

ORDER: E-9162
ISSUED: APR. 29 1955

(CONTROL DEFINED)

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DOCKET No. 6582
(E-9162)

EASTERN-COLONIAL CONTROL CASE

Decided April 29, 1955

Control of Colonial Airlines, Inc., by Eastern Air Lines, Inc., existing as of February 27, 1954, the date of the final decision in docket No. 5666, (18 C. A. B. 453) found to have been terminated, and show-cause proceeding dismissed.

APPEARANCES:

E. Smythe Gambrell, W. Glen Harlan, Harold L. Russell, and Robert E. Hicks for Eastern Air Lines, Inc.

John W. Cross, Richard A. Fitzgerald, John Hartshorn, and Alexander G. Hardy for National Airlines, Inc.

Edward A. Silliere, Edmund M. Hanrahan, Branch T. Dykes, and L. Orville Cameron for Colonial Airlines, Inc.

E. Welch Pogue and James F. Bell for Mohawk Airlines, Inc.

Melvin H. Nuss and Allan M. Hawman for the city of Reading, Pa.

Robert L. Griffith, William J. McAuliffe, Jr., Robert Burstein, George S. Lapan, Jr., and John W. Chambers for the Office of Compliance, Civil Aeronautics Board.

OPINION

BY THE BOARD:

The instant proceeding is an outgrowth of the Eastern-Colonial Acquisition Case, docket No. 5666 *et al.*, 18 C. A. B. 453 (1954), in which Eastern Air Lines, Inc. (Eastern), and Colonial Airlines, Inc. (Colonial), had jointly applied for approval of an agreement providing for the acquisition of Colonial's assets by Eastern. In that case, the examiner found that Eastern had acquired prior control of Colonial in violation of section 408 of the Act, but he recommended approval of the agreement because of substantial public-interest factors favoring such approval.

The Board adopted the examiner's findings and recommendations. The President, however, determined that the agreement should be disapproved because of Eastern's unlawful acquisition of control of Colonial in violation of section 408. He took the position that mergers should be accomplished in full accordance with the requirements of the Act, including the requirement for advance Board approval of any acquisition of control. Accordingly, the Board disapproved the acquisition agreement.¹

Having found that Eastern had unlawfully acquired control of Colonial, the Board instituted the instant proceeding requiring Eastern to show cause why it should not be directed to terminate its

¹ Order No. E-8136, 18 C. A. B. 453 (1954).
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control of Colonial, and why it should not be directed to cease and desist from acquiring any control of Colonial or any of its routes and assets without prior approval of the Board in full compliance with the provisions of the Act.² National Airlines, Inc. (National), and Colonial were given leave to intervene.

After due notice, a hearing was held before Examiner Edward T. Stodola, who issued an initial decision in which he found and concluded that Eastern's control of Colonial had been terminated and recommended that the proceeding be dismissed. National filed exceptions to the initial decision and a brief in support of such exceptions. Colonial filed a brief supporting the examiner's initial decision. Eastern relied on its brief to the examiner in support of the examiner's position. The Office of Compliance, which had conducted the investigation, also relied upon its brief to the examiner, in which it had concluded that Eastern did not have control of Colonial and recommended that the proceeding be dismissed. The Board has heard oral argument and the case now stands submitted for decision.

Upon consideration of the entire record, we agree with and adopt the examiner's findings, conclusions, and recommendations. The examiner who heard the instant proceeding was the same examiner who had heard the original acquisition case and who, in that proceeding, had arrived at the conclusion that Eastern had obtained unlawful control of Colonial. In the instant proceeding, using the same standards which he had applied in the original case and scrutinizing the evidence with the same meticulous care, the examiner has arrived at the conclusion that Eastern no longer controls Colonial. The determination of the narrow issue which this case presents for decision was essentially factual in nature. The examiner saw and heard the witnesses and observed their demeanor while testifying. He was therefore in a good position to determine their credibility. In his initial decision he made credibility findings and, in addition, pointed out that documentary evidence was adduced to support many of the assertions of the witnesses.

We are satisfied from a review of the record that the examiner's finding and conclusion that Eastern's control of Colonial has been terminated is fully supported by substantial evidence in the record considered as a whole. Accordingly, the instant proceeding should be dismissed.

An appropriate order will be entered.

Rizley, Chairman, Gurney and Denny, Members of the Board, concurred in the above opinion.

ADAMS, *Vice Chairman*, and LEE, *Member*, filed the following dissenting statement:

We cannot agree with the majority's decision in this case because we are not satisfied that Eastern's control over Colonial has been completely terminated.

ORDER

A full public hearing having been held in the above-entitled proceeding, and the Board, upon consideration of the record, having

² Order No. E-8160, adopted March 9, 1954.

issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof:

IT IS ORDERED, That the above-entitled proceeding be and it is hereby dismissed.

INITIAL DECISION OF EXAMINER EDWARD T. STODOLA

Control of Colonial Airlines, Inc., by Eastern Air Lines, Inc., existing as of February 27, 1954, the date of the final decision in docket No. 5666, found to have been terminated.

Show-cause proceedings in docket No. 6582 ordered dismissed.

APPEARANCES:

B. Smythe Gambrell, W. Glen Harlan, Harold L. Russell, and Robert E. Hicks (Gambrell, Harlan, Barwick, Russell & Smith) for Eastern Air Lines, Inc.

John W. Cross, Richard A. Fitzgerald, John Hartshorn (Cummings, Stanley, Trbitt & Cross), and *Alexander G. Hardy* for National Airlines, Inc.

Edward A. Silliere, Edmund M. Hanrahan (Sullivan, Donovan, Hanrahan, McGovern & Lane), *Branch T. Dykes*, and *L. Orville Cameron* for Colonial Airlines, Inc.

L. Welch Pogue and James F. Bell (Pogue and Neal) for Mohawk Airlines, Inc. *Melvin H. Nuss and Allan M. Hawman* for the city of Reading, Pa.

Robert L. Griffith, William J. McAuliffe, Jr., Robert Burstein, and George S. Lapham, Jr., for the Office of Compliance, Civil Aeronautics Board.

In order No. E-8160, issued on March 9, 1954, docket No. 6582, the Civil Aeronautics Board ordered Eastern Air Lines, Inc., to show cause why Eastern should not be directed to terminate its control of Colonial Airlines, Inc., and why Eastern should not be directed to cease and desist from acquiring any control of Colonial or any of its routes or assets without prior approval of the Board in full compliance with the provisions of the Civil Aeronautics Act of 1938, as amended.

In the proceedings under docket No. 5666, the joint application of Eastern and Colonial for approval of their agreement of July 18, 1952, providing for the acquisition of the assets of Colonial by Eastern, the examiner found that Eastern had acquired prior control of Colonial in violation of section 408 of the Act but he recommended, nevertheless, that the Eastern-Colonial agreement should be approved because of substantial public-interest factors favoring such approval.

Eastern and Colonial vigorously excepted to the examiner's findings of unlawful prior control and in exceptions, briefs, and oral argument urged the Board to reverse those findings. The Board accepted the decision of the examiner with respect to both the question of control and the merits of the acquisition agreement; but the President, for reasons noted below by the Board, ordered a disapproval of the proposed acquisition of Colonial by Eastern.¹

In its order No. E-8160 of March 9, 1954, the Board has summarized its action with respect to the examiner's decision, noted the grounds upon which the President directed the disapproval of the proposed acquisition, and stated its reasons for the institution of this show-cause proceeding as follows:

*** In its decision in this matter which was submitted to the President for approval in accordance with section 801 of the Civil Aeronautics Act, the

¹ *Eastern-National-Colonial, Acquisition of Assets*, 18 C. A. B. 453 (1954).

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Board found that the examiner's finding that Eastern acquired control of Colonial in violation of section 408 of the Act was supported by the record, and the Board concluded that upon consideration of the entire record it agreed with and adopted the examiner's findings and conclusions on this issue among others. The Board, however, was of the opinion that Eastern's power to control Colonial did not in fact influence or affect the subsequent execution of the Eastern-Colonial acquisition agreement which was before the Board for approval in docket No. 5666, and that important public interest factors were present which warranted approval of the acquisition under section 408. Thereafter, the President directed disapproval of the acquisition agreement because of Eastern's prior unlawful acquisition of control of Colonial in violation of section 408, expressing the view that any such transaction should be accomplished in full compliance with the requirements of the Civil Aeronautics Act, including the requirement for advance approval of any acquisition of control. Pursuant to this direction, the Board entered an appropriate order disapproving the Eastern-Colonial agreement.

The Board having found on the record before it in docket No. 5666 that Eastern had unlawfully acquired control of Colonial, and the acquisition by Eastern of the assets and routes of Colonial in accordance with the Eastern-Colonial agreement having been disapproved, it appears evident that the public interest requires clear and complete assurance that no unlawful control of Colonial by Eastern within the meaning of section 408 will continue in existence. Whether Colonial continues indefinitely as an independent operating entity, or whether, as appears more likely, there will be further efforts to arrange for appropriate integration of Colonial's assets and routes with those of another carrier through acquisition or merger, it is essential that Colonial be free of any unlawful control by any other air carrier, and particularly by one which may have any interest in any future transfer of Colonial's routes and assets. Accordingly, it is necessary that action be taken immediately to require complete compliance with the requirements of the Civil Aeronautics Act in regard to the control of Colonial by Eastern.

On March 18, 1954, Eastern filed its answer to the order to show cause, alleging various factual matters, and combined therewith a motion to dismiss the proceeding. Attached to the answer were various letters and affidavits in support of Eastern's allegations of fact. With regard to Eastern's auxiliary agreement with Sigmund Janas, which was found to be one of the circumstances by which Eastern acquired control of Colonial, the motion to dismiss alleged, *inter alia*, that the agreement had been modified to delete the provision which required Janas to support an Eastern-Colonial merger. Of the 110,524 shares of Colonial stock previously held by persons found to have been connected with Eastern or within the orbit of Eastern's influence, Eastern in its answer stated, in effect, that only 56,800 of such shares were held by such persons as of the time the answer was filed. Eastern also said that it had no control or influence over the persons holding the 56,800 shares and, further, that Eastern did not even know, and had no way of knowing, whether such persons still held stock which had been previously found to be held by them. On April 15, 1954, the Board's Office of Compliance filed an answer to Eastern's motion to dismiss, stating, *inter alia*, that it had made a limited but representative investigation of the matters alleged in the motion and that only 41,415, rather than 56,800, shares of Colonial stock were then held by persons found to have been connected with Eastern or under Eastern's influence in the proceedings under docket No. 5666. On April 26, 1954, National Airlines, Inc., filed a petition for quarantine and intervention stating, *inter alia*, that

Eastern still controlled Colonial; that the Board should place Eastern in quarantine by an order prohibiting any transaction involving the integration of Eastern and Colonial until such time as there had been a full investigation of Eastern's alleged continued control of Colonial; and that the Board permit National to become a party to the show-cause proceeding. Further documents with respect to Eastern's motion to dismiss the show-cause proceeding were shortly thereafter filed by Colonial, Eastern, and National.

