

PUBLIC LAW BOARD NO. 7036

**Case No. 1
Award No. 1**

**The Burlington Northern and
Santa Fe Railroad Company
(Formerly Santa Fe Coastlines)**)
)
)
and)
)
United Transportation Union)

PARTIES TO DISPUTE

QUESTIONS AT ISSUE

1. Does Carrier's proposal dated August 21, 2006 satisfy the requirements of Article IX of the 1985 National Agreement thereby allowing the Carrier to establish intra-seniority district service between Oakland and Stockton, California?
2. Shall the Carrier's proposal as set forth in Notice dated August 21, 2006 notifying the United Transportation Union of its desire to extend switching limits to the extent indicated at Stockton, California be imposed?
3. Is the Carrier precluded from operating Oakland International Gateway (OIG) trains with Stockton to Bakersfield service crews?

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by Agreement dated April 4, 2007, and has jurisdiction over the dispute involved herein.

This Board has reviewed the parties' submissions, which include Proposal A and Proposal B. Proposal A was a negotiated agreement and was put out to the membership for ratification. The negotiated agreement was rejected. The Organization then offered a counter proposal, Proposal B. This proposal was rejected by the Carrier. Subsequently this Board was established to determine an appropriate agreement to cover the intradivisional service.

The parties cited in their submissions their respective positions regarding the Port Chicago operations. After careful consideration of all the facts the Carrier will be granted the right to operate BNSF trains originating and terminating at Oakland International Gateway (OIG) via the Port Chicago connection to Stockton or via the Martinez and Sacramento Subdivisions to Stockton over the acquired trackage rights.

The Organization argued that the Carrier did not have the right to establish intradivisional service between the Richmond Terminal and Stockton. Article IX of the UTU 1985 National Agreement granted the Nation's Carriers the right to establish intradivisional service. Thus, the intradivisional service between the Richmond Terminal and Stockton is in keeping with the provisions of the National Agreement.

This Board has reviewed the entire record, and finds that Proposal A is in keeping with Article IX of the 1985 National Agreement. Consequently, the Board will not substitute its judgment for the judgment of the parties who have first hand knowledge of the operations and working conditions. Based upon the unique circumstances presented to this Board by the parties, the Board will impose the conditions of Proposal A including the condition that UTU represented employees will be provided automatic certification for Article XIII of the 1972 UTU National Agreement protection benefits for a minimum protection period of six years.

As to the Question at Issue in Item 2 the Carrier may extend the eastward switching limits at Stockton to M.P. 1085 and the westward switching limit may be extended to M.P. 1128 on the Stockton Subdivision under the terms and conditions of Proposal A.

The Organization argued vehemently that the OIG traffic should not be operated by crews assigned to the Stockton/Bakersfield pools. Its position was that the Stockton/Bakersfield pools were usurping the crews assigned to the Riverbank ID pools of the traffic exclusively assigned to the Riverbank ID. Its premise was the Carrier was attempting to overlay new ID conditions over an existing ID service in an effort to seek relief from the more stringent conditions of the Riverbank ID run. This Board finds no merit to the Organization's position. Consequently, the Carrier has the right to use the Stockton to Bakersfield ID pools to operate OIG traffic between Stockton and Bakersfield.

This Board would be remiss in its duties if it did not address its concerns regarding the employees' rejection of the negotiated agreement. Proposal "A" is the Organization's and the Carrier's best efforts with their eyes on the reasonableness, operating efficiency, and protection of the employees' rights. The parties' efforts should not be rejected by the employees with the mindset that they can secure better conditions through arbitration. This Board finds the language set forth in Arbitration Board No. 477 (CSX and UTU, Neutral David H. Brown) direct to point on this issue, we quote the pertinent part:

We have given long and careful study to the issues involved herein. Certainly we understand and sympathize with the position of the affected employees. However, the simple fact is that under Article IX of the National Agreement the carrier has the clear right to establish this service, making changes that under no circumstances are going to be ratified by the aggrieved employees. Thus, union representatives have undertaken the impossible task of negotiating an agreement which would be acceptable to their constituents.

In truth, the tentative agreement negotiated by the UTU representatives appears to the arbitrator to be more reasonable and practical than any alternative proposal. Certainly it is much to be preferred over the carrier's proposal which is really a skeletal agreement which would invite, in our opinion, interminable controversy long after the service is established.

With the above thoughts in mind, the findings in this Award are strictly limited to this unique set of circumstances.

AWARD

Questions at Issue:

Item No. 1.

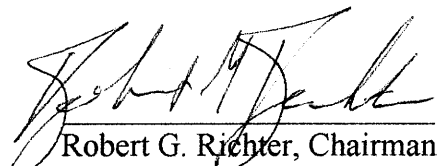
The answer is yes, and Proposal A is attached to this Award and is made a part hereto.


Item No. 2.


The answer is yes.

Item No. 3.

The answer is no.


