# SPECIAL BOARD of ADJUSTMENT

**Between**

## BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY

**And**

## UNITED TRANSPORTATION UNION

**CASE No. 1 : QUESTION AT ISSUE:**

Does the agreement proposed by the carrier to govern the establishment and operation of interdivisional freight service run between Kansas City and Oklahoma City satisfy the requirements of Sections 1 and 2 of Article IX of the October 31, 1985 National Agreement?

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

**CASE No. 2: QUESTION AT ISSUE:**

Does the agreement proposed by the carrier to govern the establishment and operation of interdivisional freight service run between Oklahoma City and Fort Worth, TX satisfy the requirements of Sections 1 and 2 of Article IX of the October 31, 1985 National Agreement?

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

**CASE No. 3: QUESTION AT ISSUE:**

Does the agreement proposed by the carrier to govern the establishment and operation of interdivisional freight service run between Fort Worth and Temple, TX satisfy the requirements of Sections 1 and 2 of Article IX of the October 31, 1985 National Agreement?

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

**Discussion:**

These cases deal with the realignment of interdivisional service between Kansas City and Temple Texas. On September 2, 2004 the Carrier served notice to establish three interdivisional runs between Kansas City and Temple under the provisions of the October 31, 1985 UTU National Agreement. The first notice concerned service between Kansas City, Kansas and Oklahoma City, Oklahoma. The second notice was for service between Oklahoma City and Fort Worth and the final notice was for service between Fort Worth and Temple.

The current operation provides for crew changes at Arkansas City, Kansas and Gainesville, Texas. The Carrier stated that these runs were necessary because Oklahoma City and Fort Worth have developed into natural crew change points on the merged BNSF system. Oklahoma City is a terminal of significant size where trains originate and terminate. Fort Worth is a terminal for runs for all parts of the merged BN system except for Santa Fe crews. In addition Fort Worth has a large intermodal terminal and BN has seen significant growth in this area in recent years.

Fort Worth has also become an " inspection" point. Due to changes in the Power Brake Law, trains need only be inspected for mechanical defects every 1500 miles. The Carrier stated that the practical effect was that trains travel between Chicago and Fort Worth without having to stop at Kansas City for mechanical inspection. The Carrier stated this would allow crews to change at Kansas City in a 'step-on step=off" arrangement and proceed to Fort Worth without delay. Under the Carrier's proposal, these trains would operate with a single crew to Oklahoma City where another crew will

take the train to Fort Worth where it will either be terminated or be reclassified or delivered to a customer. Under the current arrangement, a crew from Gainesville would handle the train to Fort Worth and then get in a taxi and ride on the highway to Temple. The Carrier wants to make the necessary crew district changes in order to rationally fit the crew districts to developing traffic patterns, as well as develop strategies to address the significant growth

The Carrier served the same notices on the Brotherhood of Locomotive Engineers and Trainmen in September , 2004. The BLE argued that the proposed runs did not meet the "reasonable and practical standard" under Article IX, Section 2 of the 1986 BLE Agreement. This dispute has already gone to arbitration where in Award No. 1 of Public Law Board No. 6860 Referee Kenis held that the proposed operations meet the "reasonable and practical" standard and that the Carrier had the right to establish the service In view of this award and other factors the UTU in oral argument did not take issue with the Carrier's right to establish the interdivisional service between Kansas City and Temple ,Texas pursuant to paragraph (a) of Section 2 of Article IX of the October 31, 1985 National Agreement.

Thus, this Board is left to determine what agreement provisions are deemed to be reasonable and practical under Section 2 of Article IX of the October 31, 1985 National Agreement. Section 2 provides:

**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 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.

(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.

As stated above the Carrier served notice on September 2, 2004. There were numerous meetings between the parties in an effort to resolve the interdivisional notice and the

Carrier's proposal relating to the notice. The Carrier stated that during negotiations it made it clear to the Organization that several items were included to be exchanged for ratification of the agreements. The Carrier advised the Organization at each negotiating session that certain provisions were contingent upon ratification The final proposal issued by the Carrier was submitted to the Organization membership for ratification. Prior to a vote by the organization membership, the Carrier issued correspondence dated March 1, 2005 indicating the specific sections of each agreement that were considered to be quid-pro-quo for a ratified agreement. The General Chairmen of the UTU responded to the Carrier's March 1, 2005 letter and advised, in part, "These issues have been previously addressed and deemed reasonable by both parties and to now seek to change these agreements in this forum is improper". The proposed agreements failed ratification..

