



**NATIONAL MEDIATION BOARD**

WASHINGTON, DC 20572

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In the Matter of the  
Application of the  
  
MIDWEST TRAIN DISPATCHERS  
  
alleging a representation dispute  
pursuant to Section 2, Ninth, of  
the Railway Labor Act, as  
amended  
  
involving employees of  
  
NATIONAL RAILROAD  
PASSENGER CORPORATION

31 NMB No. 48

CASE NO. R-6988  
(File No. CR-6803)

FINDINGS UPON  
INVESTIGATION-  
DISMISSAL

January 29, 2004

This decision addresses the application of the Midwest Train Dispatchers (MTD or Applicant) alleging a representation dispute pursuant to the Railway Labor Act<sup>1</sup> (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), among certain Train Directors of National Railroad Passenger Corporation (Amtrak or Carrier). The Transportation Communications International Union (TCU or Incumbent) is the certified representative of the craft or class of Clerical, Office, Station and Storehouse Employees (COSS), on Amtrak. At the time the application was received, the position of Train Director was covered by TCU's certification. For the reasons discussed below, the Board finds that Amtrak's Train Directors are not a separate craft or class and dismisses MTD's application.

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<sup>1</sup> 45 U.S.C. § 151, *et seq.*

### PROCEDURAL BACKGROUND

On October 21, 2003, the MTD filed an application alleging a representation dispute involving the Chicago-based Train Directors at Amtrak. This application was assigned NMB File No. CR-6803 and Cristina A. Bonaca was assigned as the Investigator.

On November 3, 2003, Amtrak and TCU each submitted an initial position statement. On November 5, 2003, MTD filed a response to Amtrak and TCU's initial position statements.

In response to the Investigator's letter on November 5, 2003 inviting additional statements, TCU and MTD filed additional position statements on November 13, 2003, and November 14, 2003, respectively.

On November 17, 2003, the Investigator gave the participants the opportunity to file additional statements by November 24, 2003. TCU was the only participant to file an additional response.

On December 5, 2003, the Investigator asked Amtrak to provide additional information on its position that its Chicago or Off-Corridor operations are part of its system-wide operations. Amtrak responded with a supplemental statement on December 15, 2003. TCU responded on December 19, 2003, and MTD responded on December 23, 2003.

### ISSUES

Are Train Directors on Amtrak a separate craft or class, or are they properly part of the craft or class of Clerical, Office, Station and Storehouse Employees?

What is the appropriate system for employees covered by the application?

## CONTENTIONS

### MTD

MTD contends that an earlier *Amtrak* decision, 10 NMB 510 (1983), which discussed the proper craft or class of Train Directors, is distinguishable from the present situation. The Applicant argues that the duties and responsibilities of Train Directors are not commonly performed by other members of the COSS craft or class.

MTD argues that Train Directors clearly represent a different classification from the COSS employees, as they: undergo a lengthy training process; are required to have a minimum number of years of specialized experience; must successfully pass certain examinations, and; are subject to federal rules. The Applicant also notes that Train Directors, unlike other COSS employees, were exempt from a September 2003 “Sadie Hawkins”<sup>2</sup> Displacement. MTD also asserts that, “several Train Directors working for Amtrak in 1993 were represented by the Brotherhood of Locomotive Engineers in New York.”

As to Amtrak’s argument that Train Directors should be viewed as a system-wide group pursuant to Board policy, MTD responded that Amtrak has consistently treated the 26 Chicago Train Directors as separate from the other 32 Amtrak Train Directors. MTD contends that Amtrak’s Chicago Train Directors are a distinct unit because they: 1) are subject to a separate collective bargaining agreement (CBA) that only applies to the Chicago or Off-Corridor employees, and; 2) have different seniority lists and agreements, as well as different pay benefits and levels of responsibility. In sum, MTD argues: “The additional responsibilities and authority of Train Directors in Chicago effectively make them Train Dispatchers. Since the

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<sup>2</sup> A Sadie Hawkins arrangement is where employees have a fixed-time opportunity to bid on any and all positions within a seniority district.

