



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the
Application of

BILLY GONZALEZ

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

involving employees of

**BROWNSVILLE & RIO GRANDE
INTERNATIONAL RAILWAY, LLC**

47 NMB No. 12

CASE NO. RD-7544
(File No. CRD-7210)

FINDINGS UPON
INVESTIGATION-
AUTHORIZATION OF
ELECTION

March 4, 2020

This determination addresses the application of Billy Gonzalez alleging a representation dispute pursuant to the Railway Labor Act (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth),¹ among “Car Repair Employees” at Brownsville & Rio Grande International Railway, LLC (B&RG). Gonzalez seeks to decertify the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) as the representative of the applied-for employees.

For the reasons set forth below, the National Mediation Board (Board or NMB) concludes that the appropriate craft or class for the applied-for employees is Carmen, and authorizes a decertification election among that craft or class.

PROCEDURAL BACKGROUND

On December 17, 2019, Gonzalez filed an application seeking to decertify SMART as the representative of “Car Repair Employees” at B&RG. The

¹ 45 U.S.C. § 151, *et seq.*

application was given NMB File No. CRD-7210 and Andres Yoder was assigned as the Investigator. On February 10, 2020, in response to a request for information, B&RG submitted information.

ISSUES

What is the appropriate craft or class for the “Car Repair Employees”?
What representation consequences follow?

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

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 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

B&RG is a short-line railroad with headquarters in Brownsville, Texas. *See Brownsville & Rio Grande Int’l Ry., LLC*, 44 NMB 70, 72 (2017) (*B&RG*). It primarily provides switching services to other carriers near the Port of

Brownsville. *Id.* A Denver, Colorado-based management company called OmniTRAX, Inc. acquired B&RG on August 12, 2014. *Id.*

On June 14, 2017, in NMB Case No. R-7487, the NMB certified SMART as the representative of the Carmen craft or class at B&RG. *See Brownsville & Rio Grande Int'l Ry., LLC*, 44 NMB 155 (2017). At the time of the certification, the job duties of the Carmen craft or class included “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.” *See B&RG, above*, at 73.

According to the information B&RG provided, the applied-for “Car Repair Employees” perform job duties that include making “[w]eld 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.

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. *See Long Island Rail Road*, 47 NMB 19, 23 (2019). The Board makes craft or class determinations case by case, based upon Board policy and precedent. *See United Airlines, Inc.*, 45 NMB 114, 124 (2018).

In this case, the applied-for “Car Repair Employees” perform the same work as the Carmen craft or class. As a result, the appropriate craft or class for the applied-for employees is Carmen.

CONCLUSION

The Board finds that the appropriate craft or class for the applied-for employees is Carmen, and that SMART is currently certified to represent that craft or class. Accordingly, NMB File No. CRD-7210 is converted to NMB Case No. RD-7544.

Based on the authorization cards submitted by Gonzalez, the Board further finds that a representation dispute exists among the Carmen craft or class, and authorizes a decertification election by Telephone and Internet

Voting, using a cut-off date of December 15, 2019, with the tally in Washington, DC.

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

A handwritten signature in black ink that reads "Mary L. Johnson". The signature is written in a cursive style with a large initial 'M' and a distinct 'L'.

Mary L. Johnson
General Counsel