

PUBLIC LAW BOARD NO. 6860

Case No. 1

Award No. 1

**PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE
ENGINEERS AND TRAINMEN**

-and-

BNSF RAILWAY COMPANY

QUESTION AT ISSUE:

Do the agreements proposed by the carrier to govern the establishment and operation of three interdivisional freight service runs between Kansas City and Temple, TX. satisfy the requirements of Sections 1 and 2 of Article IX of the May 19, 1986, BLE arbitrated National Agreement?

If not, what conditions are deemed to be reasonable and practical?

Kansas City - Oklahoma City

Oklahoma City - Ft. Worth

Ft. Worth - Temple

ARTICLE IX - INTERDIVISIONAL SERVICE

Section 1 - Notice

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.

Section 2 - Conditions

Reasonable and practical conditions shall govern the establishment of the runs described, including but not limited to the following:

(a) 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.

(b) 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 May 31, 1986 by the number of miles encompassed in the basic day as of that date. Weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

(c) When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the carrier shall authorize and provide suitable transportation for the crew.

Note: Suitable transportation includes carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

(d) On runs established hereunder crews will be allowed a \$4.15 meal allowance after 4 hours at the away from home terminal and another \$4.15 allowance after being held an additional 8 hours.

(e) In order to expedite the movement of interdivisional runs, crews on runs of miles equal to or less than the number encompassed in the basic day will not stop to eat except in cases of emergency or unusual delays. For crews on longer runs, the carrier shall determine the conditions under which such crews may stop to eat. When crews on such runs are not permitted to stop to eat, crew members shall be paid an allowance of \$1.50 for the trip.

(f) The foregoing provisions (a) through (e) do not preclude the parties from negotiating on other terms and conditions of work.

Section 3 - Procedure

Upon the serving of a notice under Section 1, the parties will discuss the details of operation and working conditions of the proposed runs during a period of 20 days following the date of the notice. If they are unable to agree, at the end of the 20-day period, with respect to runs which do not operate through a home terminal or home terminals of previously existing runs which are to be extended, such run or runs will be operated on a trial basis until completion of the procedures referred to in Section 4. This trial basis operation will not be applicable to runs which operate through home terminals.

Section 4 - Arbitration

(a) 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 either party. The arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above.

(b) The decision of the arbitration board shall be final and binding upon both parties, except that the award shall not require the carrier to establish interdivisional service in the particular territory involved in each such dispute but shall be accepted by the parties as the conditions which shall be set by the carrier if and when such interdivisional service is established in that territory. Provided further, however, if carrier elects not to put the award into effect, carrier shall be deemed to have waived any right to renew the same request for a period of one year following the date of said award, except by consent of the organization party to said arbitration.

FINDINGS AND DISCUSSION

Public Law Board No. 6860, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute and did participate therein.

The Organization advances three arguments in support of its position that the interdivisional service proposed by the Carrier should not be implemented. First, it asserts that Carrier's notices to establish interdivisional service between Kansas City and Oklahoma City and between Oklahoma City and Fort Worth are void *ab initio* because they do not meet the requirements of Article IX, Section 2(a) that such runs must be reasonable in regard to miles run, hours on duty and other conditions of work. Second, even if the Carrier's notice complies with Article IX, Section 2(a), the Organization contends that Carrier's actions in prematurely presuming ratification failure, requesting arbitration and altering the negotiated terms prior to the completion of the ratification process require dismissal of the Carrier's position with prejudice and the remanding of the matter to the property for further negotiations. Finally, should the Board decide to consider and set the conditions of the subject

subject runs, it should defer to the judgment of the negotiators and impose the conditions set forth in the tentative agreements.

Carrier argues that the proposed service is both reasonable and practical and satisfies the requirements contained in Article IX of the 1986 Agreement. In the Carrier's view, the Board has no basis to impose any conditions other than those proposed by the Carrier. The Board is reminded that there is significant value to a ratified agreement and, in this case, the Carrier acquiesced to several demands from the Organization in order to assure ratification. When ratification did not occur, those additional concessions were properly extinguished, Carrier argues. The Organization should not now be permitted to obtain in arbitration what it could not achieve through the bargaining process.

