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7/26/2004

Mr. G. L. Shire
General Director Labor Relations
Burlington Northern Santa Fe Railroad Company
2600 Lou Menk Drive
P.O. Box 961030
Fort Worth, TX 76161-0030

RE: P.L.B. NO. 6761, AWARD NO. 01

Dear Mr. Shire:

Please be referred to Neutral Member Quinn's letter dated July 10, 2004 and your letter dated July 19, 2004 pertaining to the subject encaptioned above.

Enclosed herewith is a fully executed copy with final agreement imposed pursuant to the arbitrations decision attached. I would appreciate your forwarding a copy to Neutral Quinn for his file. This office will provide General Chairman W. E. Young with a signed copy.

Thank you in advance for attending to these affairs. Your assistance is always greatly appreciated.

Yours truly,

Rick Marceau
International Vice President

Enclosures: (2) – Award #1/Agreement

cc: Mr. W. D. Young, General Chairman (w/encls.)

PUBLIC LAW BOARD 6761
AWARD NO. 1

Parties to Dispute: The Burlington Northern and Santa Fe Railway Company
and
The United Transportation Union

Question at Issue:

Does the agreement proposed by the Carrier to govern the establishment and operation of interdivisional freight service with home terminal at Stockton, California, to operate between Stockton and Bakersfield, California, satisfy the requirements of Sections 1 and 2 of Article IX of the November 1, 1985, UTU National Agreement? If not, what conditions are deemed to be reasonable and practical?

Findings:

The right to establish interdivisional service has been bargained nationally. That same National Agreement provides guidance regarding what "conditions" are appropriate when the desired interdivisional service is implemented. Article IX of UTU's 1985 National Agreement addresses the procedure to be followed and the conditions to be included when a Carrier desires to establish interdivisional service. Section 1 of Article IX reads:

"An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service."

On September 8, 2003, BNSF gave notice to UTU concerning the interdivisional service desired and appended thereto a document that set forth the conditions that would govern the proposed interdivisional service. Pivotal to the case at hand is the language under Section 4(a) of Article IX, reading:

“In the event the carrier and the organization cannot agree on the matters provided for in Section 1 and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 30 days after arbitration is requested by the carrier.”

This Board is limited by Section 4(a) regarding any conditions included in an arbitrated interdivisional service agreement. The Section 2 conditions are the only required conditions, and the National Agreement recognizes those conditions to be both general and specific in nature.

Section 2 of the National Agreement begins with the general requirement that:

“Reasonable and practical conditions shall govern the establishment of the runs described,”

The Organization has not suggested at any time throughout the handling of this dispute that the proposed run was either unreasonable or impractical. As far as the specific conditions under Section 2, subsection (a) reads:

“Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.”

The proposed run is 235 miles long. This is not an excessive distance for interdivisional service. There are many ID runs on the Coast Lines that are in excess of 235 miles. The actual on-duty time (hours worked) between Stockton and Bakersfield should be well under eight hours.

Subsection (b), Section 2 of the National Agreement states:

“All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on October 31, 1985 by the number of miles encompassed in the basic day as of that date. Car scale and weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.”

The Carrier has satisfied the interdivisional service “conditions” contained under Section 2 of Article IX.

Section 2 of BNSF's proposal grants equity to the "prior rights" seniority district trainmen, even though most truly "prior-righted" trainmen have either left the service of BNSF or will do so in the future. Section 12 allows trainmen to advance their vacations so as to coincide with layover days at the home terminal, and Section 13 allows trainmen to mark up during the final 24-hours of their vacation so as to avoid missing a round trip because their turn was called shortly before they returned from vacation, if the trainman desires to so do. Section 14 precludes the trading of trains in opposite directions, and Section 15 provides for a pre-85 switching allowance to trainmen.

We conclude that the protective conditions attendant to interdivisional service are more beneficial than those within the Washington Job Protection Act, New York Dock Conditions, or any other protective conditions recognized nationally in this industry, and the employees affected by the implementation of interdivisional service are protected.

