STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 3, 2016)

KATHLEEN BROWN,	**:**	
ROBIN BRINDLE,	**:**	
SANDRA CARTER,	**:**	
KIMBERLY CLAYMAN,	**:**	
MARCIE LAPORTE, and	**:**	
KELVIN RAMIREZ, AKA KEVIN RAMIREZ,	**:**	
Plaintiffs,	**:**	
	:	
v.	**:**	**C.A. No. PC 12-3075**
	:	
DELTA AIRLINES, INC.	**:**	
Defendants.	**:**	

DECISION

MCGUIRL, J. The Plaintiffs—Kathleen Brown, Robin Brindle, Sandra Carter, Kimberly Clayman, Marcie Laporte, and Kevin Ramirez (Plaintiffs)—seek judicial review of a decision of the Board of Review of the Department of Labor and Training (Board of Review or DLT). In its decision, the Board of Review rejected the Plaintiffs' claims for wages and found that requiring Delta Airlines, Inc. (Delta) to pay its employees one and one-half times the normal rate of pay for hours worked on Sundays and holidays, as required by G.L. 1956 § 25-3-3, is related to the rates, routes, or services of airline carriers and therefore is preempted by the Airline Deregulation Act (ADA), 49 USC § 40101(a)(12). The Court exercises jurisdiction pursuant to G.L. 1956 §§ 42-35-15, et seq. For the reasons set forth herein, this Court affirms the DLT's decision.

I

Facts and Travel

The Plaintiffs were employees of Delta at Delta's facility in the T.F. Green Airport in Warwick, Rhode Island (TF Green). Between September 6 and September 13 of 2011, the Plaintiffs filed complaints with the DLT, alleging that Delta violated provisions of §§ 25-3-1, et seq., entitled "Work on Sundays or holidays." Specifically, the Plaintiffs claimed that Delta violated § 25-3-3[1] by failing to pay them one and one-half times their normal rate of pay (premium pay) for the hours they worked on Sundays and holidays.

On May 9, 2012, Mary Ellen McQueeney Lally, a DLT hearing officer (Hearing Officer), conducted a hearing on the Plaintiffs' claims against Delta. See Ramirez v. R.I. Dep't of Labor and Training, 2014 WL 4412618 (R.I. Super. Sept. 3, 2014). During such hearing, Delta moved to dismiss the case as a matter of law and asserted that requiring Delta to provide its employees with premium pay for the hours that they worked on Sundays and holidays is related to Delta's rates, routes, or services, and therefore triggers preemption under the ADA.[2] See id. The DLT issued six decisions[3] and found that requiring Delta to provide the Plaintiffs with premium pay relates to its prices, routes, and services. See id. The DLT explained that as a result, the ADA preempted the Plaintiffs' claims under § 25-3-3, and therefore, the statute could not be applied against Delta. See id. Accordingly, the DLT ruled that it was "preempted from enforcing wage

[1] Section 25-3-3(a) requires that "[w]ork performed by employees on Sundays and holidays must be paid for at least one and one-half (1 1/2) times the normal rate of pay for the work performed; provided: (1) that it is not grounds for discharge or other penalty upon any employee for refusing to work upon any Sunday or holiday enumerated in this chapter[.]" Sec. 25-3-3(a).

[2] The ADA was enacted by Congress "to encourage, develop, and attain an air transportation system which relies on competitive market forces to determine the quality, variety, and price of air services, and for other purposes." See 49 USC §§ 40101, et seq.

[3] The DLT issued six separate decisions because, at that point in time, the Plaintiffs each had filed a separate complaint with the DLT; however, each of the Plaintiffs' claims were indistinguishable in substance.

laws for airlines employees" and that it had no jurisdiction to adjudicate the Plaintiffs' claims. Id.

Thereafter, on June 15, 2012, the Plaintiffs timely appealed[4] to the Superior Court. See id. at *2; see also § 42-35-15. In their appeal, the Plaintiffs asserted that the DLT's decision was affected by error of law because it misconstrued the breadth of the ADA. See Ramirez, 2014 WL 4412618 at *4. The Plaintiffs further claimed that Delta failed to produce any evidence to support the DLT's conclusion that requiring Delta to compensate its employees with premium pay for hours worked on Sundays and holidays would have a significant impact on its rates, routes, and services, and therefore, such statutory requirement was not preempted by the ADA. See id. at *7. In response, Delta asserted that the DLT properly found that the Plaintiffs' claims for premium pay were preempted by the ADA. See id. As a result, Delta moved to dismiss the Plaintiffs' claims. See id. at *4.

