



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the
Application of the

SWITCH CAT'S

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

involving employees of

EASTERN IDAHO RAILROAD

40 NMB No. 42

CASE NO. R-7358
(File No. CR-7085)

FINDINGS UPON
INVESTIGATION

March 7, 2013

This determination addresses the application of the Switch Cat's (Organization) alleging a representation dispute pursuant to the Railway Labor Act (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth).¹ Switch Cat's alleged a representation dispute among "Engineers and Conductors" of Eastern Idaho Railroad (EIRR or Carrier).

For the reasons set forth below, the National Mediation Board (NMB or Board) concludes that the proper craft or class for the employees covered by the application is "Train and Engine Service Employees."

PROCEDURAL BACKGROUND

On December 17, 2012, Switch Cat's filed an application alleging a representation dispute involving Engineers and Conductors at EIRR. The application was assigned NMB File No. CR-7085 and Norman L. Graber was assigned as the Investigator. The Brotherhood of Locomotive Engineers and Trainmen (BLET) were certified to represent the Locomotive Engineers craft or class of employees at the Carrier in NMB Case No. R-6403, 23 NMB 94 (1996).

¹ 45 U.S.C. § 151, *et. seq.*

BLET was also certified to represent the Conductors craft or class of employees at the Carrier in NMB Case No. R-6404, 23 NMB 96 (1996).

On December 27, 2012, EIRR filed its List of Potential Eligible Voters (List) and signature samples.² On January 3, 2013, Investigator Graber requested position statements from the participants on the issue of the proper craft or class. The Carrier was also directed to provide information on cross-utilization for employees covered by the application. The Carrier provided a position statement and the requested information on January 14, 2013. BLET provided a position statement on January 15, 2013.

ISSUE

What is the proper craft or class for employees at EIRR covered by the application?

CONTENTIONS

EIRR

EIRR contends that the appropriate craft or class of employees for representation purposes for its employees covered by the application includes both Engineers and Conductors. The Carrier asserts that the employees in question are covered by a single collective-bargaining agreement (CBA). The Carrier further alleges that, since at least 1999, all employees are required to be, or become, certified to work as both Engineers and Conductors. Since at least 1999, the employees at issue are placed on a single seniority roster, and may bid for any job for which they are qualified. According to the Carrier, employees bid on jobs every six months; and most employees work over time as Engineers, Conductors, or in a combined Engineer/Conductor position.

Switch Cat's

Switch Cat's filed its application for a craft or class of the Carrier's Engineers and Conductors, but did not file any position statement with the Board.

² Pursuant to a BLET filing alleging that an employee omitted from the List is appealing his discharge, EIRR added that employee to the List on January 17, 2013.

BLET

BLET filed a position statement asserting that all BLET-represented employees at EIRR are on a single roster, and can be required by the Carrier to perform both Engineer and Conductor functions if they are certified to do so. BLET stated that it is not in possession of cross-utilization data, and stated no conclusion on the proper craft or class in this case.

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.

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

II.

Switch Cat's and BLET 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

The Carrier provided a declaration from its General Manager, William Goldsberry, a copy of the CBA between EIRR and BLET covering the employees at issue in this matter, and a series of work assignment sheets based on employee bids for work.

Article 1.H of the CBA provides: “The use of the term ‘Employee-Team Member’ shall mean all engineers and conductors represented by the BLET and shall apply to all references of the term ‘employee’ in this contract.”

Article 3 of the CBA provides as follows:

- A. All employees on and after the effective date of this Agreement must become certified to perform service as an engineer and qualified to work a conductor’s position.
- B. Employees shall, if certified as locomotive engineers, operate locomotive engine(s) and remote control devices used to operate the Carrier’s locomotive engine(s) and trains.
- C. Employees shall perform tasks, including but not limited to, coupling and uncoupling cars; inspecting cars and locomotives; throwing switches; locking and unlocking derails; opening and closing gates; coupling and uncoupling air hoses; relieving other Employees; servicing and supplying locomotives; assisting in training new engine service employees; receiving train orders and/or track warrants; operating Carrier vehicles; performing air brake tests; assisting other employees to clear main line or perform such other functions as may be necessary in an emergency situation; receiving, delivering and/or transmitting waybills, car placement information, bills of lading, switch lists and other data; and other duties as assigned.

According to Goldsberry, these requirements for job qualification and performance have been contained in CBAs since at least 1999. Goldsberry further states that all employees are on a single seniority roster and, pursuant to Article 9 of the CBA, they bid on jobs as either an Engineer or Conductor. The job bids are put out twice a year, in January and July; and the employee with the highest seniority is awarded the bid. This bidding system has been in place since at least 1999. EIRR provided copies of bid awards from July 2011, January 2012, July 2012, and January 2013.

The bid awards submitted by the Carrier cover 25 employees, 18 of

whom are on the List, for a two-year period. The evidence reveals that, during that time, four employees worked exclusively in a combined Engineer/Conductor position; three employees worked in a combined Engineer/Conductor position, in an Engineer job, and in a Conductor job; seven employees worked in a combined Engineer/Conductor position and in an Engineer job; six employees worked in a combined Engineer/Conductor position and in a Conductor job; one employee worked exclusively as an Engineer; and four employees worked exclusively as Conductors.³

Based on the job bid awards, it appears that 20 out of 25 (or 80 per cent) employees regularly bid on and worked jobs requiring both Engineer and Conductor duties.⁴

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., and Patriot Woods R.R.*, 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 has held 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). 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 Columbia &*

³ Given the limited number of recent bid awards for the employees working only as Conductors, it is possible that they are in their first year of employment, and have not yet qualified to work as Engineers. Similarly, there is only one bid award, dated in January 2013, for the employee working only as an Engineer and it is possible this was the first time he bid for work as an employee of the Carrier.

⁴ Assuming the four employees who might not yet be qualified as Engineers become qualified and work in that position, and that the one employee who might only have bid once on a job later chooses an Engineer/ Conductor position or Conductor position, the number could rise to 24 or 25 out of 25 (96 or 100 percent) employees.

Cowlitz Ry., above at 271-272; Florida East Coast R.R. Co., 21 NMB 35, 44 (1993); Kiamichi R.R. Co., 19 NMB 212, 219 (1992).

At this Carrier, at least 20 employees work regularly both as Engineers and Conductors. With the exception of one employee working only as an Engineer and, possibly, four employees working only as Conductors, at least 80 percent of all employees perform both Engineer and Conductor duties for the Carrier. Since at least 1999, the CBA has required this type of heavy cross-utilization.

For these reasons, one combined craft or class of Train and Engine Service Employees is appropriate in this case because there is a small workforce with the majority of employees regularly performing duties of two of the traditional railroad crafts or classes.

CONCLUSION

The Board finds that the proper craft or class at EIRR is Train and Engine Service Employees. Accordingly, NMB File No. CR-7085 is converted to NMB Case No. R-7358.

Pursuant to the Board's December 19, 2012 docket letter, EIRR has provided the Board with a single alphabetized List of Potential Eligible Voters for Train and Engine Service Employees. The Carrier also has provided the Board with signature samples and mailing labels.

The Board finds a dispute to exist in NMB Case No. R-7358, among Train and Engine Service Employees of Eastern Idaho Railroad, sought to be represented by Switch Cat's and presently represented by the Brotherhood of Locomotive Engineers and Trainmen. An Internet and Telephone Election is hereby authorized using the cut-off date of December 7, 2012. The tally will be in Washington, D.C.

By direction of the NATIONAL MEDIATION BOARD.

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

Mary L. Johnson
General Counsel

Copies to:
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