



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

INTERNATIONAL ASSOCIATION
OF SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS

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

involving employees of

TEXAS & NORTHERN RAILWAY,
COMPANY

40 NMB No. 15

CASE NOS. R-7347
AND R-7348
(FILE NO. CR-7080)

FINDINGS UPON
INVESTIGATION

November 29, 2012

This determination addresses the application of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART or Organization) alleging a representation dispute pursuant to the Railway Labor Act (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth).¹ SMART alleged a representation dispute among “Operating and Maintenance Employees” of Texas & Northern Railway Co. (T&N or Carrier).

For the reasons set forth below, the National Mediation Board (NMB or Board) concludes that the proper crafts or classes for the employees covered by the application are Operating Employees and Non-Operating Employees.

¹ 45 U.S.C. § 151, *et. seq.*

PROCEDURAL BACKGROUND

On September 7, 2012, SMART filed an application alleging a representation dispute involving Operating and Maintenance Employees at T&N. The application was assigned NMB File No. CR-7080 and Cristina Bonaca was assigned as the Investigator.

On September 18, 2012, T&N filed its List of Potential Eligible Voters and signature samples. On September 26, 2012, Investigator Bonaca requested position statements from the participants on the issue of the proper craft or class. The Carrier was also directed to provide position descriptions for the 37 employees covered by the application. The participants provided this information to the Board on October 10, 2012. The Investigator requested preponderance information for a 30 day period for the employees covered by the application. The Carrier provided this information to the Board on November 8, 2012.

ISSUE

What is the proper craft or class for employees at T&N covered by the application?

CONTENTIONS

SMART

SMART contends that the appropriate craft or class of employees for representation purposes at T&N is Operating/Non-Operating Employees. The Organization argues that T&N has departed from utilizing workers in accordance with traditional craft or class lines, and sought to maximize workplace flexibility by scheduling workers as it deems fit. SMART states that the significant cross-utilization among a small number of employees makes a finding of a combined craft or class of Operating/Non-Operating Employees appropriate at T&N. *Columbia & Cowlitz, Ry., LLC and Patriot Woods R.R., LLC*, 38 NMB 264 (2011).

T&N

The Carrier states that the proper craft or class for the group of 37 employees identified in SMART's application is Operating/Non-Operating Employees. All 37 employees are on a single seniority roster, are subject to similar terms and conditions of employment, report to the same two managers,

and receive similar wages and fringe benefits. The Carrier states that while these employees are hired into job titles which are either Operating or Non-Operating, there is significant cross-training and cross-utilization. The Carrier contends that cross-utilization is a vital practice for T&N as it allows for its continued efficient operations. T&N argues that these employees are part of a single, integrated workforce that share a community of interest due to the nature, structure, and small size of T&N's operations. In sum, the Carrier believes a combined craft or class of Operating/Non-Operating Employees is appropriate.

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.

T&N is a common carrier as defined in 45 U.S.C. § 151.

II.

SMART is a labor organization and/or representative 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

SMART provided excerpts from an unratified collective bargaining agreement between the United Steelworkers and the Carrier as evidence of

T&N's commitment to cross-utilization of its employees. The Organization also provided a weekly schedule for the employees for the week of September 30-October 6, 2012.

T&N's counsel, Michael P. Duff, provided facts about the employees covered by SMART's application. He stated that all of the employees covered by the application are part of a single seniority roster; are subject to similar terms and conditions of employment; work at the same location; report to the same two managers, Tracy Edwards and Brian Deamer; perform their duties in the same industrial setting; and receive similar wages and fringe benefits.

Duff stated that there is significant cross-training and cross-utilization among the Operating and Non-Operating employees. While employees are hired into specific jobs, they are advised during the interview process and throughout their employment that they will be trained on and assigned other job duties as needed. Employees in the most populated job titles, Train Crew Workers/Yardmaster (Operating) and Track Crew Repairmen (Non-Operating), can be and are assigned to perform and/or assist with each others' duties.