By order No. E-8447, dated June 17, 1954, the Board denied the motion of Eastern to dismiss the show-cause proceeding and it likewise denied National's request for a quarantine, but it granted National permission to intervene in the proceeding. Among other things, the Board in that order found that it appeared from Eastern's motion to dismiss that there were sufficient areas of uncertainty in Eastern's relations with Colonial to warrant a full investigation and a public hearing.

On July 2, 1954, Eastern filed a petition for reconsideration of order No. E-8447 requesting, *inter alia*, that the Board either dismiss the proceeding under docket No. 6582 or state the reasons for the Board's denial of Eastern's motion to dismiss and set forth "any other or further administrative remedies or recourse" which Eastern may have. On July 12, 1954, National filed an answer to Eastern's petition for reconsideration. On July 29, 1954, Colonial filed a petition for leave to intervene in the show-cause proceeding under docket No. 6582, and asked for expeditious action therein. In its petition, Colonial also suggested that a voting trust be established, with a trustee acceptable to the Board, to vote the stock still in the hands of persons whom the examiner and the Board found to be within Eastern's control. On August 5, 1954, Eastern filed a renewed motion to dismiss the show-cause proceeding stating, *inter alia*, that its agreement with Janas had been voluntarily rescinded and that that action, together with Colonial's voting trust proposal, should remove all possible areas of uncertainty with respect to the question of Eastern's alleged continued control of Colonial. National filed an answer to each of the latter two pleadings.

In order No. E-8595, issued on August 30, 1954, the Board denied Colonial's petition of July 29, 1954, for the establishment of a voting trust,² Eastern's petition for reconsideration filed on July 2, 1954, and Eastern's renewed motion to dismiss of August 5, 1954. The Board, by order No. E-8595, also granted Colonial leave to intervene in docket No. 6582 and stated that the important and complex issues involved in this proceeding should not be resolved on the basis of pleadings and accompanying affidavits but require that the matter be fully developed through the hearing process.³

Public hearings in this matter were held in New York City and Washington, D. C., on various dates from December 2, 1954, until

² In declining to accept Colonial's request for the establishment of a voting trust, the Board stated that the difficulty of determining the Colonial shares subject to Eastern's influence made Colonial's suggestion premature. But the Board made clear that the denial of Colonial's suggestion was not intended to discourage or prevent such action under appropriate circumstances.

³ On September 8, 1954, Eastern filed a petition for reconsideration of order No. E-8595, for expedited action in the proceeding in docket No. 6582, and for certain other relief. On December 3, 1954, the Board issued order No. E-8798 denying Eastern's petition of September 8, 1954.

December 30, 1954. Eastern, Colonial, National, and the Board's Office of Compliance actively participated in the hearings. Briefs were filed on February 1, 1955.

Basically, this proceeding involves the question of whether Eastern now controls Colonial pursuant to sections 408 (a) (5) and 408 (a) (7) of the Civil Aeronautics Act, which provide:

(a) It shall be unlawful unless approved by order of the Board as provided in this section—

* * * * *

(5) For any air carrier or person controlling an air carrier, any other common carrier, or any person engaged in any phase of aeronautics, to acquire control of any air carrier in any manner whatsoever;

* * * * *

(7) For any person to continue to maintain any relationship established in violation of any of the foregoing subdivisions of this subsection.

Without limiting the scope of the issues as delineated in detail at the prehearing conference, held November 3, 1954, as set forth in the report of prehearing conference, served November 5, 1954, the following essential questions have been agreed upon as governing this proceeding: (a) Did Eastern Air Lines, Inc., have control of Colonial Airlines, Inc., as of August 31, 1954, or at any time between said date and the date of close of hearings herein; (b) in the event that Eastern now controls Colonial, what action should be taken to direct Eastern to terminate such control; and (c) in the event Eastern does not now control Colonial, should Eastern be directed to cease and desist from acquiring any further control of Colonial or any of its routes or assets without prior application for approval by the Civil Aeronautics Board? In view of the issues governing this proceeding, the primary question to be resolved in this case is whether or not the stock control of Colonial by Eastern found to exist in docket No. 5666 has been terminated.

While the terms "control" and "controlling" are nowhere defined in the Civil Aeronautics Act, section 408 of the Act applies to control acquired in any manner whatsoever. Section 413 of the Act, which supplements section 408, provides that "whenever reference is made to control, it is immaterial whether such control is direct or indirect." An acquisition of control without Board approval, therefore, is prohibited howsoever it may be brought about.

It is unnecessary here to review in detail the legal meaning of the terms "control" and "controlling" in the situations forbidden by the Act. The law of control has given us workable guideposts which have long been familiar to both the courts and to regulatory agencies. Indeed, the question of control in its present posture requires an application of principles no different from those applied to the facts in docket No. 5666. These principles are no longer open to controversy but their application is necessarily a matter of judgment for the trier of the facts.

In ascertaining the existence of control of one company by another, it is clear that control is an issue of fact which must be determined from a broad consideration of the special circumstances of each case; that control may be exercised in other ways than through a vote of the stock of the corporation sought to be controlled; that

control does not depend upon the ownership of any specific quantum of stock or other ownership rights but rather represents the amount of power and influence necessary to give one company actual domination or substantial influence over another; that power over another company's stock through affiliates, through close business associates with the same interests, or power over stock holdings exercised in combination with other factors bearing pressure upon the company sought to be dominated may spell corporate control; and that, while there is no technical meaning of control apart from that accorded the term in ordinary usage, the term "control" embraces every form of control and may cover a wide variety of situations of fact. In short, it has been consistently held that the term "control" is not an absolute or unqualified concept but rather is one which involves the act or the power of direction or domination under many and varied circumstances.⁴

The ultimate findings in the recommended decision in docket No. 5666 in support of the conclusion that Eastern had acquired control of Colonial, which findings were affirmed by the Board and by the President, rest exclusively upon subsidiary findings relating to the following three factors or considerations:

(a) 110,524 shares of Colonial stock or approximately 21 percent of all the capital stock of the carrier were found to have been acquired by two of Eastern's directors and by persons and firms in the immediate orbit of Eastern's influence;

(b) An agreement between Eastern Air Lines, Inc., and Sigmund Janas with respect to the settlement of certain causes of action and the extinguishment of certain stock options in Colonial held by Janas; and

(c) The stockholders' request, in the form of a letter dated July 11, 1952, written by a group of stockholders representing more than 10 percent of the outstanding stock of Colonial and requesting a Colonial stockholders' meeting to consider the then pending Eastern proposal to acquire Colonial.

The evidence of record, although further subclassified in the organization and structure of these findings, really falls into only two basic or cardinal categories: (a) That dealing with the subsidiary findings made by the examiner in docket No. 5666 and referred to above; and (b) that dealing with other matters in this proceeding.

The findings in docket No. 5666 relating to the acquisition of stock of Colonial by certain persons in Eastern and by persons and firms under Eastern's influence were the heart of the conclusion that Eastern controlled Colonial. The evidence in this case with respect to the Colonial stock situation will be dealt with first. The proof of record relating to other matters will follow.

⁴ The principles abbreviated above are found in the following significant decisions on the meaning of control: *Zifrin's Overnight Exp., Inc.-Purchase-Overnight Exp., Inc.*, 5 M. C. C. 246 (1937); *Pan Am. Airways, Inc., Aeronaves de Mexico*, 4 C. A. B. 494, 496-497 (1943), citing and relying upon, *inter alia*, a series of decisions culminating in *Rochester Tel. Corp. v. U. S.*, 307 U. S. 125 (1939); *Pan Am. Airways, Acquisition of China National*, 6 C. A. B. 143, 146 (1944); *Greyhound Corp.-Investigation of Control-Southern Ltd.*, 45 M. C. C. 59 (1945); *Transcontinental & W. A., Control by Hughes Tool*, 9 C. A. B. 381, 386-387 (1948); *Greyhound Corp.-Control-Southeastern Greyhound Lines*, 57 M. C. C. 123 (1950); and *In re Western Gateway Broadcasting Corp.*, 6 Pike & Fischer, Radio Regs. 1325 (1951).

An examination of the facts of record in this proceeding against the background of the findings in docket No. 5666 is necessary for a proper disposition of the issues raised by the Board's order to show cause of March 9, 1954. It was found in docket No. 5666 that 110,500-odd shares of Colonial stock, or approximately 21 percent of all the capital stock of the carrier, had been acquired by 2 members of the board of directors of Eastern and by persons and firms in the immediate orbit⁵ of Eastern influence.

Except for the acquisition of 7,000 shares of Colonial stock by Everett Cook, a director of Eastern, and a few other smaller acquisitions by persons close to Eastern, the acquisitions of Colonial stock which led to the finding of control were made following the April 1952 meeting of Colonial stockholders at which those stockholders rejected an agreement for merger between Colonial and National Airlines. Among the purchasers of Colonial stock in the spring and summer of 1952 were Laurance S. Rockefeller, another director of Eastern; the Flumen Corp., a family holding company in which Admiral Lewis L. Strauss, then senior financial adviser to the Rockefeller family, had an interest; Allen & Co., a New York investment banking firm; Smith, Barney & Co., a leading New York stock brokerage and banking firm; and R. F. Lafferty & Co., another New York stock brokerage firm. Smith, Barney & Co. and R. F. Lafferty & Co. acquired Colonial stock for both their own accounts and the accounts of certain of their customers directly or indirectly connected with Eastern. Various other individuals and firms with Eastern affiliations acquired Colonial stock during that period. Eastern's directors and its attorneys alone held approximately 33,900 shares.