On September 3, 2014, this Court issued a decision concluding that the DLT erred in dismissing the Plaintiffs' claims without the presentation of factual evidence on the preemption issue. See id. at *8-9. This Court remanded the matter to the DLT for a further hearing and a finding of fact on the issue of the effect of employee wages on Delta's rates, routes, and services. See id. at *9.

Consequently, on May 4, 2015, the parties went before the DLT for the remanded hearing that was ordered on this matter. See Department of Labor and Training, Division of Labor

[4] Plaintiffs originally filed separate appeals with the Superior Court on June 15, 2012. Id. at *2. On September 18, 2012, Plaintiffs filed a motion to consolidate their appeal because each case presented identical legal issues. Id.; see Super. R. Civ. P. 7(b)(3)(ii) (allowing for parties to submit a motion to consolidate cases for trial). Both the DLT and Delta did not object to such request. On or about October 3, 2012, the Plaintiffs' motion to consolidate PC-2012-3071, PC-2012-3072, PC-2012-3073, PC-2012-3074, and PC-2012-3076 was granted. See Ramirez, 2014 WL 4412618 at *2.

Standards Claim No. LS 2011-396, September 1, 2015 decision at 2 (Decision). During the hearing, Kelly Fredericks (Mr. Fredericks), President and CEO of the Rhode Island Airport Corporation (RIAC), and Sandra LaPlante (Ms. LaPlante), station manager for Delta at TF Green, testified on behalf of Delta. See id. Neither witness qualified as an expert.

Mr. Fredericks testified that he was President and CEO of the RIAC for two years, but had experience in the aviation and transportation industry as a civil engineer and as the chief operating officer of an international airport for approximately thirty-five years. Tr. at 19-20, 21-22. Mr. Fredericks stated that as President and CEO of RIAC, a critical component of his job is attracting and maintaining air carrier services at TF Green. Id. at 22-23. Mr. Fredericks testified that TF Green services eight airline carriers and approximately 10,000 travelers per day, with Sundays and holidays being some of its most important days. Id. at 20-21, 32-33. Mr. Fredericks further stated a statute that allows employees to either refuse to work on Sundays and holidays without repercussions or receive premium pay for such hours, could significantly impact the air carriers that service RIAC. Id. at 32-33. In addition, Mr. Fredericks stated that the two main factors that influence whether a carrier will locate in Rhode Island are cost and demand. Id. at 24, 37, 40-45. When asked if additional labor costs in Rhode Island would make RIAC less competitive in the market for air services, Mr. Fredericks answered affirmatively. Tr. at 25-26. Mr. Fredericks further claimed that increased costs could make Rhode Island a less attractive site to airlines in general. Id. at 26-27. Specifically, Mr. Fredericks testified that increased labor costs "could lead to reduction in service from a flight frequency opportunity," and could "diminish[] [RIAC's] competitive advantage." Id. at 31.

Ms. LaPlante testified that she has been Delta's station manager at TF Green for three years but has worked for Delta for twenty years. Id. at 47-48. Ms. LaPlante explained that as a

station manager, her job is to oversee day-to-day operations, perform administrative work, provide superior customer service, manage schedules, and lead a team of twenty-five employees. Id. at 49-50. Ms. LaPlante testified that Sundays and holidays are extremely important to Delta because it is open seven days per week and operates approximately four to five flights on Sundays. Id. at 53-54. Ms. LaPlante also claimed that, as a station manager, she is responsible[5] for managing the employee schedule to ensure that minimum staff is available to operate Delta's flights at TF Green and is in charge of ensuring counter, gates, and baggage staffing. Id. at 57, 59, 71-73. In addition, Ms. LaPlante explained that she is also responsible for allocating money for employee salaries and benefits from the budget that she obtains from Delta's corporate headquarters. Id. at 63. Ms. LaPlante asserted that if Delta is required to pay premium pay to its Rhode Island employees for the hours worked on Sundays and holidays, that requirement could impact or modify the services that Delta provides on such days. Id. at 61-63, 64. Additionally, Ms. LaPlante stated that the increased cost could likely cause airlines to reduce staff on Sundays and holidays, making Delta less competitive. Id. at 63.

