



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the
Application of the

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AIRLINE
DIVISION

alleging a representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended

involving employees of

NETJETS SERVICES, INC.

38 NMB No. 63

CASE NO. R-7297
(File No. CR-7003)

FINDINGS UPON
INVESTIGATION

August 8, 2011

This determination addresses the application of the International Brotherhood of Teamsters, Airline Division (IBT or Organization) alleging a representation dispute pursuant to the Railway Labor Act¹ (RLA or Act), 45 U.S.C. § 152, Ninth (Section 2, Ninth), among Flight Dispatchers employees of NetJets Aviation, Inc. (NJA). At the time this application was received, these employees were not represented by any organization or individual.

On February 18, 2011, the IBT requested that the application be amended to reflect that the Flight Dispatchers are employed by NetJets Services, Inc. (NJS), rather than NJA.

For the reasons set forth below, the National Mediation Board (NMB or Board) finds that NJS is subject to the RLA.

¹ 45 U.S.C. § 151, *et seq.*

PROCEDURAL BACKGROUND

On January 21, 2011, the IBT filed an application alleging a representation dispute among NJA's Flight Dispatchers. The Board assigned Cristina A. Bonaca to investigate. By letter dated February 4, 2011, NJS submitted an initial position statement stating that the application incorrectly lists NJA as the employer of the Flight Dispatchers at issue. NJS stated that NJS is the actual employer.

The IBT submitted its initial position statement on February 18, 2011 and requested that the application be amended to list NJS as the RLA carrier in this case. On February 22, 2011, Investigator Bonaca requested information from NJS. NJS complied with this request on March 7, 2011.

On April 11, 2011, the case was reassigned to Investigator Susanna F. Parker.

ISSUE

Is NJS subject to the jurisdiction of the RLA?

CONTENTIONS

IBT

The IBT agrees with NJS's initial position statement and requests that its application be amended to state that "the Flight Dispatchers are employed by RLA carrier NJS, rather than NJA." Secondly, the IBT states that there are 51 Flight Dispatchers involved in this case, including the five former NJI, Inc. (NJI) Flight Dispatchers.

NJS

As stated above, NJS contends that IBT's application incorrectly lists NJA as the employer of the Flight Dispatchers at issue in this case. NJS asserts that NJS is the corporate entity that employs the Flight Dispatchers in this case. Further, NJS states that NJS and NJA are sister corporations, wholly-owned by NetJets Inc. (NetJets), which in turn is owned by Berkshire Hathaway, Inc. Additionally, NJS states that the Flight Dispatchers employed by NJS handle the flights performed by NJA. NJS states that "NJS and NJA do not comprise a single transportation system in the 'classic' sense because NJS

is not a carrier at all.” Applying the NMB’s two-part jurisdictional test, NJS asserts that flight dispatcher work is work traditionally performed by employees of air carriers. Additionally, although NJS does not employ pilots or operate flights, NJS contends that it is a derivative carrier under the RLA. Accordingly, NJS states that both parts of the NMB’s jurisdictional test are met and the NMB has the jurisdiction to proceed with the investigation.

Finally, NJS states that there are 51 Flight Dispatchers involved in this case, including five who previously worked for NJI.

FINDINGS OF LAW

Determination of the issues in this case is governed by the RLA, as amended, 45 U.S.C. § 151, *et seq.* Accordingly, the Board finds as follows:

I.

45 U.S.C. § 151, First, includes within the definition of a carrier “any company which is directly or indirectly owned or controlled by or under common control with any carrier.”

II.

The IBT is a labor organization and/or representative as defined in 45 U.S.C. § 151, Sixth, and § 152, Ninth.

III.

45 U.S.C. § 152, Fourth, gives employees subject to its provisions, “the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and to designate who may participate as eligible voters in the event an election is required.

STATEMENT OF FACTS

NJS provided information regarding the corporate entities involved in this case. NJS also submitted a declaration from Eric Lampert, Vice President & Director of Flight Operations for NJA; NetJets Flight Operations Manual; NetJets' Flight Dispatcher's Job Description; Dispatcher Safety Agreement; NetJets Aviation, Inc. Operational Control Acknowledgement; NetJets New Hire Orientation packet; NetJets Inc. Code of Business Conduct and Ethics; and NetJets' marketing material entitled, "NetJets Pilots."