Train Directors in the NEC (Northeast Corridor) do not have this same authority as to train movements, they are different and therefore operate under different operating rules and a different bargaining agreement.”

Amtrak

Amtrak asks the Board to dismiss MTD’s application, arguing that the Applicant has failed to satisfy the necessary showing of interest through the signed authorization cards submitted by some Chicago-based Train Directors. As MTD is seeking to represent a group of employees already represented by TCU, Amtrak argues that MTD needs to provide signed authorization cards for a majority of the craft or class of employees it seeks to represent.

The Carrier relies on *Amtrak, above*, in support of its position that Train Directors are appropriately included in the COSS craft or class. Amtrak contends that there are nearly 5,000 employees in its COSS craft or class, therefore, MTD would need to provide over 2,000 valid, signed authorization cards to demonstrate a majority interest.

Further, even if the Board accepted MTD’s argument that Train Directors are in fact a separate craft or class, Amtrak contends there is still an inadequate showing of interest because MTD would need to submit a majority of authorization cards from this group system-wide. Amtrak contends that its Chicago or Off-Corridor operations are clearly part of its system-wide operations -- sharing central management, operating procedures, labor relations, payroll, and a number of other integrated functions.

TCU

TCU concurs with Amtrak that the MTD’s application should be dismissed because the Board has already determined that Train Directors on Amtrak are not a separate craft or class. *Amtrak, above*.

TCU argues that virtually all of the factors cited by MTD were raised and found insufficient to support a finding that Train Directors are a separate craft or class in *Amtrak, above*. TCU maintains that any additional duties performed by Train Directors since the 1983 decision are the result of federal regulations.

In addition, TCU argues that Amtrak's Northeast Corridor and Off-Corridor operations are part of the same system, regardless of the fact that employees work under different CBAs. TCU points out that the Board in *Amtrak*, 12 NMB 80 (1985), ruled that Amtrak's Northeast Corridor was not separate from other parts of its overall operations. Further, TCU has represented all COSS employees across the Amtrak system since 1971, including the Northeast Corridor operations once they were assumed by Amtrak. *See Amtrak*, 10 NMB 510, 513.

Finally, TCU notes that the majority of terms and conditions of the Off-Corridor and Northeast Corridor agreements are negotiated by TCU and Amtrak in the same Section 6 notice. Therefore, TCU argues that Amtrak's Off-Corridor Train Directors work under the same terms and conditions of employment as all other COSS craft employees in Amtrak's Off-Corridor operations.

#### 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.

Amtrak is a common carrier by railroad as defined in 45 U.S.C. § 151, First.

##### II.

TCU and MTD are labor organizations and/or representatives as provided by 45 U.S.C. § 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 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

MTD

MTD provided the following exhibits in support of its position:

1. Position Description for Amtrak Train Directors which states that Train Directors:

- a. must be experienced and proficient in the operation of an interlocking machine which will govern the movements of passenger trains, freight trains, and other equipment;
- b. must pass the required examinations of the Northeast Operating Rules Advisory Committee (NORAC) and the General Code of Operating Rules (GCOR);
- c. preferably have nine months experience with interlocking, central traffic control skills, and train operations, and;

- d. must pass a physical examination as required by the Federal Railroad Administration (FRA).
2. Memorandum stating that all Train Director trainees will be working under the FRA and are subject to random drug testing.
3. July 10, 2003 Amtrak Job Code Table Special Report which shows that Train Directors are at the top of the pay scale among the different crafts represented by the TCU.
4. Amtrak Booklet of Rules for Train Directors, effective January 1, 1997, which supplements the GCOR at Amtrak. Rule 1.17 provides that Train Directors are subject to the Federal Hours of Service Act, 49 C.F.R. § 219.5.
5. September 18, 2003 memo regarding a TCU Job List, which exempts 26 Train Directors and 23 other exempt jobs from a "Sadie Hawkins" Displacement.
6. August 5, 1993 letter notifying former Train Directors that upon their becoming Amtrak Train Dispatchers, they would be represented by BLE's American Train Dispatchers Department (ATDD).
7. April 12, 1990 memorandum from TCU discussing a pay increase for Train Directors on the Northeast Corridor.
8. Various exhibits discussing seniority rights for Northeast Corridor employees.
9. April 2, 2000 GCOR and cover page of 1995 NORAC Operating Rules.

Amtrak

Amtrak provided a list of 4,327 employees in the system-wide COSS craft or class. Amtrak lists 100 Train Directors system-wide, as they include other titles in their Train Director grouping. There are 58 Train Director titles system-wide, and 26 Train Directors in Chicago.

Amtrak also provided the following information to support its contention that its Chicago or Off-Corridor operations are part of its system-wide operations:

1. Amtrak's operations are headquartered in Washington, D.C. The Vice President of Transportation, Ed Walker, is located in Washington, D.C. and all Amtrak Train Directors fall under Mr. Walker's supervision regardless of their geographic location.
2. Joseph Bress, Amtrak's Vice President for Labor Relations, administers labor relations for the entire company, including operations in Chicago, the Northeast Corridor, and all other geographic regions. LaVern Miller, Amtrak's Director for Labor Relations in Washington, D.C., handles employee grievances from throughout the country.
3. Employee Training is managed from corporate headquarters in Washington, D.C. and is administered locally. All Train Directors, regardless of work location, are required to comply with the same training and operating rule requirements, and are subject to the same drug and alcohol testing mandated by FRA regulations.
4. Amtrak financial matters and payroll are administered from headquarters in Washington, D.C.



5. All of Amtrak's operations are jointly managed and all of its employees are subject to the direction of a single management.

6. Train Directors working under the Northeast Corridor CBA and the Off-Corridor CBA "enjoy exactly the same base pay, benefits and other terms and conditions of employment," however they participate in two separate seniority pools.

7. Bargaining with the TCU over the terms and conditions of employment for both the Northeast Corridor agreement and the Off-Corridor agreement is conducted as one single negotiation that results in two separate "but identical" agreements.

#### National Mediation Board Rules

Section 1206.2(a) of the National Mediation Board Rules provides:

Where the employees involved in a representation dispute are represented by an individual or labor organization . . . a showing of proved authorizations . . . from at least a majority of the craft or class must be made before the National Mediation Board will authorize an election . . . .

#### DISCUSSION

##### I. Proper Craft or Class

In determining the proper craft or class for a group of employees, the Board considers a number of factors. These factors include functional integration, work classifications, terms and conditions of employment, and work-related community of interest. *United Parcel Serv. Co.*, 30 NMB 84 (2002); *Frontier Airlines, Inc.*, 29 NMB 28 (2001); *United Airlines, Inc.*, 28 NMB 533 (2001); *US Airways, Inc.*, 28 NMB 104 (2000). It is particularly important that the employees

share a work-related community of interest. *Continental Airlines, Inc./Continental Express, Inc.*, 26 NMB 143 (1999); *LSG Lufthansa Servs., Inc.*, 25 NMB 96 (1997); *Airborne Express, Inc.*, 9 NMB 115 (1981). The Board makes craft or class determinations on a case by case basis, relying upon Board policy and precedent. *US Airways, above*; *USAir*, 15 NMB 369 (1988); *Simmons Airlines*, 15 NMB 124 (1988).

The Board examined whether Train Directors are properly included in the COSS craft or class in *Amtrak*, 10 NMB 510 (1983). In that decision, the Board rejected an application for the representation of a new craft or class of Station, Tower, and Telegraph Employees, which included Train Directors. *Id.* Specifically, the applicant wanted to separate the Telegraph group from the COSS craft or class.<sup>3</sup> *Id.* at 511. The Board found that the distinctions in the applied-for craft (formerly part of the Telegrapher craft or class) and the COSS craft or class had effectively disappeared because of technological advances. *Id.* at 519. Train orders and routing that had previously been transmitted by telegraph were now transmitted by radio and telephone. *Id.* at 517.

