



NATIONAL MEDIATION BOARD
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46 NMB No. 21
September 3, 2019

Fred B. Jacob
Solicitor
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570-0001

Re: NMB File No. CJ-7205
NLRB Case No. 29-UD-232699
G2 Secure Staff, LLC

Dear Mr. Jacob:

This responds to your request for the National Mediation Board's (NMB or Board) opinion regarding whether G2 Secure Staff, LLC (G2 or Employer) is subject to the Railway Labor Act (RLA), 45 U.S.C. §151, *et seq.* On June 12, 2019, the National Labor Relations Board (NLRB) requested an opinion regarding whether G2's operations at La Guardia International Airport (LGA) are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that G2's operations and employees at LGA are subject to the RLA.¹

I. PROCEDURAL BACKGROUND

On December 11, 2018, Ms. Veronica Salazar filed a petition with Region 29 of the National Labor Relations Board ("NLRB") seeking a deauthorization election in the bargaining unit of G2 employees represented by the Service

¹ For the reasons set forth in her dissent in *ABM Onsite Services*, 45 NMB 27, 36 (2018), Chairman Puchala disagrees with her colleagues' decision to return to the six factor analysis for determining carrier control in jurisdiction cases. In the instant case, however, she agrees that there is sufficient record evidence of carrier control over personnel decisions and the manner in which the G2 employees perform their duties to establish RLA jurisdiction. In particular, Delta's ability to dictate to G2 as to the acceptability and continued employability of G2 employees is a significant factor in light of the fact that Delta is the sole customer of G2 in LGA.

Employees International Union, Local 32 BJ (SEIU or Organization). On January 28, 2019, the NLRB Regional Director of Region 29 conducted a hearing and the Employer filed post-hearing brief at the conclusion of the hearing. The Employer raised the issue of jurisdiction at the NLRB hearing and the Organization responded that “given the state of current [National Labor Relations] Board law,” it did not have a clear position on whether G2’s employees fall under the RLA or the National Labor Relations Act. The Employer’s brief asserted that G2 is a derivative carrier under the RLA and is therefore subject to the jurisdiction of the NMB.

On June 12, 2019, the NLRB referred the case to the NMB for an advisory opinion on the issue of jurisdiction. The NMB assigned Josie Bautista to investigate. The Employer submitted a position statement to the NMB. The Organization did not submit a position statement to the NMB. The NMB’s opinion is based on the request and the record provided by the NLRB as well as the position statement filed by the Employer.

II. FINDINGS OF FACT

The Employer is an airline service company, providing various passenger services at 54 major airports throughout the United States, including LGA. On or about April 19, 2017, G2 entered into the Airport Services Master Agreement (Agreement) with Delta Airlines (Delta) to provide cabin service cleaning, cabin service provisioning, aircraft security checks, and lavatory and water servicing functions at LGA. G2 employs approximately 170-180 employees at LGA who are covered by the Collective Bargaining Agreement (CBA) between G2 and SEIU.²

Staffing and Scheduling

Section 2.3 of the Agreement between G2 and Delta requires G2 employees to perform cabin cleaning services in full compliance with Delta’s standard practices, including but not limited to, Delta’s Service Manual (CSM), Ground Operations Manual (GOM) and Delta Connection Ground Operations Manual (DCGOM). Delta has the sole discretion to set and adjust the team sizes for G2’s cleaning crews.

² On or about April 7, 2017, G2 entered into a recognition agreement with SEIU that governs the cabin service cleaning employees at LGA that had previously been employed by Gate Serve.

The staffing schedule of G2 employees are dictated by the flight schedules and passenger loads of Delta. Delta determines how many crews are needed and adjusts the number of crews on a monthly basis. There are typically four G2 employees per cleaning crew on each aircraft assigned to the following areas: first class, lavatories, galley, and seat pockets.

Before being hired, G2 employees are required to comply with background checks (including 10-year background checks) and drug screening. Delta also requires an enhanced security screening before G2 employees can work on Delta properties. The enhanced security screening includes continuous background checks through a third party vendor, Endera. The Agreement requires G2 to contract with Endera for all of its employees at LGA.

Carrier Involvement in Day-to-Day Operations

The record shows that the Director of Operations at G2 communicates with Delta representatives every day and holds daily meetings with various members of Delta management. There are 12 managers in four departments at G2 in LGA: Operations, Shift, Safety and Training, and eight supervisors. All G2 managers have Delta email addresses. Delta has the authority to direct G2 cleaners to be dispatched to its aircraft. The Captain, Senior Flight Attendant, and/or Gate Agent at Delta can contact the Delta "Tower" and have cleaners dispatched to the aircraft when necessary. A G2 employee sits at the Delta "Tower" to handle the requests from Delta.

