



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the
Applications of the

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

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

involving employees of

BROWNSVILLE & RIO GRANDE
INTERNATIONAL RAILWAY, LLC

44 NMB No. 16

CASE NO. R-7487
CASE NO. R-7488
CASE NO. R-7489
CASE NO. R-7490
CASE NO. R-7491
(FILE NO. CR-7158)

FINDINGS UPON
INVESTIGATION –
AUTHORIZATION OF
ELECTIONS

April 27, 2017

This determination addresses the applications of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) alleging representation disputes pursuant to the Railway Labor Act (RLA),¹ 45 U.S.C. § 152, Ninth (Section 2, Ninth). SMART alleged representation disputes among the following employees of Brownsville & Rio Grande International Railway, LLC (B&RG or Carrier): Carmen; Clerical Office Employees; Locomotive Mechanics; Maintenance of Way Employees; Train and Engine Service Employees; and Yardmaster. The applied-for employees are currently unrepresented.

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 applications are Carmen; Clerical Office Employees; Locomotive Mechanics; Maintenance of Way Employees; and Train and Engine Service Employees.

¹ 45 U.S.C. § 151, *et seq.*

PROCEDURAL BACKGROUND

On November 18, 2016, SMART filed applications alleging representation disputes involving the following six crafts or classes at the Carrier: "Carmen"; "Clerical Office Employees"; "Locomotive Mechanics"; "Maintenance of Way Employees"; "Train and Engine Service Employees"; and "Yardmaster." The applications were assigned NMB File No. CR-7158 and Andres Yoder was assigned as the Investigator.

On December 5, 2016, B&RG submitted the List of Potential Eligible Voters (List) and signature samples for those potential voters. Both B&RG and SMART then submitted position statements on December 29, 2016, and SMART submitted a second statement on March 24, 2017. B&RG provided additional requested information, including relevant job descriptions, on January 16, 2017, February 23, 2017, March 13, 2017, and March 30, 2017.

ISSUE

What are the proper crafts or classes for the employees covered by the applications?

CONTENTIONS

B&RG

B&RG contends that the employees covered by the applications belong in the following five crafts or classes: Carmen; Clerical Office Employees; Locomotive Mechanics; Maintenance of Way Employees; and Train and Engine Service Employees.

SMART

SMART asserts that the employees covered by the applications belong in the five crafts or classes B&RG identifies, plus a sixth Yardmaster craft or class. SMART alternatively agrees with the five crafts or classes B&RG identifies.

FINDINGS OF LAW

Determination of the issues in this case is governed by the Act, as amended, 45 U.S.C. § 151, *et seq.* Accordingly, the Board finds as follows:

I.

B&RG is a carrier as defined in 45 U.S.C. § 151, First.

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 purposes of this chapter.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and to designate who may participate as eligible voters in the event an election is required. In determining the choice of the majority of employees, the Board is “authorized to take a secret ballot of the employees involved or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives . . . by the employees without interference, influence, or coercion exercised by the carrier.”

STATEMENT OF FACTS

Background

B&RG is a short-line railroad with headquarters in Brownsville, Texas. It primarily provides switching services to other carriers near the Port of Brownsville. A Denver, Colorado-based management company called OmniTRAX, Inc. acquired B&RG on August 12, 2014.

Position Descriptions

SMART's applications cover 33 individuals who together hold 11 different job titles. Below is a list of each job title, as well as a description of each job:

1. The job duties for B&RG's **Accounts Payable Associate**² include assisting field offices with entering and reconciling invoices; reviewing and collecting receipts and invoices; and monitoring vendor accounts.
2. The job duties for B&RG's **Carmen** include "mak[ing] weld repairs on railcars"; inspecting, replacing, and repairing railcar components; and "salvag[ing] parts from dismantled [or] scrapped" railcars. Job duties also include "perform[ing] air brake tests"; "[r]epair[ing] painting on" railcars; and rerailling railcars and locomotives.
3. B&RG's **Composite Mechanics** work in "a locomotive repair shop, outside in all weather conditions, and in confined spaces on and around locomotives[,] and they may be required to work in other environments.

The Composite Mechanics' job duties include "performing inspections, troubleshooting and preventive maintenance" on "locomotive mechanical and electrical systems"; completing inspection and repair reports; and performing diagnostics, installation, and repair of locomotive components. Job duties also include examining "flow/pressure measurements, . . . rotating equipment, control points, relays and wiring and adjust[ing] or replac[ing] defective parts as needed"; testing, installing and repairing system components like "pumps, radiators, power assemblies, compressors, . . . panel lighting, [and] circuit breakers"; and analyzing and correcting faults related to "inspection, troubleshooting, preventive maintenance and installation of locomotive equipment." Finally, job duties include "[o]perational qualification of . . . control systems to verify conformance to specifications on . . . locomotives using a variety of test equipment and procedures [like] gauges, dial indicators, manometers, meters, [and] insulation break-down test devices . . ."

