



Date: November 6, 2007

To: Transportation Craft
Award Distribution

From: Gene L. Shire

Subject: Awards 1 through 9 of PLB 6849

Attached are Awards 1 through 9 of PLB 6849. This arbitration board hears contract interpretation cases advanced by the former Santa Fe UTU (Northern and Southern Divisions). The Board sustained four "HO" (riding on the side of a car in excess of one mile account caboose elimination) cases. This was not totally unexpected. We had arguable points based upon the literal language of the 1982 National Agreement that provided the terms and conditions attendant to caboose elimination, but the Board disagreed with these positions for reasons I will discuss when summarizing the individual Awards. On the other hand, the Board upheld BNSF's position on some important principles.

Award 1 is a basic day claim for a road crew performing switching within switching limits where yard crews are on duty (Fort Worth). A Gainesville road crew was required to receive their train at ConAgra (formally Union Equity) off of five tracks. Since this was not the "minimum number of tracks" (the train would have fit on three of those tracks) the claim was sustained in favor of UTU.

What is interesting about this Award is the way that it was sustained. UTU argued that the crew could not receive their train at an industry, even if the minimum number of tracks are utilized. The Award seems to say that had we utilized the minimum number of tracks, the claim would have been denied. Therefore, when settling claims, or when faced with similar claims in the future, if the minimum number of tracks are utilized, the claim should not be paid upon the basis of this Award.

Award 2 involves the former ATSF Crew Consist Agreement. Under that agreement, a conductor-only crew may perform no more than three "events" during a trip or tour of duty. "Event" is known to mean either a

straight pick-up or straight set-out. Moving locomotive in connection with the assignment, receiving the train or yarding the train does not constitute an "event."

In this case, the conductor-only crew left their train at an intermediate point of their run (Somerville), and placed their power to a separate track. The crew had already performed three "events" prior to their arrival at Somerville and believed that setting out their train at an intermediate point constituted the fourth, and penalty triggering, "event." BNSF argues that the crew yarded their train at Somerville and put their power away. The fact that this occurred at an intermediate location does not change the nature of the work. The train was yarded and left at that location. The Board upheld our position:

A review of the language of Article II of that Agreement fails to persuade the Board that the claim ought to be sustained. What the Claimant did was not a set out in accordance with the provisions of the 1992 Agreement. What the Claimant did was leave the train prior to its arriving at its final terminal simply because his tour of duty was about to end. Prior to doing that he placed yarded cars on one track and placed several locomotives on another track at the intermediate point of Somerville. This did not constitute a set-out as the claim states. Consequently this was not an event.

This was a must-win for BNSF. Had the Board found that setting an entire train out at an intermediate point was an "event," our Santa Fe conductor-only penalties would increase dramatically. It could have meant that every time a crew has to abandon a train short of the final terminal, that act would be an "event."

Award 3 addresses UTU's assertion that an interdivisional service crew was used in other than interdivisional service. A Gainesville – Temple crew handled a train from Gainesville to Fort Worth and then transported to Temple. UTU's position is that the interdivisional service crew must work a train through the ID run-through terminal (in this case Cleburne). According to UTU, taking a train from Gainesville to Fort Worth and then riding in a taxi through Cleburne to Temple was a violation because the claimants did not handle an interdivisional service train.

BNSF's position is that there is no such thing as an interdivisional service train. There are interdivisional service crews, however, and so long as the crew goes through the run-through terminal, whether it be

on a train or on the highway, that crew is working under the terms of the interdivisional service agreement. The Board upheld BNSF's position on this important principle, reasoning:

He did not protect it the full length from Gainesville to Temple. But he did protect it for as long as the company wanted him to. The language of the Agreement does not say that he had to do so from one end to the other. If the parties had wanted to say that the Board can but conclude that they would have said that in framing the language of the agreement.

The Claimant did protect his ID run. He protected it as much as management asked him to. Then he was taken off the train and transported by service car to Temple which was the end of the run. There is nothing in the language of Appendix 2 that says that this was inappropriate. The Claimant did what he was asked to do on the day in question and he was paid for the full run. The language here, as well as well constructed contract language, does not put undue and irrational constraints on management, in organizing the work place, when dealing with its forces covered under labor contract.

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The Carrier also argues that agreements, including this 1985 Appendix, applies' to employees and not trains. This goes without saying as all of the experienced melnbers of this Board, on both sides, full well knows [sic].

