



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

UNITED STEELWORKERS, AFL-
CIO-CLC

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

involving employees of

SAVAGE TRANSPORTATION
MANAGEMENT, INC.

41 NMB No. 6

CASE NO. R-7379
(File No. CR-7093)

DETERMINATION OF
JURISDICTION -
DISMISSAL

February 19, 2014

This determination addresses the application of the United Steelworkers, AFL-CIO-CLC (USW or Organization), alleging a representation dispute pursuant to the Railway Labor Act¹ (RLA or Act), 45 U.S.C. § 152, Ninth, (Section 2, Ninth), among “track maintenance, switchers, and locomotive mechanics,” employees of the Savage Transportation Management, Inc. (STM). At the time this application was received, these employees were not represented by any organization or individual.

For the reasons set forth below, the Board finds that STM is not a carrier subject to the Act. Therefore, the Board dismisses the application.

PROCEDURAL BACKGROUND

On June 13, 2013, the USW filed an application alleging a representation dispute among Savage Rail Solutions Industry Unit’s (SRS) “track maintenance, switchers, and locomotive mechanics.”² The Board assigned Norman L. Graber as the Investigator.

¹ 45 U.S.C. § 151, *et seq.*

² SRS, identified in the USW application, is not a corporate entity. The corporate entity employing the workers sought to be represented by USW is STM.

The Board docketed the case listing the employer as STM, and on June 21, 2013, STM requested clarification of the craft or class of employees being sought by USW for representation purposes. On June 27, 2013, the Investigator directed USW to specify the rail lines and employees sought to be covered by its application. On July 5, 2013, USW responded that it is seeking to represent eight track maintenance employees, 12 switchers, and one locomotive mechanic working for SRS providing services to FMC Corporation (FMC), TATA Chemicals North America, Inc. (TATA), and Church & Dwight Company, Inc. (Church & Dwight). On July 19, 2013, STM submitted a List of Potential Eligible Voters, signature samples, and a position statement.

ISSUE

Is STM a carrier within the meaning of § 151, First, of the RLA?

CONTENTIONS

USW

USW did not file a position statement.

STM

STM contends that it is not subject to the Board's jurisdiction because it is not a "carrier" as defined by the RLA. STM asserts that it is neither a common carrier by rail nor owned or controlled by a common carrier by rail.

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.

45 U.S.C. § 151, First, defines the term carrier to include:

[A]ny railroad subject to the jurisdiction of the Surface Transportation Board, any express company that would have been subject to subtitle IV of title 49, United States Code, as of December 31, 1995, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in

transit, refrigeration or icing, storage and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such “carrier”.

II.

The USW is a labor organization and/or representative as defined in 45 U.S.C. § 151, Sixth.

STATEMENT OF FACTS

Background

STM, a Delaware corporation, is a wholly-owned subsidiary of Savage Companies, a Utah corporation. Savage Companies provides services through its subsidiaries to a variety of entities in different industries, including oil refineries, power plants, transload facilities, and mining operations. Among its various services, Savage Companies provides in-plant industrial rail services, primarily through STM. The in-plant services include track maintenance and railcar switching.

Savage Companies divided the operations of its subsidiaries into the following four categories, or “units:” material source, truck transport, material handling, and rail services. A number of subsidiaries provide services within the rail services unit. STM is one of the subsidiaries whose operations fall within the rail services unit.

STM has customers in various locations in the United States. The employees sought to be represented by the USW application work for STM in an area known as the “Green River Trona Formation” in the service of three STM customers. This area is about 20 miles west of Green River, Wyoming. Trona is a mineral that is often referred to as soda ash, and it is mined as the primary source of sodium bicarbonate. Two of the main underground trona mines are operated by FMC Corporation (FMC) and TATA Chemicals North America, Inc. (TATA).³ The mines are adjacent to one another, FMC to the west of TATA. Adjacent to the east of TATA’s operation is Church & Dwight Company, Inc. (Church & Dwight), which operates a trona processing and manufacturing facility. Private track owned by TATA connects with private track owned by Church & Dwight, which is how the trona mined by TATA is delivered to Church & Dwight.

³ Tata was formerly known as General Chemical Industrial Products (General Chemical).

The Union Pacific Railroad (UP) operates an east/west track system near the northern border of the adjacent properties in question. FMC, TATA, and Church & Dwight each have a contract with UP to provide inbound rail service for shipment of items necessary for their operations. Each also uses UP for outbound shipments.

STM provides industrial rail switching services to FMC, TATA, and Church & Dwight pursuant to contracts. The work is performed on track owned or controlled by FMC, TATA, and Church & Dwight, and on owned or controlled spur lines and sidings adjacent to UP's main line. TATA's contract also provides for STM to perform track maintenance on track owned or controlled by TATA. FMC has a separate contract with STM for the provision of track maintenance on track owned or controlled by FMC. STM provides no track maintenance for Church & Dwight.

