

PUBLIC LAW BOARD NO. 6483

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

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-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 Brotherhood of Locomotive Engineers of its desire to extend switching limits to the extent indicated at Los Angeles be granted?

MAY 13, 1971 NATIONAL AGREEMENT

ARTICLE II - SWITCHING LIMITS

Article 7 - Changing switching limits of the May 23, 1952 Agreement hereby amended to read as follows:

- (a) 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, specifying the changes it proposes and the conditions, if any, it proposes shall apply in event of such change. 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 so agree on the matter, the dispute shall be submitted to arbitration as provided for in the Railway Labor Act, as amended, within sixty days following the date of the last conference. The carrier shall designate the exact questions or conditions it desires to submit to arbitration and the General Chairman or General Chairmen shall designate the exact questions or conditions such General Chairman or General Chairmen desire to submit to arbitration.

Such questions or conditions shall constitute the questions to be submitted to arbitration.

The decision of the Arbitration Board will be made within 30 days after the Board is created, unless the parties agree at anytime upon an extension of this period. The award of the Board shall be final and binding on the parties and shall become effective thereafter upon 7 days notice by the carrier.

- (b) This rule shall in no way affect the changing of yard or switching limits at points where no yard crews are employed.
- (c) This rule shall become effective September 1, 1971, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before August 1, 1971.

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 present west switching limits at the Carrier's Los Angeles Terminal are on a line between Hobart and Los Angeles including 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 II of the May 13, 1971, BLE National Agreement where a carrier considers it advisable to change switching limits it is required to give notice to the General Chairman in writing specifying the changes it proposes and any conditions it proposes to apply in the event of such change. 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 BLE General Chairman Mullen 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 United Transportation Union (UTU) General Chairman pursuant to Article VI of the January 27, 1972, UTU National Agreement.

The Carrier met with General Chairman Mullen on December 28, 2001, to discuss the December 12, 2001 notice. They met again on January 4, 2002. Representatives of the UTU 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 II (a) of the May 13, 1971 BLE 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 Brotherhood of Locomotive Engineers (hereinafter referred to as the Organization or the BLE) 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.

Unlike the 1972 UTU National Agreement the May 13, 1971 BLE National Agreement does not embody any standards to determine under what circumstances a

carrier has the right to extend switching limits. Nevertheless, numerous arbitration tribunals have concluded that the appropriate paradigm is whether the carrier has demonstrated that extending switching limits:

- (1) will result in more efficient and adequate switching service; and/or
- (2) will facilitate development.

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.

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 outlaw 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. 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. Therefore, this should not be a bar under the comparable 1971 BLE 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 raised several concerns it has 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 suspects that the Carrier is attempting to avoid its obligation to compensate crews for all miles run in interdivisional service.

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 between Barstow and the Ports of Los Angeles and Long Beach is governed by existing rules that this Board is not empowered to change.

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 May 13, 1971 BLE 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 Brotherhood of Locomotive Engineers 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



John D. Mullen, Employee Member

Dated:

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 May 13, 1971 BLE 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 Brotherhood of Locomotive Engineers 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



John D. Mullen, Employee Member

Dated:

MEMORANDUM OF AGREEMENT
Between The
BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY
And The
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

1. Pursuant to Carrier's notice dated December 12, 2001, the switching limits at Los Angeles, California are extended 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 BNSF's Harbor Subdivisions, Union Pacific's San Pedro Subdivision, Dolores Yard, and the Alameda Corridor.
2. Road crews may be required to receive or deliver their train at any location within the expanded terminal pursuant to agreements applicable on the Coast Lines.
3. If by operation of this provision a road crew is obligated to operate additional miles, such additional actual miles shall be added to the miles of the assignment.
4. Yard assignments within the expanded terminal may be established at Los Angeles, Watson, Dolores, the Port of Los Angeles or the Port of Long Beach.
5. The former ATSF Coast Lines Yard Service Agreements shall govern yard assignments.
6. Where existing agreement provisions require the filling of a yard vacancy from an extra board, such vacancies in the expanded terminal will be filled from the existing Los Angeles extra board.

Signed this _____ day of _____, 2002 and effective
_____, 2002.

FOR THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY:

FOR THE BROTHERHOOD OF
LOCOMOTIVE ENGINEERS:

Assistant Vice President Labor Relations

General Chairman

General Director Labor Relations

APPROVED

Manager Labor Relations

Vice President BLE

BNSF



Gene L. Shire
General Director - Labor Relations

Burlington Northern Santa Fe

P.O. Box 961030
Fort Worth, TX 76161-0030
2600 Lou Menk Drive
Garden Level
Fort Worth, TX 76131
Phone: 817-352-1076
Fax: 817-352-7482

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

January 4, 2002

Side Letter No. 1

Dear Mr. Mullen,

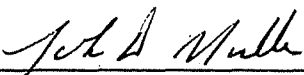
This is in regard to the agreement we initialed today providing for the extension of switching limits in the Los Angeles area.

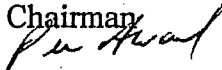
The parties agree to meet expeditiously upon notification that the agreement has ratified to determine district miles and route codes to the various locations within the expanded terminal.

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

Sincerely,

I AGREE:



General Chairman


BNSF



Gene L. Shire
General Director - Labor Relations

Burlington Northern Santa Fe

P.O. Box 961030
Fort Worth, TX 76161-0030
2600 Lou Menk Drive
Garden Level
Fort Worth, TX 76131
Phone: 817-352-1076
Fax: 817-352-7482

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

January 3, 2002

Side Letter No. 2

Dear Mr. Mullen,

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 BLE.

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
per Award