



NATIONAL MEDIATION BOARD

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

In the Matter of the
Application of the
TRANSPORT WORKERS UNION OF
AMERICA
alleging a representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as amended
involving employees of
BRIGHTLINE TRAINS FLORIDA LLC

52 NMB No. 9

CASE NO. R-7643
(NMB File No. CR-7254)

FINDINGS UPON INVESTIGATION –
AUTHORIZATION OF ELECTION

November 12, 2024

This determination addresses the application filed by the Transport Workers Union of America (TWU) alleging a representation dispute pursuant to the Railway Labor Act (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth),¹ among On Board Service Employees, employees of Brightline Trains Florida LLC (Brightline). These employees are currently unrepresented.

The TWU's application raises the question of RLA jurisdiction. For the reasons set forth below, the National Mediation Board (NMB) finds that Brightline is a carrier subject to the RLA. The NMB further finds that a representation dispute exists among Brightline's On Board Service Employees craft or class and authorizes an election using July 28, 2024 as the voter eligibility cut-off date.

¹ 45 U.S.C. § 151, *et seq.*

I. PROCEDURAL BACKGROUND

On August 8, 2024, TWU filed an application, along with authorization cards, alleging a representation dispute involving On Board Service Employees at Brightline. The application was designated NMB File No. CR-7254 and assigned to Investigator Angela I. Heverling.

On August 22, 2024, Brightline filed an initial position statement objecting to NMB jurisdiction. On August 23, 2024, TWU filed an initial position statement arguing that Brightline is subject to RLA jurisdiction and that On Board Service Employees is the appropriate craft or class. Brightline provided additional submissions on September 6, 2024 and September 24, 2024 while the TWU provided additional replies on September 20, 2024 and September 27, 2024.

II. ISSUE

Is Brightline subject to the jurisdiction of the RLA?

III. CONTENTIONS

TWU argues that Brightline is subject to RLA jurisdiction under the Fixing America's Surface Transportation (FAST) Act deeming recipients of Consolidated Rail Infrastructure and Safety Improvements (CRISI) grants "rail carriers" under the RLA.

Brightline disputes that this language confers RLA jurisdiction because it is not a railroad subject to Surface Transportation Board (STB) jurisdiction. Additionally, Brightline argues that its acceptance of CRISI funds is not sufficient to trigger the FAST Act language on which TWU relies to support its RLA jurisdiction contention.

IV. STATEMENT OF FACTS

Brightline is a privately owned and operated intercity rail route currently running between Miami, Florida and Orlando, Florida. It runs partially on tracks owned and shared by the Florida East Coast Railroad (FECR). Brightline currently services six stations within Florida including one at Orlando International Airport. Brightline was previously known as All Aboard Florida and has changed its name several times before taking its current name in 2020.

In 2012, STB determined that it did not have jurisdiction over All Aboard Florida, stating in part that "there is nothing in the record to show that [All Aboard Florida's] proposed construction and intrastate operations would be part of the interstate rail network" and the use of tracks owned by an interstate freight

carrier was insufficient to bring All Aboard within the STB's jurisdiction. *All Aboard Florida*, (S.T.B. Dec. 21, 2012) No. FD 35680, 2012 WL 6659923 at *1.²

Brightline has accepted funds from the U.S. Department of Transportation under the CRISI Grant Program that was created in 2015. This federal funding has been announced by Brightline through a number of press releases and in other media reports. For example, Brightline announced in June of 2022 that it received \$15.9 million in grant funding toward high-speed rail from Tampa to Orlando, a line that has not yet been completed.³ Brightline's press release at the time described these funds as a CRISI grant to cover "preliminary engineering activities and environmental approvals required to construct an intercity passenger rail system between Orlando International Airport and Tampa." In March of 2023, Brightline announced that it had completed a CRISI-grant funded project in South Florida to upgrade 48 grade crossings that are part of the rail corridor it shares with FECR. The FRA awarded the \$2.3 million grant for that project to Brightline in 2017.⁴ In September of 2023, Brightline announced that it had received approximately \$1.6 million to improve rail safety using artificial intelligence technology. At the time, an FRA administrator stated that "[s]ince President Biden signed the Bipartisan Infrastructure Law, CRISI funding has quadrupled, and we're proud to put those investments towards an effort that will inform future infrastructure decisions and safety upgrades along a growing rail corridor providing freight and passenger rail benefits in several Florida communities."⁵ In addition to the grants received directly by Brightline, in 2020 the city of Boca Raton, Florida received an over \$16 million grant to construct a Brightline Train Station and adjacent parking structure.⁶

² A dissenting opinion to the STB's jurisdiction determination noted that there were "multiple indicia to support a finding that the transportation on this line will be related to interstate commerce." *All Aboard Florida* at 5. Two examples were plans to have a station at the Orlando International Airport and to provide access to ports in Miami, West Palm Beach, and Fort Lauderdale, Florida—possibly providing access to cruise ship travelers. *Id.* at 6. That decision was rendered while these stations were in the planning stages and Brightline's Orlando International Airport station did not open until 2023. It is therefore possible that Brightline's links to interstate commerce have changed since 2012 and the STB's analysis would be different today. Although not necessary for this determination, it should be noted that the NMB has at times viewed such factors as providing a link to interstate commerce for purposes of RLA jurisdiction. *See, e.g., Holland America Westours*, 29 NMB 140 (2002).