Article IX, Section 2, of the 1986 Agreement mandates that "reasonable and practical" conditions must govern interdivisional service that is proposed by a carrier. Article IX, Section 2, sets forth examples of reasonable and practical conditions, such as the runs must be reasonable regarding miles run and hours on duty. Section 2 also addresses the appropriate compensation for those miles in excess of the miles encompassed by the basic day; the provision of "suitable transportation" at the terminal of the run in the event the engineer is required to report for service, or is relieved from service at a location other than the normal on and off duty locations; away-from-home terminal meal allowances; and a run through meal allowance driven by the length of the new service run.

Article IX, Section 2, expressly states that the parties may negotiate other terms and conditions regarding the proposed service, in addition to those set forth in Section 2 (a) – (e). If the parties are unable to reach an agreement and arbitration is invoked pursuant to Article IX, Section 4, then the arbitration board is governed by the general and specific guidelines set forth in Section 2.

The Employees argue that the Kansas City to Oklahoma City does not meet the "reasonable and practical" standard under Article IX, Section 2. While BLET recognizes that the "priority trains" BNSF intends to operate in this service are able to make the run in a reasonable amount of time, they will do so at the expense of other traffic moving in that territory. Stated differently, the Organization suggests that those trains remaining in the Kansas City to Arkansas City/Wellington pools will be put on side tracks in order to allow the "priority" trains by, thereby causing engineers on non-priority trains to suffer unreasonable and impractical conditions regarding their runs. While the Board agrees that such a result would cast doubt on the service proposed by the Carrier, the

Employees have not offered any evidence in support of their position other than conjecture.

The Carrier, however, explains that the territory between Kansas City and all three involved terminals in that corridor, Wellington, Arkansas City and Oklahoma City is largely high-speed two-mainline track territory. Moreover, as Carrier points out, there are route options available that would allow the Carrier to move certain traffic over to a different route in the event of congestion. This, in light of the fairly recent changes in the agreements governing service between Kansas City and Arkansas City/Wellington, convinces this Board that the Carrier has proposed reasonable and practical service regarding the Kansas City to Oklahoma City run and that the new run will not create hardship to any engineer working an existing run.

Turning to the Employees contention that the Oklahoma City to Fort Worth proposal does not meet the "reasonable and practical" test, the Carrier points out that its former component property, the former "Frisco" railroad, currently operates between these two cities without any significant difficulty and there has been no complaint from the employees currently operating between Fort Worth and Oklahoma City regarding that run's inherent "reasonableness" or "practicality." Therefore, the Board finds that the proposal regarding operation between these two cities in the instant case meets the "reasonable" and "practical" standard.

The Carrier first served notice to establish this service during September of 2004. The parties met several times over a period of at least seven months. Further, the Carrier made it clear, from the very first meeting, that there were certain elements that were worthy of consideration in exchanged for a ratified agreement. Ultimately, the proposal did not ratify and is now properly before this Board.

The conditions proposed by the Carrier as applicable to the proposed runs satisfactorily meet the reasonable and practical conditions required by Article IX, Section 2 of the 1986 Agreement. All of the required elements, as provided under Article IX, Section 2 and subparagraphs (a) through (d) are included in the proposal. With one exception, the Board finds that the Carrier's so-called "arbitration proposal" meets the National Agreement's requirements.

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 in order to do their part for the railroad. Because of this concession, their basic daily rate of pay is below the national average for locomotive engineers. In exchange, the former Santa Fe agreed to allow the engineers the conductor-only

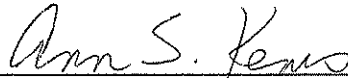
overmile rate. Since this increased overmile rate has become, for all intents and purposes, the former Santa Fe overmile rate and said rate is tied to significant concessions made by the engineers years ago, that rate shall apply to the service proposed by Carrier. Other than this, the "arbitration" proposals offered by BNSF addressing this service meet the general and specific guidelines contained under Article IX, Section 2 of the 1986 National Agreement and shall govern the proposed service.

The applicable proposals are appended hereto and made part of this Award.

AWARD

The Agreements proposed by BNSF to govern the establishment of three interdivisional service runs between Kansas City and Temple, Texas satisfy the requirements of Section 1 and Section 2 of Article IX of the May 19, 1986 BLE Arbitrated National Agreement. However, the following provision shall replace the proposed language addressing payment for miles in excess of those encompassed in the basic day:

All miles in excess of the miles encompassed in the basic day shall be paid for at the conductor-only overmile rate. Car scale and weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.



Ann S. Kenis

Chairperson and Neutral Member



Gene L. Shire
Carrier Member



Richard K. Radek
Organization Member

Dated this ^{7th} day of August 2005.