Based on the testimony given and the evidence submitted, the DLT reasoned that "[a]n increase in salaries would change [Delta's] budget with the possibility that an adjustment in services or staffing would have to be made." See Decision at 4. In reaching its conclusion, the DLT reasoned that "the logical effect[s] that . . . [§ 25-3-3] has on [Delta's] delivery of services or the setting of rates" is "sufficient even if indirect." Id. at 5 (internal citations omitted). The DLT explained that Ms. LaPlante's testimony, which indicated that an increase in employees' wages would, in fact, affect Delta's services, was both "persuasive" and from "a unique

[5] Ms. LaPlante did acknowledge that she is not involved in the following: deciding how many Delta flights arrive to, and depart from, TF Green; Delta's minimum staffing levels; the rates Delta charges for flights; the routes Delta flies; or the services offered by Delta. Tr. at 57, 71-73.

perspective." Id. at 4. The DLT also noted that, although Mr. Fredericks' testimony was not particular to Delta, it was "credible as pertaining to air carriers and supportive of the points made by Ms. LaPlante." Id. Therefore, the DLT found that compensating employees with the premium pay is related to Delta's rates, routes, and services, and, as a result, the ADA preempts § 25-3-3's application against Delta. Id. at 5, 6.

Thereafter, on November 18, 2015, the Plaintiffs again timely appealed the DLT's Decision to this Court. See Pls.' Brief; see also § 42-35-15. In their appeal, the Plaintiffs assert that the DLT committed an error of law in finding that § 25-3-3 was preempted by the ADA because the possible increase in labor costs posed by the Sunday and holiday premium pay requirement is insufficient to trigger preemption. See Pls.' Brief at 7, 21. The Plaintiffs also assert that even if the DLT did not commit error of law, the DLT's Decision is clearly erroneous because Delta failed to prove, by reliable and substantial evidence, that increased labor costs would have a significant impact on its rates, routes, or services. See id. As a result, the Plaintiffs contend that the Court should reverse the DLT's Decision and remand the case solely for the purpose of calculating wages, penalties, and attorney fees. See id. Conversely, Delta asserts that the DLT did not commit an error of law because § 25-3-3 is a "blue law" that dictates how airline carriers, like DLT, can employ and, in and of itself, is sufficient to trigger preemption. See Defs.' Brief at 1, 5, 14. Delta further asserts that the DLT's Decision is not clearly erroneous because reliable and substantial evidence in the record proves that requiring Delta to abide by § 25-3-3 would significantly impact its rates, routes, and services. Id. at 10.

II

Standard of Review

The Superior Court exercises jurisdiction over appeals from the DLT pursuant to § 42-35-15(g) of the Rhode Island Administrative Procedures Act, which provides as follows:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> "(1) In violation of constitutional or statutory provisions;
> "(2) In excess of the statutory authority of the agency;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error or law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 42-35-15(g).

As a general rule, "[a]dministrative agencies retain broad enforcement discretion" and, thus, considerable deference is accorded to an agency's decision. Arnold v. Lebel, 941 A.2d 813, 820 (R.I. 2007). Such deference is additionally given to an agency's interpretation of a statute, whose administration and enforcement has been entrusted to that agency. See In re Lallo, 768 A.2d 921, 926 (R.I. 2001) (stating that an agency's interpretation of its own statute or regulations should be accorded "weight and deference as long as that construction is not clearly erroneous or unauthorized") (internal citations omitted).

When considering questions of law, however, the Court is not bound by the determination of the agency, but instead may be "freely reviewed to determine the relevant law and its applicability to the facts presented in the record." State, Dep't of Envtl. Mgmt. v. State Labor Relations Bd., 799 A.2d 274, 277 (R.I. 2002). Therefore, "questions of law—including

statutory interpretation—are reviewed *de novo*." Iselin v. Ret. Bd. of Emps' Ret. Sys. of R.I., 943 A.2d 1045, 1049 (R.I. 2008).

