



NATIONAL MEDIATION BOARD
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47 NMB No. 20
July 28, 2020

Beth Tursell
Associate to the General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570-0001

Re: NMB File No. CJ-7214
NLRB Case No. 19-CA-257782
Flight Services & Systems, LLC

Dear Ms. Tursell:

This responds to your request for the National Mediation Board's (NMB or Board) opinion regarding whether Flight Services & Systems, LLC (FSS) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On April 22, 2020, the National Labor Relations Board (NLRB) requested an opinion regarding whether FSS's Baggage Handlers, Meet-and-Assist Personnel, Security Employees, and Wheelchair Service Employees at Seattle-Tacoma International Airport (SEA) are subject to the RLA.

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

I. PROCEDURAL BACKGROUND

On February 22, 2020, Michael Siyoum, a former FSS employee, filed an unfair labor practice charge with the NLRB against FSS. On April 22, 2020, the NLRB referred the case to the NMB for an advisory opinion on the issue of jurisdiction and provided the record it developed in this matter.

The NMB assigned Andres Yoder to investigate. FSS submitted a position statement and supporting documentation. In its position statement, FSS argued that its operations and employees at SEA are subject to the RLA. Siyoum did not submit a position statement. The NMB's opinion is based on the request and the record provided by the NLRB, as well as on FSS's submissions.

II. FINDINGS OF FACT

FSS – a wholly owned subsidiary of International Total Services, Inc. (ITS) – provides services to air carriers at 17 airports throughout the country, including SEA. In 1993, based on the level of control air carriers exercised over ITS, the NMB determined that ITS’s nationwide “Airline Services Division” was subject to RLA jurisdiction. *See International Total Services*, 20 NMB 537 (1993).¹ ITS, however, is not itself an air carrier. *See, e.g., International Total Services*, 26 NMB 72 (1998).

At SEA, FSS employs workers who serve seven air carriers.² Under a contract with **Asiana Airlines** (Asiana), FSS employs Baggage Handlers, Meet-and-Assist Personnel, and Vendor Screening Agents. Under a contract with **Cathay Pacific Airways** (Cathay), FSS employs Security Employees (made up of Aircraft Door Guards, Bag Room Guards, Catering Security Guards, and Ramp Guards). Under a contract with **EVA Airways**, FSS employs Vendor Screening Agents and Meet-and-Assist Personnel. Under a contract with **Frontier Airlines** (Frontier), FSS employs Meet-and-Assist Personnel. Under a contract with **Icelandair** FSS employs Meet-and-Assist Personnel. Under a contract with **Korean Airlines**, FSS employs Meet-and-Assist Personnel and Vendor Screening Agents. And under a contract with **Sun Country Airlines** (Sun Country), FSS employs Wheelchair Service Employees.

Baggage Handlers provide carriers with services related to the movement of baggage. **Meet-and-Assist Personnel** assist carriers with moving passengers to departure gates, moving them onto planes, and releasing them. **Security Employees** (including Aircraft Door Guards, Bag Room Guards, Catering Security Guards, Ramp Guards, and Vendor Screening Agents) provide carriers with security related to aircraft access, baggage, catering, ramps, and service

¹ The NMB reaffirmed that determination in 1998. *See International Total Services*, 26 NMB 72 (1998). Prior to 1998, the NMB determined that ITS’s operations and employees at three particular airports were subject to the RLA. *See International Total Services*, 24 NMB 18 (1996) (General Mitchell International Airport); *International Total Services*, 16 NMB 44 (1988) (San Francisco International Airport); *International Total Services*, 11 NMB 67 (1983) (O’Hare International Airport). Finally, in 1982, after finding that ITS’s operations at American Airlines’ Reservations Center, Leaving Center, and Flight Academy were part of “a single, integrated business” with Service & Systems, Ltd. (S&S) and Security 76, the NMB determined that ITS’s and S&S’s combined operations and employees were subject to the RLA. *See International Total Services*, 9 NMB 392 (1982).