³ Carl Lisciandro, *Brightline Secures Federal Funds to Help Complete a Plan for Tampa to Orlando High Speed Rail*, WUSF (June 2, 2022), <https://www.wusf.org/transportation/2022-06-02/brightline-secures-federal-funds-to-help-complete-a-plan-for-tampa-to-orlando-high-speed-rail>.

⁴ *Brightline completes CRISI-funded Grade Crossing Projects*, PROGRESSIVE RAILROADING (March 6, 2023), <https://www.progressiverailroading.com/safety/news/Brightline-completes-CRISI-funded-grade-crossing-projects--68725>.

⁵ Garrett Phillips, *Brightline Receives Federal Grant for AI-based Rail Safety System*, 12 NEWS (Sept. 29, 2023), <https://cbs12.com/news/local/brightline-grant-ai-based-rail-safety-system-florida-orlando-train-railroad-technology-camera-9-29-2023>.

⁶ Media Releases, *Boca Raton Receives \$16.4 Million for Brightline Train Station Project*, CITY OF BOCA RATON (Sept. 24, 2020), <https://www.myboca.us/CivicAlerts.aspx?AID=669>.

V. DISCUSSION

An entity is a “carrier” subject to RLA jurisdiction if it is a “railroad subject to the jurisdiction of the Surface Transportation Board”. 45 U.S.C. § 151, First. STB jurisdiction, in turn, is defined in the Interstate Commerce Commission Termination Act of 1995 (ICCTA), 49 U.S.C. § 10101, *et seq.*

The CRISI grant program of the U.S. Department of Transportation’s Federal Railroad Administration (FRA) was created in 2015 in Section 11301 of the FAST Act, Pub. L. 114-94 and codified at 49 U.S.C. § 22907. The following statutory language from the FAST Act at 49 U.S.C. § 22905 (Section 22905) regarding the CRISI grant program is most relevant to our determination:

Grant Conditions

(b) Operators Deemed Rail Carriers and Employers for Certain Purposes.—A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under this chapter shall be considered a rail carrier as defined in section 10102(5) of this title for purposes of this title and any other statute that adopts that definition or in which that definition applies, including—

- (1) the Railroad Retirement Act of 1974 (45 U.S.C. 231 *et seq.*);
- (2) the Railway Labor Act (45 U.S.C. 151 *et seq.*); and
- (3) the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*).

The Grant Conditions language first provides that by receiving funding under a CRISI grant, a “person” shall be considered a “rail carrier” under Section 10102(5) of the ICCTA. Being considered a rail carrier under the ICCTA does not alone confer STB jurisdiction. Under the ICCTA, the STB does not have jurisdiction over all “rail carriers.” Section 10501 defines the jurisdiction of the STB and limits it to transportation between “a place in . . . a State and a place in the same or another State as part of the interstate rail network.”

As discussed above, Brightline has received a number of CRISI grants in recent years for infrastructure improvements such as improving safety at grade crossings. Because it has received these grants and is operating on “rail infrastructure constructed or improved” with this funding, Brightline is deemed a carrier under the RLA according to the language in Section 22905(b).

Brightline argues that the STB’s 2012 decision that it is not subject to STB jurisdiction is determinative because the RLA’s definition of a carrier requires STB jurisdiction. It is true, as Brightline argues, that meeting the definition of

rail carrier under Section 10102(5) of the ICCTA alone is not sufficient to establish jurisdiction under the RLA. This is because under the RLA, a carrier includes “any railroad subject to the jurisdiction of the Surface Transportation Board” 45 U.S.C. § 151. The CRISI grant conditions, however, do more than deem recipients rail carriers under the ICCTA. The grant conditions also deem a recipient a rail carrier under “any other statute that adopts that definition or in which that definition applies” and explicitly include the RLA as one such statute. 45 U.S.C. § 22905.

Brightline urges the Board to interpret Section 22905 as deeming a recipient a rail carrier under the ICCTA only. Brightline argues the following:

What § 22905(b) actually does is cause ‘a person that conducts rail operations over rail infrastructure constructed or improved with’ § 22907 grant funding ‘to be considered a rail carrier as defined in’ 49 U.S.C. § 10102(5). As we have explained, the term ‘rail carrier’ in § 10102(5) is, in turn, used in the section of the statute defining STB jurisdiction, 49 U.S.C. § 10501(a). The STB ‘has jurisdiction over *transportation by a rail carrier*’ (emphasis added); however, when transportation provided by a ‘rail carrier’ is between a place in a State and a place in the same State, STB jurisdiction ‘applies’ only when the transportation is ‘part of the interstate rail network’.

