



**NATIONAL MEDIATION BOARD**

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Re: NMB Case No. R-7071  
Union Pacific Railroad

Gentlemen:

This determination addresses the March 2, 2006 appeal filed by the American Train Dispatchers Association (ATDA or Organization) of Investigators Norman L. Graber's and Kendrah L. Davis' eligibility ruling. For the reason discussed below, the appeal is denied.

**I. Procedural Background**

On January 6, 2006, ATDA filed an application pursuant to the Railway Labor Act (RLA or Act), 45 U.S.C. § 152, Ninth (Section 2, Ninth), alleging a representation dispute involving

the Train Dispatcher Employees of Union Pacific Railroad (UP or Carrier). On January 31, 2006, the Carrier provided a Potential List of Eligible Voters (List). The Board found that a dispute existed and authorized an election with a tally set for March 15, 2006.

On February 10, 2006, the Organization filed its challenges to the List. ATDA argued, inter alia, that 14 employees working as Managers of Central Train Dispatching (MCTDs) are management officials under the Board's Representation Manual (Manual) Section 9.211 and should be removed from the List. On February 21, 2006, the Carrier responded that MCTDs are not management officials and should remain on the List. On February 22, 2006, the Investigators requested further information from the Carrier. On February 27 and 28, 2006, and March 2, 2006, the Carrier supplemented its response to the Board. On February 27, 2006 and March 1, 2006, ATDA also supplemented its position on the pending issue.

On March 2, 2006, the Investigators ruled on the Organization's challenges, and held that the MCTDs are not management officials within the meaning of Manual Section 9.211, and that they remain properly on the List.

## **II. Investigators' Ruling**

ATDA challenged the inclusion of MCTDs on the List, contending that they supervise train dispatchers regarding rules and safety-related issues. ATDA also contended that MCTDs, inter alia, train apprentice dispatchers, evaluate and discipline dispatchers, resolve conflicts between dispatchers and train management, receive higher pay, and are at a higher organizational level.

In UP's responses, the Carrier provided documentary evidence to support its contentions that MCTDs are experienced dispatchers who work as peer trainers for other dispatchers. The Carrier argued that MCTDs do not supervise dispatchers, have no authority to change rules or procedures,

have no authority to hire or fire employees, do not formulate the Carrier budget or disburse Carrier funds, and do not make work assignments for dispatchers. The Carrier also contended that MCTDs do not effectively recommend or impose discipline on dispatchers, and do not evaluate dispatchers.

The Investigators ruled the evidence demonstrated that MCTDs do not manage dispatchers, and do not effectively discipline or evaluate dispatchers. Combined with their findings that MCTDs do not “authorize and grant overtime, transfer dispatchers or establish their work assignments, create carrier policy, or commit significant carrier funds in a meaningful way,” the Investigators found that MCTDs “do not possess the level of managerial authority required by the RLA to exclude a group of employees from a craft or class.”

### **III. ATDA’s Appeal and UP’s Response**

In its March 6, 2006 appeal and March 9, 2006 filing, ATDA again argues that MCTDs play an integral role in disciplining dispatchers, and conduct the semi-annual evaluations that provide the foundation for the dispatchers’ annual Performance Development Reviews (PDRs). In contesting the Investigator’s finding that MCTDs’ role in the disciplinary process is “fairly routine,” ATDA argues that when an MCTD investigating a rules violation finds no violation occurred, “the discipline process stops.” The Organization contends, therefore, that “MCTDs’ discretion in determining whether train dispatchers will be subject to discipline in the first place is independent and unfettered.” ATDA also contends that MCTDs’ semi-annual evaluations of dispatchers are as important as the PDRs written by the dispatchers’ direct-line supervisors, the Corridor Managers. The Organization argues that *United Airlines, Inc.*, 30 NMB 9 (2002) and *Business Express, Inc.*, 20 NMB 312 (1993), demonstrate that MCTDs are management officials under the RLA.

The Carrier responded to the Organization’s appeal on March 8, 2006. UP argues that ADTA relies almost exclusively on the issues of discipline and evaluation, rather than a

consideration of the “cumulative evidence” by which questions regarding management official status are determined. UP contends that the weight of the evidence requires a finding that MCTDs are not management officials. Moreover, the Carrier notes that ATDA concedes that the ultimate authority to discipline lies with management officials other than the MCTDs. The Carrier also contends that the Organization relies on new evidence to support its arguments regarding MCTDs’ evaluation authority, and that the evidence nevertheless demonstrates that Corridor Managers, rather than MCTDs, evaluate dispatchers.

#### **IV. Discussion**

The evidence establishes that MCTDs are not management officials within the meaning of Manual Section 9.211, and accordingly should remain on the List.

Manual Section 9.211 provides:

Management officials are ineligible to vote. Management officials include individuals with:

- (1) the authority to dismiss and/or discipline employees or to effectively recommend the same;
- (2) the authority to supervise;
- (3) the ability to authorize and grant overtime;
- (4) the authority to transfer and/or establish assignments;
- (5) the authority to create carrier policy; and
- (6) the authority to commit carrier funds.

