

PUBLIC LAW BOARD 7527

PARTIES UNITED TRANSPORTATION UNION
TO
DISPUTE BNSF RAILWAY COMPANY

AWARD NO. 21
CASE NO. 21
BNSF FILE: 55-11-0038
UTU FILE: ID-Tulsa-Ft. Scott

STATEMENT OF CLAIM: 1) Does the Carrier's notice dated April 17, 2013, to establish interdivisional service between Enid OK and Springfield, MO satisfy the requirements of Section 1 of Article IX of the October 31, 1985 National Agreement?

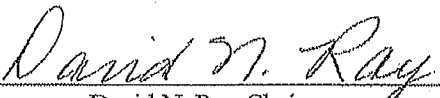
2) If the answer to Question 1 is yes does the Carrier's notice to govern the establishment and operation of interdivisional service with home terminal Enid, OK satisfy the requirements of Section 2 of Article IX of the October 31, 1985 National Agreement?

FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

On April 17, 2013, Carrier served notice to implement interdivisional service between the points outlined above. Following this notice, the parties met to discuss the terms and conditions under which the interdivisional services would be implemented. The parties initialed agreements that were presented to the UTU membership for ratification; however, the membership did not ratify the agreements. The Organization contends that the agreements before this Board are neither reasonable nor practicable as required by the 1985 UTU National Agreement. Conversely, Carrier contends that the agreements initialed by the parties not only meet the conditions set forth in the 1985 UTU National Agreement, but exceed those conditions.

This Board is not the first to consider whether or not a proposed agreement to implement interdivisional service meets the requirements stipulated by the 1985 UTU National Agreement. Review of Article IX reveals five provisions, which when incorporated into an agreement satisfy the reasonable and practical conditions stipulated by the Agreement. The agreement further provides the parties the liberty to agree to amend the five stipulated conditions or include additional conditions for the implementation. Each of the agreements before this Board contain the five conditions outlined in Article IX, as well as additional conditions whose inclusion is not required by Article IX, but have been agreed upon by the parties.

AWARD: The questions at issue are answered in the affirmative. The Board finds that the attached agreement meets and exceeds the conditions set forth in Article IX of the 1985 National Agreement.


David N. Ray, Chairman


Roger A. Boldra, Carrier Member


Randall S. Knutson, Employee Member

MEMORANDUM OF AGREEMENT

Between
BNSF Railway Company
And
SMART – Transportation Division

Pursuant to the Carrier's notice dated April 17, 2013, and in accordance with Article IX of UTU 1985 National Agreement, the parties agree that intraseniority district service may be established between Enid, Oklahoma and Springfield, Missouri with the home terminal at Enid. The following conditions will apply:

1. Pool Rotation

- 1.1. Subject to the exceptions contained in this Agreement, Trainmen will be called on the recognized first-in, first-out basis.
- 1.2. Crews will maintain their position in the pool if runaround at the initial terminal, en route, or at the away-from-home terminal. Pool crews working under the terms of this Agreement will operate utilizing the Carrier's "Home on Duty" process. The Home on Duty process provides that employees will be positioned on the board at both the away-from-home and home terminals based upon their time on duty from the previous home terminal.

2. Pool Regulation

- 2.1. The number of pool crews shall be regulated in accordance with the provisions of Article 30, Section E of the 1978 SLSF Conductors' and Brakemen's Schedule, except as follows:
- 2.2. The prescribed 3200 to 3800 miles per month will be "indexed" so that Trainmen will make between 3571 and 4171 miles per month.
- 2.3. Pool regulation will utilize the Carrier's automated pool regulation program which uses trip rate miles to calculate regulation miles. The interested Local Chairmen will have access to that report and calculation, giving them the opportunity to question and challenge the automated regulation calculation.

3. Equity

- 3.1. The total miles of this intra-seniority district run is 307. The miles operated on each of the 3 involved Midwest Seniority Zones, and the percentage those miles represent, is as follows:

Enid Zone	119.3 miles	38.9%
Cherokee Zone	145.3 miles	47.3%
Springfield Zone	42.4 miles	13.8%

3.1.1. Enid Zone

In order to achieve equity, 38.9% of the pool turns and 38.9% of the extra work in the Enid-Springfield ID pool (not necessarily 38.9% of the extra board positions) shall be designated as Enid Zone assignments and shall be made in accordance with Midwest Seniority ranking, subject to the Midwest prior rights of Enid Zone employees.

