



**NATIONAL MEDIATION BOARD**

WASHINGTON, DC 20572

(202) 692-5000

32 NMB No. 42  
August 31, 2005

Henry S. Breiteneicher  
Acting Solicitor  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, DC 20571-0001

Re: NMB File No. CJ-6880  
Signature Flight Support

Dear Mr. Breiteneicher:

This letter responds to your request for the National Mediation Board's (NMB or Board) opinion regarding whether Signature Flight Support (Signature or Employer) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On April 15, 2005, the National Labor Relations Board (NLRB) requested an opinion regarding whether Signature's operations at its facility at the Westchester County Airport in White Plains, New York (White Plains) are subject to the RLA.

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

I. PROCEDURAL BACKGROUND

This case arose out of a representation petition filed by the International Brotherhood of Teamsters, Local 478 (Local 478), on July 21, 2004, with the NLRB seeking to represent all full-time and regular part-time concierges and customer service representatives at Signature's White Plains facility. Signature objected to the NLRB's jurisdiction on the ground that its employees and operations at White Plains are subject to the RLA.

A hearing was held in NLRB Region 2 on August 6, 2004. On April 15, 2005, the NLRB requested an NMB opinion regarding the NMB's jurisdiction over Signature's White Plains operations. On April 18, 2005, the NMB assigned Maria-Kate Dowling to investigate. The participants filed their respective submissions with the NMB on April 22, and May 17, 2005.

The NMB's opinion in this case is based upon the request and record provided by the NLRB, including the hearing transcript provided by the NLRB, and the position statements submitted by Signature and Local 478.

## II. SIGNATURE'S CONTENTIONS

Applying the NMB's two-part function and control test for determining jurisdiction of employers that are not owned by or under common ownership with an RLA carrier, Signature contends it is subject to the RLA. Signature states that it satisfies the function part of the test since its employees perform work that is of a type traditionally performed by airline employees, namely, fueling, baggage service, customer service, and ground service equipment maintenance. Signature further contends that it satisfies the control part of the test since the majority of Signature's work at White Plains is performed for two employers, NetJets and TAG Aviation (TAG). Signature asserts that NetJets and TAG exert significant influence on its daily operations and the manner in which its employees perform their duties.

According to Signature, its staffing levels in White Plains are dictated by the schedules of NetJets and TAG. Signature also asserts that NetJets and TAG have the right to specify how many employees have to work on a given day and have exercised that right. Signature further asserts that NetJets requires Signature employees to follow specific procedures and that Signature has adopted those procedures for all its White Plains customers. Signature also contends that TAG has required the purchase of particular equipment and specified the Signature employees to operate that equipment. In

addition, Signature contends: that NetJets and TAG have affected Signature's employment decisions; that Signature employees respond to service requests that come directly from NetJets and TAG and not from Signature supervisors; and that Signature employees resolve other service issues by dealing directly with NetJets and TAG.

### III. LOCAL 478'S CONTENTIONS

Local 478 asserts that Signature does not perform services for common carriers as required for RLA jurisdiction. Local 478 argues that many of Signature's other clients at White Plains are single-owned private aircraft, such as corporate jets for Tommy Hilfiger, CitiBank, and Xerox. Local 478 also asserts that the employees at issue, Air Concierges and Customer Service Representatives, do not perform work traditionally performed by carrier employees. Local 478 further asserts that the employees are not controlled directly or indirectly by any entity other than Signature since the employees are hired, paid, trained, supervised and disciplined by Signature. Finally, Local 478 contends that Signature waived its claim of RLA jurisdiction when it failed to raise the issue with regard to its Line Service Technicians and Facilities Maintenance employees in a prior representation case filed before the NLRB.

### IV. FINDINGS OF FACT

#### SIGNATURE

Signature provides fixed base operations (FBO) at approximately 40 facilities throughout the United States, including White Plains. At White Plains, Signature serves privately-owned aircraft, corporate-owned aircraft and fractionally-owned aircraft.<sup>1</sup> According to Signature's General

---

<sup>1</sup> With fractionally-owned aircraft, a fractional ownership corporation sells fractions of shares in corporate airplanes in a fashion similar to real estate time shares. Owners of fractional shares can sublease transportation on the aircraft.