Immediately following the announcement of the decision in docket No. 5666 on March 1, 1954, Eastern's board of directors, on March 5, adopted a resolution stating that Eastern's directors considered it to be contrary "to the best interests of Eastern Air Lines for any director, officer, attorney, agent, or representative of Eastern Air Lines to acquire or continue to hold directly or indirectly any stock of Colonial Airlines or to permit any person subject to his control or influence to acquire or continue to hold any such stock." That resolution was immediately circulated to all members of Eastern's board of directors and to all members of Eastern's advisory, field, and junior boards of directors who constitute Eastern's management throughout Eastern's system. When the Board released its decision on March 1, 1954, in docket No. 5666 and issued its show-cause order on March 9, 1954, in this proceeding, Eastern's management immediately sought to ascertain what shares of stock found to have been under Eastern's influence or control were still in hands which might be considered friendly to Eastern. Letters and/or telegrams were sent by Eastern to the individuals or firms who had participated in the acquisitions of the 110,500-odd shares of stock which were found to be the principal factor in Eastern's control of Colonial.

⁵ For the sake of brevity, where such brevity will suffice, all persons who held shares of Colonial stock attributed to Eastern's influence or control in docket No. 5666 will be referred to as persons then in Eastern's "orbit" and the stock they held will be referred to as "orbit stock."

Several blocks of the 110,500-odd shares of stock, including the 26,200 shares once owned by Laurance S. Rockefeller, a director of Eastern, were sold on the open market to persons unknown to the sellers even before the President disapproved the Eastern-Colonial agreement of acquisition. After the announcement on March 1, 1954, of the rejection of the Eastern-Colonial agreement, further sales were made in the stock groups comprising the original 110,500-odd shares, and, by April 15, 1954, the holdings of Colonial stock by those persons found in docket No. 5666 to have been under Eastern's influence or control had been reduced to approximately 41,000 shares or about 8 percent of the total outstanding stock of Colonial. Sales of the so-called orbit stock continued during the remainder of the year 1954. As hereinafter shown, virtually all of the 110,500-odd shares of Colonial stock attributed to Eastern's control or influence in docket No. 5666 had been sold or otherwise transferred from its orbit owners before the close of the hearings herein on December 30, 1954.

With the issuance of the order to show cause, the Board's Office of Compliance was brought into this proceeding. It conducted an investigation of the matters set forth in Eastern's answer filed on March 18, 1954. Consistent with the limited time it had at its disposal, the Office of Compliance proceeded to ascertain whether the persons or firms found by the examiner in docket No. 5666 to be holding Colonial stock under Eastern's influence continued to hold such stock in Colonial. In cases where the orbit stock had been sold or otherwise distributed, the Office of Compliance sought to identify its new acquirer and his possible relationship to Eastern.

After the Board decided that this matter be fully developed through the hearing process, the Office of Compliance, continuing as the investigative arm of the Board, undertook, in the words of its chief, to make "as complete a factual record as the circumstances permitted." That office has a corps of trained investigators. Under the direction of the Chief of the Office of Compliance, they undertook the large and difficult task of locating and interviewing a representative cross section of the owners of Colonial stock and of identifying and tracking down the movement and current disposition of all of those Colonial shares previously held to have been under Eastern's control or influence.

Thousands of stockholders own the 515,600 Colonial shares. Since it was obvious that not all Colonial stockholders could be contacted personally, the Office of Compliance decided on a sampling technique whereby it was arbitrarily decided that the investigators for the Office of Compliance would concern themselves with those persons who held 250 or more shares of Colonial stock. When the names and addresses of such persons were ascertained, the investigators were sent to various parts of the country to interview numerous shareholders in Colonial. The holdings of all the persons or firms which held Colonial shares classified as the orbit stock in docket No. 5666 were investigated; in addition, many current holders of Colonial stock unknown to the record in docket No. 5666 were interviewed. The Compliance investigators were briefed at the time of their assignment and they were given form questionnaires and information material to assist them in their interviews.

In order to expedite the hearings by keeping the number of holders of Colonial stock as witnesses down to a reasonable number, it was agreed by counsel for each party during the prehearing conference that (a) the investigators for the Office of Compliance would be permitted to testify as to the results of their interrogations of holders of Colonial stock, including testimony as to conversations during the interviews of such holders of Colonial stock; (b) counsels' right to object to the testimony of investigators on the grounds of hearsay would be waived, but the holders of Colonial stock investigated by the personnel of the Office of Compliance would be subject to call as witnesses upon the request of any party; and (c) such notes and questionnaires as had been or would be used or made by investigators would be available to each counsel at the hearing. Most of the Colonial stockholders were interviewed in person and their demeanor in answering questions was observed by the investigators. When testifying at the hearing, each investigator stated that he had no reason to doubt the truth of any of the answers given him.

As of August 31, 1954, there were 515,600 shares of Colonial stock outstanding, of which 333,658 shares, or approximately 65 percent of the total, were owned by 351 persons who each held 250 shares or more. The tabulation that follows represents an analysis of the 333,658 shares of Colonial stock as of August 31, 1954, showing, by States, the number of stockholders holding 250 shares or more, the amount of stock held by each such person, the number of such persons interviewed by the personnel of the Office of Compliance, and the total number of shares held by such interviewed stockholders:

| State | Number stockholders with 250 or more shares | Total shares held | Interviewed | |
|---------------------------|---|-------------------|---------------------|--------------|
| | | | Number stockholders | Total shares |
| Alabama..... | 1 | 500 | | |
| California..... | 22 | 18,237 | | |
| Connecticut..... | 9 | 3,300 | | |
| District of Columbia..... | 7 | 4,667 | 3 | 3,500 |
| Florida..... | 9 | 5,800 | 8 | 4,800 |
| Georgia..... | 2 | 1,700 | | |
| Illinois..... | 10 | 8,000 | 4 | 5,500 |
| Indiana..... | 1 | 300 | | |
| Louisiana..... | 1 | 300 | | |
| Maryland..... | 3 | 1,450 | | |
| Massachusetts..... | 13 | 10,450 | 10 | 9,550 |
| Michigan..... | 2 | 5,250 | 1 | 4,900 |
| Minnesota..... | 2 | 3,866 | | |
| Mississippi..... | 7 | 4,800 | | |
| Missouri..... | 2 | 883 | | |
| New Hampshire..... | 4 | 3,033 | 3 | 1,433 |
| New Jersey..... | 13 | 3,968 | 2 | 600 |
| New York City..... | 159 | 187,477 | 111 | 161,726 |
| New York State..... | 27 | 19,866 | 5 | 8,034 |
| North Carolina..... | 5 | 2,000 | | |
| Ohio..... | 14 | 19,738 | 7 | 16,700 |
| Oklahoma..... | 1 | 300 | | |
| Pennsylvania..... | 23 | 16,573 | 11 | 10,423 |
| Tennessee..... | 1 | 900 | | |
| Texas..... | 4 | 5,700 | | |
| Vermont..... | 2 | 600 | | |
| Virginia..... | 1 | 300 | | |
| Washington..... | 3 | 1,400 | | |
| West Virginia..... | 2 | 2,000 | | |
| Canada..... | 1 | 300 | | |
| | 351 | 333,658 | 165 | 227,166 |

The personnel of the Office of Compliance interviewed 165 of the shareholders shown in the above tabulation. These shareholders held 227,166 shares or approximately 68 percent of the amount of stock held by persons holding 250 shares or more, or approximately 44 percent of the total amount of Colonial stock outstanding. Additional interviews were conducted between August 31, 1954, and the close of public hearings in this matter. Not a single Colonial stockholder interviewed by the investigators of the Office of Compliance was found as of the time of the interview to be under Eastern's influence or subject to Eastern's control, either directly or indirectly.

In its brief, National states that 78,722 shares of Colonial stock were under Eastern's control as of the date of close of the record herein. Included in the shares chargeable to Eastern's control by National are 5,883 shares held by persons claimed to have been in the orbit of Eastern's influence in docket No. 5666;⁶ 4,795 shares of Colonial allegedly held by employees of Eastern or their relatives; 35,744 shares of Colonial allegedly held by persons or firms who are also stockholders of Eastern; and 32,300 shares of Colonial stock held by persons or firms now alleged to be under Eastern's control but who were complete strangers to the record in docket No. 5666. National also urges that other factors exist, buttressing its charge that Eastern controls Colonial, including certain alleged pressures by Eastern on the management of Colonial.

As previously noted, 110,524 shares of Colonial stock were held by various persons or firms found to be under Eastern's influence or control in docket No. 5666. The following tabulation shows, with compact clarity, the Colonial stock held by the persons or firms under Eastern's control in docket No. 5666, the stock held by those persons or firms as of August 31, 1954, and the stock held by the so-called orbit stockholders as of the most recent date shown by the record in this proceeding:⁷

⁶ National places 500 shares once held by Morris Levine and 928 shares now held by the stock brokerage firm, Auchincloss, Parker & Redpath, into the holdings still held by persons or firms within the orbit group in docket No. 5666. However, the small holdings of Auchincloss, Parker & Redpath were not included in the stock groupings which established control in docket No. 5666; moreover, Morris Levine held only 100 shares (as a customer of R. F. Lafferty & Co.) as of the close of the record in docket No. 5666. Levine later acquired additional shares in Colonial but sold all his Colonial stock before the close of this record. There is no reliable evidence whatever in this case that the 928 shares now held by Auchincloss, Parker & Redpath are under Eastern's influence or control.