Job Descriptions

The Carrier provided the six job descriptions in the applied-for group.

1. Maintenance Tech-Car (Car Repairer) – responsible for the building, re-building, repairing and re-railing of railroad cars. ... Job responsibilities include: inspect, repair and maintain all types of railroad cars; replace wheels, draft gears and safety appliances; test airbrake system, re-rail cars and locomotive; adjust and bind loads; clean, prepare and paint cars; use various hand, electric and pneumatic power tools; and use burning torch and equipment.
2. Maintenance Technician Locomotive – responsible for the inspection, repair, and mechanical maintenance of diesel locomotives and other mobile equipment in field and shop environments, or maintenance of electrical components on diesel locomotives, road maintenance equipment, cranes, air compressors, and building and shop facilities equipment. Job responsibilities include:

- Receives instructions regarding work to be done. Determines materials and required tools. Communicates written and/or verbal findings of inspections to Supervisor.
 - Performs inspection utilizing meters, analyze trouble areas and makes repairs as required.
 - Performs necessary electrical tests, removes, disassembles, replaces, repairs, modifies, rebuilds, assembles, adjusts, and maintains batteries and all electrical equipment or components on locomotives, road maintenance equipment, lighting circuits, crane circuits, air compressors, building and shop facilities, and equipment. Performs incidental heating and burning.
 - Duties may also include working on railroad signal systems, which may require the ability to perform strenuous work using hand tools....
 - Inspects, maintains and repairs locomotives, road maintenance equipment and other on and off road mobile equipment.... Performs welding and building.
3. Track Equipment Operator – responsible for operation of mobile equipment that supports track repair activities. Job responsibilities: must be capable of operating equipment used to maintain, repair, replace and construct track such as: tie adzing equipment, spike pulling and driving equipment, track lining and cleaning equipment, ballast regulating equipment, chain saws, paving breakers, portable and self-propeller air compressors, portable snow plows...etc.
4. Track Crew Repairman (Track Laborer) – entry-level Maintenance of Way position responsible for the repair and maintenance of railroad tracks and other supporting structures. The Track Laborer works outdoors in industrial settings, in all weather conditions. Job responsibilities include: lock tracks out and operate rail switches as instructed; gather tools necessary to perform maintenance/repair tasks; operate manual, pneumatic, and burning tools

necessary to perform rail maintenance and repair work; drive/remove spikes, drill holes in rail/ties, remove set/bolt plates on ties; pre-assemble track sections for usage at a later time; maintain cleanliness of Maintenance of Way tool storage area; communicate with Track Equipment operators in the performance of track maintenance and fabrication work; and perform other general labor work as required.

5. Train Crew Worker (Train Service) – transportation position responsible for the operation of locomotives moving raw materials, finished products, and empty railcars. Train Service Employees work outdoors in industrial settings, in all weather conditions. May work as conductor, engineer, or brakeman depending upon training and qualifications. Job responsibilities include: communicate via radio transmitter with crew members and workers in the Yard Office regarding rail transportation work to be performed; transport loaded and unloaded cars to and from customers for interchange with other rail carriers; observe hand and radio signals in the yard in accordance with railroad rules and regulations; operate track switches as needed; perform procedures required to couple/uncouple rail cars; push/pull drawhead into place to align for railcar coupling; apply hand brakes on rail cars not in active use; and maintain cleanliness of locomotive cab.
6. Yardmaster – provides direction to train service crews involved in the distribution of rail traffic at facilities in Lone Star, TX, and to other customers. Job responsibilities include: provide instructions to train crews about sequencing of train moves in any given shift, using switching orders and other written instructions; may also act as a member of the train crew in the capacity of an engineer, conductor, or brakeman; and perform safe job briefings, safety huddles and other safety activity in support of the company's safety program.

Preponderance Data

Section 9.212 of the Board's Representation Manual describes the preponderance standard:

Employees who perform work in more than one craft or class may be eligible to vote if the preponderance of their work time is spent performing job functions encompassed by the craft or class during a time period specified by the Investigator. . . . Absent unusual circumstances, a period of 30 to 90 calendar days will be used by the Investigator for a preponderance check.