Manager Timothy McCole and Operations Manager John T. Hope, approximately 60 percent of Signature's business comes from NetJets, formerly Executive Jets, a fractional ownership corporation, and approximately 20 percent comes from TAG, "an international charter management company." Signature's remaining business at White Plains is corporate and other private aircraft. Signature employs about 60 individuals at White Plains, including a general manager, department managers, an operations manager, five operations supervisors, Line Service Technicians, Customer Service Representatives (CSRs), Air Concierges (Concierges), Facilities Maintenance, Facilities Cleaners, Ground Support Equipment Maintenance employees (GSEs), Gate Booth employees, and an Accounting and Administrative staff.<sup>2</sup>

#### Nature of Work for Signature Employees

Until the construction of its own facility at White Plains, NetJets had subleased office space from Signature. At the new facility, which is not open to the public but only to NetJets' owners, Signature provides towing, oil, and fuel and deicing services. Although some NetJets flights still come into the Signature facility, Signature provides less passenger services and more aircraft services.

According to McCole, CSRs greet and assist passengers and air crew members, and arrange services such as transportation between airport and hotel, fuel and oil service, food and beverages, newspapers and other amenities. McCole stated that Signature's line employees are supposed to

---

<sup>2</sup> The NLRB has certified Region 9A, United Auto Workers (UAW), as the exclusive collective bargaining representative for a unit of Signature's Line Service Technicians and Facilities Maintenance employees. Following the certification, on October 7, 1998, Signature and UAW entered into an initial three-year collective bargaining agreement. The current contract between Signature and UAW appears by its terms to cover GSE/Facilities Maintenance and Line Service Technicians as well as Facility Cleaners and Gate Booth persons.

immediately address any requests from NetJets employees for fueling or catering. One CSR described his job duties as “billing the customers, answering phone calls, basically things of that nature regarding clerical duties.” Although his written job description includes tasks such as leading in, chocking or marshalling<sup>3</sup> aircraft, and helping customers load and unload baggage, the employee stated that these duties are actually performed by Line Service Technicians. Finally, this employee stated that CSRs fulfill fuel orders from NetJets employees with or without seeking approval from their Signature supervisor and may also take calls from flight crews informing Signature of their approach to the airport and their needs with regard to fuel and amenities.

McCole also testified that the Concierge is responsible for customer service on the “air side” such as greeting passengers and crews upon arrival, escorting people to and from the facility, providing food, beverages, and other amenities, and helping with baggage. According to McCole, the Concierge is also responsible for marshalling departing aircraft. However, an employee who spent the first eight months of employment as a Concierge, described the duties as “delivering catering” such as “newspapers, ice, coffee” from the Signature facility to the ramp and to the aircraft and as “basically running out whatever they needed.” The employee stated that these duties were performed for NetJets and the other Signature customers and that, while his Signature supervisor directed his deliveries, the employee also responded to the immediate service needs of flight crews. The employee further testified that Concierges neither marshalled aircraft nor were trained by Signature to marshal aircraft. Finally, the employee stated that it was not part of the Concierge job to identify persons in accordance with Signature’s security procedures.

Other Signature employees at the airport include Gate Booth employees, Line Service Technicians, GSEs, a Facilities

---

<sup>3</sup> Chocking is blocking aircraft wheels to prevent movement. Marshalling is directing an aircraft under its own power in and out of the gate.

Maintenance employee, and Facilities Cleaners. Gate Booth employees primarily control the flow of people into and out of the air side. Line Service Technicians perform a variety of aircraft servicing duties including fueling and defueling, repositioning aircraft, deicing, towing aircraft to and from hangers, servicing oil and windshields, cleaning the lavatories, and supplying water. GSEs provide maintenance for Signature's ground equipment such as deicers, tugs, tractors, and fuel trucks. The Facilities Maintenance employee performs minor facilities repair work and the facilities cleaners perform janitorial duties. Finally, Signature's employees also provide "gold cap" service or quick-turn-around cleaning to any arriving aircraft that requests the service.