PLB 535 offers us guidance. In a case on the former Union Pacific, the Carrier argued that since the negotiated proposal failed ratification, the earlier and less "Carrier expensive" proposal should be adopted. The Board reasoned:

"Notwithstanding the vehement argument advanced by the Carrier, this Board is convinced that the agreement which the parties themselves reached in March 1993, should govern interdivisional service between Portola and Elko. When the BLE, UTU and the Carrier reached a mutual understanding after intensive negotiations, it was their collective judgement that the conditions for interdivisional service outlined in that agreement would be fair and reasonable for train and engine service employees who would protect the interdivisional service and would also allow the Carrier to operate its interdivisional trains effectively between Portola and Elko.

It is reasonable to assume that the Organizations and the Carrier all made compromises in order to fashion a satisfactory resolution of the Carrier's proposal for interdivisional service between Portola and Elko. Presumably, neither the

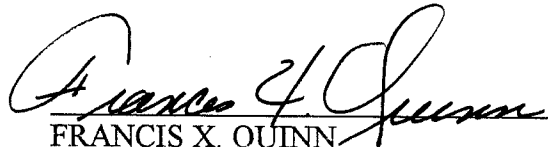
Organizations nor the Carrier were entirely pleased with the final settlement. However, it was the product of experts in train and engine service and this Board feels compelled to defer to their expertise. These parties had years of experience in train operations, and the agreement which they eventually reached simply cannot be ignored by this Board.”

The Stockton to Bakersfield BLE ID Agreement failed ratification. The parties, BLE and BNSF, listed that question before Referee Robert M. O’Brien who rendered his decision in PLB 6740 Award No. 2. Referee O’Brien rejected the BLE’s arguments that the ID Notice was improper and recognized that BNSF’s original ID proposal exceeded the reasonable and practical conditions required by Article IX Section 2 of the BLE 1986 National Agreement. In addition, the BLE requested that Referee O’Brien impose the more lucrative ID proposal. Referee O’Brien refused stating:

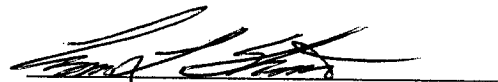
“A compelling argument can be made that employees should not receive benefits in arbitration that they expressly rejected during negotiations. This Board agrees with that logic. This is particularly so in the present case where the Carrier specifically informed the BLE that the modified proposal that was agreed to on October 16, 2003, contained benefits that were expressly contingent on ratification of this proposal and these enhancements would be withdrawn if the proposal were not ratified. Nevertheless under the unique circumstances extant in this case, we find that Locomotive Engineers in the proposed interdivisional service between Stockton and Bakersfield are entitled to the conductor-only overmile rate even though overmiles are entirely unrelated to this new interdivisional service.

In 1990, the former Santa Fe Railway Company asked its Locomotive Engineers for financial relief in order to avoid bankruptcy. The Engineers agreed to freeze their wages for five years to help the Santa Fe avoid a potential bankruptcy. Because of this concession, their basic daily rate of pay is below the national average for Locomotive Engineers. As a *quid pro quo* for this concession, the Santa Fe agreed to allow Engineers in Riverbank ID service the conductor-only overmile rate for all miles in excess of those encompassed in the basic day. Engineers earned that benefit and it should be continued for employees in the Stockton-Bakersfield ID service, in this Board’s opinion. Other than this, the agreement proposed by the Carrier for this interdivisional service shall be adopted. That agreement is appended hereto and made part of this Award.”

The question at issue is answered in the affirmative. The Carrier, BNSF, has complied with the terms and conditions associated with the establishment of interdivisional service pursuant to the terms of the National Agreement. The "conditions" attendant to interdivisional service that are included in the National Agreement are part of the final proposal before this Board.


FRANCIS X. QUINN
Chair and Neutral Member


R.L. MARCEAU
Organization Member


GENE SHIRE
Carrier Member

July 62, 2004
Fort Worth, Texas

MEMORANDUM OF AGREEMENT
Between The
BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY
And The
UNITED TRANSPORTATION UNION

Pursuant to Carrier's Notice dated September 8, 2003, interdivisional service may be established between Stockton and Bakersfield, California to handle "I-5" trains that have Stockton as the initial and/or final terminal under the following conditions.