² In the List, the Carrier identifies this position as "Accounting Clerk."

4. The job duties for B&RG's **Conductors** include "[m]ov[ing] trains safely in the yards and over the road"; "operat[ing] track switches"; inspecting railcars; and "us[ing] radio communications" and computers.
5. The job duties for B&RG's **Customer Service Representatives**³ include "reporting of train crew activities"; "[p]rovid[ing] daily work orders to field crews"; "[a]ct[ing] as the liaison between field and rail customers"; "[a]ssist[ing] customers with billing and traffic specific inquiries"; and "[p]rocess[ing] customer requests including [bills of ladings], releases, and switch requests." Job duties also include "[e]nsur[ing hazardous materials] railcars are billed properly and are in compliance with [relevant] regulations"; "[h]andl[ing] incoming emergency calls"; and "[n]otify[ing] rail customers of incidents, business impacts and resolutions."
6. The job duties for B&RG's **Engineers** include operating locomotives; "[t]ak[ing] directions from conductors and brakemen"; lining switches; coupling railcars; lacing air hoses; and servicing locomotives.
7. B&RG's **Locomotive Electrician**⁴ works in "a locomotive repair shop, outside in all weather conditions, and in confined spaces on and around locomotives."

The Locomotive Electrician's job duties include "perform[ing] required inspections, troubleshooting and preventive maintenance" on "locomotive electrical components, electrical wiring and electrical equipment"; completing inspection and repair reports; installing "locomotive electrical components, electrical wiring and electrical equipment"; and testing, installing and repairing "circuits, control switch gear, connections and electrical equipment" like "panel lighting, circuit breakers, [and] power systems" Job duties also include "examin[ing] parts such as control points, relays and wiring and adjust[ing] or replac[ing] defective parts as needed"; "[o]perational qualification of relays, switches, and control devices to verify conformance to specifications [on] locomotives"; and "[e]valuat[ing] control systems for service using a variety of test equipment and procedures" such as "meters, insulation test devices and live circuit measurements."

³ In the List, the Carrier identifies this position as "Customer Service Agent."

⁴ In the List, the Carrier identifies this position as "Electrician."

8. The job duties for B&RG's **Maintenance of Way Foreman**⁵ include "inspect[ing and repairing] rails and ties"; rerailling "detailed trains"; and supervising subordinates and "[c]onduct[ing] job briefings" with them.
9. B&RG's **Student Conductor** "performs all the functions the Conductor does[,]" but he does so as an assistant and with supervision. The Conductor position is described above.
10. The job duties for B&RG's **Track Inspector** include "[d]evelop[ing] work plans and track maintenance activities"; assigning and prioritizing "programs and projects for maintenance forces"; ensuring that "field personnel" follow "instructions pertaining to inspections, maintenance, and construction work"; and "inspect[ing] the railroad and customer tracks, switches, crossings, bridges, [and] roadbed" Job duties also include "[a]ssist[ing] with training programs"; understanding customers' "business and service needs"; "[a]rticulat[ing] . . . strategic priorities"; and maintaining an "understanding of [relevant] requirements with repairs to track and remedial action required to keep in compliance per class designation."
11. The job duties for B&RG's **Track Laborers**⁶ include raising rails "to facilitate removal of old tie and installation of new tie"; "[d]rill[ing] holes through rails for insertion of bolts"; and "[o]perat[ing] track-wrench machine[s]" and "rail saw[s]"

Trainmaster in Training

None of B&RG's employees carry a Trainmaster in Training job title or a Trainmaster job title. The Carrier advertised a Trainmaster position around July 2016, and approved it on August 2, 2016. According to B&RG, in August 2016 it assigned Daniel Hayes to a part-time role as a Trainmaster in Training so that he could eventually become a Trainmaster. However, Hayes maintains that he never began a new part-time role in the summer of 2016. Instead, he says his role at the Carrier remained unchanged.

⁵ In the List, the Carrier identifies this position as "MOW Supervisor."

⁶ In the List, the Carrier identifies this position as "Laborer."

According to B&RG, the Trainmaster in Training “performs all the functions [of] a [T]rainmaster” with the only difference being that the Trainmaster in Training is supervised 90 percent of the time. B&RG lists the job duties for the Trainmaster position as including the following: “[e]nsur[ing] compliance” with applicable “practices and procedures”; “observing, documenting, and evaluating safe work practices”; and “[i]nvestigat[ing] incidents . . . and implement[ing] corrective actions” Job duties also include “[m]anag[ing] resources and assets”; “[m]ak[ing] recommendations regarding hiring and performance management of staff”; and “[c]oordinat[ing] with commercial and/or customer solutions unit to satisfy customer expectations.”