#### NetJets' Control over Signature's Operations and Employees

##### Personnel Policies

Signature hires, trains, and disciplines its employees. Signature conducts background checks and determines pay rates. Signature determines when employees start and end their shifts, sets their break times, maintains personnel records, and directs employee drug tests. Employees wear uniforms bearing Signature's name regardless of what aircraft they are working on. Employees are also issued identification cards bearing Signature's names. Concierges, counter personnel, supervisors, and managers are issued business cards with Signature's name. Signature also supplies its employees with equipment purchased by Signature, such as office supplies, computers, tractors, and fueling trucks.

Signature maintains its own employee information manual as well as safety procedures manual and customer service manual. These manuals apply to all Signature employees nation-wide. According to Hope, certain elements of the safety procedures such as the towing and fueling of airplanes and safety on the ramp are based on the "stringent demands of NetJets." Other procedures in the manual are dictated by the Federal Aviation Administration (FAA) and by the local airport authority.

### Audits

Signature General Manager Hope stated that NetJets periodically audits Signature's performance. A document entitled "Signature Flight Support Fixed Base Operator Standards (Standards)" outlines the "minimum standards" that NetJets uses for evaluating Signature and its employees and states that "[r]outine reviews shall not take place more than twice a year." Following the review, Signature receives a report indicating any shortcomings or irregularities that NetJets wants corrected. Signature responds to the report with a letter outlining any corrective measures that have been taken.

The Standards also give NetJets the right to demand documents relating to fuel quality control and to observe Signature's fueling operations. In addition, the Standards list specific procedures that Signature must follow regarding the towing and servicing of NetJets' aircraft, such as providing NetJets with a list of all ground equipment available and, when requested, the maintenance records for that equipment; providing NetJets with detailed ramp dimensions, weight capacities and hangar dimensions; using a minimum of three personnel on all NetJets aircraft towing operations; and ensuring that designated deicing procedures are followed.

### Supervisory Authority and Work Scheduling

NetJets' White Plains operation is overseen by the NetJets Gateway Coordinator who is responsible for meeting its aircraft upon arrival and ensuring that its aircraft depart successfully. The Gateway Coordinator is also responsible for overseeing Signature's performance of its duties for NetJets and reporting any problems that he observes with Signature's performance to NetJets' corporate headquarters. According to General Manager Hope, the Gateway Coordinator meets with him on a daily basis regarding NetJets' needs for that day and any schedule changes. Hope communicates this information to Signature employees. The Gateway Coordinator and Hope also "periodically discuss Signature's performance throughout the

day.” McCole also meets with NetJets’ Gateway Coordinator at least once a week to discuss Signature’s performance including staffing levels, professionalism of Signature employees, and the availability of equipment.

NetJets also provides Signature with logistics reports several times a day. These reports show their schedule and any changes. A logistics report may also contain specific information such as passenger catering preferences or that a flight crew is “out of duty time” and their trip to the hotel should be expedited. The last logistic report of the day is received at 2 a.m. and gives the positioning of NetJets’ aircraft for morning departures. According to Hope, Signature bases its staffing on these reports and depending on NetJets’ schedule, may even call in additional employees on an overtime basis to cover flights. McCole testified that if there were a large number of unscheduled NetJets’ aircraft for the evening shift, he would hold people from the day shift over to accomplish this work or call employees in on overtime to staff flights if necessary. McCole also discusses the number of Signature employees scheduled and whether NetJets thinks that the staffing level is adequate with NetJets’ Gateway Coordinator.

Hope also testified that following an aircraft accident in January 2003, NetJets demanded a change in Signature’s aircraft towing policy to require a Signature supervisor on every NetJets’ aircraft movement and Signature complied. This change in the towing policy was applied by Signature to all its customers. McCole testified that NetJets maintains a policy regarding accidents or damage to aircraft that involves holding a board of inquiry to discuss the cause of the accident and Signature’s proposed remedy. The board determines whether to continue Signature’s contract. NetJets’ management retains the discretion to terminate the contract if they determine there have been too many accidents in too short a period. According to McCole, NetJets’ air crews also oversee the fueling of their aircraft to ensure that it is done correctly and a NetJets’ crew member must be present to supervise oil servicing on aircraft.



