



NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

(202) 692-5000

In the Matter of the
Application of the

AMERICAN TRAIN DISPATCHERS
ASSOCIATION

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

involving employees of

LOUISVILLE & INDIANA
RAILROAD

41 NMB No. 21

CASE NO. R-7392

CASE NO. R-7393

(FILE NO. CR-7119)

FINDINGS UPON
INVESTIGATION-
AUTHORIZATION OF
ELECTIONS

May 29, 2014

FINDING UPON INVESTIGATION

This determination addresses the application of the American Train Dispatchers Association (ATDA or Organization) alleging a representation dispute pursuant to the Railway Labor Act (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), among “Train Dispatchers and Bridge Operators” employees of Louisville & Indiana Railroad (Louisville & Indiana or Carrier). The employees are currently unrepresented.

For the reasons set forth below, the National Mediation Board (Board or NMB) concludes that the appropriate crafts or classes for the employees at Louisville & Indiana are separate crafts and classes for Train Dispatchers and Bridge Operators.

PROCEDURAL BACKGROUND

On March 26, 2014, ATDA filed an application alleging a representation dispute involving the “Train Dispatchers and Bridge Operators” on Louisville &

Indiana. The application was given NMB File No. CR-7119 and Angela I. Heverling was assigned as the Investigator. Upon request, the participants submitted position statements on the appropriate craft or class for the employees at issue.

ISSUE

Does “Train Dispatchers and Bridge Operators” constitute an appropriate craft or class at Louisville & Indiana?

CONTENTIONS

Louisville & Indiana Railroad

The Carrier asserts that the employees who the ATDA is seeking to represent constitute two separate crafts or classes. It asserts that the functions, duties, and responsibilities of Train Dispatchers and Bridge Operators are substantially different and there is “little community of interest or commonality of duties between the crafts.”

ATDA

The ATDA asserts that Train Dispatchers and Bridge Operators share a community of interest and a combined craft or class is appropriate because the employees in each job classification share the following: 1) they perform a function directly related to the movement of trains, 2) they interact on a regular basis, 3) they work under common supervision, 4) they share restricted hours of service requirements, 5) they are subject to the same federally-required testing, 6) they share operating and safety rules, and 7) they receive the same benefits.

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.

Louisville & Indiana is a common carrier as defined in 45 U.S.C. § 181.

II.

The ATDA 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

Louisville & Indiana Railroad is a Class III rail carrier under the jurisdiction of the Surface Transportation Board. It operates 11 locomotives over 113 system miles. There are four employees who work as train dispatchers and four who work as bridge operators. Because it is a small railroad, the Carrier maintains only one dispatching desk covering its entire system. They control traffic over all of the Carrier’s line, including a line that traverses the Ohio River Bridge. The dispatchers give directions to the bridge operators when opening or closing the bridge is necessary.

In addition to controlling train movements across the Carrier’s railroad between Louisville and Indianapolis, train dispatchers coordinate train movements with other carriers, including CSX and Norfolk Southern. Train dispatchers are located in Jeffersonville, IN and report to the Chief Dispatcher. They provide direction to bridge operators when necessary.

Train dispatchers are salaried employees who are not eligible for overtime. Training for dispatchers takes between three and six months, depending on prior experience. Dispatchers receive classroom training and on-the-job training, including riding trains to become familiar with the railroad.

Bridge operators are responsible for monitoring and directing traffic and raising and lowering the lift span bridge over the Ohio River. They coordinate these movements with the U.S. Coast Guard and the Carrier's train dispatchers. Bridge operators are located at Clagg Tower in Louisville, KY, where having a bridge operator present is a requirement of the Coast Guard. They also report to the Chief Dispatcher. Bridge operators communicate daily with train crews and with federal maritime authorities.

Bridge operators are hourly employees who receive overtime when working more than 40 hours a week. Their pay levels are lower than the train dispatchers and they are not qualified for dispatcher positions. Bridge operators are generally trained in a two to three-week period. This includes classroom training and brief on-the-job training.