The Board dismissed the application stating that a craft or class separate from the COSS craft or class was inappropriate as the work of the former telegrapher employees was “commonly performed by members of the Clerical, Office, Station and Storehouse craft or class on most properties.” *Id.*; See also *Amtrak*, 21 NMB 301, 304 (1994) (the Board, in dicta, reaffirmed that Amtrak Train Directors are properly part of the COSS craft or class). The *Amtrak* decision, 10 NMB 510 (1983), is also consistent with longstanding Board policy not to fragment traditional crafts or classes. *Amtrak*, 12 NMB 80 (1985); *Eastern Airlines, Inc.*, 12 NMB 29 (1984); *Republic Airlines, Inc.*, 11 NMB 57 (1983).

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<sup>3</sup> The Clerks and Telegraphers were merged into one group in the 1971 National Agreement between Amtrak and the Brotherhood of Railway, Airline and Steamship Clerks (BRAC). *Id.* at 511.

The duties of Amtrak's Train Directors have not changed in any meaningful way since the Board's 1983 decision. In 1983, the Telegraph employees, including Train Directors, were: 1) required to pass exams on operating rules; 2) subject to the Hours of Service law; 3) required to complete various training courses, and; 4) required to have annual physical exams. *Amtrak, above*, at 516-517. The only change is that the Train Directors are now subject to a federal regulation requiring drug testing because they transport hazardous materials. 49 C.F.R. § 172.702.

MTD relies on Amtrak's Train Directors' exemption from a September 2003 "Sadie Hawkins" Displacement as evidence of their "separateness" from the COSS craft or class. While Train Directors were not part of the Displacement because of their training requirements, this is insufficient to justify their placement in a separate craft or class. Further, Train Directors were subject to the same training requirements in 1983 when the Board declined to remove them from the COSS craft or class. *Amtrak, above*.

Additionally, MTD's statement that "several Train Directors working for Amtrak in 1993 were represented by the Brotherhood of Locomotive Engineers (BLE) in New York," does not persuade the Board that Train Directors are properly a separate craft or class. In fact, Amtrak's Train Directors were never represented by the BLE. Instead, the agreement arose because Train Director positions in that location were abolished, and those former Train Directors were offered Train Dispatcher positions -- which are a separate craft or class, represented by the ATDD of BLE on Amtrak. Therefore, the Train Directors were represented by TCU until they were awarded a position in the Train Dispatcher craft or class, at which time they became ATDD members.

Accordingly, the Board finds that Train Directors remain properly part of the craft or class of Clerical, Office, Station and Storehouse Employees on Amtrak as they share a work-related community of interest with the other COSS employees.

## II. Policy of System-wide Representation

Joseph B. Eastman, drafter of the 1934 Amendments to the RLA commented that:

[T]he way in which the words ‘craft’ or ‘class’ have been defined . . . is that they would cover the entire service of a particular carrier. That is, it would . . . be all of the employees of the carrier, no matter in what shop they were located, who did that particular kind of work.

*Hearings Before the House Comm. on Interstate and Foreign Commerce on H.R. 7650, 73d Cong., 2d Sess. 44, at 57 (1934).* It is the Board’s longstanding policy that system-wide representation is only possible when the craft or class includes all employees who are eligible to belong to that craft or class -- regardless of their work locations. *LSG Lufthansa Servs., Inc.*, 25 NMB 96 (1997); *Henson Aviation, Inc.*, 18 NMB 441, 443 (1991); *Grand Truck Western R.R. Co.*, 12 NMB 228, 234 (1985) (“The necessary system-wide nature of the Railway Labor Act crafts or classes is well-established in the railway industry.”). In fact, the Board has expressly rejected the argument that geographically segregated employees be treated as a separate craft or class “where such employees do not constitute the full craft or class carrier-wide.” *Seaboard Coast Line R.R. Co.*, 6 NMB 63, 64 (1976).

When determining the scope of a carrier’s system, the Board examines the extent of consolidation of operations, labor relations and payroll functions. *Ogden Union Ry. & Depot Co.*, 16 NMB 398 (1989).

