



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

BROTHERHOOD OF RAILROAD
SIGNALMEN

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

involving employees of

BURLINGTON NORTHERN SANTA
FE RAILWAY COMPANY

32 NMB No. 27

FILE NO. CR-6873

FINDINGS UPON
INVESTIGATION

April 8, 2005

This determination addresses the application filed by the Brotherhood of Railroad Signalmen (BRS or Organization). BRS seeks to represent the Signalmen on Burlington Northern Santa Fe Railway Company (BNSF or Carrier) and its recently acquired line extending from Garrison to Butte, Montana (the Line or Copper City Subdivision), formerly of the Montana Western Railway Company, Inc. (MWR)*. The Signalmen on BNSF are currently represented, through a voluntary recognition, by the BRS. All operating and non-operating employees on the Line are currently represented by the United Transportation Union (UTU) (R-6476). BRS requests the National Mediation Board (NMB or Board) to investigate whether BNSF and the Line are operating as a single transportation system.

The investigation establishes that BNSF and the Line operate as a single transportation system for purposes of the craft or class of Signalmen.

* MWR actually leased the Line from the Oregon Short Line Railroad, which is a subsidiary of Union Pacific (UP).

PROCEDURAL BACKGROUND

On February 7, 2005, BRS filed an application alleging a representation dispute involving the Signalmen on BNSF. The application was given NMB File No. CR-6873 and assigned to Investigator Cristina A. Bonaca.

On February 22, 2005, BNSF filed its initial position statement. BRS responded with its position statement on March 1, 2005. Neither MWR nor UTU filed a position statement in this matter.

ISSUE

Are BNSF and the Line a single transportation system? If so, what are the representation consequences?

CONTENTIONS

BRS

BRS contends that the evidence clearly shows that the Line is operated along with the rest of BNSF's operations as a single transportation system. The Organization asserts that BNSF did not literally merge with MWR. Instead, BRS argues that BNSF subsumed the Line when it purchased all of the rail assets of MWR's Line, and "the trackage formerly operated by MWR is now the Copper City Subdivision" of BNSF. BRS asserts that, "[f]or purposes of this proceeding, MWR has ceased to exist."

BRS states that the Line is operated and managed by BNSF employees, and is held out to the public as part of the BNSF system. As such, BRS asks the Board to recognize it as the system-wide representative of all Signalmen on the BNSF system, including those Signalmen working on the Line.

BNSF

BNSF asserts that the Line is not contiguous with any other track maintained by it, and that it has no plans to

integrate the Line into its operation. Instead, the Carrier argues that the Line is operated as a stand-alone subdivision.

The Carrier states that the Line is fully operated by nine UTU-represented employees, including one Signalman. Further, BNSF asserts that “the UTU-represented employees . . . do not perform duties outside . . . the Line.” These employees, all operating and non-operating employees, are covered by one collective bargaining agreement (CBA) between BNSF and the UTU -- an agreement that was formally recognized after BNSF’s acquisition of the Line.

FINDINGS OF LAW

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

I.

BNSF and MWR are common carriers as defined in 45 U.S.C. § 151, First.

II.

BRS and UTU are labor organizations and/or representatives as defined in 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

Corporate Transactions and Representation

Between 1886 and 1986, the Line was leased to and operated by BNSF’s predecessor, Burlington Northern Railroad Company (BN). The Signalmen on the Line have historically been represented by the BRS. Under the 1972 CBA between BN and the BRS, the Line was part of the Billings Seniority District.

In 1986, BN agreed to sell all of its rights, title, and interest in the Line to MWR. During MWR’s ownership of the Line, UTU became the collective bargaining representative of all operating and non-operating employees on the Line -- including all Signalmen.

On June 23, 2003, the Surface Transportation Board (STB), Finance Docket No. 34330, issued an Acquisition and Operation Exemption for BNSF to acquire and operate MWR’s 52-mile Line. The exemption became effective on July 23, 2003.

After acquiring the Line, BNSF formalized and modified the CBA with the UTU covering all operating and non-operating employees working on the Line. In relevant part, the CBA provides:

Article 1 -- Succession and Adoption

Section 1. A. The “Collective Bargaining Agreement between Montana Western Railway Co., Inc. and the Employees Represented by the United Transportation Union” is, and is recognized as being binding upon the Burlington Northern and

Santa Fe Railway Company (“BNSF”), as the successor to Montana Western Railway Company, to cover the wages, rules and working conditions of the employees on the former Montana Western Railway properties that BNSF is acquiring

Article 4 -- Agreement Changes

Section 1. The term “Railroad” or “Carrier” and all references to “Montana Western” in this contract shall mean BNSF as successor to the Montana Western

Section 12, Article 23.4. If there is a final, authoritative ruling that BNSF craft or class lines apply on the former Montana Western property, this agreement will be wound down in an orderly fashion.

