



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

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31 NMB No. 90  
June 18, 2004

Hank Breiteneicher  
Acting Solicitor  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, DC 20571-0001

Re: NMB File No. CJ-6844  
Worldwide Flight Services, Inc.

Dear Mr. Breiteneicher:

This letter responds to Jeffrey D. Wedekind's request for the National Mediation Board's (NMB) opinion regarding whether Worldwide Flight Services, Inc. (Worldwide) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On March 2, 2004, the National Labor Relations Board (NLRB) requested an opinion regarding whether Worldwide's operations at its facility at Building 9, John F. Kennedy Airport (JFK), are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that Worldwide's operations and its employees at Building 9, JFK, are subject to the RLA.

I. PROCEDURAL BACKGROUND

This case arose out of a representation petition filed by the International Brotherhood of Teamsters, Local 851 (Teamsters) on April 22, 2003, with the NLRB seeking to represent all full-time and part-time freight agents and acceptance agents employed by Worldwide at Building 9, JFK. NLRB Case No. 29-RC-10028. On April 23, 2004, NLRB Regional Director Alvin Blyer issued a Notice of Hearing for May 2, 2004. On April 30, 2003, the Regional Director dismissed the petition, citing *Worldwide Flight Servs.*, 27 NMB 93 (2000)

as precedent that Worldwide was a carrier under the RLA and subject to RLA jurisdiction.

The Teamsters filed a Request for Reconsideration, and on September 2, 2003, the NLRB granted the request and remanded the case to the Regional Director to hold a hearing on “whether the Employer is a carrier or is directly or indirectly controlled by an air carrier.” The Order further directed that following the hearing, the Regional Director was to transfer the case to the NLRB for “a determination whether referral to the National Mediation Board for a jurisdictional opinion is appropriate.”

NLRB Region 29 held a hearing on October 15, 2003. On March 2, 2004, the NLRB requested an NMB opinion regarding the NMB’s jurisdiction over Worldwide’s JFK operations at Building 9. On March 5, 2004, the NMB assigned Eileen M. Hennessey to investigate. On March 16, 2004, the Teamsters filed a position statement; and, on March 25, 2004, Worldwide filed a position statement.

The NMB’s opinion in this case is based upon the request and record provided by the NLRB including the hearing transcript and exhibits provided by the NLRB, and the position statements of Worldwide and the Teamsters.

## II. WORLDWIDE’S CONTENTIONS

Prior to the sale of Worldwide to Castle Harlan in 1999, Worldwide was directly controlled by AMR Corporation, a “carrier” under the RLA. Worldwide is now a “derivative carrier” under the RLA, and the NMB has previously found Worldwide subject to RLA jurisdiction. *Worldwide Flight Servs.*, 27 NMB 93 (1999); *Worldwide Flight Servs.*, 27 NMB 96 (1999).

Worldwide contends that it meets the function part of the two-part test because the nature of the work is traditional airline work. The employees at Building 9, JFK, conduct ground handling services (loading and off-loading cargo, freight/cargo handling) traditionally done by air carrier

employees. Including the employees in Building 9, there are approximately 1400 Worldwide employees at JFK who provide fleet service work, passenger/cargo service work, and mechanic and related services.

Worldwide further contends that it meets the control part of the test because virtually every aspect of its work is dictated and controlled by the carriers with whom it contracts, including Korean Air Lines (KAL), Air France, Aeromex Express and Czechoslovakian Airlines.

Worldwide has a Standard Ground Handling Agreement (SGHA) with the carriers designed by the International Air Transport Association (IATA). Under this agreement, Worldwide is the agent for the carriers. Moreover, each SGHA is supplemented by the carrier. For example, the contract with KAL details manpower and qualifications; equipment; payment of overtime, and; performance standards, etc. In addition, Worldwide employees use carrier forms and equipment; and the employees are trained by the carriers. KAL must approve employee overtime. Finally, KAL and the other carriers are substantially involved in employee supervision, hiring and discipline.

### III. TEAMSTERS' CONTENTIONS

The Teamsters do not dispute that Worldwide's employees do traditional airline work. The Teamsters assert, however, that the control exercised by the carriers over Worldwide's operations is insufficient to establish RLA jurisdiction. The Teamsters contend that Worldwide retains the exclusive authority to hire, fire and transfer employees; that KAL personnel do not generally sit in on hiring interview decisions. Further, the Teamsters state that while the carriers can suggest promotions, the final decision rests with Worldwide. The Teamsters further contend that Worldwide schedules employees; that the carriers do not provide any compensation or benefits to employees, and; that Worldwide is primarily responsible for training the employees.

