

**Marty E. Zusman, Ph. D.**  
**Labor Arbitrator**

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June 11, 2013

T. Gary Taggart  
Director-Labor Relations  
Union Pacific Railroad Company  
24125 Aldine Westfield Road  
Spring, TX 77373

Warran Dent  
General Chairman – BLET  
607 W. Harwood Road  
Hurst, TX 76054

RE: PLB 7577

Dear Advocates:

I have enclosed proposed Award No. 1 for Case No. 1 of Public Law Board No. 7577. This is a proposed Award for your consideration. Should the parties jointly agree on any changes or should there be any other issues, please bring them to my attention.

In order to expedite handling, I have signed the proposed Award. Should both parties agree to changes or should either party desire to further discuss these proposed Award, my signature shall be deemed void.

Very truly yours,

A handwritten signature in cursive script that reads "Marty E. Zusman".

Marty E. Zusman  
[mzus@comcast.net](mailto:mzus@comcast.net)

Enclosures

**PUBLIC LAW BOARD NO. 7577**

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

**PARTIES TO DISPUTE:** ( **Union Pacific Railroad Company**  
(  
( **vs.**  
(  
( **Brotherhood of Locomotive Engineers**  
( **And Trainmen (Southern Region)**

**STATEMENT OF CLAIM:**

**Shall the Carrier's proposal as set forth in Notice dated April 5, 2012 notifying the Brotherhood of Locomotive Engineers and Trainmen of its desire to extend switching limits to the extent indicated at Beaumont, Texas be granted?**

**FINDINGS:**

**This Board, after hearing upon the whole record and all the evidence finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and, that the parties were given due notice of hearing thereon.**

**The facts of this case are that the Carrier currently has an east switching limit on the Lafayette Subdivision at Milepost 275.62 and a west switching limit at Milepost 283.05 at Beaumont, Texas. On April 5, 2012, the Carrier proposed moving the east switching limit to Milepost 270.7 and the west switching limit to Milepost 292.6. The Carrier argued that the extension was necessary to increase and ease switching process efficiency and operations which would, "permit more fluid yard and road operations." It based its argument on Article II of the BLE National Agreement of May 15, 1971.**

**The Organization has argued on property and strongly before this Board that the Carrier's actions are unnecessary, flawed, and superseded by subsequent Agreements negating Article II of the BLE National Agreement. The Organization argues that there exists a clear history of negotiations and**

imposed settlements which not only granted Beaumont provision changes for efficiency, but prevented the exercise of future enlargements to the existing limits of the Beaumont terminal. The Implementing Agreement of 1997 made no change to the switching and terminal limits of Beaumont. The imposed Beaumont ID Service Agreement held to no change. Accordingly, Article II is not applicable. What is applicable is Article 1, Section 13, paragraph (c) of the arbitrated Beaumont ID Agreement which specifically estopped the Carrier as it was more recent and more specific than the general provisions of Article II. Those arbitrated terms of the Beaumont ID Agreement restrict the Carrier to the existing historical limits and deny the Carrier the right to its April 5th request to enlarge those limits. Further, even if the Board were to consider Article II of the 1971 BLE National Agreement, there is no showing by the Carrier of any industry to be serviced or legitimate rationale for the change.

The Board has carefully studied the history of this dispute on property, the facts of record, and the governing Agreements. The Board reaches the following conclusions. Article II of the 1971 BLE National Agreement specifically states in pertinent part that:

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 . . . of such intention, specifying the changes it proposes . . . carrier and the General Chairman . . . shall . . . endeavor to negotiate an understanding . . . In the event the carrier and the General Chairman . . . cannot so agree . . . the dispute shall be submitted to arbitration . . .

The Board has studied this language and concludes that the Carrier has properly provided proof that it followed the above notice on-property in an attempt to negotiate; and then moved to arbitration when negotiation failed.

The Board has studied the language of the Beaumont ID Agreement, particularly Article 1, Section 13 Sections, A, B and C. The Organization identifies Article C stating that, "This clause does not change the Beaumont Terminal Limits" as restraining and prohibiting the Carrier from invoking Article II, supra. There is nothing in the language of the Beaumont ID Agreement that supersedes, supplants or negates the Carrier's rights to

**invoke Article II.**

**As such, the Board turns to the Organization's position on property and before this Board that there is no justification, no proof, and no record presented by the Carrier that an industry has been identified for which the change in switching limits were shown to be necessary. The Organization argues that there is no industry or industries that were demonstrated to be in need of additional service for which the proposed change would be justified. Carrier's rational of efficiency, cost saving, reducing penalty payments and the like are invalid (Public Law Board 354, Award 1). Failing to show any such justification, the Carrier cannot be permitted to simply request a change and receive it.**

**The Board finds no language in Article II that constrains a change in switching limits to servicing industries. In fact, the language clearly permits the notice to be submitted when the Carrier "considers it advisable to change" the switching limits. Such change must be proven. Throughout this dispute, the Carrier has argued that the changes would increase operational efficiency. It has maintained that the changes would allow the switching and movement of trains without problems and penalties; allow trains to "fit within the terminal without moving a train beyond the existing switching limits" and provide numerous other benefits. On point, the Carrier maintained that:**

**The current size of the Beaumont terminal does not allow sufficient room to yard and exchange crews. Therefore, trains are either held at initial terminals or at other points in order to avoid congestion at the Beaumont terminal. As a result of these delays, scheduled trains fail to arrive at their destination on time. This also inhibits the Company when bidding on new business requiring expedited transit time. This results in inconvenience and increased cost to the Company's customers.**

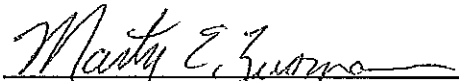
**The Carrier has shown that the change improves efficiency and under these circumstances is properly advanced to this Board. The Organization has not shown that such arguments lack factual proof.**

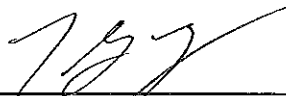
**Accordingly, having reviewed the numerous prior Awards that have considered Carrier requests, the facts of this record convince this Board that the Carrier's proposed change is justified (Public Law Board 5269, Award 1;**


Public Law Board 5832, Award 1; Arbitration Board Nos. 318, 338, 372, 378, 404, 511, 512). In short, the Board is not persuaded by the Organization's objections and the General Chairman's strong arguments. Due to the circumstances of this instant case, the Board upholds, sustains, and grants the Carrier's extended switching limits put forth in this Arbitration.

**AWARD:**

The Question at issue in the Statement of Claim must be answered in the Affirmative. The Carrier's proposal as set forth in the Notice of April 5, 2012 to extend switching limits as indicated at Beaumont, Texas shall be granted.

  
Marty E. Zusman  
Chair and Neutral Member

  
T. G. Taggart  
Carrier Member, UP

  
W. Dent  
Organization Member, BLET

Date: 6-18-2013