



## NATIONAL MEDIATION BOARD

1301 K St NW, Suite 250E  
Washington, DC, 20005

In the Matter of the  
Application of

SCOTT BERGER

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

involving employees of

CARROLLTON RAILROAD

51 NMB No. 20

CASE NOS. RD-7619,  
RD-7620 & RD-7621  
(NMB File No. CR 7251)

FINDINGS UPON INVESTIGATION –  
AUTHORIZATION OF ELECTIONS

August 12, 2024

This determination addresses the application filed by Scott Berger (Applicant) alleging a representation dispute pursuant to the Railway Labor Act (RLA), 45 U.S.C. §152, Ninth (Section 2, Ninth),<sup>1</sup> among “Operating” employees at Carrollton Railroad (Carrier). Applicant seeks to decertify the Transportation Communications Union/IAM (TCU/IAM) 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 crafts or classes for the employees covered by the application are Locomotive Engineers, Maintenance of Way, and Yardmen. Accordingly, Board administratively amends the application and finds that a dispute exists among the employees in all three crafts or classes; and authorizes decertification elections among the employees in the Locomotive Engineers, Maintenance of Way, and Yardmen crafts or classes.

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<sup>1</sup> 45 U.S.C. § 151, *et seq.*

### PROCEDURAL BACKGROUND

On May 23, 2024, the Applicant filed an application seeking to decertify the TCU/IAM as the representative of the applied-for employees. The application was given NMB File No. CR-7251 and Josie G. M. Bautista was assigned as the Investigator.

On June 6, 2024, the Carrier submitted a List of Potential Eligible Voters (List) for the craft or class of Locomotive Engineers. On June 7, 2024, the Investigator requested information from the Carrier regarding the applied-for employees. The Carrier and TCU/IAM filed their initial position statements on June 26, 2024. On June 27, 2024 and June 29, 2024, the Applicant responded to the Carrier's and TCU/IAM's submissions.

On July 2, 2024, the Investigator requested additional information from the Carrier and TCU/IAM in light of the Applicant's assertion that the applied-for employees are cross-utilized at Carrollton Railroad. The Carrier supplied the requested information on July 16, 2024. TCU/IAM responded to the Investigator's request on August 2, 2024.

### ISSUES

Is "Operating Employees" an appropriate craft or class at Carrollton Railroad? If not, what are the appropriate crafts or classes of the employees covered by the application?

### CONTENTIONS

The Applicant asserts that the applied-for employees are "required to work cross-utilized alongside one another in the multiple crafts for which we hold seniority," and that therefore a single craft or class of "Operating Employees" is appropriate. The Carrier contends that the employees in the Locomotive Engineers, Maintenance of Way, and Yardmen crafts or classes are not cross-utilized among the three crafts, and because the Applicant has failed to identify a proper craft or class the application should be dismissed. TCU/IAM contends that the craft or class of "Operating" employees does not exist at Carrollton Railroad and the Applicant has not provided sufficient evidence that the crafts or classes at Carrollton Railroad should be combined. Further, TCU/IAM contends the application should be dismissed for failure to specify a proper craft or class.

### 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.

Carrollton Railroad is a common carrier as defined in 45 U.S.C. § 151.

#### II.

TCU/IAM 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

Carrollton Railroad, a subsidiary of CSX Transportation (CSXT), is a short-line railroad operating in Carroll and Gallatin Counties in Kentucky that runs for 15.3 miles, north and east, from Worthville, Kentucky on the LCL Subdivision of CSXT. The LCL Subdivision of CSXT is a 101-mile line that connects Covington, Kentucky to Louisville, Kentucky.

On November 26, 1979, TCU/IAM (a successor to the Brotherhood of Railway, Airline and Steamship Clerks (BRAC)) was certified to represent the Locomotive Engineers, Maintenance of Way, and Yardmen crafts or classes at Carrollton Railroad. *See Carrollton R.R.*, 7 NMB 142 (1979) (Locomotive Engineers); *Carrollton R.R.*, 7 NMB 144 (1979) (Yardmen); *Carrollton R.R.*, 7 NMB 146 (1979) (Maintenance of Way Employees). BRAC and the Carrier negotiated a single collective bargaining agreement (CBA) with an effective date of December 1, 1980, covering all the employees in the Locomotive Engineers, Maintenance of Way, and Yardmen crafts or classes. On December 10, 1980, BRAC and the Carrier signed a Letter of Agreement, giving the Carrier the “right, without

penalty, to cross-utilize employees holding positions or working in the various ranks to perform work of any rank, subject to the agreement provisions for payment of the higher rate.”

The List submitted by the Carrier on June 6, 2024 covering the Locomotive Engineers craft or class contained the names of three potential eligible voters. On July 16, 2024, at the direction of the Investigator, the Carrier provided Lists for the Maintenance of Way Employees craft or class and the Yardmen craft or class. The List for the Maintenance of Way Employees craft or class contained one potential eligible voter, and the List for the Yardmen craft or class contained the names of four potential eligible voters.

The employees in the Locomotive Engineers, Maintenance of Way, and Yardmen crafts or classes at Carrollton Railroad are covered by the same CBA and are subject to similar terms and conditions of employment. They are also subject to the same supervision, as all employees report directly to Jarret Yates, Line Manager/Assistant Superintendent.

In terms of employee cross-utilization, data provided by the Carrier demonstrates that the employees in the Locomotive Engineers, Maintenance of Way, and Yardmen crafts or classes at Carrollton Railroad were not cross-utilized during the 90-day preponderance period identified by the Investigator.

### 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 Brownsville & Rio Grande Int'l Ry.*, 47 NMB 64 (2020). 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).

In this case, the Board certified three separate and distinct crafts or classes at Carrollton Railroad in 1979 and while all three crafts or classes share the same CBA and the same line of supervision, there is insufficient evidence in the record to justify combining the three crafts or classes together in one craft or class for purposes of a decertification election. The Board recognizes that a decertification election should generally be coextensive with the certifications. The Applicant is seeking to remove a certified representative, claiming that the employees in those three crafts or classes no longer wish to be represented by TCU/IAM. Accordingly, the Board sees no reason to disturb its separate certifications for each of the following crafts or classes at Carrollton Railroad: Locomotive Engineers, Maintenance of Way Employees, and Yardmen.

CONCLUSION

NMB File No. CR-7251 is converted to NMB Case Nos. RD-7619 (Locomotive Engineers), RD-7620 (Maintenance of Way Employees) and RD-7621 (Yardmen), respectively.

Based on the authorization cards submitted by the Applicant, the Board finds that a dispute exists in NMB Case Nos. RD-7619 (Locomotive Engineers), RD-7620 (Maintenance of Way Employees) and RD-7621 (Yardmen) and authorizes decertification elections among the crafts or classes of Locomotive Engineers, Maintenance of Way Employees, and Yardmen, using a cut-off date of May 10, 2024.

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 Lists of Potential Eligible Voters in the crafts or classes of Locomotive Engineers, Maintenance of Way, and Yardmen. The Carrier must print the same sequence number from the Lists 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



Maria-Kate Dowling  
General Counsel