At the request of the Investigator, the Carrier provided cross-utilization data for the month of September. The Carrier summarized the data stating that out of 37 employees, "six (6) employees holding non-operating titles performed some operating duties, and one (1) employee holding an operating title performed some non-operating duties." The Train Crew Worker, Operating Employee, spent 20 percent of his time performing operating duties, and 80 percent of his time performing non-operating duties. The six Non-Operating Employees performed work as follows for the month of September: 5 percent operating /95 percent non-operating; 6 percent operating/94 percent non-operating; 50 percent operating/50 percent non-operating; 35 percent operating/65 percent non-operating; 25 percent operating/75 percent non-operating; and 15 percent operating/85 percent non-operating. In sum, 19 percent of T&N's workforce was cross-utilized for the month of September.

DISCUSSION

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. *Columbia & Cowlitz, Ry., LLC and Patriot Woods R.R., LLC*, 38 NMB 264 (2011); *Florida Northern R.R.*, 34 NMB 142 (2007); *Frontier Airlines, Inc.*, 29 NMB 28 (2001); *United Airlines, Inc.*, 28 NMB 533 (2001). The Board makes craft or class determinations case by case, based upon Board policy and precedent. *USAir*, 15 NMB 369 (1988); *Simmons Airlines*, 15 NMB 124 (1988).

The Board recognizes that "historical patterns of representation in the railroad industry provide the basis for craft or class determinations." *Terminal R.R. Ass'n of St. Louis*, 28 NMB 187, 199 (2000); *Duluth, Missabe & Iron Range Ry. Co.*, 16 NMB 495, 500 (1989). However, 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).

In *Florida Northern R.R.*, 34 NMB 142 (2007), 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 the employees were appropriately in two separate crafts or classes. Much like the facts presented at T&N, employees spent a majority of their time (93 percent) working in their assigned duty positions within the Operating or Non-Operating craft or class. *Id.* at 159. Further, the sizes of the workforces are similar, with 37 employees at T&N and 52 at issue in the *Florida Northern* decision.

At T&N, only 19 percent of the workforce (7 out of 37 employees) was cross-utilized during the month of September. In addition, only several of those cross-utilized employees actually split their time between operating and non-operating functions. The vast majority of cross-utilized employees spent the preponderance of their time working in their assigned duty positions. The fact that these employees share similar working conditions and are subject to similar terms and conditions of employment is not sufficient to place them in a combined craft or class in light of the preponderance data.

The evidence clearly establishes that each group shares a distinct community of interest and that two separate crafts or classes is appropriate. See *The Kansas City Southern Ry., Co.*, 29 NMB 410 (2002); *Union Pacific R.R. Co.*, 27 NMB 247 (2000). Accordingly, the Board finds that the appropriate crafts or classes at T&N are Operating Employees and Non-Operating Employees.

CONCLUSION

The Board finds that the proper crafts or classes at T&N are Operating Employees and Non-Operating Employees. Accordingly, File No. CR-7080 is converted to NMB Case Nos. R-7347 (Operating) and R-7348 (Non-Operating).

Consistent with the direction of the Board's September 10, 2012 docket letter, T&N must provide the Board with two alphabetized Lists of Potential Eligible Voters, one of all Operating Employees, and one of all Non-Operating

Employees.² These Lists are due December 13, 2012. Signatures samples were previously provided. Once the Lists of Potential Eligible Voters are provided, the Investigator will determine whether SMART's showing of interest is sufficient to proceed with the Board's Investigation.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel

Copes to:
Tracy Edwards
Richard R. Ross
Erika Diehl
Mike Lewis
Michael P. Duff
Richard J. Mahon
Sean M. Dalton

² The list of potential eligible voters must contain all individuals with an employee-employer relationship as of the last day of the last payroll period prior to September 7, 2012.