⁷ The attorneys for the Office of Compliance were requested to re-cast the orbit stock holdings in docket No. 5666 in terms of the most recent information of record. The above tabulation is based upon their most recent re-cast (appearing at page 15 of their brief) except that that recapitulation shows George Burroughs still holding 500 shares in Colonial. Burroughs' shares were sold before the hearings in this matter were ended.

| Person or firm | Stock held— docket 5666 | Stock held as of Aug. 31, 1954 | Stock held as of most recent date shown by record |
|---------------------------------------|----------------------------|--------------------------------------|---|
| Laurance Rockefeller..... | 26,200 | 0 | 0 |
| Flumen Corp..... | 16,000 | 4,700 | 0 |
| Mrs. Hugh Knowlton, Jr..... | 500 | 0 | 0 |
| George A. Smith..... | 200 | 0 | 0 |
| Everett Cook..... | 7,000 | 0 | 0 |
| Charles Bradshaw..... | 500 | 0 | 0 |
| Ruth Bradshaw..... | 500 | 0 | 0 |
| M. Cook Barwick..... | 500 | 0 | 0 |
| Charles G. Gambrell..... | 3,024 | 0 | 0 |
| Smith, Barney & Co..... | 7,000 | 0 | 0 |
| Allen & Co..... | 10,800 | 10,000 | 0 |
| Smith, Barney & Co. for accounts of: | | | |
| James Donoghue..... | 3,000 | 0 | 0 |
| Robert B. Holland..... | 4,100 | 2,200 | 0 |
| Hillman Periodicals, Inc..... | 4,500 | 400 | 0 |
| Robert B. Holland, Jr..... | 1,000 | 1,250 | 0 |
| Harriet Holland Rogers..... | 800 | 1,250 | 0 |
| Laura Harding..... | 400 | 0 | 0 |
| Robert S. O. Harding..... | 200 | 0 | 0 |
| Dr. James Craig Joyner..... | 2,200 | 0 | 0 |
| Miscellaneous..... | 3,200 | 455 | 1,055 |
| R. F. Lafferty & Co. for accounts of: | | | |
| R. F. Lafferty & Co..... | 2,000 | 0 | 0 |
| Bankers Trust Co..... | 4,800 | 0 | 0 |
| George Sumers, Jr..... | 300 | 0 | 0 |
| Barbara Lafferty..... | 300 | 0 | 0 |
| Mrs. J. M. Gross..... | 1,000 | 0 | 0 |
| Sunhill Realty Co..... | 800 | 0 | 0 |
| Guy R. Byam..... | 200 | 0 | 0 |
| Raymond E. Lafferty..... | 100 | 100 | 0 |
| Paul Lafferty..... | 100 | 100 | 0 |
| Robert B. Holland..... | 4,600 | 0 | 0 |
| C. F. Abell..... | 500 | 0 | 0 |
| S. & G. Co. (B. Sohmer)..... | 1,400 | 2,000 | 2,000 |
| Clarence Rule..... | 100 | 100 | 100 |
| Rita K. Hillman..... | 1,000 | 2,800 | 600 |
| George Burroughs..... | 500 | 500 | 0 |
| Mrs. L. J. Johnson..... | 500 | 700 | 700 |
| Miscellaneous..... | 900 | 1,200 | 100 |
| Total..... | 110,524 | 27,755 | 4,555 |

As the foregoing chart shows, the persons or firms who were found to be under Eastern's influence or control in docket No. 5666 have sold or otherwise disposed of 105,969 shares as of the date of close of the record in this case. Accordingly, the number of shares owned by persons or firms held to be under Eastern's influence or control was reduced to 4,555 shares or a total of less than 1 percent of all of the outstanding stock of Colonial Airlines. This figure should be further reduced to the extent of 2,600 shares (2,000 shares held by S. & G. Co. and 600 shares held by Rita K. Hillman) for the reason that the voting power of those 2,600 shares was placed in the hands of the National Bank of Washington for a period of 1 year from December 23, 1954.⁸ Except for 1,955 shares, or less than four-tenths of 1 percent of a total outstanding stock of Colonial, all of the so-called orbit stock which was the principal basis for

⁸ This was accomplished by the execution of a form of "Appointment of Attorney and Proxy" irrevocably appointing the National Bank of Washington attorney in fact and proxy and granting to it the right to exercise any and all voting rights which may accrue to the S. & G. Co., to Rita K. Hillman, and to certain other shareholders in Colonial, through the ownership of any Colonial stock they might have during the year ended December 23, 1955. The National Bank of Washington was chosen by Colonial's management to act as such attorney and proxy for the reason that after examination it was determined that this bank had no connection with National, Eastern, or Colonial or with any of their officers or directors. The bank also has no connection whatever with any of the persons held to be within the orbit of Eastern's influence in docket No. 5666.

the finding of control in docket No. 5666, has been sold or otherwise transferred from its orbit owners.

There is no evidence that any of the shares sold by the orbit stockholders were purchased by persons or firms under control in any way by Eastern Air Lines.

Nineteen Eastern employees or their relatives own 4,795 shares of Colonial stock. None of these Eastern employees are in management positions. Of the total 4,795 shares, 2,000 are held by one John W. Galson and his wife; the Galson shares are clearly immunized from the charge of control since the voting rights to those shares have been transferred in trust to the National Bank of Washington.

However, neither the Galson holdings nor the relatively meager holdings of the other 18 Eastern employees (ranging from 12- to 400-share lots) have been or are under the influence or control of Eastern or any of its officers. The record is devoid of any proof that Eastern in any way could control the voting of the shares held by any of the employees of the carrier. There is no showing that Eastern exercises any form of control over the personal investments of its employees. In fact, such proof as there is in the record with respect to the ownership of Colonial shares by certain of Eastern's employees is to the effect that the purchases of Colonial stock by such employees were motivated by personal reasons; that none of those employees had been subject to actual or potential influence or control by Eastern in the purchasing or in the voting of the Colonial stock they held; and that neither Eastern nor any of its officers had ever attempted to influence any of the Eastern employees to purchase or vote Colonial stock or to otherwise monitor Eastern employees in their personal investment programs.⁹

Of the 35,744 shares of Colonial held by persons or firms charged by National to be stockholders of Eastern and under Eastern's control, 17,344 shares were derived from a November 1, 1954, list of Eastern stockholders whose names also appeared on Colonial's stock register of the same date as holders of 50 or more shares of Colonial stock and from tabulations submitted by National showing Eastern stockholders holding Colonial shares whose names do not appear on the November 1st list, since they were either held in lots of under 50 shares or in street names. Except in the relatively few instances where direct testimony was available, the record is barren of reliable proof to show that all the persons who appear as record owners of Eastern Air Lines stock are the same persons who appear as owners of Colonial stock by reason of similarity of names. But, even assuming that all of the 17,344 shares of Colonial are held by Eastern stockholders, in addition to the stockholdings in Colonial individually held by Eastern shareholders listed and discussed below, the common holdings represented by the 17,344 Colonial shares fail to demonstrate that any of those holdings are

⁹ For example, Galson testified that he made it his business to avoid mentioning his Colonial share holdings to Eastern's management because he regarded his personal investments his own private business, beyond managerial direction. He stated, in part, as follows: "I don't mind [Eastern's management] to direct me, directing my work at the office, but when it comes to my personal life, or personal money, I thought it was my personal business to attend to."

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under Eastern's influence or control. Moreover, the common holdings represented by the 17,000-odd shares have become irrelevant and immaterial to the issues herein. Not a shred of evidence was introduced to show that any of those Eastern stockholders have been or are under the influence of Eastern in either the purchase or the voting of their Colonial shares. Eastern cannot prevent its stockholders from buying Colonial stock or Colonial stockholders from buying Eastern stock. No presumption exists and the record warrants no inference that any of those persons would favor Eastern vis-a-vis National, American, Northeast, or any other airline in any matter on which they are entitled to vote as shareholders of Colonial. Indeed, National is a party to a stipulation in this proceeding to the effect that each Eastern stockholder owning shares in Colonial, if called to the stand to testify, would testify that Eastern had never exerted any influence or control over him regarding his purchase of stock in Colonial or the voting thereof.

The remaining Eastern stockholders claimed by National to be under Eastern's control and holding Colonial shares are Thomas F. Caldwell, 300 shares; Henry A. Cohen, 400 shares; Harold A. Hatch, 300 shares; Barrie Wiess, 600 shares; the Equitable Holding Co., 3,000 shares; the Essex Royalty Co., 4,000 shares; Josephthal & Co., 4,800 shares; and L. F. Rothschild & Co., 5,000 shares. Each of the foregoing stockholders was investigated by the Office of Compliance.

Thomas F. Caldwell, a former regional sales manager for Eastern, who went into the auto agency business in 1949, resides in Florida. He sold some Eastern stock when he went into that business. He thereafter purchased stock in Colonial during the pendency of the Eastern-Colonial merger proceedings, with a view to acquiring more Eastern stock if the merger were approved.¹⁰ Caldwell talked to certain officials of Eastern as well as to an official of National about the status of the merger proceedings. No one from either Eastern or National had ever approached him to try to influence him in any way with respect to acquisition of Colonial stock or the merger issues.

While there is no specific evidence in the record as to why Henry A. Cohen purchased the 400 shares held by him, Mr. Cohen, as a partner of L. F. Rothschild & Co., stated that the purchase of the 5,000 shares for that brokerage firm was an arbitrage type of transaction. Cohen's purchase of Colonial was his own independent decision. There is no evidence at all in the record that Eastern influenced or controlled Cohen or had any connection whatever

¹⁰ What Caldwell did in purchasing Colonial stock approaches an "arbitrage" transaction. Closer to true arbitrage would be selling Eastern stock, followed by the immediate purchase of Colonial stock, with the hope of getting Eastern back at a price lower than Eastern's current market value if the Eastern-Colonial merger were approved. It will be recalled that the acquisition agreement in docket No. 5666 provided for an exchange of 2 shares of Eastern for 3 shares of Colonial at a time when Eastern had a market value of about \$24.50 per share and Colonial stock was selling for approximately \$13.25 per share. A real arbitrage transaction, however, occurs when both sides of the transaction are certain; for example, a purchase of bonds in a corporation which are convertible into stock at a specific price, exercising the option to convert, and selling the stock at a profit, would constitute true arbitrage. As used in these findings, the term "arbitrage" simply means buying in one market (Colonial) with the hope of conversion in another (Eastern) at a spread, irrespective whether the buyer originally held Eastern and sold it to buy Colonial or bought Colonial without theretofore holding and selling Eastern.

with the acquisition of the Cohen or the Rothschild Company's holdings in Colonial.

Harold A. Hatch purchased his 300 shares of Colonial as a speculation. He is a director of the Irving Trust Company, which also employs Charles G. Gambrell, brother of E. Smythe Gambrell, Eastern's general counsel. The record, however, is absolutely barren of any proof that Hatch is under Eastern's influence or control. Hatch's decision to buy Colonial was entirely his own idea. There is likewise no proof in the record that Barrie Wiess, a resident of Philadelphia who also owns stock in American Airlines and Pan American World Airways, is under Eastern's influence or control in any way whatever.

The Equitable Holding Co., a personal holding corporation, has been an Eastern stockholder for approximately 15 years; it held shares in Colonial during the proceedings in docket No. 5666; however, there were no findings in docket No. 5666 to the effect that the Equitable Holding Co. was under the influence or control of Eastern; and the record in the present proceeding likewise fails to tie the Equitable Holding Co. to Eastern in any way except that it has been and still is a stockholder of Eastern. Eastern does not control Equitable or its holdings in Colonial.