The Carrier's Train Dispatcher and Control Operator Manual, effective November 19, 2012, governs employees under both job descriptions. The manual states that "[b]ridge operators are included in the category of control operators" and all rules contained in the manual apply to train dispatchers and control operators. The Manual was created by the Chief Train Dispatcher to whom both groups of employees report and does not govern any other employees. The manual includes work rules applicable to all employees and rules for each group of employees. The manual describes the relationship between train dispatchers and bridge operators.

The train dispatcher controls the use of the main track and must implement the instructions and priorities of management in doing so. Control operators will be governed by the instructions from the train dispatchers and must not authorize trains to enter the (Carrier's) main track without first obtaining permission from the train dispatcher.

Train dispatchers give direction to bridge operators. Both groups of employees are subject to the federal Hours of Service Act.

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. *Indiana Southern RR*, 37 NMB 226 (2010); *Florida Northern Railroad*, 34 NMB 142 (2007); *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. *USAir*, 15 NMB 369 (1988); *Simmons Airlines*, 15 NMB 124 (1988).

The Board has not previously considered the proper craft or class for bridge operators. Train Dispatchers has been recognized as a historical craft or class on railroads. The Board has stated that the primary responsibility of a Train Dispatcher is “to direct and control the movement of trains.” *Buffalo & Pittsburgh RR*, 17 NMB 14, 16 (1989).

Citing *Florida Northern*, 34 NMB 142 (2007), the ATDA argues that the Board has combined all non-operating employees to form an appropriate craft or class and that the facts here present an appropriate case for combining train dispatchers and bridge operators in a similar fashion. In recent cases, the Board has not based craft or class determination solely on historical representation patterns, but has looked to evidence of cross-utilization of employees on small railroads. *Id.* at 153 (recognizing that at smaller carriers, employees may work in more than one traditional craft or class over a period of time). See also *Eastern Idaho RR*, 40 NMB 42 (2013); *Columbia & Cowlitz Railway, LLC*, 38 NMB 264 (2011).

Unlike in the cases cited above, there is no evidence of cross-utilization among the employees at issue. Train dispatchers and bridge operators interact but have very different qualifications and training requirements. Bridge operators are not qualified to be train dispatchers and, therefore, there is no cross-utilization of these employees. In recent years, the Board has relied upon evidence of cross-training and cross-utilization of employees to combine traditional crafts and classes in small carriers. There is no evidence of such cross-training or cross-utilization among the train dispatchers and bridge operators at Louisville & Indiana. In addition, train dispatchers and bridge operators are based in separate locations. They have differing rates of pay and train dispatchers are salaried employees while bridge operators are hourly employees eligible for overtime.

Although this is a small railroad, ADTA has not provided any evidence that would justify adding bridge operators to the traditional craft or class of Train Dispatchers. Train dispatchers and bridge operators do not share a work-related

community of interest, due to the different training, rates of pay, and work locations discussed above. They appropriately belong in a separate craft or class.

CONCLUSION AND AUTHORIZATION OF ELECTION

The Board finds that ATDA’s application for “Train Dispatchers and Bridge Operators” is not a proper class or craft. These employees are appropriately in the separate crafts or classes of Train Dispatchers and Bridge Operators.

The Board finds disputes to exist among these two crafts or classes. Therefore, the Board converts NMB File No. CR-7119 to NMB Case No. R-7392 (Train Dispatchers) and NMB Case No. R- 7393 (Bridge Operators). TEV and Internet elections are hereby authorized using a cut-off date of March 24, 2014.

Pursuant to Section 12.1 of the NMB Representation Manual, the Carrier is hereby required to furnish, within 5 calendar days, 1” X 2-5/8” peel-off labels bearing the alphabetized names and current addresses of those employees on the list of potential eligible voters, separated by craft or class. The Carrier must print the same sequence number from the list of potential eligible voters beside each voter’s name on the address label. The Carrier must also provide to the Board the name and sequence number of those potential eligible voters on military leave who are serving in foreign countries or who reside outside of the United States. The Carrier must ensure that the Board receives the labels within 5 calendar days. Tally in Washington, DC.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel

- Copies to:
Michael Stolzman
John Goldman
Thomas Lawrence, Esq.
F. Leo McCann
L.E. Dowell
Michael S. Wolly, Esq.