



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

30 NMB No. 3
October 29, 2002

Mr. Andrew Chunko
Manager Operations
Maryland & Pennsylvania
Railroad Co.
York Railway Company
96 South George Street
Suite 400
York, PA 17401

Joshua D. McInerney, Esq.
Baptiste & Wilder, P.C.
1150 Connecticut Ave., NW.
Suite 500
Washington, DC 20036

Mr. William A. Jasper, VP
York Railway Company
8711 Perimeter Park Blvd.
Suite 1
Jacksonville, FL 32216

Mr. Al Koch, Business Rep.
Teamsters Local 430
1780 Six Avenue
York, PA 17403-2643

Mr. Don Treichler, Director
National Airline Division
International Brotherhood
of Teamsters
6242 Westchester Parkway
Suite 250
Los Angeles, CA 90045-4820

Mr. Byron A. Boyd, Jr.
International President
Kevin C. Brodar, Esq.
Associate General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107

Mr. John A. Nadalin, Dir. of
Strategic Planning
United Transportation Union
5727 Biggert Road
London, OH 43140

Re: NMB Case No. R-6907
York Railway Company

Gentlemen:

This determination addresses the October 22, 2002 appeal filed by the International Brotherhood of Teamsters (IBT) of Investigator Eileen M. Hennessey's eligibility rulings. For the

reasons discussed below, the appeal is granted in part and denied in part.

I.

Procedural Background

On March 1, 2002, the United Transportation Union (UTU) filed an application pursuant to the Railway Labor Act, 45 U.S.C. §152, Ninth (Section 2, Ninth), seeking to represent the craft or class of Train and Engine Service Employees of the York Railway Company (YRC or Carrier).^{*} On March 18, 2002, YRC provided the National Mediation Board (Board) with a List of Potential Eligible Voters (list) in this case. The Board authorized a mail ballot election on September 12, 2002. On September 16, 2002, the Investigator sent a letter to the Carrier, the IBT and the UTU setting a schedule for challenges and objections and the election period. On September 24, 2002, the IBT and the UTU filed challenges and objections. On October 1, 2002, YRC and UTU filed responses to challenges and objections. On October 3, 2002, the IBT filed an additional submission. On October 3, 2002, the UTU objected to the IBT's October 2, 2002, submission. The Investigator ruled on all challenges and objections on October 18, 2002. The IBT appealed two of the Investigator's rulings on October 22, 2002. The UTU responded to the appeal on October 24, 2002.

^{*} On September 12, 2002, the Board determined that YRC is a single transportation system comprised of the Maryland & Pennsylvania Railroad Company (MPA) and Yorkrail, Inc. (YKR) and the appropriate craft or class for this application is Train and Engine Service Employees. *Maryland & Pennsylvania R.R. Co./Yorkrail, Inc./York Ry. Co.*, 29 NMB 444 (2002). The IBT currently represents Train and Engine Service Employees on YKR and the UTU represents these employees on MPA.

The ballots were mailed out on October 1, 2002. The ballot count is scheduled to take place on October 29, 2002.

Kurman

Among other challenges, the IBT asserted that Michael Kurman is ineligible because he is receiving a disability annuity under the provisions of the Railroad Retirement Act (RRA). The UTU responded that Kurman is on occupational disability and has a reasonable expectation of returning to work. The Carrier stated that Kurman has not worked for YRC since July 22, 1999. According to the YRC, the Carrier was notified that Kurman applied for disability benefits from Railroad Retirement on March 30, 2000.

Wilson

The IBT asserts that Donald Wilson is ineligible because he is a casual part-time employee. During the investigation the Carrier stated that Wilson is employed by the Carrier as an extra-list trainman. Wilson works on weekend coal trains and during the week as the Carrier's needs dictate. He is employed as a farmer during the week. The UTU argues that Wilson is a regular employee of the Carrier who is "in furloughed status and responds when called."

On October 18, 2002, the Investigator issued rulings stating that Kurman is eligible to vote because "he has a reasonable expectation of return to work and is not retired under the provisions of the Railroad Retirement Act." The Investigator ruled that Wilson was eligible because he "has a regular employee-employer relationship with the Carrier and regularly scheduled work assignments."

II.

Contentions on Appeal

IBT

The IBT asserts that Kurman is receiving a disability annuity under the provisions of the RRA, and therefore, is not an eligible voter pursuant to the Board's Representation Manual (Manual) Section 5.311. The IBT also argues the Donald Wilson is a casual part-time employee who is ineligible.