Delta provides mandatory and detailed guidelines regarding the manner in which G2 employees must clean and provision Delta's aircraft, including the amount of time for G2 employees to complete the required tasks before the aircraft is scheduled to depart. Delta provides the breakroom for G2 employees as well as the warehouse where G2 employees keep their cleaning tools. Delta also provides the cleaning solutions and products used by G2 employees at LGA to clean its aircraft. The ground equipment and water trucks used by G2 employees to perform water services on Delta aircraft at LGA are all owned by Delta Airlines. Delta also provides the SMARTrack devices, which must be used by G2 employees when cleaning Delta aircraft. SMARTrack is a hand-held device that tracks the time spent by G2 employees, including when tasks are started and completed as well as the size of the crew used.

Carrier Access to G2's Operations and Records

Section 7.4 of the Agreement gives Delta the right to audit all of G2's employment records for each of its employees. Further, the Agreement requires G2 to keep a full and detailed records for each employee at its space of operations at LGA, which is space provided and controlled by Delta. The Agreement also requires G2 to cooperate with any audits and inspections of G2's operations conducted in accordance with Delta's operational contractor oversight program to verify G2's compliance with its operational obligations under the Agreement.

Delta has access to all staffing schedules as well as all employee training records. Delta requires all of G2's employees' training records to be kept in Delta's automated training record system where it has complete access and control.

Carrier's Role in Personnel Decisions and Benefits

Delta has no role in hiring G2 employees. However, Delta is the sole customer of G2's operations in LGA and requires all of G2's employees to submit to an enhanced and continued background checks in order to work on Delta properties. G2 employees at LGA have been terminated based on information received from Delta Airlines. For example, Richard Haverstick, G2's Director of Operations at LGA, testified at the NLRB hearing that a Delta manager witnessed a G2 employee taking liquor from the liquor cabinet on an aircraft and Delta demanded the employee be removed. G2 subsequently terminated the employee. Delta managers have notified G2 that they do not want a particular employee working on Delta aircraft, the employee was terminated as a result. An example of this notification occurred when Delta demanded an employee be removed for behavior that Delta management felt was unsafe. While G2 investigated the incident, the employee was terminated based on Delta's demand. Haverstick testified further that "Delta said they didn't want the employee on their property. So in that case, if they can't be on Delta's property, that's the only work we have in LaGuardia." A G2 employee also testified at the NLRB hearing that employees "were fired because they did something they weren't supposed to and Delta doesn't accept that."

Delta has also recommended G2 employees for performance awards or recognition by informing the Director of Operations at G2. These employees received \$50 gift cards and/or recognition via a plaque on the wall.

Carrier Control Over Training

Section 2.8 of the Agreement between Delta and G2 provides that G2

“[S]hall ensure that all personnel utilized in the performance of the Services required hereunder receive all operation and safety training necessary for the safe, lawful, and competent performance of such services, including, without limitation, any specialized training provided or required by Delta and any training required by applicable laws, rules, regulations, procedures, Security directives, and Delta’s Aircraft Operator Standard Security Program (“AOSSP”).

The Agreement also requires G2 to designate a Training Coordinator responsible for the training of new employees, dissemination of new procedures and revisions to standard practices, and participation in the Delta’s “Train the Trainer” activities. Moreover, the Agreement requires that all training must be documented in the Delta automated training record-keeping system or any other training record-keeping system specified or approved by Delta. Delta has the right to conduct audits of the training records to ensure that G2 is in compliance with the Agreement.

Delta develops the content of all training materials that all G2 employees are required to take. The training includes computer based and on-the-job training relating to safety, security and cabin cleaning. Delta requires all training to be taken annually. G2 employees who are not current on their required training are flagged in Delta’s system and are not permitted to perform services for Delta.

The training for the SMARTrack device is held at the “C” terminal at LGA, which is a space leased by Delta. The SMARTrack training is conducted by a trainer and supervisors from Delta. The SMARTrack technology is linked to Delta’s live flight data feed and dispatchers use the system to push job assignments. All software, hardware, and trainers required for the SMARTrack technology system are provided by Delta at no extra cost to G2.