The Essex Royalty Co., which acquired all of its present holdings in Colonial during the year 1954, is a subsidiary of Case, Pomeroy & Co., a large New York investment house. Case, Pomeroy & Co. holds stock in both Northwest Airlines and Pan American World Airways. Hadley Case is president of Case, Pomeroy & Co. Essex Royalty Co. bought shares in Colonial through the brokerage house of Craigmyle, Pinney & Co. Craigmyle, Pinney & Co. does a large business in air transport stocks. It followed the various items of public information relative to the efforts of National and Eastern to merge with Colonial. Case is a customer of Craigmyle, Pinney & Co. Alexander Pinney, a partner in Craigmyle, Pinney & Co., suggested the purchase of Colonial stock to Case on the grounds that it was a good speculation. Both Essex Royalty and Case, Pomeroy hold stock in numerous companies, including a number of airlines. Case knows Phillip Brown and William Barclay Harding, partners in Smith, Barney & Co., because of Case's investment activities; but he never discussed the purchase of Colonial Airlines stock with them and they never recommended the purchase of Colonial Airlines shares to him. Case has held stock in Eastern Air Lines for some years and wanted to increase his holdings; after discussing the matter with Pinney, he decided that a good way to increase his holdings in Eastern would be to purchase Colonial in the hope that Eastern would eventually acquire Colonial. Case's purchase was also an arbitrage type of transaction.

Craigmyle, Pinney & Co., and the corporations with which the partners of Craigmyle, Pinney & Co. are affiliated, have no direct connection with Eastern Air Lines in any way; nor has Eastern Air Lines or any of its officers undertaken to influence Craigmyle, Pinney & Co. or any of its partners, either directly or indirectly, with respect to the purchase or sale of stock in Colonial Airlines. There is likewise no evidence that the Essex Royalty Co. is under

the influence or control of Eastern in any way or that Essex Royalty's purchase of Colonial Airlines stock was motivated by anything but a desire to diversify its stock portfolio with additional air transport stocks.

Josephthal & Co., another New York brokerage firm, bought its present holdings in Colonial for its own account. Except for also holding shares in Eastern, this brokerage house is a stranger to that carrier and its management as far as this record is concerned. Not a scintilla of evidence was adduced to show that Eastern or its officials have exerted any influence or possessed any control whatever over Josephthal & Co. or the shares this firm holds in Colonial Airlines.

The final groupings of Colonial shares alleged by National to be held by persons or firms under Eastern's influence or control include persons or firms who were unknown to the record in docket No. 5666. These new alleged affiliates of Eastern hold 32,300 shares of Colonial. They include: M. J. Bennett, 1,200 shares; Louise Craigmyle, 3,500 shares; Ronald M. Craigmyle, 5,000 shares; J. Frank Davies, 900 shares; Murray Furman, 1,100 shares; Ernest W. Kreher, 1,500 shares; Leff Brothers, 600 shares; Massasoit Corporation, 1,000 shares; Sutro Brothers, 15,700 shares; John W. Walters, 500 shares; Alma M. Ward, 300 shares; Robert W. White, 700 shares; and Margaret M. Whiting, 300 shares. Each of the stockholders in this group was also investigated by the Office of Compliance.

M. J. Bennett & Co. is an insecticide and exterminating business in New York City. M. J. Bennett is a friend of John Carden, who is associated with R. F. Lafferty & Co.; however, Bennett's decision to purchase the 1,200 shares of Colonial stock was entirely his own; he was not persuaded to make the purchase by Carden or by anyone else in R. F. Lafferty & Co. Indeed, Carden suggested to Bennett that he sell all of his Colonial stock as Bennett was about to buy the last 200 shares of his purchase. The record is devoid of any proof that M. J. Bennett is under the influence or control of Eastern.

Ronald M. Craigmyle is a partner in Craigmyle, Pinney & Co. He purchased the shares of Colonial he owns at the suggestion of Alexander Pinney. Louise Craigmyle is the wife of Ronald M. Craigmyle. Ronald M. Craigmyle has a power of attorney for his wife, and Mr. Craigmyle made the purchases for both his own and his wife's accounts. Craigmyle knows Hugh Knowlton, although the record does not show whether it is Hugh Knowlton, Sr., a director of Eastern, or Hugh Knowlton, Jr., his son, or some other person with the name of Hugh Knowlton. Craigmyle has met Charles G. Gambrell. Craigmyle, Pinney & Co. was the broker which sold Charles G. Gambrell's shares in Colonial reflected in the proceeding under docket No. 5666. There is no evidence in this record, however, that Ronald M. Craigmyle or his wife, Louise Craigmyle, are under the influence or control of Eastern or that they bought shares in Colonial at the suggestion of Eastern or any of its officials. Ronald M. Craigmyle has been quite active in the purchase and sale of airline stocks and his purchase of Colonial was made in the ordinary course of his business transactions. The record also shows that whatever Craigmyle, Pinney & Co. suggested

to their customers or whatever was said between the partners of the firm in the appraisal of Colonial stock as either a speculation or investment, was done pursuant to their appraisal of the market and without the inspiration or influence of any person associated with any air carrier.

J. Frank Davies resides in Tampa, Fla. Davies purchased his Colonial stock from Karl Kreher, a cousin of Ernest W. Kreher, whose status in these matters is discussed below. Karl Kreher is a salesman with the A. M. Kidder Co., a Tampa brokerage house. Karl Kreher was partially responsible for influencing Davies' judgment in the purchase of Colonial stock when they talked it over together as customer and salesman, but Davies was convinced independently of Kreher's judgment that the purchase of shares in Colonial was a good investment. Davies owns a motor-parts company in Tampa. A. M. Frost, a vice president of Eastern, married Davies' ex-wife about 10 years ago, but Davies has never talked to Frost about Colonial stock. Davies knows no one else connected with Eastern. George B. Howell, a director of Eastern, is a prominent banker in Tampa. Ernest Kreher, who died in early December 1954, had been a director of the Marine Bank & Trust Co. of Tampa of which Howell is president. Howell had no other business association with the late Ernest Kreher; he has never had, and does not now have, any business associations with the son, Ernest W. Kreher. Howell has met Karl Kreher but has never had any business dealings with him. Howell knows J. Frank Davies and the fact that Davies is in the auto-parts business, but Howell has never had any business association with Davies. Ernest Kreher once owned the Tampa Engineering Co. which went broke; the Reconstruction Finance Corporation took over the mortgage it had on the company and set up a new corporation (during the early days of World War II) in cooperation with the Navy Department and Maritime Commission, to complete the company's contracts. The RFC, the Navy, and Maritime requested Howell to become president of the new company until its debts were paid. Howell thereafter became president of the Tampa Shipbuilding Corporation, the successor to the Tampa Engineering Co. Howell recently sold Tampa Shipbuilding to Louis Wolfson. Karl Kreher was once employed as a mechanic for the Tampa Shipbuilding Corporation but was fired from his job for causing a disturbance. The late Ernest Kreher and his son, Ernest W. Kreher, jointly held the 1,500 shares of Colonial when they were contacted by the Office of Compliance in October 1954. Ernest W. Kreher alone handled the purchase; he had discussed the advisability of buying Colonial with his cousin, Karl Kreher; but neither of the Krehers had any relationship with or knew any of the employees or officers of Eastern Air Lines. Howell never discussed the purchase of Colonial stock with Davies, the Krehers, or anyone else; he has never directly or indirectly influenced any purchase or sale of shares in Colonial.¹¹ There can be no controversy over a finding

¹¹ Howell has not been on friendly terms with either the late Ernest Kreher or his nephew, Karl Kreher. The late Ernest Kreher was somewhat resentful that Howell took over the shipbuilding company which the Kreher family lost; Karl Kreher, currently a stock salesman for the A. M. Kidder Co., was, as already noted, once fired from his job with the Tampa Shipbuilding Corporation.

that Ernest Kreher had never been under the influence or control of Eastern, or a finding to the effect that J. Frank Davies, Karl Kreher, Ernest W. Kreher, or the A. M. Kidder Co., are not now or have ever been under the influence and control of Eastern.

Murray Furman is a specialist on the floor of the American Stock Exchange. As a result of his activity on the American Stock Exchange, he knows and is friendly with Phillip Brown, a partner in Smith, Barney & Co.; John J. Murphy, a director of Colonial; R. F. Lafferty and George Sumers—the latter two both orbit stockholders in docket No. 5666; but Furman did not discuss the purchase of Colonial stock with any of those persons. He became interested in Colonial as a result of his position on the American Stock Exchange. No proof of any kind was adduced to show that Murray Furman is under the influence or control of Eastern or that he purchased his holdings in Colonial as a result of persuasion by anyone associated with Eastern.

The Leff Brothers, Lewis and Julius, own a small brokerage house in New York. The brothers buy and sell various corporate stocks for their own account. Julius Leff is a professional in trading on the American Stock Exchange and he uses the Leff Brothers office to buy and sell as a professional trader. Julius Leff makes from 10 to 100 calls in offices around the street daily, gathering tips and similar information. Although the Leffs know R. F. Lafferty, George Sumers, Phillip Brown, Admiral Lewis L. Strauss, and F. William Harder—all persons within the so-called orbit of Eastern in docket No. 5666—no one of those persons or anyone in or out of Eastern, influenced or persuaded the Leff Brothers to purchase shares in Colonial. The record fails to show that the Leff Brothers are acquainted with anyone in Eastern's management or that they are under Eastern's influence or control in any way.

The Massasoit Corporation is a real estate holding company in New York City, owned by the Ley family. Harold A. Ley, Jr., owns 20 percent of Massasoit and the remaining 80 percent interest is owned by his father and other members of the family. Harold A. Ley, Jr., also owns the controlling interest in the Haley Corp., the latter a general travel agency which specializes in travel to Europe and Bermuda. The Haley Corporation has a travel agency appointment from the Air Transport Association and another from the International Air Transport Association. United Air Lines sponsored its appointment to the former and Pan American World Airways sponsored its appointment to the latter. In August 1954, the Haley Corporation purchased 1,000 shares of stock in Colonial and the Massasoit Corp. also purchased 1,000 shares in that carrier. Haley owns no other securities but Massasoit has a diversified stock portfolio. Ley was approached to buy Colonial stock by Alexander Pinney of Craigmyle, Pinney & Co.

