



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of

JARED MARTIN, AN INDIVIDUAL

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

involving employees of

BAUXITE & NORTHERN RAILWAY

44 NMB No. 4

CASE NO. R-7476
(FILE NO. CR-7155)

FINDINGS UPON
INVESTIGATION
AUTHORIZATION OF
ELECTION

January 24, 2017

This determination addresses the application of the Jared Martin, an Individual (Martin) alleging a representation dispute pursuant to the Railway Labor Act (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth).¹ Martin alleged a representation dispute among “Operating and Non-Operating Employees” of Bauxite & Northern Railway (B&N or Carrier). The applied-for employees are currently represented by United Steelworkers, AFL-CIO (USW).

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 Operating and Non-Operating Employees.

¹ 45 U.S.C. § 151, *et seq.*

PROCEDURAL BACKGROUND

On October 3, 2016, Martin filed an application alleging a representation dispute involving Operating and Non-Operating Employees at B&N. The application was assigned NMB File No. CR-7155 and Norman L. Graber was assigned as the Investigator.

On October 13, 2016, B&N filed its List of Potential Eligible Voters and signature samples. On November 2, 2016, Investigator Graber requested position statements from the participants on the issue of the proper craft or class. The Carrier was also directed to provide certain information regarding the five employees covered by the application, including position descriptions for all the employees and a preponderance check showing the jobs performed by the employees in the 90-day period immediately preceding the filing of the application. On November 16, 2016 and December 14, 2016, B&N provided the requested information to the Board. On November 17, 2016, USW filed its position statement.

ISSUE

What is the proper craft or class for employees at B&N covered by the application?

CONTENTIONS

B&N

B&N contends that the appropriate craft or class of employees for representation purposes is Operating and Non-Operating Employees. The Carrier contends that all employees in the applied-for craft or class have been represented as one group by USW for at least 15 years, receiving the same fringe benefits. The Carrier also states that there is an identical chain of command for the entire B&N workforce, and that the workforce is functionally integrated because the employees are materially and significantly cross-utilized. Given that employees regularly perform work in two or three separate crafts or classes, B&N argues that they belong in a single Operating and Non-Operating Employees craft or class.

USW

USW stated its agreement that Operating and Non-Operating Employees is the proper craft or class at B&N.

Martin

Martin did not file a position statement.

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.

B&N is a common carrier as defined in 45 U.S.C. § 151.

II.

Martin and USW 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

USW is the certified bargaining representative of the Carrier's employees in the following crafts or classes: Locomotive Engineers, Locomotive Firemen & Hostlers, Conductors, and Brakemen. *Bauxite & Northern Railroad Company*, 8 NMB 305 (1981); *Bauxite & Northern Railroad Company*, 8 NMB 307 (1981); *Bauxite & Northern Railroad Company*, 8 NMB 309 (1981); and *Bauxite & Northern Railroad Company*, 8 NMB 311 (1981); respectively. Additionally, Lillian Glidewell, an Individual, was certified as the bargaining representative of the Carrier's Clerical, Office, Station & Storehouse Employees. *Bauxite & Northern Railway Company*, 8 NMB 513 (1981).

According to B&N's Corporate Counsel, Labor and Employee Relations, Jackie Newstadt, although USW was certified by the NMB in four separate crafts or classes, all five of the B&N employees, excluding managers, have been represented by USW in a single "bargaining unit" for at least 15 years.² B&N further asserts that, beyond specific conditions and requirements for certification in three of the crafts or classes, terms and conditions of employment are uniformly applied to all five employees. Also, these employees receive the same fringe benefits and are subject to the uniformly applied due process and standards of conduct.

More importantly, B&N alleges that the workforce is functionally integrated, with employees being "materially" and "significantly" cross-utilized. According to B&N, represented employees regularly and consistently work within two or three separate crafts or classes. Additionally, the chain of command is identical for the employees. All five employees report to B&N Trainmaster Shawn Barlow, who reports to General Manager Gene Cox, who reports to Genesee & Wyoming (G&W) Central Region Vice President of Transportation Paul Bourzikas, who reports to B&N President and G&W Central Region Senior Vice President of Operations Dewayne Swindall.

Job Descriptions

The Carrier provided the five job descriptions in the applied-for group.

Engineering

² The Carrier states that it does not employ any Clerical, Office, Station & Storehouse Employees.

Lead Laborer/Foreman, Maintenance of Way: Oversee, lead, and perform track maintenance and railcar repair activities.