² On April 22, 2020, when the NLRB referred this case to the NMB for an advisory opinion, the NLRB stated that at SEA, FSS has a contract with an eighth carrier called Condor Airlines (Condor). In its May 5, 2020 position statement, FSS also stated that FSS has a contract with Condor. FSS further stated that, at SEA, it has a contract with a ninth carrier called EVA Air Cargo, and a contract with a tenth carrier called Korean Air Cargo. However, in a May 26, 2020 email, FSS informed the NMB that at SEA, FSS no longer performs services for Condor. Moreover, after the NMB asked FSS for copies of its contracts with EVA Air Cargo and Korean Air Cargo, FSS instead submitted copies of contracts with EVA Airways and Korean Airlines.

personnel. And **Wheelchair Service Employees** provide carriers with services related to wheelchair assistance.

Staffing and Scheduling

In a March 26, 2020 affidavit, FSS's Chief Operating Officer and Chief Commercial Officer Robert P. Armstrong stated that FSS regularly discusses "all . . . scheduling needs" with the carriers.

Under the five contracts for Meet-and-Assist Personnel, FSS must contact the carriers to establish staffing needs. Under the three contracts for Vendor Screening Agents, FSS must provide sufficient staffing as determined by the carriers. Further, under one of those contracts – FSS's contract with Korean Airlines (Korean Airlines Contract) – FSS must provide two Vendor Screening Agents for each "single ground handling" event. Finally, FSS's contract with Cathay (Cathay Contract) for Security Employees requires it to provide one employee per flight for aircraft-access security, baggage-room security, catering security, and ramp security.

At SEA, there is no evidence that the carriers grant requests for overtime. In a March 20, 2020 affidavit, Siyoum stated that FSS grants requests for shift transfers, meal breaks, and vacation.

Carrier Involvement in Day-to-Day Operations

According to Armstrong, "FSS . . . meets with the . . . carriers . . . to monitor and ensure compliance with their respective contracts" Additionally, "management personnel from each carrier routinely and continuously meet with FSS management to discuss specific operational and employee issues."

Under the five contracts for Meet-and-Assist Personnel, FSS employees must adhere to a number of professional standards, such as wearing a carrier-approved uniform, displaying a badge, maintaining high grooming standards, and so on. The Cathay Contract for Security Employees requires FSS to hold "[r]egular meetings" with Cathay "to review all aspects of performance." FSS is also required to adhere to Cathay's "Supply Chain Sustainability Code." In ensuring compliance with that code, Cathay can notify FSS of "breach[es,]" submit corrective action plans to FSS, and terminate the contract if FSS does not comply with a corrective action plan. In addition, before the "service commencement day[,]" FSS was required to submit a "security quality assurance plan" to Cathay for approval, and to create contingency plans "in accordance to . . . [Cathay] policy."

Carrier Access to Operations and Records

In his affidavit, Armstrong stated that “[e]ach carrier requires FSS to provide access and opportunity to inspect its operations and records to ensure compliance with” their respective contracts. Armstrong also stated that FSS uses carriers’ computer reservation systems to provide baggage handling services and wheelchair services, and that “FSS employee training records are maintained on computers and databases owned and operated by the carriers.” “[A]ll wheelchairs and transportation equipment[,]” Armstrong wrote, “are supplied by the carriers.”

Under the five contracts for Meet-and-Assist Personnel, FSS must provide records of background investigations to the carrier or to an “applicable government authority.” The Cathay Contract for Security Employees requires FSS to maintain Cathay’s “manuals, circulars, and other operational documents.” FSS is also required to “keep, for a period of six (6) months[,]” records related to FSS’s compliance with the contract, and to keep records related to specific responsibilities (such as background checks) for three years. Cathay can then audit those records. FSS must further appoint “managerial staff” to maintain communication with Cathay. In addition, FSS must provide Cathay with a description of all facilities, systems, or equipment it uses “for handling [Cathay] aircraft.” Finally, under FSS’s contract with Sun Country (Sun Country Contract) for Wheelchair Service Employees, Sun Country has the right to inspect FSS records “which may be determined to be the basis for billing.”

Carrier Role in Personnel Decisions and Benefits

According to Armstrong, “[a]ll employees hired by FSS must meet mandatory hiring guidelines required by each carrier.”

