

PUBLIC LAW BOARD NO. 6492

Case No. 1

Award No. 1

PARTIES TO DISPUTE: UNITED TRANSPORTATION UNION

-and-

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

QUESTION AT ISSUE

Shall the Carrier's proposal as set forth in its notice dated December 12, 2001, notifying the United Transportation Union of its desire to extend switching limits to the extent indicated at Los Angeles be granted?

JANUARY 27, 1972 NATIONAL AGREEMENT

ARTICLE VI - SWITCHING LIMITS

Existing agreements are amended to read as follows:

The employees involved, and the carriers represented by the National Carrier's Conference Committee, being desirous of cooperating in order to meet conditions on the various properties to the end that efficient and adequate switching service may be provided and industrial development facilitated, adopt the following:

Section 1. Except as provided in Section 2 hereof, where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman or General Chairmen of such intention, whereupon the carrier and the General Chairman or General Chairmen shall, within 30 days, endeavor to negotiate an understanding.

In the event the carrier and the General Chairman or General Chairmen cannot agree on the matter, the dispute shall be submitted to arbitration as provided for in the Railway Labor Act, as amended, within 60 days following the date of the last conference. The decision of the Arbitration Board will be made within 30 days thereafter. The award of the Board shall be final

and binding on the parties and shall become effective thereafter upon seven days' notice by the carrier.

### FINDINGS

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

The Burlington Northern and Santa Fe Railway Company (hereinafter referred to as BNSF or the Carrier) transports a significant number of trailers/containers on flat cars at Los Angeles, California. During the year 2001, 423,873 trailers/containers were loaded ("lifted") on flat cars at Los Angeles. A significant amount of this freight business is generated by the Port of Los Angeles and the Port of Long Beach, California.

The Carrier's freight traffic into and out of Los Angeles is extremely heavy. Currently, BNSF transports an average of 20 trains a day out of Los Angeles. About 14 of these trains usually originate at Hobart and the remainder commence at the Ports of Los Angeles and Long Beach. The latter trains operate through Watson to Hobart over BNSF track, a distance of approximately 28 miles. The Carrier also operates an average of 20 trains a day into Los Angeles. Again, normally 14 of these trains operate to Hobart and the remainder terminate at the Ports of Los Angeles and Long Beach.

Two other freight carriers, the Union Pacific Railroad and the Pacific Harbor Lines, also transport freight in the Los Angeles area. Furthermore, 56 passenger/commuter trains operate in this area utilizing much of the mainline. Between 6:00 a.m. and 9:00 a.m. and again between 3:00 p.m. and 6:00 p.m., the so-called "commuter

windows,” both inbound and outbound freight trains are held to accommodate passenger traffic.

The west switching limits at the Carrier’s Los Angeles Terminal are on a line between Hobart and Watson. This territory is often referred to as the Harbor Subdivision. Currently, BNSF road crews perform all service on the Harbor Subdivision, operating under road rules.

The Carrier operates unassigned pool freight service between Hobart and Barstow, California. Westbound trains arriving at Hobart destined for the Ports of Los Angeles and Long Beach are relieved at Hobart and handled to the Ports by an extra board road crew or, occasionally, by a road switcher or a local. Trains moving eastbound are manned by extra road crews, road switchers or locals to Hobart where an unassigned pool freight crew relieves them and operates the eastbound trains to Barstow.

The Carrier’s territory between Hobart and the Ports of Los Angeles and Long Beach through Watson is all single track. There is only one location on this territory for trains to meet. The maximum speed limit on this territory is 20 MPH. Moreover, there are several locations where BNSF track crosses the Union Pacific Railroad. These interlockings are controlled by the Union Pacific which gives priority to its own traffic.

Because of these conditions, it is not unusual for crews operating between Hobart and Watson or the Ports of Los Angeles and Long Beach to be on duty 10 or 12 hours. Accordingly, the trip between Barstow and Watson or the Ports could not be completed within the permissible hours of service even if the unassigned freight pool crews were allowed to operate through Hobart.