NetJets

NetJets is a fractional aircraft ownership company that allows individuals and corporations to purchase shares of a NetJets aircraft. NetJets is owned by Berkshire Hathaway Inc., and NJS and NJA are wholly-owned subsidiaries of NetJets.² NetJets operates approximately 500 aircraft in the United States through NJA.

NetJets has one website, <http://www.netjets.com>, and all United States flight services are held out to the public and marketed by NetJets using the corporate logo of "NetJets®". NJS and NJA are not independently marketed. All aircraft offered by NetJets in the United States are managed and operated by NJA.

NetJets, NJS and NJA share corporate headquarters in Columbus, Ohio at 4111 Bridgeway Avenue, which is connected to Port Columbus Airport. According to the declaration of Eric Lampert, the Flight Dispatchers work in the Flight Center along with Assistant Chief Pilots and employees providing crew scheduling, crew support, maintenance control, and travel functions.

² There were three entities at issue in *NJI, Inc./ NetJets Aviation, Inc.*, 37 NMB 136 (2010): NetJets, NJI, and NJA. NJI and NJA were wholly-owned by NetJets and the issue was whether NJA and NJI constituted a single transportation system. The Board found that NJI and NJA were not a single transportation system. Later in 2010, NJI ceased flight operations and all flight activities performed by NJI were consolidated into NJA. At this time NJI does not operate any aircraft, does not have an operating certificate, and does not have any employees. All aircraft offered by NetJets in the United States are now scheduled on NJA aircraft and operated solely by NJA pilots. According to the NetJets Flight Operations Manual, "The NJI, Inc. Air Carrier Certificate has been consolidated with the NetJets Aviation, Inc. Air Carrier Certificate. In accordance with the FAA-approved consolidation plan, the Flight Operations Manuals of the two carriers are combined into one."

NetJet's provides the following combined services: financial; legal; labor relations; human resources; sales, marketing, and global asset management; procurement; purchasing; information technology; and owner services, to NJA through its wholly-owned subsidiary, NJS.

NJS does not employ pilots or operate flights. NJA principally employs only pilots and flight attendants. NJA does not employ other crafts or classifications such as flight dispatch, meteorology, and quality assurance traditionally associated with air carriers. These functions are provided to NJA solely by NJS employees.

According to the Flight Dispatcher Job Description, a NetJets® document, "The primary function of this position is to provide NetJets flight crews with safe and timely Flight Planning and Flight-Release information for all required NetJets flight-operations and in compliance with all FAA and regulatory requirements. We pay the person to perform and provide company required duties in support of the NetJets Mission, Vision, and Values."

Management and Labor Relations

According to Lampert, the NJA Vice President & Director of Flight Operations is responsible for Flight Standards, Daily Operations, and Flight Support. The Daily Operations department includes the Chief Pilots, Assistant Chief Pilots, Pilots, Chief Flight Attendant, Assistant Chief Flight Attendant, and Flight Attendants. The Flight Support department includes the Flight Dispatchers and is responsible for all flight dispatch duties.

The Flight Dispatchers report to one of five NJS Flight Dispatch Tactical Managers who report to the NJS Director of Flight Support, Dana Weigle. Weigle, in turn, reports to Lampert.

Lampert holds the position where management of NJA Pilots and NJS Flight Dispatchers merge. NJA Pilots are in the NJA Flight Operations department and the Assistant Director of Operations is Brent Owens. The Pilots report to Assistant Chief Pilots, who report to Chief Pilots, who report to Owens, who reports to Lampert.

NJS does not have a president. Lampert reports to NJA's Executive Vice President, Flight Operations David MacGhee. MacGhee reports to Shane Eyer, President of NJA, and Eyer reports directly to Bill Noe. Noe is President and Chief Operating Officer of NetJets North America.

As NJA VP and Director of Flight Operations, Lampert has regulatory responsibility and control over NJA flights, including the flight dispatch function.

Flight Dispatchers are required to sign the “Dispatcher Safety Agreement” (Agreement) and the “NetJets Aviation, Inc. Operational Control Acknowledgement” (Acknowledgement). The Dispatcher Safety Agreement requires Flight Dispatchers to “act in accordance with NJA’s Flight Operations Manual and in accordance with instructions from NJA’s authorized personnel.” The Acknowledgement states that “The Director of Operations [Eric Lampert] always has primary responsibility for operational control.” These two documents are signed by the individual Flight Dispatchers, and by Lampert on behalf of NJA.