Conversely, when considering questions of fact, the Court "may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are 'clearly erroneous."' Guarino v. Dep't of Soc. Welfare, 410 A.2d 425, 428 (R.I. 1980) (citing § 42-35-15(g)(5)). Further, the Court cannot "weigh the evidence [or] pass upon the credibility of witnesses [or] substitute its findings of fact for those made at the administrative level." E. Grossman & Sons, Inc. v. Rocha, 118 R.I. 276, 285, 373 A.2d 496, 501 (1977). Rather, § 42-35-15(g) limits the Court to an examination of the record in order to ascertain whether the agency's decision is supported by legally competent and substantial evidence. See Ctr. for Behavioral Health, R.I., Inc. v. Barros, 710 A.2d 680, 684 (R.I. 1998); Kirby v. Planning Bd. of Review of Middletown, 634 A.2d 285, 290 (R.I. 1993). Legally competent evidence is such "relevant evidence that a reasonable mind might accept as adequate to support a conclusion [and] means an amount more than a scintilla but less than a preponderance." Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007).

III

Analysis

A

In their memorandum, the Plaintiffs argue that the DLT's Decision is affected by error of law, as the ADA does not preempt § 25-3-3 because costs alone—such as the costs imposed by § 25-3-3's premium pay requirement—are insufficient to trigger preemption. The Plaintiffs contend that the connection between a state law and an airline's rates, routes, or services cannot be de minimis, but instead, must have a forbidden and significant impact on rates, routes, or

services. The Plaintiffs further assert that although the ADA may preempt some state laws governing employer and employee relationships, it may not do so on the grounds of increased labor costs alone. The Plaintiffs also allege that § 25-3-3 only affects labor costs because it merely dictates how much money Delta is required to pay its workers—not how Delta is required to employ its workers. The Plaintiffs claim that, as a result, § 25-3-3 presents no significant impact on Delta's rates, routes, or services, and therefore, there is no justification to preempt its application. In addition, the Plaintiffs suggest that if airlines, like Delta, were permitted to invoke preemption based on costs alone, such a finding would effectively exempt airlines from state taxes, state lawsuits, and most other state regulations. The Plaintiffs conclude that § 25-3-3 is therefore not preempted by the ADA, and thus, Delta is required to pay the Plaintiffs premium pay for the hours they have worked, and continue to work, on Sundays and holidays.

In its response brief, Delta avers that the DLT's Decision is not affected by error of law, as the Hearing Officer properly determined that § 25-3-3 is preempted by the ADA. Delta insists that § 25-3-3 is not a wage statute dictating the amount of money employers are required to pay employees, but instead, is a "blue law" that dictates how employers can employ. Specifically, Delta asserts that—unlike wage laws that are intended to ensure a competitive wage, encourage hiring, protect workers from harm, and enforce suitable working hours—§ 25-3-3 is intended to only manage the days a business is open, the number of employees it staffs and, thus, the services it provides. Delta claims that § 25-3-3 is therefore fundamentally different from the type of overtime and minimum wage laws that were found to be precluded from ADA preemption. Delta additionally contends that a law with the express purpose of discouraging employers from remaining open and, consequently, staffing employees on Sundays and holidays in order to promote a common day of rest and relaxation for Rhode Island citizens works to

unravel the ADA's objective, because it substitutes the competitive market forces proscribed by Congress for those proscribed by the Rhode Island Legislature. Delta asserts that this fact alone is sufficient to warrant ADA preemption because § 25-3-3, by its very nature, regulates air carrier services rather than permitting those services to be directed by market forces, as the ADA requires. Delta concludes that § 25-3-3 is therefore undoubtedly related to the rates, routes, and services of the airline, and is consequently preempted by the ADA.

In 1978, Congress enacted the ADA in order to promote the competitive market forces of air carriers by guaranteeing the efficiency, innovation, low prices, variety, and quality of transportation. See 49 U.S.C. App. §§ 1302(a)(4), 1302(a)(9). By enacting this federal regulation, Congress essentially deregulated domestic air transport. See id. To ensure that both its purpose was achieved and "that the States would not undo federal deregulation with regulation of their own," Congress included a preemption[6] clause within the ADA. Morales v.