The Teamsters argue that under similar facts the NMB has found that employers are not controlled by carriers. *Caribbean Airline Servs.*, 19 NMB 242 (1992). The Teamsters assert that the mere fact that the needs of the carriers influence how Worldwide deploys its employees fails to establish sufficient evidence of control. The Teamsters further assert that the facts here are distinguishable from the cases where the NMB has found the company is controlled by carriers. For example, the Teamsters note that the carriers cannot directly discipline workers and do not directly supervise workers. Therefore, the NMB should not find Worldwide subject to RLA jurisdiction.

#### IV. FINDINGS OF FACT

##### Worldwide

Prior to 1999, AMR Services, Inc., a ground handling company for domestic and foreign flag carriers, was owned by AMR Corp., the holding company for American Airlines and American Eagle Airlines, carriers under the RLA. In early 1999, AMR Services was sold to Castle Harlan, Inc., which changed the name of the ground handling company to Worldwide. In September 2001, Worldwide was sold again to Vinci, a French company.

Worldwide employs approximately 11,000 employees worldwide in more than 100 locations, providing ground handling services for domestic and foreign flag airlines. Worldwide performs services for more than 150 airlines. These services include fleet service (ramp service), passenger service (ticket, gate and cargo agents), security, skycap, wheelchair attendants, and mechanic and related services.

##### Nature of Work at JFK

At JFK, Worldwide employs approximately 1,400 employees who provide services for about 16 carriers. For cargo services at JFK, Worldwide provides fleet service workers (ramp service clerks (RSCs)), passenger/cargo service workers,

and mechanic and related workers to various carriers. Approximately 400 Worldwide employees provide passenger or fleet service for American Airlines.

At Building 9, JFK, Worldwide's RSC provide loading and unloading services from aircraft; work at the freight docks receiving, dispatching and staging freight and other cargo; perform routine cleaning of work areas, and; additional duties required by management. Worldwide Freight and Acceptance agents (agents) work with the RSCs. Their duties include the preparation of all carrier-specific paperwork used to document cargo movement. The agents are broken down by job function: 1) computer data entry; 2) preparation of all flight documents (import and export); 3) interface with U.S. Customs; 4) acceptance and distribution of cargo in accordance with the air carrier and DOT regulations, and; 5) customer notification, GO preparation, filing, customer service issues, and all other related carrier and government documentation requirements.

#### Carrier Control over Worldwide Operations

For 16 years, Worldwide has had a contract with KAL. As part of the agreement with KAL, Worldwide also performs services for Air France, Aeromex Express and Czechoslovakian Airlines. The KAL/Worldwide agreement is an SGHA which incorporates the standards established by the IATA.

The Agreement requires that any and all Worldwide employee overtime can only be incurred with prior approval of carrier management. Attachment A to the agreement requires Worldwide to have management and supervisory employees in certain positions which report to their KAL counterpart. For example, Worldwide is required to have an Assistant Vice President/General Manager who, inter alia, reports safety, training and operational issues to the KAL local general manager and coordinates quality control and standard operating procedures with the KAL local general manager. Under the agreement, the equipment used by Worldwide is supplied by KAL.

As indicated by the Agreement, KAL has personnel in Building 9 at all times. Worldwide's General Manager in Building 9, Carlos Osma, reports to the KAL's Regional General Manager, Tom Aroksaar.

In February 2002, KAL presented Worldwide with a Request for Proposal for ground handling services that included specific requirements including the following language:

Manpower and Qualification

(a) Any adjustment to agreed upon manpower levels . . . shall be made in writing. . . . If there is a dispute about manpower levels, [Worldwide] must follow the carrier's decision.

. . . .

(b) The carrier shall have the rights to request to remove any worker(s) who is not suitable for the position.

Another Section of the RFP, 11-2, has specific manpower requirements including 2 supervisors, 6 key agents and 37 agents.

Worldwide Employee Working Conditions

Worldwide's General Manager Osma testified that the hours of work for Worldwide employees is determined by the carriers' needs. KAL requests and Worldwide provides the employees' schedules. KAL must authorize and approve any employee overtime.