Michael Maratto, Vice President, Labor Relations, is in charge of labor relations for both NJA and NJS. The human resource function for both companies is provided by the NJS Human Resources Department, headed by NetJets Executive Management Team member, Linda Miller. According to Lampert, “All NJS and NJA personnel files are maintained in the same location by alphabetical order and are not segregated by company Management personnel may access the files of anyone in their chain of command.”

Lampert stated:

Through NJS, NetJets provides new-hire orientation to both NJS and NJA employees in common groups. . . . During the new hire orientation process, all new employees, whether of NJS or NJA, are given the same various forms to sign. These forms have the NetJets® logo and reference employment being with NetJets, not specifically with NJA or NJS.

Likewise, NJS and NJA employees are subject to various common NetJets policies, such as the “NetJets® Inc. Code of Business Conduct and Ethics” . . . and “NetJets® Inc. Prohibited Business Practices” . . . policy. NJS employees, including Flight Dispatchers and NJA employees receive common training in anti-harassment/discrimination issues and also common safety training.

Staffing, Supervision and Discipline

In 2010, while the position of Director of Flight Support was vacant, Lampert performed the functions of that job. Weigle assumed the Director of Flight Support position on January 3, 2011.

According to Lampert, “Weigle and I are in frequent communication regarding the Flight Dispatch function throughout each work day. . . . We discuss numerous topics, including, but not limited to: daily flight schedules and workload, daily weather issues, dispatcher staffing, operational metrics, procedural issues, and aircraft/airport performance issues.” Lampert stated that Weigle’s office is located in the Flight Center and Lampert’s office is located just outside the Flight Center, less than 100 feet from Weigle’s office.

Disciplinary actions involving the suspension or termination of a Flight Dispatcher are recommended by Weigle, and approved by Lampert. Termination decisions are reviewed up the reporting chain to Bill Noe. Discipline issues regarding Flight Dispatchers less than suspension are also discussed between Weigle and Lampert.

Weigle and Lampert make recommendations regarding staffing levels, and requests for additional staffing are reviewed and approved at the NetJets Executive Management Team level, with final approval and sign off by NetJets President, Hansell. Once the decision has been made to add one or more Flight Dispatchers, the hiring decisions are made by Weigle, subject to comment and approval by Lampert.

Budget

For 2010, subject to guidance by the NetJets Executive Management Team, Lampert, acting as Director of Flight Support, determined compensation. In the future Weigle will propose the increased amounts, subject to comment and approval by Lampert.

Lampert developed the Flight Support departmental budget for 2011, which was ultimately approved by NetJets Chairman and CEO Sokol. In the future Weigle will develop the Flight Support budget, subject to Lampert’s approval and Sokol’s final approval.

Equipment

Lampert testified that “NJS owns no assets. The equipment used by NJS Flight Dispatchers (e.g. computers, Blackberries, etc.) is largely owned by NJA. All NJS employees, including Flight Dispatchers and NJA employees, share a common computer network, which is maintained by the Net Jets Shared IT department.”

DISCUSSION

NJS’s Status as a Derivative Carrier

Applicable Legal Standards

Under Section 151, First, an entity may be a carrier either directly or indirectly, by operating a railroad, or indirectly as a subsidiary or derivative carrier. *Rail Link*, 35 NMB 250 (2008), *Georgia Ports Authority*, 31 NMB 303 (2004). A derivative or subsidiary carrier is one that is “directly or indirectly owned or controlled by or under common control with any carrier by railroad.” 45 U.S.C. § 151, First. The RLA at 45 U.S.C. § 181 extends coverage to air carriers and “every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers”

When the Board seeks to determine whether an entity is a subsidiary or derivative carrier it applies a two-part test in determining whether the employer and its employees are subject to the RLA. *Air Serv Corp.*, 38 NMB 113 (2011); *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. *Bradley Pacific Aviation, above*; *Dobbs Int’l Servs., above*. See also *Aircraft Servs. Int’l Group, Inc.*, 33 NMB 200 (2006).

In *NJI, Inc./NetJets Aviation, Inc.*, 37 NMB 186 (2010), the Board found NJA to be a “carrier” within the scope of Section 181, First, of the Act. As acknowledged by NJS, NJS is not a direct air carrier.

