speculative and, given the bidding patterns of pilots, that any determination of the appropriate recipients would be fraught with uncertainty. It also argues that any consideration of downstream damages is just not encompassed within the narrow, disputed question with which this proceeding began. That question was whether Eagle pilots with AA seniority numbers were entitled to attend AA training

classes. Once that question was answered, the only remaining issue was what remedy should be fashioned for those pilots, not others.<sup>2</sup>

### **Discussion and Analysis**

As every one understands, the remedy issues presented in this case are complex and inter-related. All four Parties (APA, ALPA, AA and Eagle) have vigorously and effectively presented their evidence and arguments, including strong equitable arguments on behalf of all affected pilots. In light of the complex and inter-related nature of the issues, I elected to announce certain aspects of my decision to the Parties on the record and then to ask the Parties to discuss with me, collectively, the remedy issues that would remain open in light of my preliminary rulings. During those discussions I provided the Parties further guidance about the resolution of the remedial issues. While this consultation process was helpful to me in further defining the issues and understanding the competing views and considerations, the Award that follows is my Award; it does not represent the “agreement” of any of the four parties. Indeed, as set forth above, the positions of the parties on the key issues addressed herein remain far apart. Nonetheless, in the face of an impending Award, each of the Parties has been helpful and cooperative in my efforts to finalize an Award with sufficient clarity and detail to facilitate implementation.

---

<sup>2</sup> Eagle raised some other remedy issues. However, they were predicated on the assumption that moving to AA was mandatory and the consequent need for a hardship provision. In view of my ruling, set forth below, these questions need not be addressed.

It should also be said that I have taken into consideration some facts that were not known until after the proceeding was underway. First, I was advised that 102 AA pilots, of whom 83 were former TWA-LLC “new hire” pilots who had been serving at American since their 2007-2009 recalls, were furloughed on February 28, 2010. However, anticipated furloughs that were to take place in April were canceled. Additionally, I was advised that American, except as a possible result of this Award, anticipates no additional training in 2010. All of this, as well as the competing equities, which will be discussed, has been taken into consideration in reaching my conclusions.

I had stated at the outset that I did not intend to require any Eagle CJ Captain to transfer to American if he chose not to do so. I reached that conclusion, which I repeat here, for two reasons. The first is that, in my judgment, the now expired Supp W/Letter 3 did not require it. Though it could be argued that those who did not elect to “forfeit the opportunity to secure a position on the AA Pilots Seniority List” pursuant to Article III.F. at the completion of CJ Captain IOE were obligated to accept the actual position when offered, the language of Supp W/Letter 3 does not support that conclusion. Other subsections of Article III, such as III. H., I. and J., speak of a CJ Captain who “accepts a new hire position.” If a pilot were required to move to that new hire position when actually available, that is, if such movement were

obligatory, the word “accept,” which clearly entails a choice, would not have been used.

The second reason is that SuppW/Letter 3 was crafted in 1997. Much has changed since then. As I and other arbitrators have pointed out, no one anticipated 9/11, no one anticipated the magnitude of the resultant furloughs, and mergers were not even discussed. Moreover, those pilots who did not chose Eagle Rights status did so at a very different time in a very different landscape. That unanticipated upward delay, encompassing ten years for some, strongly supports the judgment that reading Supp W/Letter 3 as containing an irrevocable obligation is inappropriate and inconsistent with equity.

It is therefore my conclusion that a choice should be made. Obviously, the choice should be extended to the 244 CJ Captains who would have had the opportunity to attend the aforesaid training classes. I am also of the opinion that the choice should be given to an additional 42 CJ Captains, for a total of 286. That includes all active Eagle CJ Captains who have greater seniority than the least senior currently active TWA-LLC pilot.

The choice these pilots make is to be made in light of the remedial components spelled out herein. Once these pilots are made aware of the compensation and benefits available to them if they choose to flow-up to American pursuant to the timetable set forth herein, a timetable consistent with the needs of the companies and the equities inherent in

the history and prior anticipations of all other pilots, their choice will be irrevocable. The opportunity to flow-up, clearly at times uncertain except for the first 35, will be offered to the 286 senior Eagle CJ Captains with AA numbers. The compensation and benefits attached to a flow-up choice will be granted to the most senior 244 of the 286 who choose this advancement. If less than 244 of the 286 choose to flow-up, the compensation and benefits will only be offered to that lesser number, whatever it may be, with such compensation and benefits offered to no other Eagle pilot. Though the opportunity to transfer to American may not occur for some time, dependent as it is on the health of the airline and the compelling equities in this case, I have decided to make the choice irrevocable rather than allowing an affected pilot to choose one option and later choose another. Supp W/Letter 3 has expired and finality, in my judgment, is to the interest of all.

As stated, the 244 Eagle CJ Captains who choose to transfer to American should have been at the Company earlier; the first on June 6, 2007, and the remainder on the July 3, 2007-March 18, 2009, class dates at the pace measured by the class attendance of the remaining 243 TWA-LLC pilots. The retroactivity of the compensation and benefits to be offered has been determined with those dates in mind. I have also

decided that, for these 244 Eagle CJ Captains, undeniable considerations of equity require that retroactivity also be applied to any “time to Captain” requirement. Therefore, the Award provides that, for such purposes, the “time of transfer” should be measured from the time that Captain would have transferred to AA had the breach not occurred.