3.1.2. Cherokee Zone

In order to achieve equity, 47.3% of the pool turns and 47.3% of the extra work in the Enid-Springfield ID pool (not necessarily 47.3% of the extra board positions) shall be designated as Cherokee Zone assignments and shall be made in accordance with Midwest Seniority ranking, subject to the Midwest prior rights of Cherokee Zone employees.

3.1.3. Springfield Zone

In order to achieve equity, 13.8% of the pool turns and 13.8% of the extra work in the Enid-Springfield ID pool (not necessarily 13.8% of the extra board positions) shall be designated as Springfield Zone assignments and shall be made in accordance with Midwest Seniority ranking, subject to the Midwest prior rights of Springfield Zone employees.

3.2. The Carrier projects that approximately 88 trains per month will initially be operated in this intra-seniority district service, thus 7 turns will initially be advertised at Enid, allocated to the 3 involved Seniority Zones per the Order of Selection List that is Attachment A to this Agreement, as will all future increases and decreases to the pool.

3.3. Further equalization of work between the 3 Zones will be accomplished as follows:

3.3.1. When any of the 3 Zones accrues a mileage deficit of between 3800 to 7600 miles, the appropriate Local Chairman may request equalization. As soon as the mileage deficit has been verified, a "run-off" equalization assignment will be advertised to (Midwest) prior rights employees from the owed Zone.

3.3.2. If a Midwest prior rights Trainman from the owed Zone is the successful bidder for the run-off assignment, he will displace the most junior Trainman holding a turn designated to the owing Zone. As soon as the miles have been equalized, the run-off turn will be re-bulletined and designated back to the original Zone. All miles run by Midwest prior rights Trainmen manning any run-off equalization assignment under this section will be counted toward equalization.

3.3.3. If any mileage deficit exceeds 7600 miles without equalization being requested, or if equalization is requested and no Midwest prior right Trainman from the owed Zone bids for any advertised run-off equalization assignment, equalization is considered to have been waived and all miles accrued to that point will be zeroed-out. In the latter case, the junior Trainman who would have been displaced because of equalization will continue to hold the assignment as if the run-off equalization assignment had not been bulletined.

4. **Benefit Packages**

- 4.1. Only employees assigned to the Cherokee or Springfield Zones on April 17, 2013 will be eligible for one of the relocation packages specified below.
- 4.2. For the initial start-up, up to 3 eligible Cherokee employees and up to 1 eligible Springfield employee will be eligible for one of the benefit packages below.
- 4.3. Option #1
A \$30,000 relocation package. Trainmen accepting this relocation package are required to establish new residency within 35 miles of the city of Enid, Oklahoma. Furthermore, these employees will be required to protect service on the Enid Zone, seniority permitting, for a period of 36 months.

This relocation package will be disbursed as follows:

1. \$20,000.00 when the train service employee reports to the new location.
2. \$5,000.00 after performing 18 months of actual service at that location.
3. \$5,000.00 after performing 36 months of actual service at that location.

This relocation package does not require the sale or purchase of real estate but does require a permanent residency address at the new location.

If the employee receives this relocation package and subsequently leaves the Enid terminal voluntarily prior to the expiration of the 36-month period, s/he shall forfeit future incentive payments and will be required to repay all previous relocation payments.

If the employee receiving this relocation package becomes eligible to retire under the terms of Railroad Retirement Board (RRB) less than 36 months from their relocation, they will not be eligible for any additional payments subsequent to their retirement. In addition, should such an employee retire less than 2 years after relocating, they will be required to repay the initial \$20,000 payment and the \$5,000 interim payment (paid at the 18-month interval).

Trainmen relocating under this provision shall be afforded BNSF provided lodging at Enid for a period not to exceed 60 one-night stays.