Award 4 is another conductor-only violation claim. In this case, the claimant yarded his train at the port of Beaumont on five tracks – one of the involved tracks twice. The train was yarded on tracks three through six. The claimant utilized track six first. While he was putting his train away on tracks three through five, the port engine cleared track six, so the claimant, having filled tracks three through five, placed the remainder of his train on the now clear track six and took his locomotive to track 16. UTU contended that utilizing track six twice triggered the claim. The Board disagreed and upheld BNSF's position that the claimant utilized the minimum number of tracks.

Award 5 is a basic day claim for being required to hang on the side of a car for an extended distance (over one mile) when "but for" the

elimination of cabooses, a caboose would have been utilized to protect the move.

There was no dispute that the claimant rode the side of a car for over one mile and that, had a caboose been available, it would have been utilized. BNSF's position here was that this is trackage-rights territory that became part of BNSF well after the elimination of cabooses under the 1982 National Agreement provisions. Therefore, the caboose was not eliminated under the National Agreement's authority – there was no caboose to eliminate. They were already gone. The Board did not embrace that argument and sustained the claims for a payment of two hours.

Award 6 is also an "HO" claim. In this case Local supervision authorized the move, but later suggested that a "shove car" may have been available. The Board sustained payment of the 2-hour HO claim.

While the burden of proof is to be carried by the organization in contract interpretation cases, BNSF has the obligation to carry the burden of advancing an affirmative defense. The Board did not feel that the affirmative defense that a "shove car" was readily available was proven.

Award 7 is another "HO" case. Here BNSF initially took the position that the claimant did not supply sufficient information. Later, that position is abandoned and we reverted to the trackage rights argument attendant to Award 5. Award 7 sustains the claims for the same reasons as contained in Award 5.

Award 8 is the final sustaining HO issue. Here BNSF issued instructions to the employees not to hang on the side of a car of over one mile. Instead, employees were told to stop the movement short of one mile, rest, and then continue. The Board rejected that argument and sustained the claim.

Award 9 is an important and interesting Award. It addresses UTU's claim that when an interdivisional service agreement specifies how Hours of Service Relief is to be performed, then any time a crew in interdivisional service expires under the Hours of Service Law, that train must be relieved by an extra board crew called in Hours of Service Relief.

BNSF's position is that management has options. The only time that BNSF need comply with the Hours of Service Relief conditions in the interdivisional service agreement is when BNSF decides that it needs a

crew in Hours of Service Relief service. As argued in case No.3 before this Board, since the agreements apply to people not trains, there is no such thing as an Hours of Service train – only Hours of Service crews. As a result, that train, having a crew that had expired under the Hours of Service Law, may well be handled by another interdivisional service crew to destination while that crew is properly performing interdivisional service.

In this case the claimant conductor operated a train from Galveston to Somerville. At Somerville he rode with another crew, on a train, to Davidson. There he assumed the second train, one where the crew had expired under the Hours of Service Law, and operated this train to Temple. Fundamentally, UTv's position is that the claimant provided Hours of Service Relief – work that belonged to the Temple extra board. The Board disagreed with UTU:

Argument by the Carrier in denying the claim is that there is no Appendix 11 [the Hours of Service Relief portion of the Interdivisional Service Agreement] issue at stake here because it is immaterial why a train would be stopped on an interdivisional run even if it was stopped under the law. In other words, a member of the extra board would not have to be called if there was no reason to call one. Why? Because the Claimant was working his assignment on his interdivisional run and was able to bring the train from Davidson to Temple.

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The principle enunciated by this Board in Award No.3 is applicable here albeit the contract provisions cited by the Organization in filing that claim and this one are divergent. And this is that the Carrier has the right to keep crew members busy when they are on an interdivisional run if there is work to do absent contract constraints to the contrary. That is what happened here. It is irrelevant why the Carrier would want an interdivisional crew member to move a train so long as he is on assignment and being paid to do precisely that.

Likewise, if there is insufficient work it is not improper for the Carrier to deadhead a member of the craft on an interdivisional run as long as the employee is being paid.

The Board can find nothing in the contract language provided to it by the parties to warrant any conclusion other than that cited in the immediate foregoing. If there is no employee on interdivisional service run to move a train under the Hours-of-Service then the contract language instructs the Carrier what to do: go to the extra board. Obviously, the real question centers on whether an Hours-of-Service train is stranded if interdivisional run employees are available to move it. The answer to that is: no.

If you have any questions or comments, please contact me at 352-1076