September

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

Pursuant to Carrier's Notice dated September 2, 2004, interdivisional service may be established between Kansas City, Kansas and Oklahoma City, Oklahoma to handle identified trains between these terminals under the following conditions.

1. An Interdivisional pool will be established at Kansas City, Kansas to operate between Kansas City, Kansas and Oklahoma City, Oklahoma. Kansas City shall be the home terminal and Oklahoma City shall be the away from home terminal.
 - 1.1 The district miles between Kansas City, Kansas and Oklahoma City, Oklahoma shall be 357.
2. The pool shall operate on a "first-in/first-out" basis at both the home and away-from-home terminals.
3. BNSF shall be responsible for initially designating how many trains per week are anticipated to be handled by this pool.
4. BNSF shall have the right to add or remove trains to or from those to be handled by this pool by affording the involved Local Chairmen no less than fifteen (15) days notice to allow for appropriate pool adjustment.
5. The Brotherhood of Locomotive Engineers and Trainmen shall advise BNSF regarding the distribution of equity in this pool and equity distribution management shall be effected by allocating "prior right" turns in the pool.
 - 5.1 In order to be eligible to claim prior-rights to a turn in this pool or any other benefits provided pursuant to the terms of this agreement, the engineer must have an engine-service seniority date established on or before September 2, 2004 and hold a position on the so-called "prior rights" district on that date.
6. Except in cases of emergency, engineers in this service shall only lay-off and report for service at Kansas City only.

7. Hours of service relief:
 - 7.1 Westbound trains that are relieved:
 - 7.1.1 between Kansas City to and including Emporia, the first-out engineer in this service at Kansas City will work the train to Oklahoma City.
 - 7.1.2 between Emporia and Arkansas City, the Newton extra board will work the train to Arkansas City.
 - 7.1.2.1 In the event the Newton extra Board is exhausted, the train shall be relieved by first-out away-from-home terminal engineer at Arkansas City who shall be governed by the terms and conditions of the Kansas City – Wellington / Arkansas City interdivisional service agreement
 - 7.1.3 between Arkansas City to and including Oklahoma City, the Arkansas City pool.
 - 7.2 Eastbound trains that are relieved:
 - 7.2.1 between Oklahoma City to and including Emporia, the first out away-from-home terminal engineer in this service at Oklahoma City. If no Kansas City / Oklahoma City pool engineer is available at Oklahoma City then the Arkansas City freight pool will handle the train to Arkansas City where the Kansas City / Arkansas City ID pool will handle the train to Kansas City.
 - 7.2.2 between Emporia and Kansas City, the Kansas City extra board.
8. In order to expedite the movement of interdivisional service runs, the carrier shall determine the conditions under which such crews may stop to eat. When crews on such runs are not permitted to stop to eat, crew members shall be paid an allowance of \$1.50 for the trip.
9. 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 May 31, 1986 by the number of miles encompassed in the basic day as of that date. Weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

- 9.1 Mileage rates of pay, as defined above, applicable to this interdivisional service shall not exceed the applicable rates as of October 31, 1985, except that wage increases applicable on or after December 1, 1995 shall apply to this mileage rate of pay.
10. When an engineer 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 engineer. Suitable transportation includes BNSF owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.
11. Engineers 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.
12. Disciplinary hearings or investigations involving engineers 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.
13. Every employee adversely affected either directly or indirectly as a result of the implementation of this Agreement shall receive the protection afforded by Sections 6, 7, 8 and 9 of the Washington Job Protection Agreement of May 1936, except that for the purposes of this Agreement, Section 7(a) is amended to read 100% (less earnings in outside employment) instead of 60% and extended to provide period of payment equivalent to length of service not to exceed 6 years and to provide further that allowances in Sections 6 and 7 be increased by subsequent general wage increases.
- 13.1 Relocation packages to Kansas City, Kansas shall be limited to the extent that the total number of afforded relocation packages shall not exceed the highest number of Arkansas City allocated turns in this pool and shall be applicable only in the case of a bona fide relocation of a prior-rights engineer as defined under Section 5.1 hereof.
14. Except as specifically modified herein, all other Agreements and understandings concerning work performed between Kansas City and Oklahoma City remain in effect.

Signed at Ft. Worth, TX on _____, 2005 and effective _____, 2005.

FOR THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY CO.:

FOR THE BROTHERHOOD OF
LOCOMOTIVE ENGINEERS AND
TRAINMEN:

Assistant Vice President Labor Relations

General Chairman

General Director Labor Relations

APPROVED:

Vice President