NJS does not fly aircraft and is not directly or indirectly owned by an air carrier. The parties agree that NJS Flight Dispatchers perform work that is

traditionally performed by employees of air carriers; and there is ample evidence in the record that NJS employees perform traditional airline functions. Applying the function part of the two-part test, the functions performed by NJS Flight Dispatchers are functions generally performed by airline employees. *Federal Express*, 22 NMB 157 (1995); *United Air Lines*, 2 NMB 72 (1952). Therefore, to determine whether NJS is subject to the RLA, the NMB must consider the degree of control exercised by NJA.

Carrier Control Over NJS and Its Employees

With regard to the second part of the test, the Board looks for evidence that a material degree of control exists between the carrier and the entity in question for the latter to be deemed a carrier. *Georgia Ports Authority, above; C.W.S., Inc.*, 17 NMB 371 (1990). The degree of control is examined in the context of the day to day business operations. This inquiry typically involves the control exercised by a carrier over the manner in which the entity in question conducts its business. Significant factors in the Board's analysis include: (1) whether the entity's employees are supervised by the carrier; (2) whether the employees of the entity in question act as the carriers' agents; (3) whether carrier officials have the ability to make effective recommendations regarding the hiring and firing of the entity's employees; (4) whether the entity in question uses equipment owned by the carrier to perform its duties; (5) whether the carrier has a significant degree of control over the training of the entity's employees, and; (6) whether the entity performs work for more than one employer and retains control over its operations. See *Georgia Ports Authority, above; Inter Mobile Co.*, 17 NMB 223 (1990); *Bankhead Enters. Inc.*, 17 NMB 153 (1990).

NJS provides managerial and flight support services to NJA exclusively. NetJets has one website, <http://www.netjets.com>, and all United States flight services are held out to the public and marketed by NetJets using the corporate logo of "NetJets®". This is the only identifying graphic for NetJets and all NetJets United States subsidiaries, including NJA and NJS. NJS and NJA are not independently marketed.

NJA and NJS share corporate headquarters as well as office space in Columbus, Ohio.

Eric Lampert, NJA VP & Director of Flight Operations, is responsible for the NJS Flight Dispatchers and has full regulatory responsibility and control

over NJA flights. NJS Flight Dispatchers provide flight dispatch services solely to NJA pilots operating flights on behalf of NetJets.

Flight Dispatchers are required to sign the “Dispatcher Safety Agreement” and the “NetJets Aviation, Inc. Operational Control Acknowledgement” recognizing that NJA maintains full operational control over its aircraft operations, and that the Flight Dispatchers are under full control of NJA.

Weigle and Lampert are in daily communication regarding flight schedules, workload, weather issues, dispatcher staffing, operational and procedural issues, and aircraft/airport performance issues. Additionally, all Flight Dispatcher disciplinary actions are recommended by Weigle and approved by Lampert. Similarly, staffing decisions are made by Weigle, subject to comment and approval by Lampert.

NJS does not own any assets. All equipment used by NJS Flight Dispatchers is owned by NJA. NJS Flight Dispatchers and NJA employees share a common computer network maintained by NetJets.

NJA and NJS labor relations and human resources are commonly managed. Additionally, NJA has full access to NJS Flight Dispatcher’s personnel records. NetJets provides new-hire orientation to both NJA and NJS employees through NJS. All new NJA and NJS employees receive training together and sign the same employment forms.

Therefore, based on the discussion above, the NMB finds that this record establishes that NJA exercises substantial control over NJS and its employees, and supports a finding of RLA jurisdiction.

CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB finds that NJS is subject to the RLA. Accordingly, the IBT’s application in CR-7003 is converted to NMB Case No. R- 7297. Pursuant to NMB Representation Manual Section 3.0, the investigation will proceed to address the representation of the Flight Dispatchers craft or class.

The Board finds a dispute to exist in NMB Case No. R-7297, among the Flight Dispatchers of NJS, sought to be represented by IBT and presently unrepresented. An Internet and TEV election is hereby authorized using the

cut-off date of January 8, 2011. Pursuant to Manual Section 12.1, the Carrier is hereby required to furnish, within five calendar days, 1" X 2 5/8", peel-off labels, bearing the alphabetized names and current addresses of those employees on the List of Potential Eligible Voters. The Carrier must print the same sequence number from the List of Potential Eligible Voters beside each voter's name on the address label. The Carrier must use the most expeditious method possible, such as overnight mail, to ensure that the Board receives the labels within five calendar days. Tally in Washington, DC.

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:

Tony Coleman
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