



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

UNITED TRANSPORTATION
UNION AND THE
INTERNATIONAL ASSOCIATION
OF MACHINISTS AND
AEROSPACE WORKERS

alleging representation disputes
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended

involving employees of

COLUMBIA & COWLITZ RAILWAY,
LLC AND PATRIOT WOODS
RAILROAD, LLC

38 NMB No. 62

CASE NO. R-7296
(File Nos. CR-7006 and
CR-7007)

FINDINGS UPON
INVESTIGATION

July 22, 2011

FINDING UPON INVESTIGATION

This determination addresses the applications of the United Transportation Union (UTU) and the International Association of Machinists and Aerospace Workers (IAM) alleging representation disputes pursuant to the Railway Labor Act (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth).^{*} The UTU alleged a representation dispute among “Operating Employees” of Columbia & Cowlitz Railway, LLC and Patriot Woods Railroad, LLC and requested an investigation to determine the existence of a single carrier. The IAM alleged a representation dispute among “Non-Operating Employees” at Patriot Rail Corp.

^{*} 45 U.S.C. §151, *et. seq.*

For the reasons set forth below, the National Mediation Board (Board or NMB) concludes that Columbia & Cowlitz Railway, LLC and Patriot Woods Railroad, LLC constitute a single transportation system. The proper craft or class for the employees is “Operating/Non-Operating Employees.”

PROCEDURAL BACKGROUND

On January 28, 2011, the UTU filed an application alleging a representation dispute involving the “Operating Employees” on Columbia & Cowlitz Railway, LLC and Patriot Woods Railroad, LLC. The application also requested an investigation to determine the existence of a single carrier for representation purposes among the craft or class. The application was assigned NMB File No. CR-7006 and Angela I. Heverling was assigned as the Investigator. On February 2, 2011, the IAM filed an application alleging a representation dispute involving the “Non-Operating Employees” on Patriot Rail Corp. The application was assigned NMB File No. CR-7007 and Angela I. Heverling was assigned as the Investigator.

On February 15, 2011, Columbia & Cowlitz Railway, LLC (CLC) submitted a position statement in response to both applications asserting that CLC constitutes a single transportation system and is the appropriate carrier for both applications. Regarding the craft or class issue, CLC asserts that the appropriate crafts or classes for the employees at issue are “Transportation Workers” and “Mechanics.” The UTU and the IAM filed responses on March 9, 2011.

ISSUE

Is CLC operating as a single transportation system? If so, what are the representation consequences?

CONTENTIONS

CLC

CLC asserts that it is a single transportation system, effective in late 2010 when it assumed operation of the former Columbia & Cowlitz Company and Weyerhaeuser Woods Railroad and offered employment to most of those companies’ active employees.

CLC asserts that the appropriate crafts or classes for the employees covered by the applications are Transportation Workers and Mechanics. CLC bases this assertion on the small number of employees, the cross utilization of the employees who it characterizes as Transportation Workers, and the

separate interests and working conditions of the employees who it characterizes as Mechanics. According to the Carrier, categorizing the employees as Operating and Non-Operating employees would be inaccurate because the Transportation Workers perform both operating and non-operating work.

UTU

The UTU does not object to CLC's characterization as a single transportation system. The UTU, however, asserts that, consistent with NMB practice in establishing crafts or classes at small railroads, the employees should be divided into the crafts or classes of Operating and Non-Operating Employees with those who the Carrier has characterized as Transportation Workers being Operating Employees while those the Carrier has identified as Mechanics should be Non-Operating Employees. UTU also contends that two employees who the Carrier has characterized as Transportation Workers are carmen and should be placed in the Non-Operating Employees craft or class.

IAM

The IAM also agrees that CLC is a single transportation system. IAM concurs with UTU's position that Operating and Non-Operating Employees are the appropriate crafts or classes. IAM also concurs with the UTU's contention that the two employees described as carmen by the UTU (and as Transportation Workers by the Carrier) should be in the Non-Operating Employees craft or class.

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.

CLC is a common carrier as defined in 45 U.S.C. § 151.

II.

The IAM and UTU are labor organizations and/or representatives as provided by 45 U.S.C. § 151, Sixth, and § 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 the purposes of this chapter.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and shall designate who may participate as eligible voters in the event an election is required.

STATEMENT OF FACTS

I.

The Carrier reports that the applications in CR-7006 and CR-7007 involve employees of CLC. On December 31, 2010, CLC assumed the operation of the Columbia and Cowlitz Railway Company (C&C Company) and the Weyerhaeuser Woods Railroad (Woods RR). This occurred following the purchase of these railroads and others, which were formerly assets of Weyerhaeuser NR Company, by Patriot Rail LLC. Patriot Rail is a holding company that acquires and operates short line and regional freight railroads. This sale of assets closed on December 30, 2010.