In an effort to reduce rail congestion in the Los Angeles area and to allow more expeditious access to the Ports of Los Angeles and Long Beach, the Carrier is constructing the Alameda Corridor in conjunction with the Union Pacific Railroad. The Alameda Corridor will operate directly between Hobart and the Ports of Los Angeles and Long Beach. Trains will no longer take 10 to 12 hours to traverse the 28 miles between Hobart and the Ports. Rather, they will traverse the Alameda Corridor's 20 miles on double track (soon to be triple track) at a maximum speed of 40 miles per hour. The Alameda Corridor is scheduled to open on April 15, 2002.

To operate efficiently and effectively over the Alameda Corridor the Carrier contends that it is necessary to extend the switching limits at Los Angeles westward. Under Article VI of the January 27, 1972 United Transportation Union National Agreement where a carrier considers it advisable to change switching limits it is required to give notice to the General Chairman in writing. The Agreement allows the carrier and the General Chairman 30 days to negotiate an understanding regarding a carrier's proposal to extend switching limits.

On December 12, 2001, the Carrier notified United Transportation Union (UTU) General Chairman Holden that it was proposing to extend existing switching limits at Los Angeles westward to and including Watson and the Ports of Long Beach and Los Angeles on any track over which BNSF has or may obtain operating rights, including the San Bernardino and Harbor Subdivisions; Union Pacific's San Pedro Subdivision; and the Alameda Corridor. A similar notice was sent to the Brotherhood of Locomotive Engineers (BLE) General Chairman pursuant to Article II of the May 13, 1971 BLE National Agreement.

The Carrier met with General Chairman Holden on December 28, 2001, to discuss the December 12, 2001 notice. They met again on January 4, 2002. Representatives of the BLE were present at the January 4, 2002, meeting. The Carrier reached a tentative understanding with both the BLE and the UTU at the January 4 meeting to extend the switching limits at Los Angeles. However, the tentative agreement with the BLE as well as the tentative agreement with the UTU failed ratification.

Pursuant to Article VI, Section 1, of the January 27, 1972 UTU National Agreement, in the event the carrier and the General Chairman cannot reach an agreement on extending switching limits the dispute shall be submitted to arbitration.

On February 4, 2002, the parties agreed to submit the aforementioned Question at Issue to this Board for resolution. The Board met in Fort Worth, Texas on February 21, 2002. The United Transportation Union (hereinafter referred to as the Organization or the UTU) and the Carrier submitted evidence and arguments at that hearing in support of their respective positions. Based on the evidence and arguments advanced by the Organization and the Carrier this Board hereby renders the following decision.

The 1972 UTU National Agreement provides that a carrier may propose to change existing switching limits "*... to the end that efficient and adequate switching service may be provided and industrial development facilitated. . . .*"

The Carrier has convinced this Board that extending the switching limits at Los Angeles pursuant to its December 12, 2001 notice "*will result in more efficient and adequate switching service*" for its customers despite the Organization's contention that replacing the more senior road employees with far less experienced yard employees will

result in an immediate service disruption for the Carrier's Port customers. Prior arbitration boards have held that the January 27, 1972 UTU National Agreement allows carriers to replace road crews with yard crews when switching limits are extended.

As noted above, it presently takes two crews to move trailers/containers between Barstow and the Ports of Los Angeles and Long Beach. Due to a myriad of conditions that were explained above, the 28 mile trip between Hobart and the Ports now takes between 10 and 12 hours. When the Alameda Corridor opens the Carrier estimates that this trip will take under one hour. Thus, crews should be able to operate between Barstow and the Ports within the allowable hours of service. Currently, it is not uncommon for crews to outlast before completing their assignment. Moreover, a crew change at Hobart will no longer be necessary when the Alameda Corridor opens.

