



**NATIONAL MEDIATION BOARD**

WASHINGTON, DC 20572

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**VIA EMAIL**

Anne G. Purcell  
Associate General Counsel  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, DC 20570-001

Re: NMB File No. CJ-7047  
Huntleigh USA Corporation

Dear Ms. Purcell,

This letter responds to the request for the National Mediation Board's (NMB) opinion regarding whether Huntleigh USA Corporation (Huntleigh) is subject to the Railway Labor Act (RLA) U.S.C. § 151, et seq. On May 17, 2012, the National Labor Relations Board (NLRB) requested an opinion regarding whether Huntleigh's operations at George Bush Intercontinental Airport (IAH), in Houston, Texas are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that Huntleigh's operations and its employees at IAH are not subject to the RLA.

**I. Procedural Background**

This case arose out of an unfair labor practice charge filed with the NLRB by Antoinette Spencer alleging that Huntleigh discharged her for engaging in protected concerted activity. As part of its investigation, the NLRB sought information from Huntleigh regarding the work performed by the employees and the management and supervisory structure at IAH. In response, Huntleigh raised the issue of RLA jurisdiction. The NLRB referred the case to the NMB for an opinion regarding the issue of RLA jurisdiction.

On June 6, 2012, the Board assigned Maria-Kate Dowling to investigate this case. Neither Huntleigh nor Spencer filed a position

statement with the NMB. On September 28, 2012, Huntleigh responded to the NMB's request for additional information.

The NMB's opinion in this case is based upon the request and record provided by the NLRB, as well as the information submitted by Huntleigh in response to the NMB's request.

## **II. Huntleigh's Contentions**

At IAH, Huntleigh provides services including baggage handling, wheelchair attendance, and sky cap services under its contracts with United Airlines (United) and other air carriers. Huntleigh contends that its operations at IAH are subject to the jurisdiction of the NMB under the RLA because the employees in question perform work that is traditionally performed by airline employees, and United and the other air carriers exercise the control over the manner in which its IAH employees perform that work.

## **III. Spencer's Contentions**

Spencer states that Huntleigh is covered by the National Labor Relations Act and subject to the NLRB's jurisdiction. In support of her position, Spencer states that the employees' uniforms identify them as Huntleigh employees and Huntleigh officials supervise and train the employees.

## **IV. Findings of Fact**

Huntleigh is a privately held company providing skycap and related services to airlines and airports throughout the United States. Huntleigh employs approximately 280 employees at IAH. Under its contract with United, Huntleigh provides baggage handling services. Under contracts with a number of other air carriers including British Airways, TACA Airways, Aeromexico, Air France, KLM, Singapore Airlines, Qatar Airlines, Emirates Airlines, and Viva Aerobus (referred to as the "Consortium" or collectively with United as "Carriers"), Huntleigh provides wheelchair assistance, aircraft cleaning, crew transportation services, aircraft security, office janitorial services, chartered security screening services, and sky cap services.

Huntleigh leases an office suite near IAH that provides office space for its district manager and administrative staff. At IAH, Huntleigh uses a dispatch desk in Terminal D and an office in Terminal B. The Houston Airport System, a municipal city department, provides the dispatch desk. United provides the office as a courtesy for use by Huntleigh's terminal operations manager.

The Carriers have no role in the hiring of new employees at Huntleigh's IAH operation. The United contract specifies general employee eligibility standards such as requiring baggage handlers to be able to lift a minimum of 70 pounds, have a good working knowledge of computers, speak fluent English, and have legible handwriting. Simon James Robinson, Huntleigh's District Manager for Texas and the Gulf States, stated that "To my knowledge, the only time the airlines have any say in the people who I hire is when I hire a manager for my Lufthansa account and I want to make sure they are a good fit with the individuals at Lufthansa."

Huntleigh's contracts with both United and the Consortium require Huntleigh to conduct background checks of its employees and to maintain records of these background checks for inspection and audit by the Carriers. The Consortium contracts also require that Huntleigh establish and maintain a drug testing program for its employees.

The contracts with the Carriers specify the standards employees should follow concerning baggage handling, wheelchair attendance, skycap services, and a number of other services. For example, when travelers on United require services such as wheelchair services, passengers contact the air carrier who then contacts Huntleigh. A Huntleigh dispatcher transmits the information received from the air carrier through their own communication equipment and contacts a Huntleigh wheelchair assistant who further directs them. Those agreements also specify the hourly billable rate that Huntleigh charges for the respective services it provides to the airlines and specifies which days qualify as holidays.

According to the service agreements with the Carriers, Huntleigh performs its services in accordance with their flight schedules. One of the responsibilities of Robinson is to aid in determining Huntleigh staffing levels. Managers and representatives of both Huntleigh and the Carriers discuss Huntleigh staffing levels. "These [staffing level] discussions occur with the terminal operations or [Robinson]." Robinson states that "the only time we have had any discussions recently is when an airline cancels a flight or when an airlines [sic] has moved a flight to a different day. On a day to day level the staffing levels of the Huntleigh employees are fairly stable."

Huntleigh employs a full-time training manager who provides the training of its employees. Under their contracts with Huntleigh, the Carriers have the ability to review training and audit training records. The service agreements provide the Carriers with "the right and ability to review" Huntleigh's training and to audit Huntleigh's training records to

ensure that the “training meets the appropriate standard.” As an example, Robinson noted that in 2010 an addendum to “the ADEA which impacted our wheelchair assistance services” required Huntleigh to formulate specific training guidance for our employees to comply with the new rules and regulations. According to Robinson, Lufthansa Airlines, the Consortium leader at that time, requested to review the training and Robinson put on a presentation regarding how Huntleigh employees would be trained. Robinson also stated that recently Aeromexico Airlines wanted to review Huntleigh’s training files to demonstrate to their auditors that Huntleigh’s training met the airline’s standards.

The Carriers provide the computers, podiums, and bag tag printers used by Huntleigh employees. Huntleigh provides the wheelchairs and communication equipment used by its employees. With regard to cleaning crews, Huntleigh provides the cleaning solutions, trash bags and other cleaning materials. The carriers provide the pillowcases, blankets, headrest covers and bottles of soap for stocking lavatories. Huntleigh furnishes the uniforms for all of the employees at IAH. The shirts and jackets worn by the employees identify them as Huntleigh employees.

Huntleigh operates within each of the five terminals of IAH with United providing office space in one of the terminals. United does not lease this office space to Huntleigh; rather, it is provided as a courtesy by United. The carriers’ service agreements do require that general personal appearance standards be met.

With regard to discipline, Robinson states:

if an Airline’s station manager approaches me and requests that I remove a person from their account, I have a responsibility to remove that employee and place him on another account or I have to independently investigate whether that employee has violated Huntleigh’s own rules and regulations and therefore warrant some type of disciplinary action.

In response to the NMB’s request, Huntleigh submitted copies of emails documenting complaints from United or a Consortium member. In one instance, Lufthansa complained about two Huntleigh managers. A January 2012 email from Robinson in response to the complaint, directs that the complaints be “addressed” and that “a performance improvement plan” be put in place. Another email correspondence submitted by Huntleigh responds to complaints about an employee and, in that correspondence, Robinson states that a duty manager is “in the process” of being replaced based on the Carrier’s comments and “our

own observations.” Another chain of emails concerns a Carrier’s complaints about not having enough wheelchairs to accommodate customers. Robinson responds by stating that the incident will be investigated, but he also notes that

Huntleigh will do all it can to prevent this type of situation happening again, however the sheer volume of wheelchair requests which was over 140 today can affect resources when 2 other carriers have abnormal ops and the pool of staff is affected.