The Investigator also considers:

- (1) whether the authority exercised is circumscribed by operating and policy manuals;
- (2) the placement of the individual in the organizational hierarchy of the carrier; and
- (3) any other relevant factors regarding the individual’s duties and responsibilities.

As noted by the Investigators, when the Board applies these criteria, “the Board must consider various individual elements and factors which might not be decisive if considered separately but considered cumulatively would remove a particular position from the status of an employee or subordinate official.” *Pan American World Airways, Inc.*, 5 NMB 112, 115 (1973). See also *USAir, Inc.*, 24 NMB 38 (1996); *Comair, Inc.*, 22 NMB 175 (1995); *American Int’l Airways, Inc. d/b/a Connie Kalitta Serv.*, 20 NMB 94 (1992); *Challenge Air Cargo*, 17 NMB 501 (1990); *Tower Air, Inc.*, 16 NMB 338 (1989).

The Organization’s appeal rests largely on the Manual 9.211 criteria of disciplinary and evaluation authority. Although ATDA argues at great length about the extent of MCTDs’ disciplinary authority, the record clearly establishes that MCTDs are involved only in the disciplinary process regarding safety rules. All other disciplinary matters are handled within the supervisory chain of command, involving the Corridor Managers. Moreover, ATDA acknowledges that MCTDs do not decide how their rules violation reports are utilized. Rather, ATDA argues that because the whole disciplinary process would stop if an MCTD found no rule violation, the MCTD controls the process. The mere fact that the disciplinary process continues to operate after the issuance of an MCTD report finding a safety rule violation cannot, without more, imbue the MCTDs with management official status they otherwise do not possess. MCTDs are responsible for investigating dispatchers’ potential safety rules violations. MCTDs write reports that reflect the findings of their investigations. They do not advise management what to do about those findings. The decisions on whether and how to discipline dispatchers are made by other officials. The fact that MCTDs might make factual findings that safety rules were violated, and that the disciplinary process will continue beyond their limited role in the process, does not transform MCTDs into management officials making effective recommendations or decisions about the discipline of other employees. They serve an investigative and reporting function for the management officials who are responsible for these matters.

Manual Section 10.2 provides, in relevant part, that: “Absent extraordinary circumstances, evidence submitted on appeal will not be considered by the NMB unless it was submitted to the Investigator.”

The Carrier alleges that the Organization submitted new evidence regarding evaluations on appeal. Regardless of whether ATDA introduced new evidence in its arguments involving MCTDs’ evaluations of dispatchers, the Organization still failed to demonstrate on appeal the pertinent point regarding MCTDs and management official status. As noted by the Organization, it presented the Investigators with evidence that MCTDs’ evaluations rate dispatchers in the areas of performance, maintenance authority, train authority, clerical duties, radio procedures, and emergency response. These evaluations might often include additional subjective comments from the MCTDs. As with the MCTDs’ disciplinary role, these evaluations involve a reporting role. The PDRs, which are used to determine bonuses, promotions, discipline, and discharge, are prepared by the dispatchers’ supervisors, the Corridor Managers.

Because of the Corridor Managers’ role in the evaluation process, the Organization’s reliance on *Business Express, Inc.*, 20 NMB 312 (1993) is unavailing. In that case, the Board found that Domicile Managers who evaluated Flight Attendants were management officials within the meaning of the RLA. The Board noted that it was unlikely that the carrier would not use the evaluations for promotional, disciplinary, and other purposes. In that instance, however, there was no evidence of other officials, such as line supervisors, providing other evaluations that clearly are the means of making personnel decisions. Here, the MCTDs make the semi-annual evaluations of the dispatchers’ work, but it is the Corridor Managers who supervise the dispatchers and write the PDRs on which personnel actions are based. These facts undercut the assumption of effective evaluation of employees present in *Business Express, above*. Moreover, in finding the Domicile Managers to be management officials, the Board relied additionally on the facts that Domicile Managers were the first

step in the grievance process and directed the work of Flight Attendants. *Id.* The evaluation authority, as well as the other cumulative evidence of management official status, is not as compelling in this case.

The Organization's reliance on *United Airlines, Inc.*, 30 NMB 9 (2002), is similarly misplaced. In that case, the Board found Lead Engineers were ineligible to vote based on their direction of work, participation in the hiring process, evaluation of employee performance, effective recommendation of promotions, role in the disciplinary process, approval of overtime, and some degree of commitment of carrier funds. The MCTDs in this case have a much narrower managerial role, and they do not make effective recommendations of personnel actions.

MCTDs do possess some of the indicia of management official status as set forth in Manual Section 9.211. When the scope of their authority is regarded cumulatively, however, there is insufficient evidence to establish that they are management officials within the meaning of the RLA. Accordingly, MCTDs are eligible to vote and they will remain on the List.

By direction of the NATIONAL MEDIATION BOARD.

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

Mary L. Johnson  
General Counsel