Harold A. Ley, Jr., is a director of Case, Pomeroy & Co. and a friend of Hadley Case. Ley is also affiliated with the Essex Royalty Co. through his directorship in Case, Pomeroy; Ley's father owns stock in Case, Pomeroy; and Ley's father-in-law is a stockholder in Eastern Air Lines. Although National attributes only the 1,000 Colonial shares owned by Massasoit to Eastern's control, the data

of record do not show that the Haley Corporation has disposed of its 1,000 shares. However, the record is clear that neither Ley nor any of the companies he has an interest in are under the influence and control of Eastern Air Lines. Ley at no time has had conversations or communications with anyone in Eastern with respect to a merger of Eastern and Colonial, or with respect to the advisability of purchasing stock in Colonial. The purchases of Colonial stock by the Haley Corp. and Massasoit were made pursuant to a resolution by the board of directors of the two companies upon the independent business judgment and recommendation of Mr. Ley. The Haley Corporation, as a travel agency, does not have any special or unusual relationship with any particular airline. Although Ley discussed the purchase of Colonial stock with Hadley Case at a summer resort in New Hampshire where they are neighbors, Ley at no time discussed the facts of the Colonial situation with anyone other than Hadley Case and persons within the Haley and Massasoit Corporations.

National catalogs the 15,700 shares held by Sutro Brothers, a New York brokerage house, to Eastern's control column on the ground that on December 23, 1954, counsel for Eastern wrote a letter to Allen & Co., which theretofore owned all of the 15,700 shares as well as other stock in Colonial, asking if it would be possible for Allen & Co. to send someone to the hearings in Washington in the latter part of December 1954, to explain the status of the Allen & Co.'s stock holdings in Colonial and on the further ground that on the very day Eastern wrote Allen & Co., it sold its shares in Colonial to its own broker, Sutro Brothers, in a cross-sale arrangement. As already noted, Allen & Co. was found to be an orbit stockholder in docket No. 5666, owning 10,800 shares. The company later acquired additional shares in Colonial. Pursuant to Eastern's request, Allen & Co. sent their representative to the hearings who stated his firm had sold all of its stock in Colonial because Eastern's changed offer for Colonial's assets (of December 1954, to 1 share of Eastern for 2 shares of Colonial) no longer made the prospective merger attractive as a speculation in Colonial stock. Sutro Brothers purchased the 15,700 shares of Colonial from Allen & Co. because they wanted Eastern's stock and they felt that buying Colonial was a good way to obtain shares in Eastern advantageously at a later date. Sutro Brothers had been negotiating with Allen & Co. for several months for the latter's shares in Colonial. No one connected with Eastern or Colonial had urged Sutro Brothers in any way to acquire the 15,700 shares. Other shares of Colonial held by Allen & Co. were sold on the open market. There is nothing in the record to show that Eastern controls Sutro Brothers, either individually or as a brokerage firm, or that the 15,700 shares in Colonial now owned by Sutro are under Eastern's influence in any way.

John W. Walters is a member of the New York Stock Exchange; he is associated with the brokerage firm of Walters, Peck & Co. Walters' company is a stockholder in Eastern. Walters is a specialist on the floor of the New York Stock Exchange in Eastern Air Lines stock. Walters, however, has no direct affiliation with

Eastern or its management. His specialty in Eastern Air Lines stock on the New York Stock Exchange was acquired pursuant to arrangements with the New York Stock Exchange. Walters is not under the influence of Eastern, and his shares in Colonial are not in Eastern's control.

Alma M. Ward is a resident of Wisconsin who owns an apartment house in Tampa, Fla. Elsa L. Luetcher, a sister of Mrs. Ward, manages the latter's apartment house and also handles her financial affairs. Mrs. Luetcher purchased the Colonial shares now held by Mrs. Ward, in Mrs. Ward's name, and at the suggestion of Karl Kreher of the A. M. Kidder Co., a Tampa stock broker. Mrs. Luetcher does not know any Eastern official and there is absolutely nothing in the record which would indicate that Alma M. Ward is under the influence of Eastern. Mrs. Ward is an investor who happened to invest in some Colonial stock.

Robert W. White is a retired business man and a limited partner in Craigmyle, Pinney & Co. White invests in many securities for personal reasons. He purchased his Colonial shares upon the advice of a customer's man in Craigmyle, Pinney & Co. No one in Eastern Air Lines had ever contacted White with respect to his purchase of Colonial stock. Craigmyle, Pinney & Co. delivered White's shares in Colonial directly to the Hanover Bank in New York. Many of White's investments are handled in the same way. Not one iota of proof was adduced to show that White and his holdings in Colonial are in any way under the influence or control of Eastern Air Lines.

Margaret Whiting has been a customer of Alexander Pinney, of Craigmyle, Pinney & Co., for some 25 years. Her purchase of Colonial stock was suggested by Alexander Pinney. Pinney was not under Eastern's influence in making that suggestion. No evidence was adduced to show that Mrs. Whiting is or has been under the influence or control of Eastern Air Lines. Her stock in Colonial is not under Eastern's control.¹²

National further alleges that the acquisition of the shares of Colonial by certain persons who sold their Colonial stock after being contacted by the investigators of the Office of Compliance weighs as a factor in support of National's claim that Eastern still controls Colonial.

Winthrop Rockefeller, a brother of Laurance S. Rockefeller, purchased 4,700 shares of Colonial in February and March 1953. He was called as a witness. Winthrop casually told his brother, Laurance, that he had been reading in the newspapers about the possible merger of Colonial with Eastern or National; that he was interested in making an investment in some stocks; and that the

¹² There is a statement of one of the attorneys for the Office of Compliance, used as the basis for a question asked of witness Alexander Pinney, to the effect that Mrs. Whiting "preferred that Eastern 'get' Colonial, because Les Arnold, an Eastern Air Lines vice president, is a friend of hers," but Pinney, who testified that Mrs. Whiting is a friend of a Mrs. Arnold, whom Pinney thought to be the widow of the late General H. H. Arnold, failed to confirm counsel's statement. Unless it is a matter of stipulation or given from the witness stand in the rare cases where a counsel of record is called and permitted to testify, a statement of Counsel, suppositive or otherwise, is not of course a part of the evidentiary record. Mrs. Whiting was not called. No other witness was asked about Eastern's Arnold's possible friendship with or influence over Mrs. Whiting; there is positively no evidence in the record to support National's allegation that Mrs. Whiting was persuaded to make her purchase of Colonial stock by Leslie P. Arnold of Eastern.

Colonial shares looked like a good buy. Winthrop often consults Laurance about the purchase of stock in various companies. Laurance told Winthrop there had been some conflict as to how the Colonial situation would work out, and that he frankly did not know how it would work out. He also told Winthrop if he wanted to make an investment for investment's sake, it should be all right. Winthrop also asked Harper Woodward, in his brother Laurance's office, what the market quotations were, for both Colonial and Eastern. Winthrop bought the Colonial stock on his own judgment and for his own reasons. Winthrop sold all his Colonial shares in November 1954, after his office had been contacted by an investigator of the Office of Compliance of the Board because he had been "liquidating considerable securities over the past months." Winthrop knows Admiral Lewis L. Strauss, the present Chairman of the Atomic Energy Commission. There is no evidence that Strauss ever advised him to buy stock in Colonial.¹³ Except for Winthrop's conversation with his brother Laurance, no one in either Colonial or Eastern had any contacts or conversation with Winthrop Rockefeller with regard to the purchase and sale of his shares in Colonial.

Mary Latimer Gambrell is a professor of history and chairman of the history department of Hunter College of New York City. She was called to testify. She is a sister of Charles G. and E. Smythe Gambrell. In 1945 she purchased 100 shares of Colonial stock, and the following year she acquired 33 more shares. Neither Charles nor Smythe knew of these holdings until July 1954, during the last illness of their late mother when the family gathered in the mother's home in South Carolina. At that time, Miss Gambrell mentioned her holdings in Colonial to E. Smythe Gambrell for the first time. Neither Charles nor E. Smythe Gambrell had ever advised or assisted their sister with the buying of any stocks prior to that time. Miss Gambrell told her brother Smythe that she would like to hold on to her Colonial stock. Smythe did not advise her whether she should or should not continue to hold it, although he did mention that airline stocks were depressed or lower in price than they ought to be. Nor did Smythe suggest to his sister that she should sell her shares in Colonial. On August 2, 1954, Miss Gambrell purchased an additional 1,000 shares of Colonial through Alexander Pinney of Craigmyle, Pinney & Co. Miss Gambrell then knew that the President had disapproved the proposed Eastern-Colonial merger agreement of July 1952. She had hoped by her purchase of the additional 1,000 shares to recoup her paper loss on her earlier acquisitions of Colonial stock. Neither Charles nor Smythe had ever advised their sister as to how to vote her Colonial stock. Miss Gambrell does not know any official of Eastern other than her brother Smythe. She knows no one in Colonial. There is no evidence that her stock has ever been under the control of either Eastern or Colonial. Besides stock in Colonial, Miss Gambrell owns a limited number of shares in other companies. When Smythe

¹³ Admiral Strauss has been Chairman of the Atomic Energy Commission for approximately 2 years and his position of financial adviser to the Rockefeller family, as stated in the findings in docket No. 5666, was terminated, presumably at the time he returned to Government service.

urged his sister, in September 1954, to place her Colonial stock in a voting trust suggested by Colonial, she agreed, and signed the voting trust agreement, already referred to, on October 2, 1954. The investigators of the Office of Compliance telephoned Miss Gambrell on October 13, 1954, to arrange for an interview regarding her 1,133 shares of Colonial stock. Miss Gambrell notified her brother, E. Smythe Gambrell, of the impending visit by the Board's investigators. E. Smythe Gambrell arranged to be present at the interview. The Board's investigators, when interrogating Miss Gambrell on October 13, 1954, discovered that Miss Gambrell had put her 1,133 shares of Colonial up for sale that very day through her broker, Alexander Pinney of Craigmyle, Pinney & Co. As a college professor, Miss Gambrell is a busy person. After being contacted by the investigators for Office of Compliance, she began to realize that her ownership of shares in Colonial might constitute a burden on her time. She had no fear of the Government investigating her holdings in Colonial, but she decided that selling her shares would be a good way to avoid being away from her work at Hunter College. Miss Gambrell's decision to sell her 1,133 shares of Colonial stock was her own.¹⁴

National charges that pressures by Eastern over the management of Colonial and the circumstances attending the modification and cancellation of the Eastern-Janus stock option agreement are further factors pointing to control of Colonial by Eastern.