BNSF’s Signalmen, throughout its system, are represented by the BRS and covered by a valid CBA effective September 1, 1972, revised January 1, 2001. As of January 1, 2004, the CBA between BNSF and BRS covered 1,788 Signalmen on 12 seniority rosters.

Operations

The 52-mile Line is not contiguous with any other track maintained by BNSF. At its northern-most point in Garrison, Montana, the Line connects with track leased and maintained by Montana Rail Link (MRL). However, BNSF retains trackage rights over MRL to connect with the Line at Garrison. In the south, the Line connects with UP (at Silver Bow, Montana) and Rarus Railroad Company (at Silver Bow and Butte, Montana). BNSF coordinates train and car interchanges at Garrison, Silver Bow, and Butte -- a function previously performed by MWR and the interchanging railroad.

Wendell Bell, General Director Labor Relations for BNSF, stated in a declaration that, “the Line has not been integrated into the seniority districts that govern the operating and non-operating crafts on other BNSF right-of-way within the Montana Division. From a Labor Relations perspective, BNSF has no plans to integrate the Line with BNSF operations”

The Line is operated by nine BNSF employees, one of whom performs signal duties for the Line. These employees currently work exclusively on the Line. All track maintenance and repair is performed by the nine BNSF employees dedicated to working on the Line. BNSF's General Manager, Montana Division, Maurice Plott stated in a sworn declaration that the one signal employee, "performs signal work only on the 52 miles of track that make up Copper City Subdivision."

However, as noted in the STB Decision, Line employees' duties include handing off rail traffic to other BNSF employees and also handling BNSF bridge traffic. In addition, the CBA between BNSF and the UTU states that employees "from the balance of BNSF" may be used on the Line in certain circumstances.

According to the declaration of Gary Bryson, Local Chairman of Local Lodge 87 of the BRS, liability claims arising from the operation of the Line are handled by BNSF claims agents.

Management and Labor Relations

All nine employees working on the Line are BNSF employees. Supervision of the Line, including the one signal employee at issue, is provided through Maurice Plott, the General Manager of BNSF's Montana Division. Wendell Bell, BNSF's General Director of Labor Relations, has responsibility for administering the CBA between BNSF and the UTU, covering the scheduled operating and non-operating employees working on the Line. Human Resources for employees on the Line is administered by Bob Graham, BNSF's Director Human Resources, stationed in Fargo, North Dakota.

Public Relations

Maurice Plott stated that "all correspondence with BNSF would indicate that BNSF Railway is owner and operator of the Line." In addition, shortly after BNSF's acquisition of the Line, the Carrier published in its online newsletter, "*BNSF Today*," an article about an employee on the Line rescuing mountain

lion kittens and referred to the employee as a “BNSF Track Inspector.”

Equipment

All locomotives on the Line are provided by BNSF. The Carrier also provides all cars, except where by contract the shipper has agreed to provide the cars.

Declarant Gary Bryson stated that BNSF Montana Division Signal Supervisors regularly request tools and signal equipment from other BNSF locations for Signalmen on the Line. Requests for equipment have included: a “PMD II” phase motion detector, track batteries for signal maintainers, cable to repair a crossing, spare tool boxes and tools, and various other equipment.

According to Gary Bryson’s declaration, negligent persons who damage railroad property or equipment on the Line are liable to BNSF.

Routes and Schedules

Before the STB, BNSF agreed to offer shippers service on substantially the same basis as was provided by MWR. Thus, no schedules have been combined since the acquisition of the Line. The Carrier further stated that as the Line is a non-contiguous addition to BNSF, technically no routes have been combined.

Signs, Logos, and Uniforms

Maurice Plott stated in his declaration that he is unaware if BNSF has changed any MWR corporate insignia or logos, but that, “any BNSF office on the Line will (if it is not already) be marked BNSF Railway . . .” Maurice Plott further stated that, “no standardized uniforms have been issued to employees working on the Copper City Subdivision.”

DISCUSSION

I.

The Board's Authority

45 U.S.C. § 152, Ninth, authorizes the Board to investigate disputes arising among a carrier's employees over representation and to certify the duly authorized representative of such employees. The Board has exclusive jurisdiction over representation questions under the RLA. *General Comm. of Adjustment v. M.K.T. R.R.*, 320 U.S. 323 (1943); *Switchmen's Union of N. Am. v. Nat'l Mediation Brd.*, 320 U.S. 297 (1943). In *Air Line Pilots Ass'n, Int'l v. Texas Int'l Airlines*, 656 F.2d 16, 22 (2d Cir. 1981), the court stated, "the NMB is empowered to . . . decide representation disputes arising out of corporate restructurings." See also *IAM v. Northeast Airlines, Inc.*, 536 F.2d 975, 977 (1st Cir. 1976) (federal courts leave resolution of representation disputes resulting from mergers to the NMB).