[6] Article VI, clause 2 of the United States Constitution, also known as the Supremacy Clause, is the foundation of the federal preemption doctrine. See Verizon New England Inc. v. R.I. Pub. Utils. Comm'n, 822 A.2d 187, 192 (R.I. 2003). Preemption requires that "[w]here a state statute conflicts with, or frustrates, federal law, the former must give way." CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 663 (1993) (citing U.S. Const., art. VI, cl. 2; Maryland v. Louisiana, 451 U.S. 725, 746 (1981)). Therefore, in a preemption case, state law is displaced "to the extent that it actually conflicts with federal law." Pacific Gas & Elec. Co. v. State Energy Res. Conservation and Dev. Comm'n, 461 U.S. 190, 204 (1983). To determine whether a federal regulation, such as the ADA, preempts a state statute, such as § 25-3-3, the Court must ascertain whether the ADA "expressly provide[s] that it shall supersede related state law[.]" Verizon New England, 822 A.2d at 192. In making this determination, courts are required to assume that a federal statute is not to supersede the police powers of a state unless it was Congress' "clear and manifest purpose" to do so. California v. ARC Am. Corp., 490 U.S. 93, 101 (1989). As previously stated, the ADA expressly preempts states from enacting any law that relates to the rates, routes, or services of an airline carrier. See 49 U.S.C. App. § 1305(a)(1). Therefore, the ADA would preempt § 25-3-3 if this Court finds that § 25-3-3 relates to the rates, routes, or services of an airline carrier. See id.; see also Verizon New England, 822 A.2d at 192; Pacific Gas & Elec. Co., 461 U.S. at 204.

Trans World Airlines, Inc., 504 U.S. 374, 378 (1992). This preemption clause[7] "prohibit[s] the States from enforcing any law 'relating to rates, routes, or services' of any air carrier.'" Id. at 378-79 (citing 49 U.S.C. App. § 1305(a)(1); see Mass. Delivery Ass'n v. Coakley, 769 F.3d 11, 21-22 (1st Cir. 2014) (stating that the purpose of this preemption doctrine is to ensure that states do not unravel Congress' purposeful deregulation in this area). In Morales, the United States Supreme Court made it clear that the ADA's preemption clause would have an expansive and broad interpretation. See 504 U.S. at 384. The Court went on to explain, for instance, that a state law will be found to relate to the rates, routes, or services of any air carrier, and thus in violation of the ADA, if the state law has any connection or reference thereto, whether directly or indirectly. See id. at 385-86. In addition, such relation can be found to be present when the logical effects of a statute relates to the rates, routes, or services of an air carrier. See id.; see also Coakley, 769 F.3d at 22 (stating that the phrase "related to" is purposefully expansive, and further explaining that such a determination does not require a factual inquiry into the empirical effect of a statute on a single employer in a particular situation, but instead, a reviewing court need only look at the real and logical effects of the state statute); N.H. Motor Transp. Ass'n v. Rowe, 448 F.3d 66, 82 n.14 (1st Cir. 2006) (agreeing with the district court that "there is no such quantification requirement[,]" but instead, "[t]he cases in this area have looked to the logical effect that a particular scheme has on the delivery of services or the setting of rates and have not required the presentation of empirical evidence"); Dilts v. Penske Logistics, LLC, 769 F.3d 637 (9th Cir. 2014) (stating that even a statute's potential impact on carrier's prices, routes, and services can be sufficient). In applying this logic, the First Circuit found that any state law

[7] Specifically, § 1305(a)(1)expressly preempts states from "enact[ing] or enforce[ing] any law, rule, regulation, standard or other provision having force and effect of law relating to rates, routes, or services of any carrier." 49 U.S.C. App. § 1305(a)(1).

which attempts to unravel Congress' purposeful deregulation in the area of air transport will also be preempted. Coakley, 769 F.3d at 21-22. Therefore, a state law that tries to substitute its own policies for the competitive market forces explicitly protected by the ADA will be preempted. Tobin v. Fed. Express Corp., 775 F.3d 448, 455 (1st Cir. 2014).

Sunday closing laws were enacted to "set one day apart from all others" in order to encourage "a day of rest, repose, recreation and tranquility—a day which all members of the family and community have the opportunity to spend and enjoy together[.]" McGowan v. Maryland, 366 U.S. 420, 450 (1961).[8] Therefore, in order to embrace and effectuate the promotion of "a common day of rest and recreation," the Rhode Island Legislature enacted § 25-3-3, entitled Work on Holidays and Sundays. City of Warwick v. Almac's, Inc., 442 A.2d 1265, 1270 (R.I. 1982); see Ramirez, 2014 WL 4412618 at *3 (stating that the purpose of § 25-3-3 is "to preserve the health, safety and welfare of [Rhode Island] citizens") (citing Dilloff, Never on Sunday: The Blue Laws Controversy, 39 Md. L. Rev. 679 (1980)); see also Opinion Letter of the Rhode Island Office of the Attorney General, 1984 WL 62942 (R.I.A.G.) (recognizing that Rhode Island's Sunday closing law, § 25-3-3, was enacted to preserve the health, safety, and welfare of citizens). To accomplish this purpose, § 25-3-3 encourages businesses to remain closed on Sundays and holidays by forcing employers to compensate their employees with premium pay for work performed on those days. See Almac's, 442 A.2d 1265; see also §§ 25-3-3(a), 25-3-3(a)(1). The statute does not offer employers any sort of recourse, and, in fact,

[8] Sunday restrictions were first called "blue laws" during the colonial period. Lesley Lawrence-Hammer, Red, White, but Mostly Blue: The Validity of Modern Sunday Closing Laws (citing Under the Establishment Clause, 60 Vand. L. Rev. 1273, 1306 (2007); David N. Laband & Deborah Hendry Heinbuch, Blue Laws: The History, Economics, and Politics of Sunday-Closing Laws 8 (1987)). Rhode Island's "blue laws" were designed to promote a common day of rest and recreation for Rhode Island citizens by discouraging employers from requiring employment on Sundays and holidays. See Ramirez v. R.I. Dep't of Labor and Training, 2014 WL 4412618 at *6-7 (R.I. Super. Sept. 3, 2014).

further provides that an employee cannot be discharged, or otherwise penalized, for refusing to work on Sundays or holidays. See § 25-3-3(a)(1).

Here, § 25-3-3's clear and unambiguous statutory purpose is to promote a common day of rest and recreation by regulating the workforce and incentivizing businesses to remain closed on Sundays and holidays. See Almac's, 442 A.2d at 1270. Specifically, § 25-3-3 forces employers to pay a penalty if they choose to remain open on Sundays and holidays, by requiring them to compensate employees with premium pay for the hours worked on such days. See § 25-3-3. In dictating how employers can employ workers, § 25-3-3 attempts to regulate the work force on Sundays and holidays, which undoubtedly affects the competitive market force of airlines. See Almac's, 442 A.2d at 1270; see also Tobin, 775 F.3d 448 (explaining that a state statute that tries to substitute its own policies regarding the market place will be preempted by the ADA in light of the protection provided by its preemption clause). As the United States Supreme Court has made clear, a state law is preempted by the ADA when it directly substitutes the state's own policies for competitive market forces. Tobin, 775 F.3d at 455. That effect is no different if the state law provides an incentive to employers, a penalty, or an absolute prohibition. See Tobin, 775 F.3d 448. On this basis alone, this Court finds that § 25-3-3 is preempted by the ADA and cannot be applied to air carriers like Delta. Furthermore, given the expansive interpretation of the ADA, the logical effects of § 25-3-3 would affect Delta's rates, routes, and services, as well as other air carriers servicing RIAC. See DiFiore v. Am. Airlines, 646 F.3d 81, 88 (1st Cir. 2011) (considering the implementation of a local statute on the industry as a whole, not just on the individual defendant). For instance, requiring Rhode Island air carriers to comply with § 25-3-3's premium pay provision would have a direct influence on their decision-making process regarding discretionary services, customer interaction, and staffing. See Tr. at 30-31; see

also Morales, 504 U.S. at 384. As a consequence, § 25-3-3 has a direct impact on, and therefore relates to, the rates, routes, and services of Delta. See Morales, 504 U.S. at 385-86 (stating that a state law will be found to relate to the services of any air carrier if the law has any connection or reference thereto, whether that connection be direct or indirect).

