

PUBLIC LAW BOARD NO. 7293

**PARTIES) UNITED TRANSPORTATION UNION
TO)
DISPUTE) BNSF RAILWAY COMPANY**

STATEMENT OF CLAIM:

- 1. Does the Carrier's notice dated April 5, 2011, to establish single ended interdivisional service between Tulsa, Oklahoma and Ft. Scott, Kansas satisfy the requirements of Section 1 of Article IX of the October 31, 1985 UTU National Agreement?**
- 2. If the answer to Question 1 is Yes, does the Carrier's April 5, 2011 notice to govern the establishment and operation of interdivisional service with home terminal Tulsa, Oklahoma satisfy the requirements of Section 2 of Article IX of the October 31, 1985 UTU National Agreement? (Organization File No. ID-Tulsa-Ft. Scott; Carrier File No. 55-11-0038-G)**

FINDINGS:

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

Under date of April 5, 2011, the Carrier gave notice to the Organization of its intent to establish a single ended interdivisional pool service between Tulsa, Oklahoma and Ft. Scott, Kansas, with Tulsa as the home terminal.

The Carrier says its right to serve such notice comes from the applicable provisions of Article IX, Interdivisional Service, of the 1985 UTU National Agreement, directing particular attention to the provisions of Sections 1, 2 and 3 thereof which read as follows:

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 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.

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 [Arbitration]. This trial basis operation will not be applicable to runs which operate through home terminals.

Although the Organization is challenging the propriety of the Carrier notice of April 5, 2011, it is noted that following negotiations which had taken place since mid-2010 on a prior and similar notice involving the same interdivisional service that on February 25, 2011 the parties had adopted an eight-page draft agreement that would provide for an orderly transition from a double ended pool between Tulsa and Ft. Scott, to a single ended pool out of Tulsa. That draft agreement was subject to Organization membership ratification, a process which failed ratification. An identical proposal was negotiated at that time between the Carrier and its employees represented by the Brotherhood of Locomotive Engineers and Trainmen, which was also sent out for its membership ratification, and which agreement was subsequently ratified under date of March 28, 2011.

The proposed terms and conditions that attach to the Carrier's April 5, 2011 notice, the subject of the instant dispute, are identical to the agreement proposal which had failed the Organization's internal ratification process.

The Organization here states that the Carrier notice itself is improper, and that the terms and conditions contained in it are wholly inadequate to protect the interests of the effected employees and therefore unreasonable.

The Board has given studied review of the various arguments offered by the Organization but does not find them sufficient to set aside or include them in the terms of agreement.

While it may be that the Organization would like to have an agreement include terms that go beyond those set forth in Article IX of the 1985 UTU National Agreement, and some individual members of the Organization may not be pleased with certain provisions of the proposed agreement, it must be considered that the Carrier has the right to provide for the implementation of interdivisional service along the lines as set forth in the proposed agreement of February 25, 2011 and the like terms and conditions as contained in the Carrier's subsequent notice of April 5, 2011. The terms and conditions of work contained in the proposed agreement are found to be fair and reasonable in application of Section 2 as quoted hereinbefore.

Accordingly, upon studied consideration of all the facts, evidence and arguments of the parties, the Board finds the terms of agreement between the parties be as set forth in the Carrier notice agreement of April 3, 2011, with the following addendum. That is, the parties enter into a side letter of understanding that a designated representative of the Organization, i.e., a local chairperson, be provided the opportunity of input to considerations involving any equity imbalance during the transition period and application of the pool itself.

In reaching this determination the Board finds that it must be borne in mind that the agreement initialed by representatives of both parties on February 25, 2011, terms which are identical to the Carrier notice subsequently served under date of April 5, 2011, was the fruit of many long months of good faith negotiation by representatives most skilled in collective bargaining. It is an agreement that was reached out of real and difficult compromise that is an absolute necessity in collective bargaining. It must, therefore, be considered that to alter or change the terms of settlement that brought skilled representatives of both parties together in endorsement of that tentative agreement for the purpose of renegotiation would unnecessarily set back disposition of the issue for an indefinite period of time.

AWARD:

Claim disposed of as set forth in the above Findings.


Robert E. Peterson
Chair & Neutral Member


Roger A. Boldra
Carrier Member


Steven F. Green
Organization Member

Fort Worth, TX

Dated: 2-7-12