Authority to Remove or Discipline Signature Employees

NetJets has no authority to directly remove or impose discipline on Signature employees. On at least three occasions, NetJets has requested that a particular Signature employee “not handle” a particular NetJets customer. Although Signature employees have been reassigned based on NetJets’ preference, there is no evidence that Signature has otherwise disciplined or terminated an employee at NetJets’ behest. According to McCole, when NetJets had made a request for particular employees, he would comply with that request to the best of his ability.

Signature conducts an independent performance review of its employees. Hope testified that a commendation or complaint from NetJets carries some weight because NetJets comprises 60 percent of Signature’s business at White Plains. Hope conceded, however, that there is no policy regarding the weight to be given to such a commendation or complaint. McCole testified that written commendations are kept in an employee’s file and will be noticed by his or her reviewer and “would carry a lot of weight.” McCole also stated that he shares verbal information from NetJets regarding a Signature employee with the other managers and might make a note to file. When Signature employees have received letters of appreciation or letters of commendation from NetJets, Signature has on occasion provided a gift certificate or “personal thank you” from corporate staff. McCole stated, however, that the Signature manager independently determines whether an employee receives a gift certificate or a “personal thank you.”

TAG’s Control over Signature’s Operations and Employees

According to McCole, TAG employees interact regularly with Signature employees regarding flight schedules, departures, and arrivals, as well as aircraft positioning. A TAG crew member or mechanic may request that Signature move a plane and the TAG employees oversee the aircraft movements. McCole also testified that TAG has requested that a specific

Signature employee not be permitted to work on their account and Signature complied with that request. TAG also requested that specific equipment be used to move a helicopter and in response, Signature purchased that equipment and dedicated it to that aircraft. There is no evidence that Signature terminated an employee at the request of TAG Aviation.

## 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. *Signature Flight Support/Aircraft Serv. Int'l, Inc.*, 32 NMB 30 (2004). 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. *Signature Flight Support/Aircraft Serv. Int'l, Inc.*, *above*; *see also AvEx Flight Support*, 30 NMB 355 (2003).

It is well-settled that the Board exercises its jurisdiction over air taxi and charter operations engaged in interstate commerce. *Rocky Mountain Holdings, L.L.C. d/b/a Eagle Airmed of Arizona*, 26 NMB 132 (1999). In the instant case, the record establishes that NetJets is a common carrier subject to the RLA.<sup>4</sup> NetJets operates under a Part 135 license issued by the FAA, holds itself out to the public for hire and is engaged in interstate commerce. Further, although it asserts that NetJets is not a common carrier under the RLA, Local 478, in a letter to the NLRB hearing officer dated September 14, 2004, stipulated for the purpose of the petition and hearing that NetJets is a

---

<sup>4</sup> There is insufficient evidence in the record, however, to determine whether TAG is a common carrier subject to the RLA.

common carrier under the RLA. Finally, the Board has held that NetJets is a common carrier subject to the RLA. *Executive Jet Aviation, Inc.*, 28 NMB 471 (2001); *Executive Jet Aviation, Inc.*, 27 NMB 174 (2000).

Signature does not fly aircraft and is not directly or indirectly owned by an air carrier. The record establishes that Signature employees perform a variety of functions which have been traditionally performed by airline employees such as customer service, shuttle service for passengers and crew, and baggage service. *Worldwide Flight Servs. Inc.*, 31 NMB 386 (2004) (finding customer services duties is work traditionally performed by carrier employees); *John Menzies PLC, d/b/a Ogden Ground Servs., Inc.*, 30 NMB 405 (2003). Therefore, to determine whether Signature is subject to the RLA, the NMB must consider the degree of control exercised by NetJets.