II.

Single Transportation System

Section 19 of the Board's Representation Manual (Manual) outlines the Board's procedures for mergers and defines a merger as, "a consolidation, merger, purchase, lease, operating contract, acquisition of control, or similar transaction of two or more business entities." Manual Section 19.4 provides that: "Any organization or individual may file an application, supported by evidence of representation, seeking a NMB determination that a single transportation system exists." Manual Section 19.501 provides the factors for making a determination whether a single system of transportation exists.

In *Trans World Airlines/Ozark Airlines*, the Board cited the following indicia of a single transportation system:

[W]hether a combined schedule is published; how the carrier advertises its services; whether reservation systems are combined; whether tickets are issued on one carrier's stock; if signs, logos

and other publicly visible indicia have been changed to indicate only one carrier's existence; whether personnel with public contact were held out as employees of one carrier; and whether the process of repainting . . . equipment, to eliminate indications of separate existence, has been progressed.

Other factors [include] . . . whether labor relations and personnel functions are handled by one carrier; whether there are a common management, common corporate officers and interlocking Boards of Directors; whether there is a combined workforce; and whether separate identities are maintained for corporate and other purposes.

14 NMB 218, 236 (1987).

The Board finds a single transportation system when there is substantial integration of operations, of financial control, and of labor and personnel functions. *Huron and Eastern Ry. Co., Inc.*, 31 NMB 450 (2004); *Portland & Western R.R., Inc.*, 31 NMB 71 (2003); *American Airlines and Reno Air*, 26 NMB 467 (1999). Further, the Board has noted that a substantial degree of overlapping ownership, senior management, and Boards of Directors is critical to finding a single transportation system. *Precision Valley Aviation, Inc., d/b/a Precision Airlines and Valley Flying Serv., Inc., d/b/a Northeast Express Reg'l Airlines*, 20 NMB 619 (1993). The Board's substantial integration of operations criteria does not, however, require total integration of operations.

BNSF and the Line are operating as a single transportation system. BNSF's acquisition and operation of the Line's 52-miles of rail line was approved by the STB on June 23, 2003, and effective July 23, 2003. MWR no longer owns any portion of the Line. And while the Line is not contiguous with other track maintained by BNSF, so technically no routes or schedules have been combined, the Carrier coordinates train and car interchanges on the Line, and maintains trackage rights over MRL, connecting the Line at Garrison. In addition,

liability claims arising from the operation of the Line are now handled by BNSF claims agents.

Nine BNSF employees currently work exclusively on the Line, including one signal employee. Their duties include handing off work to other BNSF employees and handling BNSF bridge traffic. In addition, the CBA between BNSF and the UTU provides that employees from other BNSF operations may be used on the Line. Declarant Gary Bryson stated that the Line regularly receives tools and signal equipment from other BNSF locations. Further, BNSF is the only Carrier to supply locomotives and cars on the Line, and negligent persons who damage railroad equipment are liable to BNSF.

Line employees are entirely subject to the management and supervision of BNSF. The Line's employees are managed by BNSF Supervisor Maurice Plott. Wendell Bell, BNSF's General Director of Labor Relations, has responsibility for administering the CBA for those employees working on the Line. Further, human resources for all Line employees is administered by Bob Graham, BNSF's Director of Human Resources. Therefore, Line employees are covered by the same policies as all other BNSF employees.

As evidenced by reports in the Carrier's online newsletter, the Line is held out to the public as being BNSF property. In addition, Maurice Plott stated that all offices on the Line are or will soon be marked BNSF Railway, and that all correspondence with BNSF would indicate that it both owns and operates the Line. While standardized uniforms have not yet been issued to employees on the Line, this factor alone is not sufficient to prevent a single system finding, especially since the Carrier will likely provide uniforms in the future.

Based upon the application of the principles cited above to the facts established by the investigation, the Board finds that BNSF and the Line operate as a single transportation system for representation purposes for the craft or class of Signalmen.

CONCLUSION

The Board finds that BNSF and the Line are operating as a single transportation system for representation purposes under the RLA for the craft or class of Signalmen. Since BNSF voluntarily recognized the BRS as the representative of the craft or class of Signalmen, there is no certification for the Board to extend to cover the Signalmen on the Line.

By direction of the NATIONAL MEDIATION BOARD.

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

Mary L. Johnson
General Counsel

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