KAL has supervisors in every department. In the customer service department where Worldwide employees answer telephones for KAL and receive orders from customers, KAL's supervisors directly supervise Worldwide's employees. In the Unit Load Department, Worldwide employees also report directly to KAL supervisors.

KAL interviews and approves all Worldwide managers prior to their employment in Building 9. Osma testified that he was interviewed by KAL on two occasions prior to being hired as the General Manager of Building 9. At other locations at JFK where Worldwide operates, carriers, including KAL, actually interview the employees for various Worldwide positions.

#### Discipline and Commendations

Under the agreement, KAL and other carriers can request employee removal from their contract. In the hearing, Worldwide provided documentation and testimony that KAL requested the transfer of one Worldwide employee due to poor attendance; Air France requested the removal of an employee; KAL requested a Worldwide employee be reprimanded due to tardiness and dress code violations, and; KAL expressed dissatisfaction with the work performance of an employee. KAL has also requested the removal of a supervisor from Building 9. All of these requests were complied with.

Similarly, KAL has requested employees be commended and promoted. Commendations are placed in the Worldwide employee personnel files.

#### Training

When Worldwide's employees are hired to work in Building 9, General Manager Osma stated that they are initially trained by Worldwide, but then the employees have carrier-specific training by KAL's personnel. For example, Osma noted that employees were trained by KAL's personnel on the new TMS software design package (which is an automatic manifesting system) and at the time of the hearing, several Worldwide employees were scheduled to take training at the KAL headquarters.

Air France gives a final test to Worldwide Acceptance Agents in Building 9 on the handling of dangerous goods

loading, and Air France provides its own training on weights and balance procedures.

#### Carrier Indicia

KAL leases Building 9. Worldwide does not pay any of the facility rental costs. KAL's trade name and logo appear on the front of Building 9. Upon entry of the building, any visitor will see the trade names and logos of the four carriers, but no Worldwide logos or signs are displayed. KAL owns the telephones and leases the computers on which Worldwide employees work.

### 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. *Signature Flight Support*, 30 NMB 392 (2003); *Aircraft Serv. Int'l Group, Inc.*, 31 NMB 361 (2004). 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. *Id.*

Worldwide does not fly aircraft and is no longer directly or indirectly owned by an air carrier. The parties stipulated that Worldwide employees perform work that is traditionally performed by employees of air carriers; and there is ample evidence in the record that Worldwide employees perform traditional airline functions. Therefore, to determine whether Worldwide is subject to the RLA, the NMB must consider the degree of control exercised by the air carriers Worldwide contracts with.



Carrier Control over Worldwide 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 operations and records; role in personnel decisions; degree of supervision of the company's employees, and; control over employee training. *Signature Flight Support, above; John Menzies PLC, d/b/a Ogden Ground Serv, Inc., 30 NMB 405 (2003); Aeroground, Inc., 28 NMB 510 (2001); Miami Aircraft Support, 21 NMB 78 (1993).*

As an initial matter, the Board notes that it has already exercised jurisdiction over Worldwide as a result of an application by the Transport Workers Union. *See Worldwide Flight Servs., Inc., 27 NMB 93 (1999); Worldwide Flight Servs., Inc., 27 NMB 96 (1999).*

Moreover, the carriers, particularly KAL, exercise substantial control over Worldwide's employees at Building 9, JFK, and throughout JFK. KAL owns or leases the equipment used by Worldwide. The carriers' schedules dictate Worldwide employee schedules, and KAL must authorize and approve employee overtime. KAL's and Air France's personnel direct and supervise Worldwide employees. Worldwide's employees are trained by KAL on KAL equipment and programs. KAL interviews Worldwide's managers. Carrier personnel report problems with Worldwide employees and these reports and requests have resulted in discipline including reassignment and removal. KAL has also requested employees be commended and those commendations have been placed in Worldwide employee personnel files. KAL recommended and funded a raise for certain Worldwide employees.

The record in this case shows that the carriers exercise sufficient control over Worldwide employees in Building 9, JFK, 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 Worldwide and its employees at Building 9, JFK, are subject to the RLA. This opinion may be cited as *Worldwide Flight Services, Inc.*, 31 NMB 386 (2004).

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Mary L. Johnson".

Mary L. Johnson  
General Counsel

Copies to:  
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