(internal citations omitted). Under Brightline’s interpretation, a railroad receiving a CRISI grant would still be need to be part of the interstate rail network to be under STB jurisdiction and considered a carrier under the RLA.⁷ Both the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA) define an employer as a rail carrier subject to STB jurisdiction⁸ so the analysis would be the same under those statutes.

TWU urges the Board to interpret the language in Section 22905 as deeming a recipient a rail carrier under the RLA, the RRA, and the RUIA. According to TWU, the language is clear and adopting Brightline’s interpretation “would render meaningless the entire portion of the statute that says that a CRISI grant recipient is a ‘carrier’ for the purposes of the RLA, the RRA, and the RUIA.” According to TWU, Congress has used its spending power to attach certain conditions upon the recipients of federal funds.

The Board’s view is that, through the FAST Act, Congress expressly intended to impose obligations on recipients of these grants beyond simply designating them as rail carriers under the ICCTA. The Board also finds it

⁷ Brightline also urges the Board to refer this to the STB to determine whether it has jurisdiction. For the reasons explained here, it is unnecessary to determine whether Brightline is under the jurisdiction of the STB. Additionally, the Board has often considered the factors outlined in the ICCTA to make that determination itself. *See, e.g., Bombardier*, 46 NMB 58 (2019).

⁸ *See* 45 U.S.C. § 231(a)(1)(i); 45 U.S.C. § 351(b).

significant that Section 22905(b) is entitled “Operators Deemed Rail Carriers *and Employers* for Certain Purposes.” (emphasis added) This language further indicates that Congress intended to do more than define rail carrier as it is already defined in the RLA and the other statutes listed in that section. If Brightline’s interpretation is correct, receiving the grant would have no impact on Brightline’s legal obligations as an employer or carrier, which is inconsistent with the language of the statute.

In addition, the FRA’s Notice of Funding Opportunity (NOFO) Requirements for CRISI grants states that “[a]ssistance under this NOFO is subject to the grant conditions in 49 U.S.C. 22905, including . . . the provision deeming operators rail carriers and employers for certain purposes.”⁹ This indicates that the FRA recognized Congress’ intent to extend jurisdiction under labor and employment statutes such as the RLA, RRA, and RUIA and that recipients of CRISI grants are aware of these requirements before applying for funding.

If, as Brightline argues, Section 22905 requires a railroad to be under the jurisdiction of the STB to be deemed a rail carrier under the RLA, there would have been no reason to mention the RLA in that section. If Congress did not intend to expand RLA jurisdiction through this section and impose obligations on grant recipients as employers under the RRA and the RUIA, there was no need to mention those statutes. It is very unlikely that Congress would adopt language that did not expand RLA jurisdiction to railroads that were not already under its jurisdiction. Notably, Brightline has provided no alternative meaning of the language conferring RLA jurisdiction over recipients of CRISI grants. If the language does not apply to entities like Brightline, who has Congress extended RLA jurisdiction to with this language? Every word or provision in a statute should be given effect. Brightline’s interpretation renders Section 22905’s language regarding the RLA, RRA, and RUIA unnecessary, meaningless, and without consequence.

Brightline also argues that the term “carrier” under the RLA is not equivalent to “rail carrier” used in the ICCTA and that the RLA does not actually define “rail carrier.” According to Brightline, “the term used in the RLA is ‘carrier’ and the term used in Section 22905(b) and the ICCTA sections defining STB jurisdiction is not ‘carrier’ but ‘*rail carrier*.’” The Board finds that no meaningful distinction can be read into the differing terms. Although the RLA also covers air carriers, the definition of carrier in Section 1, First is a definition of rail carrier or carrier by rail, as evidenced by the fact that the last time that language was substantively amended in 1934 was prior to the addition of air carriers to RLA

⁹ Notice of Funding Opportunity for the Consolidated Rail Infrastructure and Safety Improvements Program, 87 Fed. Reg. 54,278 (Sept. 2, 2022).

jurisdiction. RLA jurisdiction was extended to “carriers by air” in 45 U.S.C. § 181 but Section 1, First includes the definition of rail carrier under the Act.

Brightline also contends that the CRISI grants discussed above do not trigger Section 22905(b) because that provision does not apply to grants that have been merely announced or does not apply to planning and design. The Board finds no merit to this argument. According to Brightline’s own press release, it has completed a CRISI-grant funded project to upgrade 48 grade crossings that are part of the rail corridor it shares with FECR. This grant alone makes Brightline an entity “that conducts rail operations over rail infrastructure . . . improved with funding provided in whole or in part in a grant made under this chapter” Other CRISI grants received by Brightline also trigger Section 22905(b).

CONCLUSION

For the above reasons, the NMB finds that Brightline and its On Board Service Employees are subject to RLA jurisdiction. Based on the authorization cards submitted by TWU, the Board finds that a dispute exists regarding the representation of the On Board Service Employees craft or class.

Therefore, NMB File No. CR-7254 is converted to NMB Case No. R-7643 and an election is authorized with a voter eligibility cut-off date of July 28, 2024. Pursuant to Representation Manual Section 12.1, Brightline (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.



Maria-Kate Dowling
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