Another email chain involves reports of alleged harassing behavior by a Huntleigh skycap towards another employee. In response to the report, Robinson directed a supervisor to remove the employee while the incidents were investigated by Huntleigh. The emails indicate that the employee in question was “no longer employed due to his behavior.” The final email is a report of an employee’s disruptive behavior by United. The United team leader states that United is not “comfortable having him on the property.” Huntleigh also submitted a document entitled “Notice of Violation Hearing Officer Ruling” from the Houston Airport System that states that the alleged violation committed by an individual “in the charge in the NOV is overruled.”

## **V. 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. See e.g., *Air Serv Corporation*, 39 NMB 450 (2012); *Talgo, Inc.*, 37 NMB 253 (2010); *Bradley Pacific Aviation, Inc.*, 34 NMB 119 (2007). 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. *Air Serv Corporation, above*.

Huntleigh does not fly aircraft and is not directly or indirectly owned by an air carrier. Huntleigh provides baggage handling, wheelchair attendance, and skycap services at IAH and the NMB has previously found that this is work traditionally performed by employees in the airline industry. *International Total Services*, 20 NMB 537 (1993).

Since Huntleigh's IAH employees perform duties that have been traditionally performed by carrier employees, the first part of the NMB's jurisdictional test has been satisfied.

The NMB has previously considered the issue of whether Huntleigh was subject to the RLA. In 1987, the NMB found that while the employees at issue performed work traditionally performed by carrier employees, the degree of control exercised by Trans World Airlines over the employees at Huntleigh's operations at Lambert St. Louis International Airport (STL) was insufficient to render Huntleigh a carrier under the RLA. *Huntleigh Corporation*, 14 NMB 149 (1987). Subsequently, in 2001, the NMB determined that Huntleigh's skycap, baggage, special and security services employees at Oakland Airport (OAK) were subject to the RLA because of the substantial control exercised by Southwest Airlines. *Huntleigh Corporation*, 29 NMB 121 (2001). As these two cases demonstrate, the contracts and local practices can vary in a determinative manner for different operations and different locations. Accordingly, the NMB's opinion is based upon the record before it in each case. Therefore, to determine whether Huntleigh's operation in the instant case is subject to the RLA, the NMB must consider the degree of control exercised by air carriers over Huntleigh's IAH operations.

#### Carrier Control over Huntleigh and its Employees at IAH

In applying the second part of its jurisdictional test, the Board looks for evidence of whether a material degree of control exists between the carrier and the employer in question for the latter to be deemed a carrier. The factors that NMB considers include the extent of the carrier's control over the manner in which the company conducts its business, access to the company's operations and records, the carrier's role in personnel decisions, the degree of supervision exercised by the carrier, the carrier's control over training, and whether the employees in question are held out to the public as carrier employees. *Air Serv Corporation*, 39 NMB 450, 456 (2012). See also *Signature Flight Support/Aircraft Serv. Int'l, Inc.*, 32 NMB 30 (2004); *John Menzies PLC, d/b/a Ogden Ground Servs., Inc.*, 30 NMB 405 (2003). For the reasons discussed below, the record in the instant case does not establish that any carrier exercises sufficient control over Huntleigh's operations at IAH to support a finding of RLA jurisdiction.

Huntleigh has a contractual relationship with a number of air carriers at IAH. Huntleigh sells its services to these Carriers and tailors its business to meet the carriers' needs. Thus, as discussed above, the contracts dictate certain standards that Huntleigh employees should

follow in performing services for each carrier. For example, with respect to its contract with United, the agreement provides certain eligibility requirements to perform baggage handling to United's satisfaction, such as being able to lift 70 pounds or write legibly. The Carriers also require background checks and drug testing programs. Per its agreements, Huntleigh also performs its services in accordance with the schedules of the Carriers. As Robinson noted, staffing discussions are held when an airline cancels or moves a flight. The contracts also dictate general appearance standards, but Huntleigh employees wear uniforms that identify them as Huntleigh employees. As the NMB has previously recognized, these contracts are evidence of some degree of control because Huntleigh is engaged in a business which requires it to provide specific services linked to the arrivals and departures of its customers' flights at a busy international airport. This type of control, however, is insufficient by itself to bring Huntleigh's IAH operations under the RLA.