In *International Total Services (ITS)*, 20 NMB 537 (1993), the Board examined whether ITS’ Boston operation was a separate system for representation purposes. The Board concluded that ITS’ Boston operation was not a separate system because labor relations, management, accounting and payroll were all centralized functions. *Id.* at 545-546; *See also Delta Air Lines Global Services, Inc.*, 28 NMB 456 (2001) (Philadelphia employees were not a separate system because:

centralized labor relations existed; employees were subject to the same operating procedures, training, and benefits, and; paychecks were centrally issued); *See also Sky Valet*, 19 NMB 263 (1992) (Sky Valet's Philadelphia station not a separate system for representation because: operations were centrally controlled; labor relations, negotiation and administration of contracts, payroll, and accounting were centrally controlled, and; all employees were trained by an employee from headquarters and were required to follow the same policy and procedures manual).

In *Seaboard System R.R.-Clinchfield Line*, 11 NMB 217 (1984), separate CBAs and seniority rosters were found insufficient to establish that the Clinchfield Line was a separate system. Factors that led the Board to conclude that the craft or class of Locomotive Firemen and Hostlers was properly system-wide on Seaboard included that: Clinchfield did not have a separate employee payroll system; labor relations was handled out of Seaboard, and; employees of Clinchfield were subject to the common management and control of Seaboard. *Id.* at 222, 226; *See also Seaboard Coast Line R.R., above*, (Board held that Seaboard's Georgia Reclamation Plant was not a separate system because labor relations policy was jointly managed out of the same corporate office and employees were subject to the common management and control of the larger system; the fact the Plant employees were governed by a separate CBA was not dispositive of the system-wide issue); *See also Galveston Wharves*, 4 NMB 200, 203 (1962) (private representation agreements which do not conform to the recognized craft or class lines cannot be relied upon to modify requirements of the statute).

While Amtrak's Off-Corridor and Northeast Corridor employees have separate CBAs, the sole factor of a separate CBA is not dispositive of the system-wide inquiry. *See Seaboard System R.R., above; Seaboard Coast Line R.R., above; Galveston Wharves, above.* MTD argues that Train Directors in Chicago have more responsibility than those on the Northeast Corridor and are in essence Train Dispatchers, as they are able to "relay a movement instruction to a train" without the supervision of a Train Dispatcher. Further, MTD states that

the Chicago Train Directors are subject to different operating rules. However, these factors alone are insufficient to support a finding of a separate system for the Off-Corridor or Chicago Train Directors.

Amtrak's Off-Corridor operations are clearly part of its system-wide operations, as: 1) all employees and operations are subject to the common management and centralized control of Amtrak's Washington, D.C. headquarters; 2) labor relations and grievances for all Amtrak regions are centrally handled out of Washington, D.C.; 3) employee training is centrally managed, though administered locally, and; 4) financial matters and employee payroll is centrally administered out of Amtrak's headquarters in Washington, D.C.

Finally, the Board has previously held that Amtrak's Northeast Corridor operations are not separable from its overall operations. *See Amtrak*, 12 NMB 80, 89 (1985) (Board refused to separate Amtrak's Auto Train from the Northeast Corridor for purposes of system-wide representation). Based on the above factors and discussion, it is clear that Amtrak's Chicago Train Directors are part of Amtrak's larger system for purposes of representation.

### III. Showing of Interest

As discussed, the Board has found that Train Directors are properly part of the system-wide craft or class of Clerical, Office, Station and Storehouse Employees on Amtrak and that its Off-Corridor or Chicago operations do not constitute a separate system. Therefore, MTD needed to provide a majority showing of interest for the entire system of Amtrak's 4,327 COSS employees. Here, MTD has failed to establish the necessary showing of interest for the representation of Amtrak Train Directors, who are part of the system-wide craft or class of Clerical, Office, Station and Storehouse Employees. *See Delta Airlines Global Services, Inc., above* (Board dismissed the United Independent Union's application to represent Ramp Agents at the Philadelphia International Airport as they failed to provide a showing of interest on a system-wide basis).

CONCLUSION

Based on the foregoing, the Board finds that Train Directors are properly part of the system-wide craft or class of Clerical, Office, Station and Storehouse Employees. MTD has failed to provide a sufficient showing of interest to authorize an election. Therefore, NMB File No. CR-6803 has been converted to NMB Case No. R-6988 and dismissed.

By direction of the NATIONAL MEDIATION BOARD.



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