1. Interdivisional pool freight trainmen will operate between Stockton and Bakersfield, through the terminals of Riverbank and Fresno, California, with Stockton being the home terminal and Bakersfield the away-from-home terminal.
 - 1.1 The district miles between Bakersfield and Stockton shall be 234.
 - 1.1.1 In the event BNSF is granted trackage rights over the UPSP between Bakersfield and Stockton and BNSF utilizes trainmen in this service over the UPSP route, trainmen shall be entitled to actual route miles.
 - 1.2 Trainmen in interdivisional service shall not be used to perform non-interdivisional service.
2. Turns in the pool shall be allocated on the basis of prior rights districts, i.e., 1/3rd Riverbank North, 1/3rd Riverbank South and 1/3rd Fresno South. The appropriate UTU Officer shall advise BNSF regarding the number of turns to be allocated. Moving packages shall be limited to the number of turns allocated to a particular prior rights district and in no case shall the total number of relocation packages exceed the highest number of turns allocated to a particular prior rights district.
 - 2.1 In order to be eligible to claim "prior rights" allocation under this Section, the trainman must have been holding a position as a trainman within the identified prior rights district on September 8, 2003.
3. The pool shall operate on a "first-in/first-out" basis at both the home and away-from-home terminals.
4. Except in cases of emergency, trainmen in this service shall only lay-off and report for service at the home terminal only.

5. Temporary vacancies in the pool at the home terminal shall be filled from the Stockton combo board. Temporary vacancies in the pool at the away-from-home terminal shall not be filled and the blank turn will deadhead back to Stockton with the next following turn.
6. In connection with relieving pool freight crews in this service tied up under the Hours of Service Law, the following will prevail when it is necessary to call a road crew out of the terminal:

TRAINS RUNNING FROM BAKERSFIELD TO STOCKTON

Between Bakersfield and Fresno (including Fresno), the ID pool conductor (in this service) standing first out at Bakersfield will provide hours of service relief.

Between Fresno and Stockton a conductor from the Stockton extra board will provide hours of service relief.

TRAINS RUNNING FROM STOCKTON TO BAKERSFIELD

Between Stockton and Fresno (including Fresno), the ID pool conductor (in this service) standing first out at Stockton will provide hours of service relief.

Between Fresno and Bakersfield the first-out rested turn in this service at the away-from-home terminal will provide hours of service relief.

7. In order to expedite the movement of this interdivisional run, the carrier shall determine the conditions under which a crew may stop to eat. When a crew is not permitted to stop and eat, the crew shall be paid an allowance of \$1.50 for the trip.
8. All miles run in excess of the miles encompassed in the basic day shall be paid for at the applicable conductor-only overmile rate.
9. 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.
10. 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.

11. Disciplinary hearings or investigations involving trainmen in this interdivisional service will be held at their home terminal, except when the majority of the principals and witnesses who are to attend live at other locations.
12. Trainmen in this service may advance their vacations so as to coincide with layover days at the home terminal as well as mark-up during the last 24-hour calendar day of the vacation in order to avoid missing a trip in unassigned pool freight service.
13. Trainmen holding a turn in this unassigned pool freight service may mark-up during the final 24-hour period of vacation in order to avoid missing a round trip.
 - 13.1 Trainmen may not trade trains with trains moving in the opposite direction.
14. When a trainman in this service is tied up under the Hours of Service Law or required to give up a train, the trainman shall be promptly deadheaded to the destination terminal.
15. It is not intended that trainmen in this service will be required to perform local freight work such as station, plant and industrial switching.
 - 15.1 If, however, such service is required, the trainmen shall receive actual time consumed with a minimum of thirty minutes (30") at the pro rata rate, for each point, in addition to all other earnings for the day or trip.
 - 15.1.1 Spotting of cars at a particular location on a designated track or making other than a straight set-out and/or pick-up shall be considered station or industrial switching.
 - 15.2 Payments made pursuant to this Section 15 are duplicate time payments as contemplated by the 1985 National Agreement.
16. The provisions of Article XIII of the January 27, 1972 Agreement shall apply to employees adversely affected by the implementation of this service.

17. Except as specifically modified herein, all other Agreements and understandings concerning work performed between Bakersfield and Stockton remain in effect.

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

FOR THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY CO.:

FOR THE UNITED
TRANSPORTATION UNION:

Assistant Vice President Labor Relations

General Chairman

General Director Labor Relations

General Chairman

APPROVED:

Vice President

Agreement imposed pursuant to Award No. 1 of PLB 6761

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