Huntleigh leases its own office for its administrative staff. The employees at the airport use desks and offices in the terminal provided by the airport. The Carriers supply certain equipment used by Huntleigh employees such as podiums, computers and bag tag printers as well as blankets, pillowcases and headrest covers. Huntleigh supplies other equipment such as wheelchairs, communications equipment and cleaning materials. In this case, the office space and equipment supplied by the Carriers is insufficient to establish jurisdictional control without additional evidence of material control by a carrier.

Huntleigh trains its own employees. Each of the Carriers reserves the right to review the training Huntleigh provides and to audit training records. However, the record evidence establishes that Huntleigh develops its own training to comply with the federal rules and regulations and any other training required by the Carriers. Robinson's 2010 example establishes that Huntleigh changed its training to conform to changes in applicable law and regulations. While this change was no doubt made to ultimately satisfy its customers, the new training was developed by Huntleigh and not dictated by a carrier. Further, while Aeromexico reviewed Huntleigh's training records in order to satisfy its own auditors, there is no evidence that it or any carrier dictates specific training materials be used by Huntleigh, or directed specific changes be made to Huntleigh's training.

Huntleigh hires its own employees and has its own supervisors. With regard to discipline, Robinson states that if a carrier requests that an employee be removed from the carrier's account, he will move the employee to another account or "independently investigate whether that employee has violated Huntleigh's own rules and regulations and therefore warrant some type of disciplinary action." The emails

submitted by Huntleigh in response to the NMB's request support Robinson's statements that while the Carriers report problems with Huntleigh's service or employees, discipline results after an independent investigation by Huntleigh. Thus, the Carriers report problems or conduct but the decision to discipline or discharge an employee is made by Huntleigh.

To find jurisdictionally significant control, the NMB has required that a carrier exercise a greater degree of control over the firing, and discipline of a company's employees than is exercised by the Carriers over Huntleigh's IAH employees. For example, in *Signature Flight Support/Aircraft Service Int'l, Inc.*, 32 NMB 30, 33-34 (2004), the company provided evidence that it terminated a ground service employee after a carrier requested that he be removed from the ramp. The company in that case also provided evidence that it both hired and fired an individual based on the carrier's request. *Id.* In *Air Serv Corp.*, 33 NMB 272 (2006), the NMB found substantial control where Air Serv provided the NMB with evidence of several occasions where it complied with carrier requests regarding employee discipline or assignments. *Id.* at 279. There is no evidence in the instant case that the Carriers exercise this material degree of control over Huntleigh's IAH employees.

In the NMB's view, the degree of control in the instant case is similar to that exercised over Huntleigh's employees at STL and distinguishable from the control exercised over Huntleigh's employees at OAK. As here, the NMB determined that RLA jurisdiction was not established at Huntleigh's STL operation where Huntleigh employees were hired, trained, and supervised solely by Huntleigh; wore Huntleigh uniforms; and the carrier reported problems or complaints but did not impose or recommend any discipline. *Huntleigh Corporation*, 14 NMB 149 (1987). With regard to Huntleigh's OAK operations, the NMB determined that the employees at those stations were under "significantly greater control" than at STL. *Huntleigh Corporation*, 29 NMB 121, 126 (2001). In reaching this conclusion, the NMB relied on record evidence that "Huntleigh has discharged and disciplined many employees at the request, suggestion, or direction of carriers and, conversely, has mitigated discipline at carrier request." *Id.* In this case, as discussed above, there is no record evidence that the Carriers at IAH exercise such significant control. Accordingly, the NMB finds that the record and submissions do not establish sufficient control by either United or the Consortium over Huntleigh's employees at IAH to establish RLA jurisdiction.



## **VI. Conclusion**

Based on the record in this case and for the reasons discussed above, the NMB opinion is that Huntleigh and its employees at IAH are not subject to the RLA. This decision may be cited as *Huntleigh USA Corp.*, 40 NMB 130.

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:

John B. Renick, Esq  
John J. Marino, Esq.  
Antoinette Spencer