Yardmaster

B&RG promoted Hayes to the position of Yardmaster around 2009. However, on June 16, 2016, the Carrier eliminated the Yardmaster position and assigned Hayes the job title of Engineer. Currently, no B&RG employees hold the job title of Yardmaster. According to B&RG, no one at the Carrier has performed the Yardmaster job since June 16, 2016, while Hayes says he continued to perform the Yardmaster functions until December 15, 2016.

B&RG states that the Yardmaster job duties included “maintaining [timely and accurate] railcar movement”; “[m]onitor[ing] radio communication from railroad crews”; “dispatch[ing] information and instructions] from customers”; making sure “crews work in a safe . . . and economical manner, according to [applicable] rules, regulations, and instructions”; and “[a]ssur[ing] switch lists [and work orders] are provided in a timely manner” and properly recorded.

Hayes reports that the Yardmaster job duties included “overseeing daily train/yard operations/joint operations”; “coordinating train crews”; “reporting any issues coming from train crews or to train crews”; “making sure train crews have all necessary paperwork at hand”; “making sure there is an adequate safety supply inventory”; and “maintaining [B&RG’s rail transportation management] system”

Daniel Hayes

During the 60-day period between September 1, 2016 and October 31, 2016, B&RG cross-utilized Hayes across traditional craft or class lines. B&RG estimates that during that period, Hayes spent 90 percent of his time working as a Trainmaster in Training, and 10 percent of his time working as an Engineer, Conductor, and Brakeman. (Brakemen are responsible for “on-the-ground traffic control.”) However, according to the data B&RG provided, Hayes spent 23.96 percent of his time working in an office; 27.94 percent of his time working as a Conductor; and 48.09 percent of his time working as an Engineer. For his part, Hayes maintains that between his promotion to the Yardmaster position around 2009 and December 15, 2016, he did not work as a Trainmaster in Training at all. Instead, he “worked primarily as a [Y]ardmaster”

Beginning December 16, 2016, over six weeks after the cut-off date, B&RG assigned Hayes to a temporary work schedule. During the first month of Hayes’s new schedule – from December 16, 2016 to January 16, 2017 – the Carrier again cross-utilized him. B&RG estimates that during that period, Hayes spent 50 percent of his time working as a Conductor and 50 percent of his time working as a Brakeman. However, according to the data the Carrier provided, he spent 70.74 percent of his time working as a Conductor and 29.26 percent of his time working as a Brakeman.

B&RG estimates that when Hayes’s temporary schedule ends, he will spend 75 percent of his time working as a Trainmaster in Training, and 25 percent of his time working as an Engineer, Conductor, and Brakeman.

DISCUSSION

Carmen, Clerical Office Employees, and Maintenance of Way Employees

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. *Bauxite & N. Ry.*, 44 NMB 7 (2017). The Board makes craft or class determinations case by case, based upon Board policy and precedent. *Southwest Airlines*, 42 NMB 110 (2015).

B&RG and SMART agree that 1) the four Carmen belong in the Carmen craft or class; 2) the Accounts Payable Associate and the two Customer Service

Representatives belong in the Clerical Office Employees craft or class; and 3) the Maintenance of Way Foreman, the Track Inspector, and the three Track Laborers belong in the Maintenance of Way Employees craft or class.

The Board has traditionally recognized the three crafts or classes B&RG and SMART identify. *See, e.g., Western Fruit Express Co.*, 1 NMB 493 (1936) (certifying a representative for “carmen, their helpers and apprentices”); *Lehigh Valley R.R. Co.*, 1 NMB 25 (1937) (recognizing a craft or class of “clerical, office, station and storehouse employees”); *Delaware, Lackawana & W. R.R. Co.*, 1 NMB 80 (1938) (recognizing a craft or class of “maintenance of way employees”). Because the crafts or classes of Carmen, Clerical Office Employees, and Maintenance of Way Employees are well established – and based on the record and the factors the Board considers when making craft-or-class determinations – they are appropriate crafts or classes in this case.

Locomotive Mechanics

B&RG and SMART agree that the two Composite Mechanics and the Locomotive Electrician belong in a single Locomotive Mechanics craft or class. In the past, the Board has included mechanical and electrical work in a single craft or class. *See Louisiana & Delta R.R.*, 16 NMB 39 (1988).

