

Worldwide Flight Services, Inc. and Local 851, International Brotherhood of Teamsters, AFL-CIO.
Case 29-RC-10028

September 28, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
AND WALSH

On April 22, 2003, Local 851, International Brotherhood of Teamsters, AFL-CIO (the Union) filed a petition seeking to represent all full-time and regular part-time freight agents and acceptance agents employed by Worldwide Flight Services, Inc. (the Employer or Worldwide) at Building 9 of John F. Kennedy International Airport (JFK) in Jamaica, New York. The Employer asserts that it is directly controlled by several carriers, primarily Korean Airlines, a common carrier subject to the jurisdiction of the Railway Labor Act, and that, therefore, the National Labor Relations Board lacks jurisdiction under Section 2(2) of the National Labor Relations Act. After a hearing, the Regional Director transferred the proceeding to the Board.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board finds:

The Employer provides aviation support services for Korean Airlines (KAL), and three other air carriers (Air France, Aeromex Express, and Czech Airlines) at Building 9 of JFK, pursuant to its contract with KAL. These services include freight/cargo handling, loading and off-loading of cargo, and verification and preparation of Customs-related documentation for cargo.

The record indicates that the carriers exercise substantial control over the Employer's JFK operations. Although the contract between Worldwide and KAL requires Worldwide to maintain certain supervisory and management positions, those supervisors and managers in turn report to KAL managers on a daily basis, and there is some evidence of direct supervision by carrier personnel over Worldwide employees. Hours worked by Worldwide employees are determined by the schedules and needs of the carriers, and Worldwide must obtain prior authorization from KAL before Worldwide employees can work overtime. Paperwork concerning scheduling is submitted to the carriers on a daily basis.

¹ The Regional Director initially dismissed the petition, and the Board subsequently granted the Union's request for review, remanding the case to the Regional Director for a hearing on whether the Employer is a carrier or is directly or indirectly controlled by an air carrier. After the hearing, the Regional Director transferred the case to the Board, and the Board referred the case to the National Mediation Board (NMB) for a jurisdictional opinion, as discussed below.

The carriers also exercise substantial control over personnel matters. Although the Union argues that KAL personnel do not generally attend interviews of Worldwide employees, KAL interviews and approves Worldwide managers before they are hired, and KAL has been involved in interviewing and hiring for some specific job functions. The Union also argues that Worldwide retains ultimate authority to hire, fire, transfer, and promote employees; however, KAL monitors Worldwide's compliance with its service standards, and KAL retains the right to request Worldwide to remove an unsatisfactory employee. The record includes several examples of employee removal pursuant to carrier requests, including removal of a supervisor. A regional vice president of Worldwide testified that 98 percent of the time, Worldwide would comply with such a carrier request by moving the employee to another facility, and if a carrier insisted, an employee would definitely be removed. Likewise, Worldwide has placed employee commendations in its personnel files and promoted employees pursuant to carrier requests. Although carriers do not directly provide employee benefits or compensation, KAL recommended and funded raises for several groups of Worldwide employees.

Although there is some evidence of initial training and on-the-job training of new employees by Worldwide, KAL directly trains Worldwide employees on its specific equipment and programs, and KAL has a contractual right to review employee training records. Certain Worldwide employees are required to obtain certification for each type of aircraft involved in their work by taking tests that are administered by the carriers. Carriers also provide their own training materials for training they require of Worldwide employees.

KAL owns or leases the equipment used by Worldwide, including the telephones that Worldwide employees answer in the name of the carrier, computers and software, desks and chairs, and forms used by Worldwide employees. KAL also leases the Building 9 facility at JFK, for which Worldwide pays no rent. Finally, the National Mediation Board (NMB) noted that it has already exercised jurisdiction over this employer as a result of an application by the Transport Workers Union of America. 31 NMB 386, 394 (citing *Worldwide Flight Services*, 27 NMB 93 (1999); *Worldwide Flight Services*, 27 NMB 96 (1999)).

Section 2(2) of the National Labor Relations Act provides that the term "employer" shall not include "any person subject to the Railway Labor Act." 29 U.S.C. § 152(2). Similarly, Section 2(3) of the Act provides that the term "employee" does not include "any individual employed by an employer subject to the Railway Labor

Act.” 29 U.S.C. § 152(3). The Railway Labor Act, as amended, applies to:

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 or rendition of his service.

45 U.S.C. § 151 First and 181.

On March 2, 2004, the Board requested that the NMB study the record in this case and determine the applicability of the Railway Labor Act to the Employer. The NMB subsequently issued an opinion stating its view that

the Employer is a carrier subject to the Railway Labor Act. *Worldwide Flight Services*, 31 NMB 386 (2004).²

Having considered these facts in light of the opinion issued by the NMB, we find that the Employer is engaged in interstate air common carriage so as to bring it within the jurisdiction of the NMB pursuant to Section 201 of Title II of the Railway Labor Act. Accordingly, we shall dismiss the petition.

ORDER

IT IS ORDERED that the petition in Case 29–RC–10028 is dismissed.

² The NMB uses a two-pronged jurisdictional analysis: (1) whether the work is traditionally performed by employees of air or rail carriers; and (2) whether a common carrier exercises direct or indirect ownership or control. The NMB concluded that both prongs of the test had been met.