National states that certain contracts between Eastern and Colonial (all matters of public record and duly filed with the Board, pursuant to section 412 of the Act) are the result of an alleged power in Eastern over Colonial's management. Eastern supplied copies for the record of all Eastern-Colonial agreements from June 15, 1953, to the close of hearings in this proceeding. These agreements are for certain turnaround ground services on Colonial's aircraft in Philadelphia, a modification of that agreement, a "sale and report" agreement for Colonial bookings by Eastern's Detroit and Chicago offices, a cancellation of that agreement, a lease of the Constellation L-749 during Colonial's peak traffic period and Eastern's slack traffic period of 1954, and an agreement whereby Eastern borrows three flight engineers from Colonial. There is un rebutted evidence in this record that the foregoing contracts were, and are, fair dealings between Eastern and Colonial; that the consideration involved in each of the contracts was fair and reasonable; and that those contracts have been mutually beneficial to both parties. The fact that Colonial's aircraft leasing negotiations, as well as other contracts for the leasing of equipment with Capital Airlines and Trans World Airlines, have been reported in the minutes of the board of directors of Colonial whereas National's offer to lease equipment to Colonial is unreported in Colonial's corporate minutes

¹⁴ Albert Green, financial secretary to Edmund A. Guggenheim, has been a director of Colonial since August 1954. Although National has made no allegations that Guggenheim is in control of Eastern, his status in the Colonial situation needs to be noted for complete findings of fact in this case. Guggenheim has the power to vote and control 52,100 shares of Colonial stock, which makes him the strongest single voting factor in Colonial Airlines. Guggenheim does not know Captain Rickenbacker, or any other Eastern executive. Guggenheim is utterly free and independent of any influence or possible control by Eastern.

is not shown by the record to be of any particular significance in Colonial's relations with Eastern.

The fact that Colonial had indicated, after the disapproval of the Eastern-Colonial agreement in docket No. 5666, that it would be receptive to offers from National and Eastern only on the basis of exchange of common stock of either of those two carriers is the basis of a further charge by National that Eastern exercises control over Colonial's management. As a matter of fact, the basis of asking for offers in common stock originated in negotiations which antedated the agreement entered into by Colonial and National in March 1952. On March 2, 1954, Colonial's board of directors decided to invite both National and Eastern to make new offers for its assets. The language of the proposed contract was basically the same as the Eastern-Colonial agreement under consideration in docket No. 5666. As of March 2, 1954, neither National nor Eastern was informed of Colonial's course of action. On March 3, Branch T. Dykes, president of Colonial, talked to G. T. Baker, president of National, shortly after lunch that day. Dykes did not inform Baker of Colonial's decision to renew invitations for new offers.¹⁵ Eastern's president, T. F. Armstrong, had renewed Eastern's offer (as litigated in docket No. 5666) by telephone and telegram on March 1, 1954. On March 3, 1954, Armstrong telephoned Dykes and proposed a meeting to discuss the effect of Eastern's March 1 decision. The exact time sequence of Dykes' March 3 conversations with Baker and Armstrong is not of record. On March 3, Colonial also sent its new invitation for the submission of offers to both Eastern and National.

Representatives of Colonial and Eastern met on March 4 and discussed Eastern's decision to renew its 1952 offer and possible suggested changes in the proposed contract for the purchase of Colonial's assets. Some of Eastern's suggestions for changes met with Colonial's approval and were adopted; others were not acceptable to Colonial and were not adopted. Some of the changes suggested by Eastern and accepted by Colonial would very likely have been made by Colonial itself had it had sufficient time to think through them in advance of sending out its invitation for new offers. During the March 4 meeting, some of the conversations were directed to a change in the March 3 proposal dealing with a warranty indemnification clause which provided for liquidated damages of \$2,000 a day to be paid to Colonial if the Board should find continued unlawful control of Colonial by Eastern and a consequent governmental disapproval of an agreement of acquisition which might eventuate from Eastern's offer and Colonial's acceptance thereof. Eastern maintained at the March 4 meeting that such an indemnification clause was unnecessary. The Colonial representatives retired from the negotiations, went off by themselves into another room, and decided to change the \$2,000-a-day damage provision to a flat \$200,000 as possible liquidated damages. Indeed, a number of Colonial's own directors thought the \$2,000-a-day figure was too

¹⁵ Among other things, Baker told Dykes that it would be impossible for National to pay anything near the price for Colonial's assets that Eastern had offered. Dykes told Baker that as of the time of their conversation Colonial's directors were not sure what they would do but that he would inform Baker of any action they might take at a later date.

high. Colonial's representatives thereupon insisted upon the flat \$200,000 sum and Eastern accepted the changed provision. The later revised form of the contract sent by Colonial to Eastern contains the foregoing penalty provisions and various other provisions not contained in the 1952 Eastern-Colonial agreement.

Immediately after Eastern and Colonial agreed upon changes in the form of the proposed contract, L. Orville Cameron, vice president of Colonial, on March 4, informed an attorney for National that Colonial was sending out a new invitation for offers containing some revisions. Cameron made it clear to National that the matter of the form of the invitation had been discussed with Eastern and that Colonial likewise wanted to give National an opportunity to discuss it with Colonial. National made no suggested changes in the proposed acquisition agreement with the exception that its attorney thought that it would be better if the invitations for offers (without specifying an exchange of stock for stock) would be left open so that an offer could be made in debentures, cash or stock, or any other form of consideration. National has in the past indicated that it would prefer to offer debentures since such an offer would presumably be better for National. The acquisition of Colonial's assets through debt financing would also be to Eastern's advantage. Colonial, however, was adamant that a sale of its assets on a stock-for-stock basis would be better for Colonial. Colonial certainly had a right to take such a position, unless Colonial be deemed to be under the control of National. Colonial's directors obviously had to be free to name their own terms if they were to be true to their stewardship as managers of the airline for its stockholders. While the question as to the form of the invitation for offers has only a slight or perhaps residual relevance to the basic issue of this proceeding for the purpose of establishing the precise nature of Eastern's recent relations with Colonial, evidence on that question was received to make certain that no stone was left unturned in the quest for the right answer in this case. The record is clear that Colonial's conversations with Eastern after March 1, 1954, the date of the announcement of the President's disapproval of the acquisition agreement in docket No. 5666, were an entirely normal business procedure in a situation where each company had vigorously insisted, whether rightly or wrongly, that the decision of the examiner, the Board, and the President with respect to the question of control in docket No. 5666 was in error and where both companies were anxious to overcome the impediments of the decision in that proceeding and continue their efforts to unite. Certain other minor and technical changes in the proposed form of the acquisition contract were also made in consultations between representatives of Colonial and representatives of Eastern, but they are immaterial to the basic issue before us. There is no element of control by Eastern over Colonial in the situation outlined in the three foregoing paragraphs.

Robert H. Herrnstein was released or resigned as vice president of traffic and sales of Colonial in the fall of 1953. National's charge that Colonial's management is dominated by Eastern because an officer of Colonial was discharged or forced to resign at the behest

of Eastern must be summarily rejected. The charge may or may not be true but no reliable evidence whatever was submitted to substantiate that charge. Intimations of that charge were first injected into the hearings in New York City on December 14, 1954; hearings in this matter were concluded in Washington, D. C., on December 30, 1954; between December 16, 1954, and December 29, 1954, there was a recess in the hearings. If the charge against Eastern had substance or the prospect of substance, there was ample opportunity to adduce evidence in support of the charge. No responsible proof was produced. In cold fact, the only reliable, probative, and substantial evidence in this record with respect to the charge is to the effect that Eastern was not responsible for the discharge (or forced resignation, if such it was) of Mr. Herrnstein.

National's next charge is that Eastern's rejection of certain proposals to dismember Colonial evidences some Eastern control of Colonial. The record contains the correspondence of Rickenbacker, Dykes, and Robert E. Peach, president of Mohawk, relating to Mohawk's desire to explore the possibility of a split-up of Colonial's routes. The proposal, first made by Peach to Dykes in the letter of March 9, 1954, was rejected by Colonial on April 6, 1954. Mohawk then wrote Rickenbacker on April 12, 1954, suggesting that Eastern and Mohawk submit a joint offer to Colonial which, if accepted, would have the effect of dismembering Colonial as a unified regional system. Rickenbacker wrote Peach on April 23, 1954, and, in a long and exhaustive analysis, set forth the reasons why such a proposal was not acceptable to Eastern. As a matter of fact, Colonial had rejected the proposal before Eastern had even considered it. The Mohawk proposal is somewhat related to a subsequent proposal made by National to split up Colonial's routes. The initial discussions National had with Colonial with regard to the latter proposal were unknown to Eastern. Some time in June 1954, G. T. Baker, president of National, discussed the matter with one of Colonial's directors and requested Colonial to approach Eastern with the idea of Colonial selling its Montreal-New York route to either Eastern or National, the Bermuda-New York route to the other, and arranging for a division of the Montreal-Washington route between Eastern and National in some undefined way. Shortly thereafter, John J. Murphy, a director of Colonial, and Mr. Dykes, met with Rickenbacker and Armstrong and discussed the National proposal but Eastern indicated lack of interest in it because Rickenbacker did not think it was practical. Dykes was consistently against any efforts to dismember Colonial by splitting it up between two or more carriers; he thought it would be too difficult to effectuate, if indeed it could be accomplished at all.

National next charges that the voting trust agreement, already discussed in part above, pursuant to which certain Colonial stockholders authorized the National Bank of Washington to "exercise any and all voting rights which may accrue to him (the Colonial stock executing the agreement) by reason of his present or future ownership of stock in Colonial" also evidences some Eastern control over Colonial. In its brief, National disdainfully characterizes the

voting trust agreement as a "gimmick."¹⁶ It is nothing of the kind. The voting trust was a *bona fide* plan of Colonial to immunize and neutralize the Colonial shares of the stockholders held to be in Eastern's orbit in docket No. 5666. Only 4,600 shares are presently subject to the voting trust (2,000 shares of S. & G. Co.; 600 shares of Rita K. Hillman; and 200 shares of John Galson and his wife).¹⁷ While it is true that the voting trust idea was proposed by certain stockholders held to be in the orbit of Eastern's control in docket No. 5666, and that the proposal was casually communicated to certain officials of Eastern, these facts do not make the voting trust an instrument of Eastern's control. The significant fact is that all the signers of the voting trust agreement voluntarily released all their voting rights upon the request of Colonial's management.