UP's Role in the Operations

FMC's contracts with STM⁴ require STM to provide FMC with intra-plant railcar movement services and interchanges with UP. A separate contract also provides that STM will maintain "all trackage inside the FMC boundary . . . , plus track adjacent to the plant leased from the Union Pacific Railroad." As stated by STM, the main contact between STM employees and UP employees involves confirmation of the delivery, pickup, and location of railcars on FMC-controlled sidings and landings.

TATA's contract with STM requires STM to perform switching services on track at the Alchem Interchange. This Interchange is an area of siding trackage adjacent to TATA's property that was constructed and is owned by UP. TATA leases the Interchange from UP. STM also maintains the track in the Interchange. Spur track connects the Interchange to TATA's site. The TATA contract allows STM to move Church & Dwight cars to and from the spur and the Interchange, although that work is not to be paid for by TATA. As with the work for FMC, STM's work for TATA involves some limited contact with UP personnel, usually involving confirmation of UP's delivery and pickup of railcars being switched at the Interchange.

Church & Dwight's contract with STM also provides for movement of railcars to and from the Interchange. STM states that Church & Dwight uses the Interchange pursuant to an agreement with TATA. As with the other two contracting employers, STM employees' minimal contact with UP personnel typically involves only confirmation of the presence of railcars at the Interchange to be switched on behalf of Church & Dwight.

⁴ This includes FMC's contracts with CANAC Industrial Rail, Inc. (CANAC), which was acquired at some point by Savage Companies. On March 31, 2006, CANAC's FMC operations became part of STM operations.

DISCUSSION

Applicable Legal Standards

Under Section 151, First:

The term ‘carrier’ includes any railroad subject to the jurisdiction of the Surface Transportation Board, . . . and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service . . . in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad . . .

45 U.S.C. § 151, First.

The Surface Transportation Board (STB) has jurisdiction over transportation by rail carrier where the transportation is part of the interstate rail network. 49 U.S.C. §§10501 (a) (1) and (a) (2) (A). A rail carrier is a “person providing common carrier railroad transportation for compensation” 49 U.S.C. § 10102 (5).

A common carrier, derived from common-law principles, is an entity that has “a duty to carry all goods offered for transportation.” *American Trucking Assns. v. Atchison, Topeka, and Santa Fe Ry.*, 387 U.S. 397, 406 (1967). A common carrier’s service is “of a public character” and “for hire.” *United States v. California*, 297 U.S. 175, 182 (1936).

Moreover, the STB has acknowledged it has jurisdiction only over common carrier track, which does not extend to private track. *Willis v. Surface Transportation Board*, 51 Fed.Appx. 321 (2003), cert. denied 540 U.S. 811 (2003). In this case, neither STM nor any of the companies with which it contracts within the Green River area offer rail service to the general public for hire. The track which STM operates on FMC, TATA, and Church & Dwight property is privately constructed, maintained, and owned. The Interchange, which STM maintains and operates on for TATA and Church & Dwight, was built and is owned by UP, a public carrier.⁵ TATA leases the Interchange, however, giving it control over track. The Interchange is used only to move railcars of TATA, the leaseholder, and those of Church & Dwight, which has an agreement with TATA allowing such usage.

⁵ As the Board has stated previously, “mere ownership of tracks does not convey RLA jurisdiction.” *Georgia Ports Authority*, 31 NMB 303, 320 (2004). Where STM operates on privately controlled track, the fact that UP owns and leases out a small piece of the track in question will not establish STB or RLA jurisdiction over STM.

Given the facts above, it is clear that STM performs work for FMC, TATA, and Church & Dwight on private, rather than common carrier, track. Accordingly, the STB has no jurisdiction over any of these four companies. And absent STB jurisdiction, STM cannot be found to be a carrier within the meaning of Section 151, First of the RLA, unless it is “directly or indirectly owned or controlled by or under common control with any carrier by railroad.”

STM provided substantial information, relating to its contracts with FMC, TATA, and Church & Dwight, to establish it is not a derivative carrier based on control exercised by these companies. It is unnecessary to consider the derivative carrier issue in this case. FMC, TATA, and Church & Dwight are not carriers themselves, nor do they hold themselves out to the public as carriers by rail. Therefore, any actual control over STM by those companies would not confer RLA jurisdiction over STM.⁶

CONCLUSION AND DISMISSAL

The Board finds that STM is not a carrier and is not directly or indirectly owned or controlled by a carrier subject to the RLA. Accordingly, STM does not fall under the Board’s jurisdiction. Therefore, the case is docketed as NMB Case No. R-7379, and the USW’s application is dismissed.

By direction of the NATIONAL MEDIATION BOARD.



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⁶ Savage Companies has a wholly-owned subsidiary in its rail services “unit” that operates a short line railroad. That subsidiary, Savage Bingham & Garfield Railroad Company, Inc., utilizes less than 25 miles of track near Salt Lake City, Utah. This railroad has no connection to STM’s operations. The ownership provision for finding derivative carrier status under Section 151, First is not satisfied merely because a non-carrier holding company owns both a carrier and a non-carrier. *Bombardier Transit Systems Corp.*, 32 NMB 131, 146 (2005). Thus, STM cannot be deemed a carrier simply because Savage Companies owns a railroad unrelated to STM or its operations.