Consequently, in order to ensure that § 25-3-3 does not unravel Congress' purposeful deregulation of the airline industry, the statute must be found to be preempted by the ADA. See Coakley, 769 F.3d at 21-22 (to ensure that states do not unravel Congress' purposeful deregulation in the airline industry, state statutes that relate to the routes, rates, or services of airlines are preempted by the ADA). Accordingly, the Court finds that the DLT's Decision is not controlled by error of law because, as a matter of law, § 25-3-3 is preempted by the ADA. See § 42-35-15(g); see also State, Dep't of Envtl. Mgmt., 799 A.2d 274.

B

Substantial Impact on Rates, Routes, or Services

Even assuming, arguendo, that § 25-3-3 is a wage law that solely dictates how much money employers are required to pay employees, the statute would still be preempted by the ADA if it has a substantial impact on the rates, routes, or services of the airline industry.

In their brief, the Plaintiffs seemingly contend that the DLT's Decision is clearly erroneous because the record is devoid of competent evidence demonstrating that § 25-3-3's premium pay requirement has a substantial impact on Delta's rates, routes, or services. The Plaintiffs state that in order to be entitled to ADA preemption, Delta had to prove that the increased costs required by § 25-3-3 has, or will have, a substantial impact on its rates, routes, and services—a burden which the Plaintiffs assert Delta failed to meet. In order to meet this burden, the Plaintiffs claim that Delta had to offer far more supporting facts and evidence than

merely pointing to the potential increased labor costs that § 25-3-3 would impose. The Plaintiffs claim that Delta could have demonstrated this supposed impact by providing adequate and specific facts showing the actual amount that § 25-3-3 would have on Delta's costs. Instead of doing so, the Plaintiffs submit that Delta tried to invoke preemption on its "own say so" by simply presenting witnesses to testify that § 25-3-3 may lead to increased costs. The Plaintiffs assert that Delta's attempt ultimately failed because its witnesses were not experts; did not point to exact, conclusive evidence of the potential cost impact; did not have firsthand knowledge of the potential impact; and, ultimately, made broad, generalized conclusions based on their opinions. The Plaintiffs further contend that, although the Hearing Officer found Mr. Fredericks and Ms. LaPlante's testimony to be credible, credibility does not substitute for the substantial evidence that was required for the DLT to come to its Decision. Finally, although the Plaintiffs acknowledge that a statute's potential impact on a carrier's costs may, at some point, be sufficient to trigger preemption, without the requisite underlying facts or data, there is no support for such a conclusion here. As a result, the Plaintiffs insist that the DLT's Decision is clearly erroneous as the record is devoid of substantial, reliable, and probative evidence demonstrating the impact that § 25-3-3 would have on Delta's rates, routes, and services.

Conversely, Delta responds by claiming that the record reflects that it did, in fact, produce ample, credible evidence to demonstrate that compliance, even with just the premium pay provision of § 25-3-3, logically relates to, and has a substantial impact on, Delta's services. Delta contends that empirical or quantifying evidence is not needed in order to determine whether a law, rule, or regulation is related to the rates, routes, and services of an airline, but instead, the reviewing court need only look at the logical effects that a statute would have on the rates, routes, or services of air carriers. Delta further asserts that such analysis "cannot be

applied on a piecemeal basis" to some, based on the potential effects on those specific employers, but not to others, but must be "preempted as to all carriers or to none." Consequently, Delta claims that this Court may not "engage in a case by case analysis" of each individual airline and the specific effect that § 25-3-3 would have on its operations, but instead, must ask whether compliance with § 25-3-3 would logically affect the rates, routes, or services of any airline carrier. Delta further argues that the record provides an abundance of legally competent evidence demonstrating the resulting impact. In particular, Delta asserts that both Mr. Fredericks and Ms. LaPlante testified that Sundays and holidays are some of the busiest times for airports, and maintaining adequate levels of employees on these days is necessary to ensure competitiveness in the marketplace. Delta further argues that the testimony of Mr. Fredericks and Ms. LaPlante demonstrates that Delta would be motivated to change its staffing decisions and, as a result, alter the customer service it provides to passengers at TF Green as a direct result of compliance with § 25-3-3. Delta explains that the record additionally shows that the premium pay requirement could motivate Delta to utilize less staff on Sundays or altogether cease operating on Sundays—"exactly the result that the statute envisions." As a result, Delta asserts that since reducing staffing would logically affect its routes and services, the DLT properly found that the ADA preempts the application of § 25-3-3. Delta concludes that the DLT's Decision was based on witness testimony and the evidence before it, which must be entitled deference and may not be overturned by this Court unless clearly erroneous.