Section Laborer-Truck Driver/Equipment Operator: Install ties, replace rail, gauge track, tighten bolts, maintain switches, clear customer track of material. Wash and perform minor repairs to railcars. Operate motor vehicles requiring commercial driver's license. Unload and/or assist in unloading and distribution of materials (rail, ties, spikes, etc). Operate tools such as rail saw, track wrench, spike maul, tie adz, and claw bar as needed.

Transportation

Switchman: Switch requested inbound cars for customers at interchange, remove cars from customer loading and unloading stations, switch requested cars from multiple customer storage tracks, spot loading and unloading stations according to customer orders, switch customer outbound cars from plant storage tracks, deliver outbound cars to interchange.

Conductor: Operate track switches, couple and uncouple cars and perform other duties associated with the movement of trains, cars, and engines in rail yards and on the main railroad. Receive, relay, or act upon oral, written, or radio instructions from dispatcher, yardmaster, or other personnel indicating the switch movement, placement, or delivery of railroad cars and/or a train.

Engineer: Operate diesel locomotive; interpret train orders, train signals, and railroad rules and regulations to transport freight trains in a safe manner. Inspect locomotive for operational readiness by making FRA and Company required checks and tests. Receive train consist which provides the physical make-up of train and includes weights, lengths, location of loads and empties, and cars requiring special handling. Observe track to

detect obstructions and to anticipate operating problems as required by federal or company rules. Diagnose minor malfunctions and perform minor maintenance and servicing activities when maintenance personnel are not available. Confer with conductor or traffic control personnel by radio to give or receive information and to give instructions concerning stops, delays, or oncoming trains. Notify proper authorities and prepare reports to explain accidents, unscheduled stops, or delays.

Cross-Utilization Data

At the request of the Investigator, the Carrier provided cross-utilization data for the 90-day period immediately preceding the filing of the application, consisting of the work assignments for all five employees during that time period. The data submitted reveals that during the 90-day period in question, one employee worked 49 days as a Locomotive Engineer and 4 days as a Conductor; one employee worked 42 days as a Lead Laborer; one employee worked 19 days as a Lead Laborer, 15 days as a Switcher, and 30 days as a Section Laborer-Truck Driver/Equipment Operator; one employee worked 51 days as a Conductor and 11 days as a Locomotive Engineer; and one employee worked 41 days as a Switcher and 23 days as a Conductor.

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., LLC and Patriot Woods R.R., LLC*, 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 recognizes 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 does not base craft or class determinations solely on historical patterns of representation. For that reason, the fact that all five B&N have been represented as one group by USW, alone,

would not support a finding that an Operating and Non-Operating craft or class is proper. However, 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 *Florida East Coast R.R. Co.*, 21 NMB 35, 44 (1993). “[O]n smaller carriers with a significant degree of cross-utilization,” the Board explained, “perpetuating historic crafts and classes could result in artificial fragmentation of employees[.]” *Id.* at 44. As a result, when a carrier is small and when its employees are cross-utilized, the Board may look beyond traditional craft or class designations. *Id.* at 45.

The Board also looked beyond traditional craft or class lines in *Columbia & Cowlitz Ry., LLC & Patriot Woods R.R., LLC*, 38 NMB 264 (2011) (*Columbia & Cowlitz*). In that case, the Board considered whether 17 cross-utilized employees at a small carrier were a single Operating/Non-Operating craft or class, or whether they were separate crafts or classes. After noting “the small size of the workforce,” the Board determined the employees were working as a single craft or class. *Id.* at 272. See also *Eastern Illinois Railroad Company*, 43 NMB 35 (2015). In this case, despite the job titles, it appears that only the Engineer position is an Operating Employee job. The cross-utilization data demonstrates that 80 percent of the workforce (four out of five employees) worked in more than one position. Moreover, 40 percent of the workforce (two employees) performed both operating and non-operating jobs.

In addition to the cross-utilization data, the small size of the workforce and the facts that these employees share similar working conditions, are subject to the same terms and conditions of employment, share the same fringe benefits, and have the same line of supervision, establish that the employees belong in a combined craft or class. The facts of this case closely resemble those in *Columbia & Cowlitz, above*, where a single craft or class was found to exist.

Because the evidence clearly establishes that these employees share a work-related community of interest and are functionally integrated, the Board finds that the appropriate craft or class at B&N is Operating and Non-Operating Employees.

CONCLUSION

The Board finds that the proper craft or class at B&N is Operating and Non-Operating Employees. Accordingly, File No. CR-7155 is converted to NMB Case No. R-7476.

Based on the authorization cards submitted by Martin, the Board further finds that a dispute exists regarding the representation in that craft or class, and the Board authorizes an election among the craft or class of Operating and Non-Operating Employees, employees of B&N, using a cut-off date of October 2, 2016.

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.



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