All of the employees in question were formerly employees of the C&C Company or Woods RR. The C&C Company was a carrier under the jurisdiction of the RLA. *Columbia & Cowlitz Railway Company*, 6 NMB 527 (1978). As of December 30, 2010, it employed approximately nine non-supervisory employees. Woods RR was a division of Weyerhaeuser’s manufacturing company, which provided private rail service only to Weyerhaeuser’s facilities, and its employees were organized under the National Labor Relations Act. As of December 31, 2010, Woods RR employed approximately 12 non-supervisory employees. In November of 2010, CLC offered employment to most of the former employees of C & C Company and Woods RR.

According to the Carrier, the C&C Company and Woods RR historically cross utilized their employees and this continues under CLC. All of the employees who the Carrier characterizes as Transportation Workers are listed on a single seniority roster and perform whatever work they are qualified to perform. In the initial period following the combination of

operations, these workers performed operating assignments on their original property; however, cross training and cross utilization are underway and most employees are qualified on both prior properties. The remaining employees, who the Carrier characterizes as Mechanics, work exclusively at a facility in Longview, Washington. The Carrier states that there is “only one fully integrated workforce for both former properties”

Patriot Rail’s website recognizes the combined former C&C Company and Woods RR as a single railroad under the management of General Manager Jason Hilliard.

II.

According to a declaration by Jason Hilliard, General Manager of CLC, the Carrier’s workforce is composed of two groups of employees who the Carrier characterizes as Mechanics and Transportation Workers.

Three locomotive mechanics work full-time and exclusively on locomotive repair and maintenance at a Longview, WA shop. They perform no operating functions and report to Hilliard.

According to the Carrier, 14 Transportation Workers share the other functions of the railroad, including operating the locomotives, coupling cars, lining switches, performing car repair, and maintaining the track and facilities. The majority of the work many of these employees perform, however, is operating duties. All of these workers report to the Trainmaster, Jason Coleman, and are listed on a single seniority roster.

Because the new railroad recently began operations, CLC is in the process of cross-training workers. The Transportation Workers were hired from the C&C Company and Woods RR and possess a variety of experience and skills; however, the Carrier reports that all of these employees are expected to become qualified to operate trains. The main priority for the Carrier is “to get its existing engineers certified to operate on both predecessor segments and its existing conductor/brakemen qualified to operate on both segments.” Additionally, according to the Carrier

The next order of priority is to hire new and/or train existing employees to be able to work as conductor/trainmen on the combined properties. That step is underway with the hiring of 4 additional workers and the training of (one of the carmen), and should be completed before the end of the year. Finally, all Transportation Workers will be trained as engineers, but

that is an extended process that may take a number of years to complete.

According to the Carrier, these workers will continue to perform non-operating duties as necessary, although this will probably not exceed 25 percent of their time.

According to Hilliard, the two employees who the organizations characterize as carmen also work primarily at the Longview facility, where the locomotive mechanics work. The primary work of these individuals has been maintenance and repair of rail cars. They kept CLC's fleet of flat cars and tank cars in serviceable condition but do not have the skills required to work on locomotives. Both employees also routinely work on maintenance of way projects and other assignments away from the car shop. One of these carmen, along with the four new employees referenced above, has started a training program to qualify for conductor and brakeman work and the Carrier reports that it does not plan to replace these carmen if they retire or move to another position.

DISCUSSION

I.

The Board's Authority

45 U.S.C. § 152, Ninth, authorizes the Board to investigate disputes arising among a carrier's employees over representation and to certify the duly authorized representative of such employees. The Board has exclusive jurisdiction over representation questions under the RLA. *General Comm. of Adjustment v. M.K.T. R.R. Co.*, 320 U.S. 323 (1943); *Switchmen's Union of N. Am. v. Nat'l Mediation Bd.*, 320 U.S. 297 (1943). In *Air Line Pilots Ass'n, Int'l v. Texas Int'l Airlines, Inc.*, 656 F.2d 16, 22 (2d Cir. 1981), the court stated, "[t]he NMB is empowered to . . . decide representation disputes arising out of corporate restructurings."

II.

Single Transportation System

The Board's Representation Manual (Manual) Section 19.4 provides that: "Any organization or individual may file an application, supported by evidence of representation or a showing of interest . . . seeking a NMB determination that a single transportation system exists." Manual Section 19.501 provides

the factors for determining whether a single system of transportation exists.

In *Trans World Airlines/Ozark Airlines*, the Board cited the following indicia of a single transportation system:

[W]hether a combined schedule is published; how the carrier advertises its services; whether reservation systems are combined; whether tickets are issued on one carrier's stock; if signs, logos and other publicly visible indicia have been changed to indicate only one carrier's existence.

