



**NATIONAL MEDIATION BOARD**  
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31 NMB No. 1  
October 1, 2003

Richard A. Siegel, Esq.  
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National Labor Relations Board  
1099 14th Street, NW.  
Washington, DC 20570-0001

Re: NMB File No. CJ-6794  
NLRB Case 28-CA-18519  
Complete Skycap Services, Inc.

Dear Mr. Siegel:

This letter responds to your request for the National Mediation Board's (NMB) opinion regarding whether Complete Skycap Services, Inc. (CSSI) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, et seq. On June 19, 2003, the National Labor Relations Board (NLRB) requested an opinion regarding whether CSSI's operations at Phoenix Sky Harbor International Airport (Sky Harbor) in Phoenix, Arizona, are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that CSSI's operations and its employees at Sky Harbor are subject to the RLA.

I. PROCEDURAL BACKGROUND

This case arose out of an unfair labor practice charge filed in the Region 28 Office of the NLRB. The Regional Office suspended its investigation to determine whether the NLRB or the NMB has jurisdiction. The NLRB requested an NMB opinion regarding the NMB's jurisdiction over CSSI on June 19,

2003. On June 30, 2003, the Board assigned Susanna Pequignot and Jennifer Rosenthal to investigate.

The NMB's opinion in this case is based upon the request and record provided by the NLRB, and the statement submitted by CSSI at the NMB's request.

## II. CSSI'S CONTENTIONS

CSSI has not taken a position on the issue of jurisdiction. However, on March 18, 2003, CSSI provided information about its operations in response to a request from the NLRB. On July 15, 2003, CSSI declined the NMB's invitation to submit a position statement. In response to the Investigator's request, CSSI provided additional information on September 12, 2003.

## III. CHARGING PARTY'S CONTENTIONS

The charging party did not take a position on the issue of jurisdiction.

## IV. FINDINGS OF FACT

CSSI provides passenger skycap services to 18 commercial air carriers at Sky Harbor. These services are performed pursuant to contracts between CSSI and the individual carriers. CSSI submitted copies of its agreements with United Airlines (United), Aeromexico, Southwest Airlines (Southwest), and America West Airlines (America West).

The contracts between CSSI and the carriers require CSSI to meet certain standards of service such as supplying the carrier with a sufficient number of skycaps, performing services in a courteous manner, and providing well-groomed personnel. For example, United requires CSSI to "perform all Services in a good and workmanlike and safe manner." In addition, Aeromexico requires CSSI employees to "wear uniforms generally acceptable to Aeromexico and shall at all

times be well groomed, friendly and have empathy towards the passengers.”

United has “full access at all times to any and all work spaces provided to or used by [CSSI] to perform any services.” United’s contract also provides that all services provided by CSSI are “subject to inspection and acceptance by United’s designated representative.” CSSI is also required to allow United, upon request, to inspect and copy daily sign-in registers. America West’s contract provides that CSSI’s “facilities, books and records shall be open for inspection and examination by America West . . . at all reasonable times.” Southwest requires that all CSSI employees are “competent and properly trained as requested to perform their assigned jobs, properly attired, and shall perform their duties in a safe, courteous and professional manner.” America West’s contract states that CSSI employees must be adequately trained. Additionally, America West’s contract states that the Carrier “shall provide assistance with the initial training of personnel and any changes to procedures which will require additional training of Contractor’s personnel.”

CSSI is responsible for the direct supervision of its employees. Southwest and America West both require CSSI to maintain complete training and personnel records and retains access to these records. Southwest also requires CSSI to remove any employee, who, in the opinion of Southwest, is not qualified or necessary to perform the work assigned. In addition, Southwest reserves the right to consult with CSSI on the number of employees hired, the hours worked, and overtime or holiday work schedules. Southwest also has the right to adjust the hours of service upon reasonable notice to CSSI. Aeromexico requires that all CSSI shifts are adequately supervised.