Article IX, Section 4 (a) of the 1985 National Agreement outlines the jurisdiction of this Arbitration Board. This provision provides:

**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 the carrier. The arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above.

The parties disagree to the meaning of the above provisions and the powers of the arbitrator.

The Organization stated that the framers of the October 31, 1985 UTU National

Agreement recognized the peculiarities of the service presented unique problems calling for unique solutions. They stated if the parties had intended for there to be a cookie cutter solution, such a solution would have been reflected in the final product. They maintained that the Neutral member has plenary powers to insure the interest of the membership be protected to the same degree as that of the Carrier. The Organization argued that that the Carrier's proposed agreements fail to satisfy the requirements of the October 31, 1985 National Agreement. Instead, the Organization stated that the previously negotiated ID agreements clearly were reasonable and practical. as they reflected industry norms; the on-property agreements and the previously negotiated ID agreements

The Organization in its submissions and presentations went through each of the provisions removed by the Carrier and showed why they were not reasonable or practicable. For each provision removed, they showed where the provision was included in previous ID agreements reached on the property, Crew Consist agreements or on-property agreements. The Organization also cited an award on the CNIC Railway Company to support several of its positions. The Organization concluded that its proposed agreements were reasonable and practical as they were similar to other on property agreements.

The Carrier stated that the language of Article IX, Section 4 (a) of the 1985 National Agreement is unambiguous. They stated that the Board is governed by the general (reasonable and practical) and specific (overmiles, meals, terminal transportation)

guidelines set forth in Section 2 of Article IX The Carrier further stated that all the specific conditions contained under Section 2 reside in each of their proposals. The Carrier further pointed out that there are additional conditions that were negotiated by the parties embodied in each proposal because these additional conditions are deemed to be mutually beneficial. The Carrier concluded that that the Board would be exceeding its jurisdiction by creating additional conditions for the service due to the guidelines and limitations contained in Section 2of Article IX.

The Carrier cited Award No. 1 of Public Law Board 6761 to support its position.. This case involved the establishment of Interdivisional service between Stockton and Bakersfield, California. Referee Quinn held:

> "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 Agreements recognizes those conditions to be both general and specific in nature."

The Carrier further added that during negotiations it was willing to grant many concessions in exchange for a ratified agreement. Since the agreement was not ratified, these concessions were withdrawn by the Carrier and they concluded that there is no contractual jurisdiction for this Board to add any conditions beyond those in the current proposals.

The Carrier further argued that there was precedent to implement its proposals without including those elements that were included as a condition of ratification. They noted that Referee O'Brien had addressed these issues on this property when discussing a proposed interdivisional service between Stockton and Bakersfield. As to the Organization's failure to ratify the agreement, the Board held:

> " A compelling argument can be made that the 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."

Referee Quinn affirmed the above decision in Award No. 1 of PLB 6761. This award settled the proposed interdivisional service between Stockton and Bakersfield between the Carrier and the UTU. In adopting Referee O'Brien's view, Mr. Quinn rejected the reasoning of PLB 535 that held:

> "It is reasonable to assume that the Organization 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 Organization 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."

Referee Quinn adopted the Carrier's proposal stating "The 'conditions' attendant to interdivisional service that are included in the National Agreement are part of the final proposal before this Board".

Finally, the Carrier argued that this case ,containing all of these identical arguments, has been decided relative to the Organization representing the other side of the locomotive, the Brotherhood of Locomotive Engineers and Trainmen. Public Law Board 6860 decided :

> 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 requirements.

PLB 6880 did decide to allow the engineers the conductor-only overmile rate as opposed to the overmile rate prescribed by the National Agreement. The Carrier concluded that all three of its proposals contain all the conditions required by the National Agreement and thus should be adopted.