. . . .

Other factors investigated by the Board seek to determine if the carriers have combined their operations from a managerial and labor relations perspective. Here the Board investigates whether labor relations and personnel functions are handled by one carrier; whether there are a common management, common corporate officers and interlocking Boards of Directors; whether there is a combined workforce; and whether separate identities are maintained for corporate and other purposes.

14 NMB 218, 236 (1987).

The Board finds a single transportation system only when there is substantial integration of operations, financial control, and labor and personnel functions. *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 88 (2009); *Florida N. R.R.*, 34 NMB 142 (2007); *GoJet Airlines, LLC and Trans States Airlines, Inc.*, 33 NMB 24 (2005); *Burlington N. Santa Fe Ry. Co.*, 32 NMB 163 (2005).

In December of 2010, CLC assumed the operation of the former C&C Company and Woods RR and maintained most of their former employees. Jason Hilliard is General Manager of the Carrier. The former employees of C&C Company and Woods RR are cross trained and report to common management. CLC is increasingly utilizing all employees on both former properties as they become cross trained. All of the employees who the Carrier describes as Transportation Workers are on a single seniority roster.

As evidenced by CLC's website, CLC is held out to the public as one railroad, owned by holding company Patriot Rail.

Based upon the application of the principles cited above to the

facts established in this investigation, the Board finds that CLC, composed of the former C&C Company and Woods RR, is a single transportation system.

III.

Craft or Class Issue

In determining the proper craft or class for a group of employees, the Board considers a number of factors, including functional integration, work classifications, terms and conditions of employment, and work-related community of interest. *Florida Northern R.R.*, 34 NMB 142 (2007); *Frontier Airlines, Inc.*, 29 NMB 28 (2001); *United Airlines, Inc.*, 28 NMB 533 (2001); *US Airways, Inc.*, 28 NMB 104 (2000). The Board makes craft or class determinations case by case, based upon Board policy and precedent. *US Airways, above*; *USAir*, 15 NMB 369 (1988); *Simmons Airlines*, 15 NMB 124 (1988).

The Board has held that “historical patterns of representation in the railroad industry provide the basis for craft or class determinations.” *Talleyrand Terminal R.R. Co.*, 35 NMB 28, 32 (2007); *Terminal R.R. Ass’n of St. Louis*, 28 NMB 187, 199 (2000); *Duluth, Missabe & Iron Range Ry. Co.*, 16 NMB 495, 500 (1989). The Board has noted, however, that cross-utilization of employees across class lines presents difficulties in determining craft or class issues. For this reason, the Board does not base craft or class determinations solely on historical patterns of representation, and in recent years, the Board has recognized that on some smaller carriers, employees may work in more than one craft or class over a period of time. *See Florida East Coast R.R. Co.*, 21 NMB 35, 44 (1993); *Kiamichi R.R. Co., Inc.*, 19 NMB 212, 219 (1992).

At this Carrier, there is significant cross-utilization among most of its employees. With the exception of the three locomotive mechanics in a workforce of 17 employees, all employees perform operating and non-operating duties and no employee currently performs duties exclusive to one traditional railroad craft or class. According to the Carrier, all Transportation Workers will continue to spend up to 25 percent of their time performing non-operating duties.

The main disagreement among the participants is over the issue of those two employees who the organizations characterize as carmen. The carmen perform primarily non-operating duties and share a location with the locomotive mechanics; however, they also share a community of interest with the transportation workers due to the nature and structure of the Carrier’s operations.

For these reasons, and due to the small size of the workforce, one combined craft or class of Operating/Non-Operating Employees is appropriate in this case. In *Florida Northern R.R., above*, the Board considered whether the employees at issue were operating as one consolidated craft or class of both Operating and Non-Operating Employees and ultimately determined that they were not. In that case, the majority of employees in a much larger workforce spent 100 percent of their time performing either operating or non-operating duties. *Id.* at 159. Here, there is a small workforce with the majority of employees performing duties of several of the traditional railroad crafts or classes.

CONCLUSION

The Board finds that CLC is operating as a single transportation system and that the proper craft or class for the employees is “Operating/Non-Operating Employees.” Accordingly, File Nos. CR-7006 and CR-7007 are converted to NMB Case No. R-7296.

Pursuant to Manual Section 19.6, the investigation will proceed to address the representation of this craft or class. Any Intervenor has 14 days from the date of this determination to file an application supported by a showing of interest of at least 35% of the single transportation system or to supplement the showing of interest in accordance with Manual Sections 19.601 and 19.603.

By direction of the NATIONAL MEDIATION BOARD.



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