As observed herein, road crews currently provide service on the Carrier's Harbor Subdivision operating under road rules. Expanding the switching limits at the Los Angeles Terminal will allow the Carrier to use yard crews for this service who will operate under the more flexible yard rules. This should enhance efficiency and thus improve service to the customers served by the Carrier in this area. As observed above, arbitration boards have held that replacing a road crew with a yard crew is not an impediment to extending switching limits under the 1972 UTU National Agreement.

Allowing more trains to enter and depart the Los Angeles Terminal around the "commuter windows" of 6:00 a.m. - 9:00 a.m. and 3:00 p.m. - 6:00 p.m. will further enhance service to the Carrier's customers, in this Board's opinion. It may also facilitate development by allowing the Carrier to process more cars through the Ports of Long Beach and Los Angeles.

The Organization has expressed several concerns about the Carrier's decision to expand switching limits at the Los Angeles Terminal. For instance, the Organization contends that the exact location of the new switching limits is unidentified. Further, there will be multiple on and off duty points for yard assignments in the new Terminal which violates the former ATSF schedule agreement, according to the Organization. Additionally, the Organization is concerned that the Carrier may attempt to avoid its obligation to compensate crews for additional miles run within the expanded terminal.

The Organization's apprehension is unfounded, in this Board's opinion. In our view, the December 12, 2001, notice served by the Carrier set forth the new switching limits at the Los Angeles Terminal. Moreover, on and off duty points within the Terminal will be governed by existing rules. This Board has not authority to change those rules. Similarly, the appropriate compensation owed crews operating within the expanded Los Angeles Terminal will be governed by existing rules that this Board is not empowered to change.

The UTU also contends that the safety of BNSF employees may be compromised inasmuch as the Carrier will not own the track on the Alameda Corridor. Therefore, BNSF employees will be required to operate under rules of a foreign carrier. However, it is not uncommon for BNSF employees to operate over tracks not owned by the Carrier but over which it has trackage rights. We are not convinced that allowing Carrier's train service employees to operate on the Alameda Corridor will compromise their safety in any way.

For all the aforementioned reasons, this Board finds that extending the switching limits at Los Angeles in accordance with the Carrier's December 12, 2001, notice clearly

will result in more efficient and adequate switching service for the Carrier's customers and may also facilitate development in this area. BNSF traffic through the Ports of Los Angeles and Long Beach will move more efficiently and expeditiously by extension of the switching limits at the Los Angeles Terminal. This will result in more efficient and adequate switching service for the Carrier's customers in this area. For these reasons, the Carrier has the right under the January 27, 1972 UTU National Agreement to expand these switching limits.

Under the circumstances of this case, we are of the opinion that the tentative agreement reached by the parties on January 4, 2002, that failed ratification should be adopted. This includes Side Letter No. 1 and Side Letter No. 2 that were also agreed to on January 4, 2002. Side Letter No. 3 is now moot. The Memorandum of Agreement, Side Letter No. 1 and Side Letter No. 2 are appended hereto and are part of this Award.

### AWARD

The Carrier's proposal as set forth in its notice dated December 12, 2001, notifying the United Transportation Union of its desire to extend switching limits to the extend indicated at Los Angeles is granted.

  
\_\_\_\_\_  
Robert M. O'Brien, Chairman and Neutral Member

\_\_\_\_\_  
Gene L. Shire, Carrier Member

  
\_\_\_\_\_  
R. L. Marceau, Employee Member

4-4-02

Dated:





**BNSF**



Gene L. Shire  
*General Director - Labor Relations*

**Burlington Northern Santa Fe**

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Fort Worth, TX 76161-0030  
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Fort Worth, TX 76131  
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Mr. J.F. Holden  
General Chairman UTU  
2110 East First Street  
Suite 112  
Santa Ana, CA. 92705-4095

January 4, 2002

Side Letter 1

Dear Mr. Holden,

This is in regard to the agreement we initialed today providing for the extension of switching limits in the Los Angeles area.

The parties agree to meet expeditiously upon notification that the agreement has ratified to determine district miles and route codes to the various locations within the expanded terminal.

