



NATIONAL MEDIATION BOARD

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34 NMB No. 19
March 12, 2007

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Re: PATH/IBEW
Case No. R-7113

Gentlemen and Ms. Bacon:

This determination addresses the February 9, 2007 Motion for Reconsideration filed by Port Authority Trans-Hudson Corporation (PATH or Carrier). PATH seeks reconsideration of the National Mediation Board's (NMB or

Board) February 5, 2007 decision finding that the Carrier's Transportation Operations Examiners are not management officials and are an appropriate craft or class. *Port Authority Trans-Hudson Corp.*, 34 NMB 81 (2007). PATH's Transportation Operations Examiners are currently unrepresented. The International Brotherhood of Electrical Workers (IBEW or Organization) seeks to represent these employees. The IBEW filed a response in opposition to the Carrier's Motion on February 13, 2007.

For the reasons discussed below, the PATH's Motion is denied.

I.

CONTENTIONS

PATH

The Carrier argues that the Board erred in its finding that Transportation Operations Examiners are not management officials. PATH argues that each of the Transportation Operations Examiners has different responsibilities and the findings in the determination do not reflect an understanding of the multiple responsibilities of Transportation Operations Examiners. PATH states that the Board has not performed an on-site inspection or interviewed other, more experienced, Transportation Operations Examiners and, therefore, has not thoroughly investigated this matter.

IBEW

The IBEW argues that PATH's Motion fails to demonstrate any "material error of law or fact" in the Board's determination.* The IBEW also states that the Motion

* The IBEW also asserts that the Carrier's Motion is untimely because it was filed four business days after the Board's determination in this matter. On February 7, 2007, PATH contacted the Board by facsimile stating, "[a]s required by the Representation Manual, please advise us in writing of our appeal right and the appeal deadline, as PATH intends to file an appeal." On February 8, 2007, the Investigator notified PATH that its Motion was due on February 9, 2007, and the IBEW's response was due on February 13, 2007. Therefore, the Board finds that PATH's Motion is timely.

“reasserts arguments” previously made to the Board and that the Motion should be denied. The Organization maintains that PATH has availed itself of every opportunity to submit evidence in support of its position and, other than its general disagreement with the Board’s decision, PATH points to no reason why an on-site investigation is necessary. The IBEW argues that while a site visit may establish that PATH “sets apart the OES for its own reasons as management officials . . . this has no bearing on the Board’s conclusion that under the Railway Labor Act and the Board’s Representation Manual, the OEs are not management officials.”

II.

DISCUSSION

Section 11.0 of the Board’s Representation Manual provides:

Reconsideration may not be sought from the NMB’s certification or dismissal. Any motions for Reconsideration of Board determinations must be received by the General Counsel within two (2) business days of the decision’s date of issuance. An original and one (1) copy of the motion must be filed with the General Counsel. The motion must comply with the NMB’s simultaneous service requirements of Manual Section 1.2. The motion must state the points of law or fact which the participant believes the NMB has overlooked or misapplied and the grounds for the relief sought. Absent a demonstration of material error of law or fact or circumstances in which the NMB’s exercise of discretion to modify the decision is important to the public interest, the NMB will not grant the relief sought. The mere reassertion of factual and legal arguments previously presented to the NMB is insufficient to obtain relief.

The Board grants relief on Motions for Reconsideration in limited circumstances. Accordingly, the Board does not intend to reverse prior decisions on reconsideration except in the extraordinary circumstances where, in its view, the prior

decision is fundamentally inconsistent with the proper execution of the NMB's responsibilities under the Railway Labor Act. *Virgin Atlantic Airways*, 21 NMB 183, 186 (1994).

In its determination, the Board considered the cumulative evidence and arguments submitted by the participants in finding that the Transportation Operations Examiners are not management officials and that Transportation Operations Examiners is an appropriate craft or class. Contrary to PATH's argument, the Board noted the unique nature of the multiple responsibilities of Transportation Operations Examiners in its decision. The Board stated, in part:

The position of Transportation Operations Examiner is unique to PATH. As PATH's witness, Martin Den Bleyker stated, the position's duties include work that is performed by Trainmasters, Road Foremen, Rules Examiners, and Instructors at other railroads. One of a Transportation Operations Examiner's primary supervisory duties is to train and evaluate engineers and conductors. The Board has generally recognized instructors as employees within the meaning of the RLA. . . . While Board decisions have differed regarding whether instructors constitute a distinct craft or class or are part of another craft or class, for over four decades Board precedent has been that training and evaluating personnel does not render a position outside of the RLA's coverage.

Port Authority Trans-Hudson Corp., 34 NMB 81, 89 (2007).

The Board's determination directly cites to numerous facts supplied by the Carrier in its submissions. PATH's motion does not cite any error of fact made by the Board in its determination. Nor does PATH cite a single point of law that the Board overlooked or misapplied in its decision. Here, PATH merely reasserts factual and legal arguments already considered by the Board.

CONCLUSION

PATH has failed to demonstrate a material error of law or fact or circumstances on which the Board's exercise of discretion to modify the decision is important to the public interest. Therefore, relief upon reconsideration is denied.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Mary L. Johnson".

Mary Johnson
General Counsel