Under FSS’s contract with Asiana (Asiana Contract) for Baggage Handlers, under the five contracts for Meet-and-Assist Personnel, and under the three contracts for Vendor Screening Agents, FSS must perform background checks on potential employees who “will have access to any secure or restricted area of the airport.” The Cathay Contract for Security Employees requires FSS to remove an employee from the contract if the employee “breach[es]” Cathay’s standards or FSS’s procedures, or is otherwise “involved in any flight safety issue; or serious misconduct.” FSS is also required to conduct background checks before employees begin work or “are re-deployed onto aviation related duties.” Finally, under the Sun Country Contract for Wheelchair Service Employees, Sun Country “reserves the right” to require FSS to “remove an employee from [the] services” outlined in the contract.

At SEA, there is no evidence that the carriers hire FSS employees or promote them. In his affidavit, Siyoum stated that FSS disciplines and fires its

employees. Siyoum also noted, however, that FSS follows up on carrier complaints about its employees' performances. On one occasion, Siyoum said, FSS fired an employee after a carrier complained about his performance.

Carrier Control over Training

In his affidavit, Armstrong stated that FSS employees "must complete . . . training either by a carrier-provided instructor or by an FSS instructor that has received . . . training from the carrier and is certified by the carrier." "[A]ny FSS employee who performs services for more than one carrier[,]" Armstrong added, "must complete each carrier's training requirements."

Under the Asiana Contract for Baggage Handlers, FSS must provide training to its employees that includes "Passenger/Luggage Training[,]" "Customer Service Training[,]" and Americans with Disabilities Act (ADA) Training. The Cathay Contract for Security Employees requires FSS to provide training to its employees that ensures they understand the carrier's standards. Under four of the five contracts for Meet-and-Assist Personnel (excluding FSS's contract with Frontier), FSS must provide its employees with "Mobility Aisle Chair Training, Mobility Assistant Training, PDA E-Staff Training, and Customer Service Training." And under the fifth contract for Meet-and-Assist Personnel (FSS's contract with Frontier), FSS must provide Meet-and-Assist Personnel with "Passenger/Luggage Training[,]" "Customer Service Training[,]" and ADA Training.

In his affidavit, Siyoum stated that he trained new FSS employees "on the entire airport, the doorways we use, how to scan our badges, the different positions they will perform, and how to clock in and out."

Holding Out to the Public

At SEA, there is no evidence that FSS holds its employees out to the public as employees of any air carriers.

III. DISCUSSION

Applicable Legal Standard

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. *ABM Aviation, Inc.*, 47 NMB 38, 41 (2019).

FSS does not fly aircraft and is not directly or indirectly owned by an air carrier. The first part of the two-part test is met because services related to airline security, baggage, meet-and-assist duties, and wheelchair assistance is work traditionally performed by airline employees. See, e.g., *Gateway Frontline Services*, 42 NMB 146 (2015) (airline security); *Menzies Aviation, Inc.*, 46 NMB 8 (2018) (baggage); *United Air Lines*, 6 NMB 180 (1977) (passenger service); *ABM Aviation, Inc.*, 47 NMB 38 (2019) (wheelchair assistance).

Therefore, to determine whether FSS 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 FSS and Its Employees

In this case, the record demonstrates that the carriers exercise a significant degree of influence over FSS's operations and employees at SEA.

FSS regularly discusses all staffing needs with the carriers. The five contracts for Meet-and-Assist Personnel require FSS to reach out to the carriers in order to establish staffing needs, and the three contracts for Vendor Screening Agents require FSS to provide sufficient staffing as determined by the carriers. Under the Korean Airlines Contract, FSS must provide two Vendor Screening Agents for each "single ground handling" event. Finally, the Cathay Contract for Security Employees requires FSS to provide one employee per flight for each of four functions.

FSS meets with the carriers to monitor and ensure compliance with their respective contracts. Additionally, each carrier routinely meets with FSS management to discuss specific operational and employee issues. Under the five contracts for Meet-and-Assist Personnel, FSS employees must adhere to specific professional standards. The Cathay Contract for Security Employees requires FSS to hold regular performance-review meetings with Cathay, and requires it to adhere to Cathay's "Supply Chain Sustainability Code." Further, before the "service commencement day[,]" FSS was required to submit a "security quality assurance plan" to Cathay for approval, and to create contingency plans in accordance with Cathay policy.

