



NATIONAL MEDIATION BOARD
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40 NMB No. 46

April 17, 2013

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Re: NMB Case No. R-7358
Eastern Idaho Railroad/ Switch Cat's/BLET

Participants:

This determination addresses the April 10, 2013 appeal filed by the Brotherhood of Locomotive Engineers and Trainmen (BLET) of Investigator Norman L. Graber's April 8, 2013 eligibility rulings. For the reasons discussed below, BLET's appeal is denied.

PROCEDURAL BACKGROUND

On December 17, 2012, Switch Cat's filed an application with the National Mediation Board (Board) alleging a representation dispute involving the Engineers and Conductors of Eastern Idaho Railroad (Carrier). These employees are currently represented by BLET. On March 7, 2013, the Board issued a decision finding the craft or class at issue in this matter to be Train and Engine Service Employees, and ordered an election. *Eastern Idaho RR*, 40 NMB 156. The Investigator sent a letter to the parties on March 12, 2013, setting a schedule for filing challenges and objections.

On March 15, 2013, the Carrier filed objections, and some documentation, regarding the inclusion of employees Grace, Dixon, and Steen on the List of Potential Eligible Voters (List). On March 19, 2013, BLET filed objections to the inclusion of employees Gransbury, Martel, and Sester on the List. On March 21, 2013, the Carrier also objected to the inclusion of employee Delgado on the List, and provided information regarding employees Martel and Sester. On March 22, 2013, BLET provided evidence disputing the Carrier's assertions regarding employee Delgado. Pursuant to the Investigator's requests, the Carrier provided further evidence regarding employee Gransbury on April 4 and 8, 2013.

The Investigator's April 8, 2013 eligibility ruling removed employees Dixon, Grace, Martel, Sester, and Steen from the List, but retained employees Delgado and Gransbury on the List. BLET has appealed only the Investigator's ruling that Kenny C. Gransbury should remain on the List.

CONTENTIONS

BLET

BLET's initial objection to Gransbury alleged that he was no longer employed by the Carrier. On appeal, BLET asserts that it "has been informed that Kenny C. Gransbury does not have a regular employee-employer

relationship or scheduled work assignment with [the Carrier] and therefore should not be eligible to vote.”

SWITCH CAT'S

Switch Cat's took no position on this issue.

CARRIER

During the challenge and objection process, the Carrier alleged that Gransbury should remain on the List. It provided evidence that Gransbury switched from full-time to part-time work on March 16, 2013, and provided evidence in support of the allegation that Gransbury remains an employee eligible to vote.

DISCUSSION

The Investigator properly considered Gransbury's eligibility pursuant to the Board's Representation Manual (Manual) Section 9.201, which provides:

Only employees with a regular employee-employer relationship or scheduled work assignments are eligible to vote. The Investigator should determine:

- (1) whether the employee works an identifiable schedule during a specified time period;
- (2) whether the employee regularly relieves other employees;
- (3) what benefits the employee receives;
- (4) what deductions are taken from the employee's pay; and,
- (5) other relevant facts

Although BLET states it has been informed that Gransbury does not have an employee-employer relationship or a scheduled work assignment with the Carrier, the only factual evidence on this issue was submitted by the Carrier.

In a declaration from William Goldsberry, General Manager of Eastern Idaho Railroad, the Carrier provided evidence that Gransbury was granted a part-time schedule in lieu of a requested three-month leave of absence. Gransbury works as an engineer/conductor covering vacations, lay-offs and unit trains. Gransbury essentially works as an engineer/conductor on the Carrier's extra-board, although he has the discretion not to accept more than

2-3 starts per month. Further, Gransbury is still on the engineer/conductor seniority roster and has all rights associated with seniority, including full bumping rights. Gransbury is paid as a regular employee with regular withholding for all hours worked. The Carrier pays into Railroad Retirement for Gransbury when he works. Gransbury also accrues vacation based on the number of hours he works. Gransbury does not receive Carrier health and welfare benefits because he currently is not working the requisite number of hours.

BLET is correct that Gransbury does not work regularly scheduled assignments for the Carrier. Based on the above uncontested facts, however, Gransbury is a part-time employee and does retain an employee-employer relationship with the Carrier. See, e.g., *York Ry. Co.*, 30 NMB 16, 20-22 (2002), where employee Wilson who was regularly called in off of the carrier's train service extra-list to work, was found to be an eligible part-time employee based on his regular, unscheduled work and his continued presence on the seniority roster. In this case, Gransbury works regularly, although unscheduled hours, on the Carrier's extra-board. He remains on the seniority roster and he has all of the rights associated with seniority. Gransbury's benefits and pay deductions are further evidence of the employee-employer relationship contemplated in Manual Section 9.201. Accordingly, the Investigator's ruling is upheld and Gransbury is eligible to vote.

CONCLUSION

BLET's appeal regarding Gransbury is denied, and Gransbury remains eligible to vote.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel