



NATIONAL MEDIATION BOARD

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38 NMB No. 54

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Re: NMB Case No. R-7290
Illinois Central Railroad

Participants:

This determination addresses the Motion for Reconsideration filed by the Brotherhood of Communication Workers (BCW) on May 31, 2011. BCW seeks reconsideration of the National Mediation Board's (Board or NMB) May 26, 2011 decision finding that the Equipment Technician, Equipment Maintainer, Senior Equipment Technician, Field Engineer, Cable Splicer, and Installer employees sought to be represented by BCW at Illinois Central Railroad (Carrier or IC) are part of the Electrical Workers craft or class at IC. *Illinois Central Railroad*, 38 NMB 206 (2011).

IC filed its response to the Motion for Reconsideration on June 3, 2011, and the International Brotherhood of Electrical Workers (IBEW) filed its response on June 6, 2011. For the reasons discussed below, the Board finds that BCW's Motion fails to state sufficient grounds to grant the relief requested.

I.

CONTENTIONS

BCW

BCW requests the Board to reconsider its decision finding the employees it sought to represent are part of the Electrical Workers craft or class currently represented by IBEW. BCW contends the Board's conclusion was in error primarily because: 1) the facts of this case are similar to *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 88 (2009), where the Board found that Simulator Technicians were a separate craft or class that did not belong in the Mechanics and Related Employees craft or class; 2) the employees in question are not covered by Rule 51 (Classification of Electrician) of Agreement B, the contract controlling their employment, nor is there is any evidence that they are so covered; 3) the employees in question are not eligible for the same IBEW long-term benefits available to electricians covered by Agreement A, a separate contract with IC; and 4) the manner in which IBEW negotiated the two contracts covering the employees in question and the other IBEW-represented employees violates the IBEW constitution.

IC

IC reiterates its position in the case below that the employees in question can be treated either as a separate craft or class, or as part of the larger craft or class of Electrical Workers. IC also notes that the Board's Representation Manual (Manual) Section 11.0 states that "[r]econsideration may not be sought from the NMB's certification or dismissal."

IBEW

IBEW contends, like IC, that BCW's motion should be denied outright based on Manual Section 11.0, as quoted above. IBEW further argues that, based on longstanding Board principles, BCW's arguments do not demonstrate that a different result is warranted.

II.

DISCUSSIONA. Motion for Reconsideration

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

Reconsideration may not be sought from the NMB's certification or dismissal. Any motions for reconsideration of Board determinations must be received by the General Counsel within two (2) business days of the decision's date of issuance. . . . 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.

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); *see also Portland & Western R.R.*, 31 NMB 193 (2004); *Mesa Airlines, Inc./CCAir, Inc./Air Midwest, Inc.*, 30 NMB 65 (2002).

1. Reconsideration of Board Dismissals

Both IC and IBEW contend that Manual Section 11.0 prohibits reconsideration of a Board determination that results in the dismissal of a proceeding. The limitation on motions for reconsideration contained in Manual Section 11.0 refers to "certification or dismissal." The language refers to the Board's determinations following an election tally that results in the certification of

a representative or the dismissal of an application based on the tally. Manual Section 11.0 is not intended to bar motions for reconsideration from Board decisions in other circumstances.

2. Case Cited by BCW

BCW contends that the Board should have found a separate craft or class based on the ruling in *Northwest Airlines, Inc./Delta Air Lines, Inc.*, above. In that case, the Board found that Simulator Technicians at the single transportation system, resulting from the Delta's acquisition of Northwest, constituted a craft or class separate from the Mechanics and Related Employees craft or class that frequently included Simulator Technicians in the past. In citing *Northwest Airlines, Inc./Delta Air Lines, Inc.*, above, BCW notes that the Board's finding relied on the facts that: (1) the Simulator Technicians skill set changed over time and diverged from those of other Mechanics and Related Employees, (2) Simulator Technicians had little interaction with other Mechanics and Related Employees, (3) Simulator Technicians had different training and licenses from Mechanics and Related Employees, (4) Simulator Technicians worked in different locations and reported to different supervisors than Mechanics and Related Employees, and (5) Delta and Northwest had treated Simulator Technicians as a separate craft or class from Mechanics and Related Employees.

There are many factual similarities between this matter and *Northwest Airlines, Inc./Delta Air Lines, Inc.*, above. The skill set of the employees at issue here have evolved over time based on technological changes, they have little interaction with other electricians, they have different licenses, and they work in a different location under separate supervision. However, there are key differences from *Northwest Airlines, Inc./Delta Air Lines, Inc.*, that make reliance on that decision unavailing.

First, although not dispositive, the Carrier here has not treated the employees at issue as a separate craft or class. They have a separate contract, but they have been considered to be Electrical Workers by the Carrier and IBEW.

Second, employees in this matter are part of a specific craft or class that encompasses all employees performing electrical work. The Mechanics and Related Employees craft or class considered in *Northwest Airlines, Inc./Delta Air Lines, Inc.*, is historically a craft or class of employees performing different jobs that are functionally related to the maintenance tasks for air carriers. Because the jobs in the Mechanics and Related Employees craft or class vary widely to begin with, as one job shifts in nature, it is more natural to sever the connection to the broader craft or class if the function of that job no longer pertains to the maintenance function. In fact, the Board concluded "that Simulator Technicians at the Carriers are properly a separate craft or class, as they do not share a 'functional' community of interest with the Mechanics and Related Employees craft or class." *Id.* at 111.

Third, the record in this case demonstrates that the employees in question perform electrical work. Evidence provided by both the Carrier and the BCW itself shows that the employees in question work under a contract referring to them as electricians and “that much of the work the disputed employees perform is traditional electrician work, although done in the setting of the telecommunications area.” *Illinois Central Railroad*, 38 NMB 206, 214-215 (2011). Accordingly, the disparate functional community of interest relied on in *Northwest Airlines, Inc./Delta Air Lines, Inc.*, is not present in this case.

Because of the above distinctions between this matter and *Northwest Airlines, Inc./Delta Air Lines, Inc.*, above, the Board finds no reason to alter its determination in this matter based on the decision in that case.

3. Rule 51 of the Controlling Contract

Rule 51 of Agreement B covers the “Classification of Electrician.” BCW asserts that the employees it seeks to represent are not covered by Rule 51. BCW also alleges that there is no evidence that Rule 51 ever applied to the employees in question. The record in the “Findings Upon Investigation – Dismissal” proceeding which is being reconsidered contains evidence from the Carrier that “the work performed by the classifications at issue is described in Rule 51 (Classification of Electrician.” The Board relied, in part, on IC’s evidence on this point in ruling that the employees at issue belong in the Electrical Workers craft or class. BCW’s bare assertion that these employees are not covered by Rule 51 will not overcome the Carrier’s evidence or alter the Board’s determination.

4. IBEW Benefits

BCW contends that employees covered by Agreement A receive certain long term benefits from IBEW that are not available to employees covered by Agreement B. The treatment of these employees by their union, however, is not germane to employee placement within the appropriate craft or class. Craft or class placement is determined by the employees’ work and the employee-employer relationship. Accordingly, the availability of union benefits is not a basis for changing the Board’s craft or class determination.

5. IBEW Constitution

BCW contends that IBEW’s bargaining for Agreements A and B as one is a violation of the IBEW constitution. Without considering whether in fact IBEW breached its own constitution, we find that this allegation, like the IBEW benefits issue discussed above, is not germane to an NMB determination on the appropriate craft or class placement for a group of employees.

CONCLUSION

The Board has reviewed the submissions of BCW, IC, and IBEW. BCW 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 interest. Furthermore, the Board finds that BCW 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