#### Carrier Control Over Signature and Its Employees

To determine whether there is carrier control over a company, the NMB looks to several factors, including: 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; role in personnel decisions; degree of supervision of the company's employees; whether employees are held out to the public as carrier employees; and control over employee training. *Signature Flight Support/Aircraft Serv. Int'l, Inc.*, above; *John Menzies PLC, d/b/a Ogden Ground Servs., Inc.*, above; *Signature Flight Support of Nevada*, 30 NMB 392 (2003); *Aeroground, Inc.*, 28 NMB 510 (2001); *Miami Aircraft Support*, 21 NMB 78 (1993).

The record in the instant case does not establish that NetJets exercises sufficient control over Signature's operations to support a finding of RLA jurisdiction. The scheduling of NetJets' flights affects the work schedules of Signature employees. Signature managers, however, determine how many employees to call in or hold over and whether to authorize overtime. Signature owns and maintains its own equipment. NetJets' access to Signature's records is limited to

personnel, maintenance, and training necessary to satisfy security and safety requirements during the periodic audits.

Signature hires, trains, pays, promotes, transfers, evaluates, and disciplines its workforce. NetJets requires that Signature employees involved in aircraft handling have appropriate certificates from a NetJets approved training program. However, Signature can choose the training program from a list that “include[s], *but is not limited to*: NATA Safety 1<sup>st</sup>, ATI Professional Line Service Training, Exxon Mobil’s Premiere Care, AvFuel, and Phillips 66 Line Training Program.” (Emphasis added.)

When NetJets has concerns about the performance of Signature employees, these concerns are brought to Signature’s supervisors. While Signature may address NetJets’ concerns by transferring an employee, the decision is made by Signature, not NetJets. Similarly, although Signature may reward an employee for their performance with NetJets, the decision on how to reward the employee is made by Signature managers. The rewards received by the employees are not paid for or provided by NetJets. Signature employees wear Signature uniforms and identification cards, carry Signature business cards, and receive on-the-job training from other Signature employees.

In contrast to the instant case, in *Signature Flight Support/Aircraft Serv. Int’l, Inc.*, 32 NMB 30 (2004), the carrier required ASII’s employees to follow their operating and training procedures, and failure to follow those procedures resulted in discipline. The carrier mandated specific training and did not provide notice for audits. Carrier personnel reported problems with ASII’s employees and at the request of the carrier. ASII disciplined and terminated those employees.

Similarly, in *John Menzies, PLC d/b/a Ogden Servs., Inc.*, 31 NMB 490 (2004), carrier personnel directed and supervised Menzies’ employees in the day-to-day performance of their duties, reporting problems and effectively recommending discipline. The carrier monitored daily and monthly cleaning,

baggage handling and on-time performance records, and provided airline passes for Menzies' employees.

The Board found the exercise of substantial control in *Kannon Serv. Enterprises Corp.*, 31 NMB 409 (2004), where the carrier: requested removal of employees; dictated what constituted adequate supervision; specified personal appearance standards; consulted with the employer on the number of employees hired, the hours worked, overtime, and holiday schedules; provided equipment; required the keeping of certain records; and provided office space.

Finally, in *Signature Flight Support of Nevada*, 30 NMB 392 (2003), the carriers exerted substantial control over Signature's McCarran operations by: requiring Signature's employees to follow their operating and training programs; directing and supervising Signature employees; reporting personnel problems and effectively recommending discipline; participating in the investigation of disciplinary incidents by performing audits without notice, and by rewarding Signature employees with free passes. The carriers in that case also had access to employees' background files as well as training files, and Signature leased space from one of the carriers.

By contrast, in the instant case, NetJets is not involved in hiring or personnel investigations. NetJets has not effectively recommended discipline or discharge. NetJets does not: provide office space or equipment; directly supervise Signature's employees; set wage rates or ranges; or authorize overtime. Nor does NetJets provide Signature employees with benefits such as free flights. Finally, NetJets does not mandate personal appearance standards or require Signature employees to wear carrier insignia.

CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB's opinion is that Signature and its employees at White Plains are not subject to the RLA. This opinion may be cited as *Signature Flight Support*, 32 NMB 214 (2005).

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:  
Douglas W. Hall, Esq.  
Tim McCole  
Dennis Smith  
Curtiss T. Jameson, Esq.  
Harold Walsh