UTU

The UTU states that Kurman is eligible because Manual Section 5.311 applies only to retired employees. The UTU maintains that Kurman is receiving occupational disability payments and is working towards returning to work. The UTU also states that Kurman is still on the MPA/UTU seniority roster. The UTU states that Wilson is either in furlough status or a regular part-time employee and in either circumstance is eligible to vote. The UTU states that there are no provisions in the MPA/UTU collective bargaining agreement (CBA) for casual employees. The UTU also states that Wilson has been employed by the Carrier for 11 years, works on the extra board, is on the seniority roster, has received the signing bonus and brakeman buyout payments under the CBA, works regularly for the Carrier on weekends and occasionally during the week.

III.

Kurman

Manual Section 5.311 states

Employees who have retired are ineligible to participate. However, an employee receiving physical disability payments is eligible if the employee retains

an employee-employer relationship and has a reasonable expectation of returning to work.

An individual who has filed for and is receiving a disability annuity under the provisions of the Railroad Retirement Act shall not be an eligible voter. [Emphasis added.]

Kurman has not worked in train and engine service for the Carrier since July 1999. According to the evidence provided to the Investigator, Kurman is currently receiving a disability annuity under the RRA. Therefore, pursuant to Manual Section 5.311, Kurman is ineligible.

IV.

Wilson

Manual Section 5.305 states

Furloughed employees are eligible in the craft or class in which they last worked provided they retain an employee-employer relationship and have a reasonable expectation of returning to work. However, a furloughed employee regularly working in another craft or class is ineligible in the craft or class from which the employee is furloughed.

Manual Section 5.301 states that

When investigating the eligibility of a part-time employee, the Investigator should determine (a) if the employee works an identifiable schedule during a specified time period; (b) whether the employee regularly relieves other employees; (c) what benefits the employee receives; (d) what deductions are taken from the employee's pay; and (e) any other relevant facts which would indicate whether the employee has

a regular part-time or a casual part-time employer-employee relationship.

The Investigator's determination of eligibility regarding part-time employees must take into consideration the varied operating practices on different carriers. If the individual's employment is casual, that is, where the employee has neither a regular employee-employer relationship nor scheduled work assignments, then the employee is ineligible.

On October 1, 2002, Wilson submitted a sworn declaration to the Board which stated in part:

I have been employed by the York Railway Company, and its immediate predecessor the Maryland and Pennsylvania Railroad as a regular employee in train and engine service since 1991, and continue to be so employed.

The collective-bargaining agreement between the carrier and the United Transportation Union does not provide for part-time or casual employees.

Pursuant to that agreement, as an employee in train and engine service, I received the prescribed signing bonus and the brakeman's buyout payment.

I am currently now in furlough status, and my name continues to appear on the seniority roster pursuant to the collective-bargaining agreement, I retain the right to be recalled and returned to service. . . .

I have been regularly recalled to service by the carrier and have worked 8 days over the last month. . . .

The Carrier states YRC does not have sufficient train

service employees to operate a Sunday coal train that requires three crews. Therefore, the Carrier regularly calls Wilson in off the train service extra-list to work on some of the approximately 33 scheduled weekend coal trains per year as well as occasional assignments during the week. During the month of September 2002, Wilson was recalled to service by the Carrier for eight days.

The Investigator ruled Wilson eligible stating that Wilson “has a regular employee-employer relationship with the Carrier and regularly scheduled work assignments.” The IBT appealed the ruling, stating that “Wilson does not have regularly scheduled work assignments and, instead works only on an as needed basis.” In support of its contention that Wilson is ineligible, the IBT compares Wilson’s status to the on-call pilots in *Hyannis Air Servs.*, 29 NMB 433 (2002) which the Board determined to be ineligible.

The record demonstrates that Wilson retains a regular part-time employee/employer relationship with the Carrier, pursuant to Manual Sections 5.301 and 5.305. Unlike the pilots in *Hyannis Air Servs.*, *above*, Wilson is on the MPA/UTU seniority roster and regularly works for the Carrier on the weekend coal trains. Accordingly, the Investigator’s ruling is upheld and Wilson is eligible to vote.

V.

CONCLUSION

The IBT’s appeal of Kurman’s eligibility is granted. Kurman is ineligible. The IBT’s appeal regarding Wilson is denied. Wilson

30 NMB No. 3

remains eligible to vote. The ballot count will take place as scheduled at 2:00 p.m., Tuesday, October 29, 2002.

By direction of the NATIONAL MEDIATION BOARD

Benetta M. Mansfield

Benetta Mansfield
Chief of Staff