



NATIONAL MEDIATION BOARD
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39 NMB No. 64

August 30, 2012

Anne Purcell
Associate General Counsel
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570-0001

Re: NMB File No. CJ-7061
Mountain Air Helicopters

Dear Ms. Purcell:

This responds to your request for the National Mediation Board's (NMB) opinion regarding whether Mountain Air Helicopters (Mountain Air or Employer) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On June 18, 2012, the National Labor Relations Board (NLRB) requested an opinion regarding whether Mountain Air's operations are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that Mountain Air's operations and its employees are subject to the RLA.

I. PROCEDURAL BACKGROUND

This case arose out of an unfair labor practice (ULP) charge filed by Craig Cervantes (Cervantes) on November 16, 2011. As part of the investigation of the ULP charge, the NLRB's Region 28 (Region) obtained an affidavit from Cervantes. The Region sought information from the Employer regarding the work performed by the employees, its corporate structure, and the management and supervisory structure at the facility at issue. The Region also sought information regarding the merits of the ULP charge and the NLRB's jurisdiction. The Employer provided responsive documents including a copy of its Federal Aviation Administration (FAA) certification as a common carrier by air.

On June 22, 2012, the NMB assigned Susanna F. Parker to investigate. Mountain Air submitted a position statement on July 16, 2012. Cervantes did not file a position statement.

The NMB's opinion in this case is based upon the request and the case file provided by the NLRB, as well as the Employer's July 16, 2012 submission to the NMB.

II. MOUNTAIN AIR'S CONTENTIONS

Mountain Air asserts that it is not a common carrier. Mountain Air asserts that while it is an "on demand" air carrier and maintains an FAA Air Carrier Certificate, passenger carrying amounts to less than three percent of its operations.

III. FINDINGS OF FACT

Mountain Air provides helicopter utility flight services including long-line operations, fire fighting, seismic explorations, film and video shoots, scouting, charter, wildlife services, and other activities. Mountain Air is a Delaware corporation with an office and place of business in Las Lunas, New Mexico and employs pilots, Airframe and Powerplant mechanics, and ground support technicians. Mountain Air's website states that Mountain Air is an "FAA certified Air Carrier for on demand passenger carrying operations." According to the Employer, Mountain Air contracts its "professional flight and ground support services to private individuals, commercial companies, and the government for a wide range of helicopter operations."

The majority (58 percent) of Mountain Air's flight operations involve "overhead powerline/infrastructure" work. This work includes placing large electrical towers and power lines in remote areas. The Employer's Standard Operating Procedures Manual states that long-line operations are the primary mode of work and the two primary missions are the carriage of personnel from point to point and support of ground crews with long-line missions. Another 25 percent of Mountain Air's flight operations involve government contract fire fighting. The remaining 17 percent of the Employer's work is split among other utility flight services.

IV. DISCUSSION

A company and its employees are subject to the RLA in two instances: when that company is a common carrier by air or rail as defined by the RLA or when that company is directly or indirectly owned or controlled by a rail or air carrier engaged in interstate or foreign commerce. When the company is not directly a carrier, the NMB applies a two part jurisdictional test to determine whether the

company is subject to the RLA. *See e.g., Boston Medflight*, 38 NMB 52 (2010); *Talgo, Inc.*, 37 NMB 253 (2010); *Bradley Pacific Aviation, Inc.*, 34 NMB 119 (2007); *Dobbs Int'l Servs. d/b/a gate Gourmet*, 34 NMB 97 (2007). 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. *Talgo, above; Bradley Pacific Aviation, above; Dobbs Int'l Servs., above. See also Aircraft Servs. Int'l Group, Inc.*, 33 NMB 200 (2006). As discussed below, Mountain Air is a common carrier by air and therefore the two part jurisdictional test is not applicable.

The pertinent portion of the RLA provides:

All of the provisions of subchapter I of this chapter except section 153 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

45 U.S.C. § 181.

Mountain Air holds a valid FAA operating certificate authorizing it to operate as an air carrier in accordance with the requirements of the Federal Aviation Act of 1958. Mountain Air also possesses Department of Transportation Operating Certificates for Rotocraft External Load Operations and Commercial Agricultural Aircraft Operations. Mountain Air holds itself out to the public for the air transportation of cargo. *See Southern Air Transport*, 8 NMB 31 (1980).

In *Evergreen Helicopters, Inc.*, 8 NMB 505 (1981), the Board found Evergreen, a helicopter service which provided air taxi service ferrying crews and equipment for oil companies, air spraying and seeding for logging companies and emergency medical ambulance service, subject to the RLA because it engaged in common carriage by air, held itself out to the public for hire, and actively sought customers. The Board noted that “although this air transportation may be geared to specialized types of service, it is available to any person who desires to employ EHI.” *Id.* at 506.

In *Offshore Logistics, Inc., Aviation Servs. Division, d/b/a Air Logistics*, 10 NMB 477 (1983), Air Logistics provided transportation by helicopter and fixed wing aircraft of oil company personnel and equipment to offshore rigs. In addition, it provided air transportation under charter contracts to the United States Forestry Service, where it flew government personnel and equipment to assist in fire prevention and control. The Board found that Air Logistics was a common carrier by air under the RLA. The Board noted that “Although the services performed by Air Logistics are of a specialized nature, they are available to any company or individual. The services performed are similar to those performed by Evergreen Helicopters, Inc., which the Board found to be a common carrier by air.” *Id.* at 479.

Mountain Air’s operations are very similar to both Evergreen and Air Logistics. Mountain Air is an air carrier, provides helicopter utility flight services, and holds itself out to the public for hire. Accordingly, the NMB finds that Mountain Air and its employees are subject to the RLA.

CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB’s opinion is that Mountain Air and its employees are subject to the RLA. This decision may be cited as *Mountain Air Helicopters*, 39 NMB 512 (2012).

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel

Copies to:
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