Holding Out to the Public

G2 employees at LGA are required to wear uniforms that must be approved by Delta. The uniforms contain the G2 logo and are provided by G2 and must meet Delta’s standards. The required safety vest worn by G2

employees is almost identical to the vest worn by Delta employees. When performing water and lavatory services, G2 employees drive the lavatory and water trucks that are provided by Delta. The trucks are branded with Delta's name and logo.

III. DISCUSSION

When an employer is not a rail or air carrier engaged in the transportation of freight or passengers, the NMB has traditionally applied a two-part test in determining whether the employer and its employees are subject to the RLA. First, the NMB determines whether the nature of the work is that traditionally performed by employees of rail or air carriers. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under common control with, a carrier or carriers. Both parts of the test must be satisfied for the NMB to assert jurisdiction.

G2 does not fly aircraft and is not directly or indirectly owned by an air carrier. The employees at issue perform cabin service cleaning, cabin service provisioning, aircraft security checks, and lavatory and water servicing functions. The Board has previously found that cabin service cleaning and provisioning constitute work traditionally performed by employees in the airline industry. *Sky Valet*, 23 NMB 155, 160 (1996). *See also Commercial Aviation Service of New York City, Inc.* 22 NMB 223, 225 (1995).

Therefore, to determine whether G2 is subject to the RLA, the NMB must consider the degree of direct or indirect control exercised over its operations by its Carrier customers.

In *ABM Onsite Services*, the Board found that,

The rail or air carrier must effectively exercise a significant degree of influence over the company's daily operations and its employees' performance of services in order to establish RLA jurisdiction. No one factor is elevated above all others in determining whether this significant degree of influence is established. These factors include: extent of the carriers' control over the manner in which the company conducts its business; access to the company's operations and records; role in personnel decisions; degree of supervision of the company's employees; whether the employees are held out to the public as carrier employees; and control over employee training. *Air Serv Corp.*, 33 NMB 272 (2006); *Aircraft*

Serv. Int'l Group, Inc., 33 NMB 258 (2006); *Signature Flight Support*, 32 NMB 214 (2005).

45 NMB 27, 34-35 (2018).

Carrier Control over G2 and Its Employees

In this case, the record demonstrates that Delta exercises significant control over G2 employees at LGA. Under the Agreement, Delta has the “sole discretion” to set and adjust the staffing of G2’s cleaning crews. The scheduling of G2’s employees are dictated by Delta’s flight schedules and passenger loads. Delta requires G2 employees to comply with its detailed guidelines regarding how each aircraft type is cleaned and provisioned. Delta provides the SMARTrack device that each G2 employee is required to carry to track when tasks are started and completed as well as the size of the crew used. At any given point in time, Delta employees such as the Captain, Senior Flight Attendant, or Gate Agent can require cleaning agents to be dispatched to the aircraft when Delta employees deem it necessary.

While Delta does not participate in the hiring of G2 employees, G2 employees are required to undergo stringent background checks to satisfy Delta’s hiring requirements. Moreover, Delta requires G2 to contract with a third party vendor Endera to provide continuous background checks for all of its employees. Delta management conducts daily meetings with the G2’s Director of Operations and has the power to remove a particular employee from working at Delta properties. The record shows that negative information from Delta results in the termination of G2 employees. Conversely, positive information from Delta results in monetary rewards or employee recognition and continued employment with G2. Essentially, Delta controls every aspect of G2’s operations, including personnel decisions, as evidenced by its ability to dictate which employees are acceptable and deserve continued employment as well as those who are not acceptable and are therefore terminated from G2’s employment

Delta exerts extensive control over the training of G2 employees. Delta develops all the training materials for G2 employees at LGA and requires that all training be taken annually. Delta provides the technology to be used in the training, the trainers and supervisors to conduct the training, and the space in which training is held. All training records for G2 employees are maintained in

a Delta automated training record-keeping system and controlled by Delta. If a G2 employee is not current on the Delta required training, then that employee is prohibited from performing services for Delta.

In the instant case, the Board finds that Delta Airlines exercises significant control over the day to day operation of G2's operation in LGA. Delta controls G2's space of operations at LGA, the staffing schedule, the procedures in which G2 employees perform their work and provides all the necessary tools and technology for G2 employees to accomplish their work.

In sum, the record shows that Delta Airlines has sufficient control over G2's operations at LGA to establish RLA jurisdiction.

CONCLUSION

Based on the record in this case and the reasons discussed above, the NMB's opinion is that G2's operations for Delta Airlines at LGA are subject to the RLA.

BY DIRECTION OF THE NATIONAL MEDIATION BOARD



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