If the foregoing accurately reflects our understanding, please sign in the space provided below.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene L. Shire".

I AGREE:

\_\_\_\_\_

General Chairman

Handwritten initials "JFH" in black ink, written vertically on the right side of the page.

**BNSF**



*Gene L. Shire*  
*General Director - Labor Relations*

*Burlington Northern Santa Fe*

*P.O. Box 961030*  
*Fort Worth, TX 76161-0030*  
*2600 Lou Menck Drive*  
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*Phone: 817-352-1076*  
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Mr. J.F. Holden  
General Chairman UTU  
2110 East First Street  
Suite 112  
Santa Ana, CA. 92705-4095

January 4, 2002

Side Letter 2

Dear Mr. Holden,

This is in regard to the agreement we initialed today providing for the extension of switching limits in the Los Angeles area.

The parties recognize that there are currently at least three railroads operating within the territory now falling within switching limits established for BNSF crews pursuant to this agreement. UP and PHL have operating rights in this territory for the purpose of handling their own traffic and servicing their industries, and they have secured these rights and operated pursuant to the terms of these rights for many years prior to the effective date of this agreement. Nothing in this agreement changes any of those provisions or in any manner restricts operation of UP or PHL or any other crews who properly secure operating rights within the new limits so long as they do work only in connection with the handling of their own business as in the past. Nor does this agreement inhibit or restrict BNSF's right to interchange traffic within the expanded terminal with any entity pursuant to existing understandings and the application of interchange rules, interchange principles and agreements with UTU.

Further, nothing in this agreement will restrict any rights BNSF, PHL, or any other carrier currently has within the expanded limits, and these existing rights shall also apply at Dolores Yard once the Alameda Corridor is operational. Currently, the territory located west of and including Watson consists of team switching tracks (also known as "team tracks" or "joint

user tracks”) allowing any carrier with operating rights within the team switching trackage limits to handle any traffic within those limits for the purpose of performing Port switching. The same rights that exist west of and including Watson regarding team switching tracks will also apply west of and including Dolores Yard once the Alameda Corridor is operational.

We also understood that BNSF shall not be allowed to relieve or replace BNSF crews with the crews of any other railroad that would cause the other railroad to perform work rightfully belonging to BNSF crews. For example, if a train operating from Barstow to Watson expires under the Hours of Service Law between Hobart and Watson, a BNSF crew must relieve the crew and complete the trip to Watson. It is a violation of this and other agreements to use a PHL or UP crew to complete the BNSF trip. On the other hand, if the inbound road crew completes the trip to Watson, nothing in this agreement prohibits BNSF from properly interchanging the train (or cut of cars) to PHL at Watson or allowing them to, as they have in the past, perform service within the expanded switching limits on existing team switching tracks.

If the foregoing accurately reflects our understanding, please sign in the space provided below.

Sincerely,



I AGREE:

\_\_\_\_\_  
General Chairman



**BNSF**

Gene L. Shire  
*General Director - Labor Relations*

**Burlington Northern Santa Fe**

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Mr. J.F. Holden  
 General Chairman UTU  
 2110 East First Street  
 Suite 112  
 Santa Ana, CA. 92705-4095

July 22, 2002

Mr. J.D. Mullen  
 General Chairman BLE  
 509 SW Wilshire  
 Suite D  
 Burleson, TX. 76028

Gentlemen:

This is in regard to the extension of switching limits at Los Angeles and the commitment in the Side Letter to calculate the additional line miles within the expanded terminal. The information that I have been provided is as follows:

Locations	Route Miles
Barstow - Hobart	149
Barstow - Dolores	164
Barstow - Watson	165
Barstow - Port of Los Angeles	170
Barstow - Port of Los Angeles (Pier 400)	171
Barstow - Port of Long Beach	171

TY&E Compensation Systems has these figures and will implement them immediately.

If you have any questions or comments, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene L. Shire".