Finally, National contends that the cancellation of the so-called Janas contract is an important element in Eastern's alleged continued control of Colonial. Sigmund Janas and Eastern had entered into an agreement dated May 14, 1952, which, in part, provided that Eastern agreed to pay Janas \$120,000 for the surrender of his options to purchase Colonial stock in the event of an Eastern-Colonial combination; that Janas was to support an Eastern-Colonial merger; and that Captain Rickenbacker was given power of attorney as Janas' agent to appear on Janas' behalf and consent to an injunction to prevent the violation of any of the terms of the agreement by Janas. In docket No. 5666, the agreement of May 14, 1952, was found to be one of the supporting circumstances by which Eastern acquired control of Colonial. By an agreement dated March 3, 1954, this agreement was modified so as to eliminate certain provisions which Eastern believed the examiner and the Board found objectionable in docket No. 5666. Negotiations for its modification were had between Eastern's lawyers and Janas' lawyer, Mortimer S. Gordon, who testified (in lieu of Janas, who was subpoenaed but was excused by agreement of each counsel)¹⁸ how the

¹⁶ National's characterization is most uncharitable. Webster's New International Dictionary, Second Edition (Unabridged, 1944) gives two definitions for the expression "gimmick" as a term of slang, United States: "(a) A secret device by which a grifter controls the mechanism of a prize wheel; anything tricky. (b) Any small device used secretly by a magician in performing a trick."

¹⁷ As previously stated, John Galson and his wife were not among the orbit stockholders in docket No. 5666. Other signers of the trust agreement, Allen & Co., Robert B. Holland, Sr., Robert B. Holland, Jr., R. F. Lafferty & Co., Morris Levine, Harriet Holland Rogers, Donald L. Rogers, Smith Barney & Co., George W. Sumers as trustees for Richard Allen Hillman, George W. Sumers for a second trust with the Bankers Trust Co., and Mary Latimer Gambrell, have disposed of their holdings in Colonial, as noted elsewhere in these findings.

National also mentions the fact that some of the same stockholders who signed the voting trust agreement also signed the so-called "demand" letter of July 11, 1952. That letter is set forth in its entirety at page 63 of the examiner's report in docket No. 5666. The signers of that letter, who represented slightly more than 10 percent of the outstanding stock of Colonial, requested Colonial's management to call a special stockholders' meeting to consider and vote on Eastern's then pending offer for the acquisition of Colonial's assets. At that meeting, Colonial's stockholders accepted Eastern's offer by an almost unanimous vote of the Colonial shares voted on that day. While the "demand" letter was significant in part to the context of facts which led to a finding of control in docket No. 5666, that letter is without consequence of any kind in this case. No evidence was received in the record regarding it; the fact that some of its signers also signed the voting trust agreement supports no implication of control on the part of Eastern in this proceeding.

¹⁸ In National's brief, counsel for National makes the following statement: "It is strange that Janas never put in a personal appearance at the hearing or that Eastern did nothing about getting him there." The nonappearance of Janas isn't strange at all; but it is indeed strange that counsel for National should make such a statement. He is party to a specific agreement of record permitting Gordon to appear and testify in lieu of Janas, with the proviso that if Gordon were unable to give all the necessary testimony with respect to the Eastern-Janas agreement of May 14, 1952, and the modification and cancellation thereof, Janas would be called. In answer to a specific call for any possible objections shortly before the close of hearings to the substitution of Gordon for Janas, and the substitution of another witness for a person under subpoena, counsel for National was mute.

modification came about. Janas never discussed the matter with anyone in Eastern, and Gordon's negotiations were only with Eastern's lawyers.¹⁹ The modification in substance eliminated the provision of the original Janas contract which prevented Janas from opposing, and required him to support, an Eastern-Colonial agreement to combine. There was also deleted from the original Janas contract a provision which would effect forfeiture to Eastern of the Janas options if Janas opposed or hindered Eastern's efforts to merge with Colonial.

Upon learning that the modification of the Eastern-Janus agreement apparently was not sufficient to satisfy the Board that "all areas of uncertainty" had been removed so as to justify the dismissal of the proceeding to show cause instituted on March 9, 1954,²⁰ Eastern tried again to eliminate all questions of control in the Eastern-Janus contract and Eastern's general counsel renewed Eastern's efforts to obtain the cancellation of the May 14, 1952, agreement. The Janas options are scheduled to expire in February 1955. If Janas wanted an opportunity to exercise his options, it was clearly necessary for him to do something about his agreement with Eastern to enable him to make a demand upon Colonial, since it definitely appeared impossible for a merger or acquisition of the assets of Colonial by Eastern to be consummated by that time. That apparently was the motivating consideration which led Janas to a decision that the contract ought to be canceled. The contract was canceled by an agreement to cancel dated June 30, 1954. The only consideration which Janas received for canceling was his mutual undertaking with Eastern to do so. Janas neither received, nor was promised, any money payments for the cancellation agreement. There were no understandings or agreements of any kind entered into by Eastern with Janas whereby Janas' options would be honored at some time in the future, if Eastern eventually combined with Colonial. The record makes inescapable a finding that the cancellation of the Eastern-Janus contract of May 14, 1952, was *bona fide*, and that that contract has been completely eliminated as a matter to be considered in determining the question of control.²¹

The basic facts outlined above make the necessary ultimate facts in this case readily ascertainable. Indeed, the ultimate facts, the conclusions based thereon, and the requisite disposition of this proceeding are plainly obvious.

There are no significant conflicts in the testimony of the several witnesses who testified in this proceeding. Their testimony was forthright and almost wholly free of doubt or ambiguity. Each of the witnesses has been fully credited with respect to the critical facts supporting the decision stated below. In addition to the testimonial evidence, extensive documentary proof was adduced to support many of the assertions of persons called to testify.

Except for the 1,955 shares, or a small fraction of 1 percent of the total outstanding stock of Colonial Airlines, all of the so-called

¹⁹ An attorney for Eastern had suggested the possible cancellation of the entire agreement in early March 1954, but Janas, through his lawyer Gordon, refused to agree.

²⁰ Order No. E-8447, June 17, 1954.

²¹ As of the close of the record in this proceeding, Janas owned no stock in Colonial Airlines.

orbit stock which was primarily and chiefly responsible for the decision or verdict with respect to control in docket No. 5666, has been moved from its orbit owners. The firms or persons who acquired those shares in Colonial are not under the influence or control of Eastern. The 1,955 shares are minuscule and almost totally without significance as a possible factor of control.

Of the 4,795 shares of Colonial held by Eastern's employees or their relatives, 2,000 of such shares (held by the Galsons) have been placed in a voting trust and thereby neutralized. The immunizing of the Galson shares does not mean that the voting of those shares would have been under the control of Eastern in the absence of a voting trust. The record is to the contrary. Indeed, the record is clear that no Eastern employee holding stock in Colonial has been, or is, under the influence or control of Eastern in any way regarding such stock.

Of the 35,744 shares of Colonial held by persons or firms asserted by National to be stockholders of Eastern and under Eastern's control, 17,344 of such shares were identified, albeit not conclusively, through various stockholder lists hereinbefore described. Since it was stipulated that each Eastern stockholder also holding Colonial shares would, if called to the stand, testify that Eastern had never exerted, and did not exert at the time of his testimony, any influence or control over him regarding his stock ownership in Colonial or the voting thereof, it is utterly absurd to attribute those shares to Eastern's dominance. National cites no law which supports a charge of control on the part of Eastern over stock held in Colonial by shareholders in Eastern under the facts of this case. Such a charge could be supported only under some mode of illogical inference or perhaps by some vague *per se* theory of power and responsibility on the part of Eastern arising solely from the fact that the holders of those shares were shareholders in both companies. The law does not recognize such irrationality. The remaining shares in Colonial owned by Eastern stockholders and also pressed by National as a control factor have been investigated; they are not, by any stretch of the imagination, under the influence or control of Eastern.

National's claim that the 32,300 shares owned by firms and individuals foreign to the proceedings in docket No. 5666 but under scrutiny in this record are under Eastern's dominance must likewise be rejected. There simply isn't any credible evidence to place those stockholders within the sphere of Eastern's influence or control.

While Colonial's relations with Eastern since the disapproval of the agreement in docket No. 5666 have been cordial and harmonious,²² there is no trustworthy evidence in this record to show that Eastern has any control over the management of Colonial or that Eastern or any of its officials have brought undue or improper pressures upon Colonial, either directly or indirectly. Colonial's president and vice president-secretary, who are men of integrity, specifically and categorically disavowed any such pressures. The record

²² Colonial's relations with Eastern understandably have in the past year been more cordial than Colonial's relations with National. National's charges in docket No. 5666, however justifiable, were vigorously challenged by Colonial, and National's more recent and less tenable imputations of subservience to Eastern's management on the part of Colonial are hardly conducive to warmth and cordiality between the officials of National and Colonial.

shows no undue or improper pressures by Eastern upon Colonial's board of directors, either individually or collectively. Undisputed testimony of record shows that Colonial's management has at all times conducted its relations with Eastern as free and independent corporate officials without dictation from anyone in Eastern.

No implications of control may be made from the fact that the original Eastern-Janas stock option contract was modified and later canceled. Janas is completely out of the Colonial picture; he no longer has any ties with Eastern; and the Janas-Eastern contract, as well as Janas himself, have been completely removed as a factor in the consideration of any alleged illegal control of Colonial by Eastern. The evidence on the Janas matter is clear and conclusive. Nor may implications of control be drawn from the fact that some of the same stockholders who signed the so-called "demand" letter of July 11, 1952, also signed the voting trust agreement which neutralized some of the orbit stock. The two transactions are unrelated. The former has been washed out as an element of control. The latter is the very opposite of a plan aimed at implementing control.

On the basis of the evidence of record and the findings herein, it is concluded that Eastern's control of Colonial has been terminated. This conclusion is supported not only by a clear preponderance of proof; the evidence in support thereof, as a matter of clear fact, is truly overwhelming. In view of this conclusion, there is no basis in this record for issuing a cease-and-desist order against Eastern.

It is, THEREFORE, ORDERED this 16th day of February 1955, that the proceedings under docket No. 6582 be, and they hereby are, dismissed.

The order entered herein is subject to the provisions of rule 28 of the Board's Rules of Practice in Economic Proceedings.

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