

Rio Airways, Inc., Employer-Petitioner and Airline, Aerospace and Allied Employees, Teamsters Local 19, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Airline Division Union. Case 16-RM-479

January 23, 1974

DECISION AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND
PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Glyn Cook. Following the hearing, the Regional Director for Region 16 transferred this case to the Board for decision. Thereafter, Petitioner (hereinafter Employer) filed a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings made by the Hearing Officer at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board makes the following findings:

The Employer, Rio Airways, Inc., is a private, Texas corporation primarily engaged in transporting passengers and freight within the State of Texas on its regularly scheduled airline service to specified points, such service being rendered pursuant to authority issued by the Texas Aeronautics Commission. In addition, the Employer performs private charter service both within and outside of Texas and transports Federal prisoners from specified points in Texas to specified points in Kansas pursuant to Tenders of Service for the United States Government. The Employer does not transport mail for or under contract with the U.S. Government and is not licensed by the Civil Aeronautics Board. The Union seeks a unit of Employer's pilots and copilots all of whom are licensed by the Federal Aviation Agency.

From January 1, 1973, to October 31, 1973, the Employer's gross revenues were in excess of \$1,500,000, and during the same period it purchased goods valued in excess of \$50,000 from points outside the State of Texas.

The Employer derives 87 percent of its annual gross revenues from its regularly scheduled intrastate passenger service, approximately 6 percent from private interstate charter flights, 2 percent from

private intrastate charter flights, approximately 1-1/2 percent from the transportation of prisoners, and 3-1/2 percent from carrying freight and maintaining and repairing radio equipment for other intrastate carriers.

The Employer honors major national credit cards such as American Express, Diners Club, Master Charge, and Air Travel Card. A majority of the Employer's services is described as "through service operations," i.e., the Employer sells passenger tickets which permit a passenger to fly to a destination by using its services as well as certain interstate carriers. The Employer has "through service" agreements with such interstate carriers as Braniff, American, and Delta.

The parties are in agreement that a unit of Employer's pilots and copilots would be an appropriate unit. However, the Union filed an application for an election to be held by the National Mediation Board and contends that the Employer's operations are covered by the Railway Labor Act. The Employer contends that its operations are intrastate in nature, that it does not transport mail for or under contract with the United States Government, and that, therefore, jurisdiction over its operation is vested in this Board.

Because of the nature of the jurisdictional question presented here, we requested, as we have in other cases in the past, the National Mediation Board (as the agency vested with jurisdiction under the Railway Labor Act over air carriers and having primary authority to determine its own jurisdiction) to study the record in this case and determine the applicability of the Railway Labor Act to the Employer. We are administratively advised by the National Mediation Board that:

The National Mediation Board has concluded, particularly, [sic] in view of Rio's regular interlining and through service agreements with major interstate air common carriers such as American Airlines, Delta Airlines, and Braniff Airways, that Rio is engaged to a significant degree in regular interstate air common carriage and carries both passengers and freight in interstate commerce so as to meet the definition of common carrier in Section 201 of Title II of the Railway Labor Act.

In view of the foregoing, we shall dismiss the petition.

ORDER

It is hereby ordered that the petition in Case 16-RM-479 be, and it hereby is, dismissed.