FSS must allow each carrier to inspect its operations and records to ensure compliance with their respective contracts. FSS also uses carriers' computer reservation systems to provide baggage handling services and wheelchair services, and FSS employee training records are maintained on carrier-owned computers and databases. All wheelchairs and transportation equipment are supplied by the carriers. Under the five contracts for Meet-and-Assist Personnel, FSS must provide records of background investigations to the carrier or to a relevant government authority. The Cathay Contract for Security Employees requires FSS to maintain Cathay's operational documents; to keep records of its compliance with its contract for six months; and to keep records related to specific responsibilities for three years. Cathay can then audit those records. FSS must also appoint staff to maintain communication with Cathay. Additionally, FSS is required to provide Cathay with a description of all facilities, systems, or equipment it uses "for handling [Cathay] aircraft." Finally, under the Sun Country Contract for Wheelchair Service Employees, Sun Country has the right to inspect FSS records which serve as the basis for billing.

All employees hired by FSS must meet hiring guidelines mandated by each carrier. Further, FSS follows up on carrier complaints, and, on one occasion, fired an employee after a carrier complained about his performance. Under the Asiana Contract for Baggage Handlers, under the five contracts for Meet-and-Assist Personnel, and under the three contracts for Vendor Screening Agents, FSS must perform background checks on potential employees who "will have access to secure or restricted areas of the airport." The Cathay Contract for Security Employees requires FSS to remove an employee from the contract if the employee breaches Cathay's standards or FSS's procedures, or is otherwise involved in a flight safety issue or serious misconduct. FSS is also required to conduct background checks before employees begin work or "are re-deployed onto aviation related duties." Finally, under the Sun Country Contract for Wheelchair Service Employees, Sun Country can require FSS to remove an employee from the services outlined in the contract.

FSS employees must be trained by an instructor who is provided by a carrier, or who is trained and certified by a carrier. Any FSS employee who performs services for more than one carrier must complete each carrier's training

requirements. Under the Asiana Contract for Baggage Handlers and under the five contracts for Meet-and-Assist Personnel, FSS must provide training to its employees that includes specific topics. In addition, the Cathay Contract for Security Employees requires FSS to provide training to its employees that ensures they understand the carrier's standards.

In sum, the record shows that the carriers have sufficient control over FSS's operations and employees at SEA to establish RLA jurisdiction.

CONCLUSION

Based on the record in this case and the reasons discussed above, the NMB's opinion is that FSS's operations and employees at SEA are subject to the RLA.

BY DIRECTION OF THE NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel

Copies to:
Thomas P. Marotta
Timothy A. Marcovy
Michael Siyoum

Member Puchala, dissenting.

Contrary to my colleagues, I would not find that Flight Services & Systems (FSS) operations and employees at SEA are subject to the RLA. For the reasons set forth in my dissent in *ABM Onsite Services*, 45 NMB 27, 36 (2018), I would require that a company asserting RLA jurisdiction establish the exercise of a meaningful degree of control over personnel decisions as described in *Airway Cleaners, LLC*, 41 NMB 262 (2014). In my view, the record in this case fails to establish that significant level of control. The Carriers have no direct role in hiring FSS employees; rather, its role is limited to collecting records of background investigations of employees who have access to secure or restricted areas. In addition, the Carriers' role in discipline is limited to reporting instances of poor performance or misconduct. Lastly, and important to highlight, the FSS

Service Agreement for Aviation Services with each Carrier at SEA is straightforward regarding its employment relationship: *“The employees of FSS engaged in performing the services hereunder shall be considered employees of FSS for all purposes and shall under no circumstances be deemed to be employees of [CARRIER.] [CARRIER] shall have no supervision or control over any such FSS employees and any complaint or requested change in procedure shall be transmitted in writing by [CARRIER] to FSS who shall in turn promptly give any necessary instructions to its own personnel.”*