Robert G. Richter, Chairman
Neutral Member


John Babler
Employee Member


Gene L. Shire
Carrier Member

Dated May 18, 2007

MEMORANDUM OF AGREEMENT
Between The
BNSF RAILWAY COMPANY
And The
UNITED TRANSPORTATION UNION

Pursuant to Carrier's Notice dated August 21, 2006, intradivisional service may be established between Oakland, CA and Stockton, CA under the following conditions.

1. Intradivisional pool freight trainmen will operate between Oakland and Stockton with Oakland being the home terminal and Stockton the away-from-home terminal.
 - 1.1 Trainmen shall initially be paid time or miles depending on the route taken, with the commitment that the parties shall endeavor to develop a trip rate for this territory in an expeditious manner.
2. The pool shall operate on a "first-in/first-out" basis at both the home and away-from-home terminals.
 - 2.1 Trainmen in this service who arrive at the final terminal in other than the order called at the initial terminal shall be entitled to restoration of turn, meaning that their standing order shall be changed to the order that they were called out of the initial terminal. It is the responsibility of the trainman to notify the proper authority that restoration of turn is requested.
3. Except in cases of emergency, trainmen in this service shall only lay-off and report for service at the home terminal only.
 - 3.1 Temporary vacancies due to lay-off at Oakland shall be filled from the existing Richmond extra board. Temporary vacancies occurring at Stockton shall not be filled and the turn shall attach to the turn immediately ahead thereof and assume normal rotation at Oakland.
4. Trainmen in this service shall receive a Code 09 meal if on duty eight (8) hours or less, or a Code 41 meal if on duty in excess of eight (8) hours, for each service trip, or combined service trip.
5. All miles run in excess of the miles encompassed in the basic day

shall be paid for at the current conductor-only overmile rate. Car scale and weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

6. When a trainman is required to report for duty or is finally relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, BNSF shall authorize and provide suitable transportation for the trainman. Suitable transportation includes BNSF owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.
7. Trainmen shall be allowed a meal allowance, at the rate provided under National Agreements, after four hours at the away from home terminal and another allowance after being held an additional eight hours.
8. Trainmen in this service who are required to exchange trains shall be paid one (1) hour at the current rate. This compensation to be paid to the trainman regardless of that trainman's seniority date.
9. Trainmen in this service who expire under the Hours of Service Law short of the final terminal shall be paid, at the current rate of pay, on a minute basis for all time in excess of thirteen (13) hours from the original on-duty time until transportation to the final terminal arrives at the trainman's location.
10. The provisions of Article XIII of the January 27, 1972 Agreement shall apply to employees adversely affected by the implementation of this service.
11. Except as specifically modified herein, all other Agreements and understandings concerning work performed between Stockton and Oakland remain in effect.

Signed at Ft. Worth, TX on _____, 2006 and effective _____, 2004.

FOR THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY CO.:
UNION:

FOR THE UNITED
TRANSPORTATION

General Director Labor Relations

General Chairman

MEMORADUM OF AGREEMENT
BETWEEN
BLE&T / UTU
And the
BNSF RAILWAY COMPANY

IT IS AGREED:

1. The switching limits at Stockton, California are extended as follows.
 - 1.1 East on the Stockton Subdivision to Milepost 1085.
 - 1.2 West on the Stockton Subdivision to Milepost 1128.
2. Yard assignments within the expanded limits may be established at Stockton and/or Riverbank.
3. The existing Stockton extra board (board 12) will protect Stockton yard vacancies and service vacancies for freight between Stockton and Bakersfield (long pool).
 - 3.1 The existing Stockton extra board (board 6) will be moved to Riverbank and will be required to protect yard vacancies at Riverbank, Stockton locals and service vacancies for freight between Riverbank and Keddie and Stockton to Roseville.
 - 3.2 Existing agreement provisions contained in the applicable Coast Lines Yard Schedule shall apply independently at both the Stockton and Riverbank on-duty location.
 - 3.3 The existing Fresno extra board will provide relief for all train crews, which expire on the hours of service, south or east of Riverbank on the BNSF railway between Milepost 1094 (Riverbank) and Milepost 995 (Fresno).

- 3.4 Unassigned freight crews on the Bakersfield Subdivision will provide relief for all freight train crews, which expire on the hours of service on the BNSF railway between Milepost 996 (Fresno) and Milepost 888 (Bakersfield).
- 3.5 The Stockton extra board maybe used to supplement an exhausted Riverbank extra board or visa versa.
- 3.5.1 When the Stockton extra board is used to supplement the Riverbank extra board, crewmember will be called on duty at Stockton at the start time of the Riverbank yard job. Alternatively, the employee may elect to provide his or hers own transportation to Riverbank and shall receive mileage reimbursement at the current rate for the highway miles between Stockton and Riverbank and return. The same will apply at Riverbank.
- 3.5.1.1 When an employee is used to "supplement" as provide above, those earnings shall not offset extra board guarantee, although they shall offset guarantee provided pursuant to any "protective conditions."
- 3.6 In the event that both extra boards are exhausted, vacancies at Stockton may be filled pursuant to canvassing employees at Riverbank, and vacancies at Riverbank may be filled pursuant to canvassing employees at Stockton.