United requires CSSI to perform skycap services during hours designated by United. Aeromexico requires CSSI to provide wheelchair services when requested by Aeromexico agents. Southwest’s contract requires CSSI to provide a

“sufficient number of skycaps” and allows Southwest to adjust CSSI’s hours of service upon reasonable notice to CSSI.

CSSI employees wear uniforms issued by CSSI. The uniforms do not bear any insignia of the carriers. The carriers provide the curbside pedestals, the curbside computer equipment used by the skycaps, and the luggage belts onto which luggage is placed. CSSI provides the wheelchairs used by skycaps.

Although CSSI leases its own office space near the airport, America West provides CSSI with two offices at Sky Harbor. These offices are provided without charge and are used by wheelchair dispatchers.

#### IV. DISCUSSION

##### APPLICABLE LEGAL STANDARD

When an employer is not a rail or air carrier engaged in the transportation of freight or passengers, the NMB applies a two-part test in determining whether the employer and its employees are subject to the RLA. *Avex Flight Support*, 30 NMB 355 (2003). First, the NMB determines whether the nature of the work is that traditionally performed by employees of rail or air carriers – the function test. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under common control with a carrier or carriers – the control test. Both parts of the test must be satisfied for the NMB to assert jurisdiction. *Id.* See also *Argenbright Sec., Inc.*, 29 NMB 340 (2002).

CSSI does not fly aircraft and is not directly or indirectly owned by an air carrier. Therefore, to determine whether CSSI is subject to the RLA, the NMB must consider the nature of the work performed and the degree of control exercised by its air carrier customers.

1. CSSI Employees Perform Work Traditionally Performed by Employees of Air Carriers

CSSI provides skycap services at Sky Harbor. The NMB has found that these services are traditionally performed by employees in the airline industry. *Avex Flight Support, above; Globe Aviation Servs.*, 28 NMB 41 (2000); *Command Sec. Corp. d/b/a Aviation Safeguards*, 27 NMB 581 (2000); *Int'l Total Servs.*, 26 NMB 72 (1998); *Int'l Total Servs.*, 20 NMB 537 (1993). Therefore, the NMB finds that CSSI employees perform functions which have been traditionally performed by airline employees.

2. Carrier Control Over CSSI and Its Employees

To determine whether there is carrier control over a company, the NMB looks to several factors, including: the extent of the carriers' control over the manner in which the company conducts its business; access to company's operations and records; role in personnel decisions; degree of supervision over the company's employees; control over employee training; and whether company employees are held out to the public as employees of the carrier. *Aeroground, Inc.*, 28 NMB 510 (2001); *Miami Aircraft Support*, 21 NMB 78 (1993); *Ogden Aviation Servs.*, 20 NMB 181 (1993); *Sapado I (Dobbs Int'l Servs., Inc.)*, 18 NMB 525 (1991).

The carriers exercise substantial control over CSSI's Sky Harbor operations. The carriers may request removal of an employee and require that CSSI shifts are adequately supervised. Although CSSI provides uniforms to its employees, the contracts between the carriers and CSSI stipulate personal appearance standards.

In addition, some carriers consult with CSSI on the number of employees hired, the hours worked, and overtime or holiday work schedules. The carriers provide equipment to CSSI including curbside pedestals, curbside computer equipment used by skycaps, and luggage belts onto which

luggage is placed. CSSI provides the wheelchairs. Although CSSI leases office space near the airport, America West Airlines provides CSSI with additional office space at the airport. Southwest requires CSSI to maintain complete training and personnel records and retains access to these records. United reviews CSSI's records including daily sign-in registers.

The record shows that the carriers contracting with CSSI at Sky Harbor exercise sufficient control over CSSI to support a finding of RLA jurisdiction.

CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB's opinion is that CSSI and its employees at Sky Harbor are subject to the RLA. This opinion may be cited as *Complete Skycap Serv., Inc.*, 31 NMB 1 (2003).

By direction of the NATIONAL MEDIATION BOARD.

*Benetta M. Mansfield*

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