



**NATIONAL MEDIATION BOARD**

WASHINGTON, DC 20572

(202) 692-5000

31 NMB No. 49  
January 29, 2004

Larry L. Phipps, President  
Roberta J. Kane  
Vice President-  
Administration & Human  
Resources  
Portland & Western  
Railroad, Inc.  
650 Hawthorne Ave., S.E.  
#220  
Salem, OH 97301

Jo A. DeRoche  
Counsel for Portland &  
Western Railroad  
Weiner Brodsky Sidman  
Kider PC  
1300 19<sup>th</sup> Street, N.W.  
5<sup>th</sup> Floor  
Washington, DC 20036

William C. Walpert  
General Secretary Treasurer  
Thomas C. Brennen, Esq.  
IBT/IBLE  
1370 Ontario Street  
Cleveland, OH 44113-1702

Roland P. Wilder  
Counsel for IBT/IBLE  
Baptiste & Wilder, P.C.  
1150 Connecticut Ave., N.W.  
Suite 500  
Washington, DC 20036

Re: NMB Case No. R-6966  
Portland & Western Railroad

Gentlemen and Ladies:

This determination addresses the December 11, 2003, Motion for Reconsideration filed by Portland & Western Railroad, Inc. (P&W or Carrier). P&W seeks reconsideration of the National Mediation Board's (Board) December 9, 2003 decision finding that P&W and Willamette & Pacific Railroad, Inc. (W&P) constitute a single transportation system. *Portland & Western R.R., Inc.*, 31 NMB 71 (2003).

The International Brotherhood of Teamsters,  
International Brotherhood of Locomotive Engineers Rail

Operating Employees' Council (IBT/IBLE or Organization) filed its opposition to the Motion for Reconsideration on December 18, 2003. For the reasons discussed below, the Board finds that P&W's Motion fails to state sufficient grounds to grant the relief requested.

I.

CONTENTIONS

Portland & Western Railroad

The Carrier requests the Board reconsider its decision "taking into account that P&W and W&P, in addition to having maintained all corporate, legal and regulatory formalities for separate entities, have not consolidated their train operations."

IBT/IBLE

The IBT asserts that P&W's Motion for Reconsideration merely reasserts arguments previously presented to the Board and fails to identify any material error of law or fact.

II.

DISCUSSION

A. Motion for Reconsideration

The Board's Representation Manual (Manual) Section 11.0 states:

Any motions for Reconsideration of Board determinations must be received by the Chief of Staff within two (2) business days of the decision's date of issuance. An original and one (1) copy of the motion must be filed with the Chief of Staff. The motion must comply with the NMB's simultaneous service requirements of Manual Section 1.201. The motion must state the points of

law or fact which the participant believes the NMB has overlooked or misapplied and the grounds for the relief sought. Absent a demonstration of material error of law or fact or circumstances in which the NMB's exercise of discretion to modify the decision is important to the public interest, the NMB will not grant the relief sought. The mere reassertion of factual and legal arguments previously presented to the NMB is insufficient to obtain relief.

The Board finds that P&W has stated sufficient grounds to grant reconsideration.

B. Decision on Reconsideration

The Board only grants relief on Motions for Reconsideration in limited circumstances:

The Board recognizes the vital importance of the consistency and stability of the law as embodied in . . . NMB determinations . . . . Accordingly, the Board does not intend to reverse prior decisions on reconsideration except in the extraordinary circumstances where, in its view, the prior decision is fundamentally inconsistent with the proper execution of the NMB's responsibilities under the Railway Labor Act.

*Virgin Atlantic Airways*, 21 NMB 183, 186 (1994).

The Carrier reasserts its argument from the initial investigation that the W&P and P&W maintain "all corporate, legal and regulatory formalities for separate entities, [and] have not consolidated their train operations." In its determination, the Board considered the evidence and arguments submitted by the participants and found:

In addition to sharing common management and administrative functions, the human resources

and labor relations functions for W&P and P&W are handled together in the same corporate office. All marketing, customer service functions and dispatching for W&P and P&W are centralized. Further, W&P and P&W share the same President, Vice-President of Marketing, Director of Customer Service, Chief Mechanical Officer, Manager of Asset Utilization, Assistant Vice-President of Transportation, Manager of Human Resources and Finance, and Assistant Vice President of Engineering.

*Portland & Western R.R., Inc.*, 31 NMB 71, 80 (2003).

The Board also found that W&P and P&W use the same set of operating rules and the same corporate safety handbook. *Portland & Western, above*. In addition, the Board found that employees of W&P and P&W receive the same wages and benefits, and are subject to the same disciplinary policies and personnel practices. *Portland & Western, above*.

The Board noted that although W&P and P&W have separate regulatory authority, the route map on the Genesee & Wyoming, Inc. website for W&P and P&W shows only the P&W logo and does not distinguish between the lines of the carriers. *Portland & Western, above*. Furthermore, the System Time Table for W&P and P&W is printed as a single document. *Portland & Western, above*.

The Board found that the cumulative evidence demonstrated that the W&P and P&W constitute a single transportation system. Here, P&W reasserts factual and legal arguments already considered by the Board. P&W may disagree with the Board's assessment of the evidence, however, P&W's reassertions are insufficient to obtain the relief requested.

CONCLUSION

The Board has reviewed P&W's and the IBT/IBL's submissions. P&W has failed to demonstrate a material error of law or fact or circumstances in which the Board's exercise of discretion to modify the decision is important to the public interests. Furthermore, the Board finds that P&W has failed to show that the prior decision is fundamentally inconsistent with the proper execution of the Board's responsibilities under the Railway Labor Act, 45 U.S.C. § 151, *et seq.* Accordingly, any relief upon reconsideration is denied.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Mary L. Johnson".

Mary L. Johnson  
General Counsel