If any one of the 244 Eagle CJ Captains chooses to flow-up to American and is subsequently enrolled in a training class, his transfer to American, save for the exception noted above, shall be no different, than transfers that had previously occurred pursuant to the now expired Supp W/Letter 3, including placement and restrictions.<sup>3</sup>

Once that Eagle CJ Captain transfers to American, he shall receive length of service for pay purposes retroactive to the date he would have transferred during the June 6, 2007-March 18, 2009 period. Prospectively, that Eagle CJ Captain who transfers will also receive the greater vacation and sick bank credit he would have earned if had been at American on the date he should have transferred. Those Eagle CJ Captains within the group of 244 who transfer will also become participants in America’s A Plan on the day they become American employees. However, as was done when TWA pilots became American employees, the one year waiting period shall be waived and the period

---

<sup>3</sup>In all other respects, these CJ Captains who choose to flow-up to AA must meet American’s criteria for employment at the time of transfer. However, it should be noted that the Parties have stipulated, as reflected in the Award, that an Eagle CJ Captain who is unable to flow to AA because he does not have an FAA First Class Medical Certificate or is on the long-term sick list or disability list does not forfeit the opportunity to flow-up at a later date.

between the time they should have transferred and the time they actually transferred shall be credited, but solely for vesting purposes. At the time that Eagle CJ Captain transfers to American, the Company, by means legally permissible as set forth in the Award, will also make contributions to the B Plan for the period that Captain should have transferred at a rate equal to the Super MD-80 First Officer rate of 73 hours, which is the reserve guarantee.

I turn now to the movement of Eagle CJ Captains to American. Here, competing equities come sharply into play. The Eagle CJ Captains have waited a long time to exercise the opportunity to transfer. On the other hand, the individual TWA pilots are not at fault for that delay. They were employees of a failing, bankrupt company whose assets were purchased by American and had little control over their fate. They, along with the Eagle CJ Captains and those pilots hired by American in 2001, were all caught up and severely impacted by the events of 9/11; events which no one anticipated and which has affected all to this day. In constructing what follows I have taken all of those equities into consideration.

The Award provides that 35 Eagle CJ Captains who choose to flow-up to American shall be placed in training beginning no later than June 2010, with said training to be in two tranches if needed. The Award also

provides that there shall be no furloughs as a direct result of these transfers. If, for other reasons, a furlough is deemed necessary during the remainder of 2010, 35 pilots furloughed shall receive two months additional furlough pay in the amount set forth in the AA/APA Agreement, as specified in the Award.

Following the aforesaid transfer, before any additional CJ Captains are transferred, recalls to AA shall be administered in accordance with the AA/APA Agreement based on the AA seniority list as of the date of this Award until the most junior pilot furloughed on February 28, 2010 has been offered recall.

Following that offer and recall, the remaining Eagle CJ Captains with AA numbers who elect to transfer when and as future positions become available and those AA pilots presently on furlough shall be entitled to enter and re-enter active service at American in AA seniority order. Of those Eagle CJ Captains who transfer, those who were in the previously referenced 244 shall be entitled to receive the previously referenced compensation and benefits as of the day they would have transferred if they were in one of the June 6, 2007–March 18, 2009 training classes.

What remains is the downstream damage question. I am not persuaded that the requested payment of monetary damages, with their

calculation and distribution so unclear and imprecise, is a suitable means of dealing with the effect on those pilots below the Eagle CJ Captains with AA numbers. A more appropriate means is to concentrate on the job opportunities which were unavailable as a result of the above described events that will become available following contractually required recalls. There are presently 1351 Captains at Eagle, 527 have AA seniority numbers, 824 do not. Through a system of preferential hiring, 824 future pilot job opportunities at AA should be made available to Eagle pilots who do not have AA seniority numbers. When job opportunities become available at a result of future hiring at AA, said Captains are to be offered one of every two new hire positions in a new hire class in Eagle seniority order subject to the following limitation. Eagle will make every attempt to release a sufficient number of pilots to meet the aforesaid ratio. It will not, however, be required to release more than 20 pilots per month should release of a greater number result, in its judgment, in severe operational difficulties. If any one of the present day Captains declines the above opportunity when available, an Eagle pilot who has become a Captain after the date of this Award shall have the option of electing that opportunity until such time as 824 pilot positions have been filled by Eagle Captains pursuant to this paragraph. This system of preferential hiring should be a matter of agreement between the directly affected Parties. The Award that follows so provides.