The Organization stated that the Kenis award does not set precedent as the BLE did not cite previous agreements on the property. The Organization stated that the BLE's approach was different that the historical perspective presented by the UTU. The Organization stated that the negotiations for these ID runs fell short of previous negotiations. The Organization contended that from day one the Carrier's position was "here it is" and that the Organization should be thankful for any type of meetings at all. The Carrier's offers were minimal, and somehow, with a straight-face, advanced a position that there were enhanced benefits associated with their offer (proposal), when in fact their offers were sub-standard, and failed to be reasonable and practical, far below the industry norm. The Organization cited several agreements that they thought were the norm on the property and the Carrier's offers did not meet these standards. The Organization concluded that it has demonstrated through industry norm; on-property agreements and the previously negotiated ID agreements that its proposals are reasonable

and practical. Further, they stated that the Carrier's proposals fail to be reasonable and practical as supported by the cited agreement and contract provisions.

The Carrier countered these arguments by stating that all the agreements cited by the Organization were all ratified and signed. They noted that had the proposals before this Board been ratified and signed, they would have contained many of the requested conditions. They cited one side letter in which the Carrier stated "since we have reached this agreement with unusual alacrity and in the spirit of cooperation". The Carrier stated that these negotiations did not contain elements of enthusiasm and promptness. The Carrier concluded that it places a significant long-term value on a ratified agreement and was willing to exchange conditions that the employees the view as favorable in exchange for that very value. If the Board grants conditions that are beyond those in the National Agreement, the Carrier feels that it would suffer significant detriment as a result as it did not get the quid–pro-quo in exchange for those enhanced provisions.

**Findings:**

The Board after considering the entire record agrees with the decisions of Referees O'Brien and Quinn that there is significant value to a ratified agreement. The Board examined the agreements that failed ratification and do not find them materially different from other agreements made on the property. The Board did not find that the conditions offered in these agreements were minimal or substandard as contended by the Organization. The Carrier clearly informed the Organization that the proposals contained

benefits that were expressly contingent on ratification and the enhancements would be withdrawn if the proposals were not ratified. As the agreement was not ratified, the Board finds no basis to grant the employees the quid-pro-quo for such ratification.

The questions at issue are answered in the affirmative. The agreements proposed by the Carrier to govern the establishment of three interdivisional service runs between Kansas City and Temple, Texas satisfy the requirements of Section 2 of Article IX of the October 31, 1985 UTU National Agreement. The "conditions" attendant to interdivisional service that are included in the National Agreement are part of the final proposals before this Board. With the exceptions noted below, the Board finds that the Carrier's proposals meet the National Agreement requirements.

**1:**The following phrase should be added to the mileage of the runs:

**(and the additional miles if alternate route used)**

**Overmile provisions:**

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

The Board reached this decision in order to simplify the application of these agreements. The current on property crew consist agreements and other on property agreements amended the 1985 National Agreement to this rate and thus would apply

**Meals En Route:**

> **BNSF shall determine the conditions under which trainmen in this service may stop to eat. When trainmen are not permitted to stop and eat, the trainman shall be paid an additional allowance of $1.50 (code 09) if on duty eight (8) hours or less or $6.00 (code 72) if on duty in excess of eight (8) hours.**

These provisions were contained in crew consist agreements made after the 1985 National Agreement and are applicable. The Board had no power to override these provisions.

**Protection:**

Delete Paragraph 14.1 of the Kansas City –Oklahoma City agreement, paragraph 13.1 of the Oklahoma City-Fort Worth agreement and paragraph 15.1 of the Fort Worth – Temple agreement. The Board does not have the authority to dilute or add to the protection provisions provided for in Article XIII of the January 27, 1972.

The Board did not amend any other provisions of the Carrier's final proposals and they will stand as written. However, the Board does note that all other agreements on the property remain in effect except as modified in these agreements. Therefore, if the current crew consist agreements contain restrictions on switching, they remain in effect and are not modified. The same is true for any other rule.

This award will be effective on or before thirty days after it is fully executed.

John R. Binau
Neutral Member

Gene L. Shire
Carrier Member

M.B. Futhey
Organization Member