When the Board makes craft-or-class determinations, a particularly important factor is whether employees share a work-related community of interest. *Endeavor Air, Inc.*, 41 NMB 281 (2014). In general, employees share a work-related community of interest when their work environments, job duties, and interactions “ensure a mutuality of interest in the objective of collective bargaining.” *US Airways, Inc.*, 31 NMB 324 (2004).

Here, the Composite Mechanics and the Locomotive Electrician share a work-related community of interest. Both jobs require employees to work in the same environment. The Composite Mechanics and the Locomotive Electrician both work in “a locomotive repair shop, outside in all weather conditions, and . . . on and around locomotives.” Additionally, the Composite Mechanics and the Locomotive Electrician share a work-related community of interest because they have overlapping duties. Both jobs require “inspections, troubleshooting and preventive maintenance” on locomotive electrical systems. Both jobs require employees to test, install, and repair electrical equipment like “panel lighting [and] circuit breakers;” and to examine “control points, relays and wiring and adjust[] or replace[] defective parts” And both jobs require “[o]perational qualification of . . . control systems to verify conformance to

specifications on . . . locomotives using a variety of test equipment and procedures” including “meters” and “insulation test devices . . .”

Based on precedent, the record, and the factors the Board considers when making craft-or-class determinations, the Locomotive Mechanics craft or class is appropriate at B&RG.

Train and Engine Service Employees

B&RG and SMART agree that the Carrier’s seven Engineers,⁷ 10 Conductors, and Student Conductor belong in a single craft or class of Train and Engine Service Employees.

Since 1993, the Board has under certain circumstances grouped the traditional Engineers and Conductors crafts or classes into a single craft or class of Train and Engine Service Employees. *See, e.g., Florida E. Coast R.R. Co.*, 21 NMB 35 (1993). The Board recognizes a Train and Engine Service Employees craft or class when the carrier is small, when there is evidence of cross-utilization, and when the facts warrant it. *See, e.g., Texas Mexican Ry. Co.*, 27 NMB 257 (2000).

In this case, the carrier is small, there is evidence of cross-utilization, and the record shows that Engineers and Conductors belong in the same group. As a result, the Train and Engine Service Employees craft or class is appropriate here.

Daniel Hayes

B&RG contends that Hayes belongs in the Train and Engine Service craft or class. In making its argument, B&RG points out that on June 16, 2016 it eliminated the Yardmaster position and assigned Hayes the job title of Engineer. B&RG also says that while Hayes worked as a Trainmaster in Training part of the time from August 2, 2016 to December 15, 2016, since December 16, 2016 he has “only perform[ed] train crew duties.”

In response, SMART makes two arguments. First, SMART asserts that Hayes belongs in a Yardmaster craft or class. According to SMART, Hayes spent most of his time performing the functions of a Yardmaster from approximately 2009 to December 15, 2016, which is weeks after the cut-off

⁷ In one of its two arguments, SMART asserts that there are only six Engineers at B&RG.

date. SMART alternatively agrees with B&RG that Hayes belongs in the Train and Engine Service craft or class.

The preponderance data shows that before December 15, 2016, when Hayes had a permanent work schedule, he spent 76.03 percent of his time working as either an Engineer or Conductor. The data also shows that once Hayes began his temporary work assignment, he spent 70.74 percent of his time working as a Conductor. Because both work schedules saw Hayes spend the majority of his time working as an Engineer and Conductor, he belongs in the Train and Engine Service craft or class. See, e.g., *Offshore Logistics, Aviation Services Div. d/b/a Air Logistics*, 11 NMB 144 (1984).

CONCLUSION

The Board finds that the proper crafts or classes for the employees covered by the applications are Carmen; Clerical Office Employees; Locomotive Mechanics; Maintenance of Way Employees; and Train and Engine Service Employees. Accordingly, NMB File No. CR-7158 is converted to NMB Case Nos. R-7487 (Carmen); R-7488 (Clerical Office Employees); R-7489 (Locomotive Mechanics); R-7490 (Maintenance of Way Employees); and R-7491 (Train and Engine Service Employees).

Based on the authorization cards SMART submitted, the Board further finds that representation disputes exist among those crafts or classes at B&RG, and authorizes elections by Telephone and Internet Voting for each craft or class, using a cut-off date of October 31, 2016 with the tally in Washington, D.C.

Pursuant to Manual Section 12.1, the Carrier is hereby required to furnish within five 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. 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 use the most expeditious method possible, such as overnight mail, to ensure that the Board receives the labels within five calendar days.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel

Copies to:
Norma Torres
Matt Despos
Jeff Monahan
Richard J. Ross
Erika Diehl-Gibbons
Lawrence T. Grutzius