The Undersigned, acting as the Arbitrator pursuant to the Agreement of the Parties and having duly heard their proofs and allegations, therefore renders the following

### **AWARD**

As stated in the foregoing Opinion, American Airlines shall offer to the 286 most senior Eagle CJ Captains holding AA seniority numbers the opportunity to elect to flow-up to American. Said election, which is to be made after said Captains are advised of the remedial components set forth herein, shall be irrevocable, and shall be made no later than May 24, 2010. Once elections are made, the opportunity to transfer to American with the remedial components set forth herein shall be offered to the 244 most senior CJ Captains of the 286 who elect this advancement. If less than 244 Eagle CJ Captains so elect, the remedial components set forth will only be offered to that lesser number.

Said CJ Captains who elect the opportunity must meet the criteria for employment at American at the time of transfer, with the "time of transfer" for the purposes of "time to Captain" measured from the time each CJ Captain would have transferred to American had the breach not occurred. By agreement of the Parties, any Eagle CJ Captain who is unable to transfer to American because he does not have a FAA First Class Certificate or is on Eagles' long-term sick list or disability list does not forfeit the opportunity to transfer at a later date provided American's eligibility criteria, as set forth herein, are met.

Except as noted above, those Eagle CJ Captains transferred to American shall be transferred in the same fashion as those CJ Captains who previously transferred pursuant to the now expired Supplement W/Letter 3, including placement and restrictions.

Once an above referenced Eagle CJ Captain electing to transfer becomes an employee of American, he shall receive length of service for pay purposes retroactive to the date he would have transferred but for the placement of TWA-LLC pilots in the June 6, 2007-March 18, 2009 training classes.

Prospectively, an above referenced Eagle CJ Captain who transfers to American will receive the greater vacation and sick bank credit he would have earned if he had been at American but for the placement of TWA-LLC pilots in the aforesaid training classes. Those Eagle CJ Captains within the group of 244 CJ Captains who transfer will become participants in American's A Plan on the day they become American employees, with the one year waiting period waived and the period between the time they should have transferred and the time they actually transferred credited solely for vesting purposes. Additionally, at the time said CJ Captain transfers to American, the Company will make contributions to the B Fund for the period that Captain should have transferred to American, which contributions shall be at the MD-Super 80 First Officer reserve guarantee rate of 73 hours. In the event such contributions are not legally permissible during the first year of said Captain's employment at American, the remainder of such contributions will be made, to the extent legally permissible, in the second year. Any remaining contributions shall be paid as taxable compensation.

The first 35 Eagle CJ Captains who elect to transfer to American shall be placed in training beginning no later than June 2010, with said training to be in two tranches if needed.

There shall be no furloughs as a result of these transfers. If, for other reasons, a furlough is deemed necessary during 2010, 35 pilots furloughed shall receive two additional months furlough pay in the amounts set forth in the AA/APA Agreement. Such additional pay shall be awarded beginning with the most senior pilot in each month of furloughs and then to each less senior pilot in that month until a total of 35 pilots have been awarded the additional pay.

Following the aforesaid transfer, before any additional Eagle CJ Captains are transferred, recalls to AA shall be administered in accordance with the AA/APA Agreement based on the AA seniority list as of the date of this Award until the most junior pilot furloughed on February 28, 2010 has been offered recall.

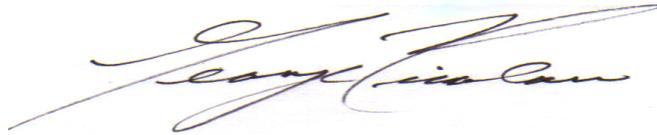
Following that offer and recall, the remaining Eagle CJ Captains with AA seniority numbers who choose to transfer when and as future positions become available and those American pilots presently on furlough shall be entitled to enter and re-enter active service at American in American seniority order. Said Eagle CJ Captains transferring to American shall be transferred in the same fashion as those CJ Captains who previously transferred pursuant to the now expired Supplement W/Letter 3, including placement and restrictions. Upon their transfer, those CJ Captains within the previously referenced 244 CJ Captains shall be entitled to receive the above referenced compensation and benefits as of the day they would have transferred but for the placement of TWA-LLC pilots in the June 6, 2007-March 18, 2009 training classes.

The affected Parties are directed to enter into a preferential hiring agreement pursuant to which American, at the time hiring resumes, will offer to 824 Eagle Captains, including Eagle Rights Captains, one of every two new hire positions in a new hire class in order of Eagle seniority, subject

to the following limitation. Eagle is to make every attempt to release a sufficient number of pilots to meet the aforesaid ratio. It will not, however, be required to release more than 20 pilots per month if doing so would, in its judgment, create severe operational difficulties.

Should any of the present day Eagle Captains decline the above offered pilot position opportunity, an Eagle pilot who becomes a Captain after the date of this Award, shall have the right to elect said opportunity in seniority order until such time as 824 pilot positions have been filled by Eagle Captains pursuant to this paragraph.

Jurisdiction will be retained in the event there is any dispute regarding the interpretation or application of this Award.



---

George Nicolau, Arbitrator

**ACKNOWLEDGMENT**

On this 9th day of April, 2010 I, George Nicolau, affirm, pursuant to Section 7507 of the Civil Practice Law and Rules of the State of New York, that I have executed and issued the foregoing as my Opinion and Award in the above matter.



---

George Nicolau