Here, the DLT accepted Mr. Fredericks and Ms. LaPlante's predictions regarding the effects that § 25-3-3 would have on Delta's rates, routes, and services as credible, and favorably noted their demeanor and forthright answers. The DLT further explained that Ms. LaPlante's testimony—which indicated that an increase in employees' wages would, in fact, affect Delta's

services—was both "persuasive" and from "a unique perspective." Id. In addition, the DLT noted that although Mr. Fredericks' testimony was not particular to Delta, it was "credible as pertaining to air carriers and supportive of the points made by Ms. LaPlante." Id. In deciding issues of fact, the Court may not weigh the evidence of the administrative record, pass upon the credibility of witnesses, or substitute its findings of fact for those made by the DLT. See E. Grossman & Sons, Inc., 118 R.I. at 285, 373 A.2d at 501. Rather, the Court's review is limited "to an examination of the certified record" in order to ascertain whether the DLT's Decision is supported by substantial evidence. See Ctr. for Behavioral Health, R.I., Inc., 710 A.2d at 684. The record shows that Mr. Fredericks had personal knowledge regarding the factors involved in attracting and maintaining air carrier services in Rhode Island and explained that the two main considerations are cost and demand. Tr. at 22-23, 24, 37, 40-45. Mr. Fredericks further emphasized that Sundays and holidays are important days for RIAC and claimed that a statute which allows employees to either refuse to work on Sundays and holidays or receive premium pay, could significantly impact the air carriers servicing RIAC. Tr. at 30-33. Mr. Fredericks also asserted that additional labor costs in Rhode Island would make RIAC less competitive in the market for air services. Tr. at 25-26. Specifically, Mr. Fredericks testified that increased labor costs "could lead to reduction in service from a flight frequency opportunity," and could "diminish[] [RIAC's] competitive advantage." Tr. at 31. The record demonstrates that, similarly, Ms. LaPlante had personal, more specific, knowledge regarding Delta's day-to-day operations at TF Green. Tr. at 49-50. Similar to Mr. Fredericks, Ms. LaPlante claimed that Sundays and holidays are extremely important to Delta. Tr. at 53. Ms. LaPlante asserted that—as someone who is responsible for allocating money for employee salaries—if Delta is required to provide premium pay to its Rhode Island employees for the hours worked on Sundays and

holidays, that requirement could impact the services that Delta provides on such days. Tr. at 57, 61-63, 64. Ms. LaPlante also stated that the increased costs might cause Delta to reduce staff on Sundays and holidays and, as a result, become less competitive. Tr. at 63-64.

Based on the record before it, the Court finds that the DLT's Decision is not clearly erroneous, but is supported by adequate and legally competent evidence. Accordingly, the Court affirms the DLT's Decision. See Ctr. for Behavioral Health, R.I., Inc., 710 A.2d at 684.

IV

Conclusion

After review of the entire record, this Court finds that the DLT's Decision was neither affected by error of law nor clearly erroneous. See § 42-35-15(g)(4) and (5). The Plaintiffs' substantial rights were not prejudiced. Accordingly, the Court affirms the DLT's Decision.

Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Kathleen Brown, et al. v. Delta Airlines, Inc.**
CASE NO:	**PC 12-3075**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 3, 2016**
JUSTICE/MAGISTRATE:	**McGuirl, J.**
ATTORNEYS:	
For Plaintiff:	**Vicki J. Bejma, Esq.**
For Defendant:	**Thomas R. Gonnella, Esq.; Rebecca M. Murphy, Esq.; William E. O'Gara, Esq.; Matthew C. Reeber, Esq.; Sean M. Fontes, Esq.**