- 4.4. Option #2
Modified Relocation Package. Trainmen accepting this benefit package will receive \$15,000 up front, plus a taxable per start allowance of \$35 for 36 months (concurrent with the hold down).
- 4.5. Trainmen accepting one of these Option-2 benefit packages will be required to protect service on the Enid Zone, seniority permitting, for a period of 36 months. If a Trainman subsequently leaves the Enid Zone voluntarily prior to the expiration of the 36-month period, s/he will be required to repay the \$15,000 relocation payment.
- 4.6. Employees utilizing an Option-2 benefit package who need to acquire lodging at Enid after performing service will be allowed to use BNSF lodging, if available. Likewise, if such employees arrive at Enid more than 4 hours prior to their on-duty time, they will be allowed to use BNSF lodging, if available. In the latter case, employees must provide the Crew office with their contact information for calling purposes unless that contact information is already on file with the Carrier.
- 4.7. Additional relocation packages will be offered to eligible Cherokee and/or Springfield employees commensurate with the expected growth in this pool.

NOTE: It was agreed that additional relocation packages would be offered for each additional Tulsa or Springfield pool turn (in excess of the four that were initially established at start-up) that exist for six consecutive months and on a one-for-one basis.

Compensation

- 4.8. Conductors in this pool will be allowed a trip rate of \$491.1344, plus applicable short crew special allowances and certification pay, for working or deadheading, between Enid and Springfield. It was further agreed that the Conductors, regardless of seniority or miles traversed, will be allowed overtime after 12 hours on duty. In addition, Conductors required to deadhead in excess of 8 hours on duty will be allowed the trip rate plus actual time consumed in the deadhead over 8 hours (at the pro rata rate), in accordance with the UTU 1985 National Agreement, Article VI.
- 4.9. Brakemen, when called, will be allowed a trip rate of \$472.3744, plus applicable short crew special allowances, for working or deadheading, between Enid and Springfield. It was further agreed that the Brakemen, regardless of seniority or miles traversed, will be allowed overtime after 12 hours on duty. In addition, Brakemen required to deadhead in excess of 8 hours on duty will be allowed the trip rate plus

actual time consumed in the deadhead over 8 hours (at the pro rata rate), in accordance with the UTU 1985 National Agreement, Article VI.

NOTE: It was agreed that all elements of the trip rates applicable to this pool are increasable by any GWI and/or COLA, starting with the July 1, 2013 GWI which was not considered in calculating the above trip rates.

- 4.10. Trainmen in this service who are held at the away-from-home terminal in excess of sixteen (16) hours shall receive continuous held-away-from-home terminal pay until placed on duty and under pay for such service. This does not supersede the enhanced held-away-from-home provisions due Brakemen operating in this service pursuant to Article 1, Section 6, of the November 1, 1993 Crew Consist Agreement.

NOTE: Without prejudice to the application of existing Schedule Rules in other circumstances, it was understood that compensation for deadheading commences when the crew is placed on duty.

5. Productivity Funds

- 5.1. The Carrier will make standard (\$48.25) productivity fund contributions for each working start made in this pool, divided among the 3 involved productivity funds as follows;

Enid	38.9%
Cherokee	47.3%
Springfield	13.8%

- 5.2. Crew Consist protected Trainmen from any of the 3 involved Zones will be credited with a share in their home fund for each working start made in this pool.

6. Returned to Initial Terminal

Trainmen called in this intra-seniority district service will not be tied up between designated terminals of their runs or turned back to their initial terminal, except when their movement is prevented (e.g., derailment of their trains), or their route to destination is obstructed or impassable (e.g., wrecks or washouts). If Trainmen are returned to their initial terminal for these reasons, they shall be compensated as follows; in the event the total mileage traversed, working and/or deadheading, is less than or equal to 260 miles, they will be allowed 1 trip rate and will commence overtime after 8 hours on duty regardless of miles traversed. In the event the total mileage traversed exceeds 260 miles, working and/or deadheading, they will be allowed 2 trip rates. Furthermore, upon tie up at their initial terminal, they shall be placed to the last-out position. Subject to the foregoing exceptions, Trainmen will not be tied up en route or turned back to their initial terminal.

7. HOS Relief

- 7.1. Hours of Service Relief within the limits of this pool may be handled by any crew or applicable extra board with contractual operating authority over the entire territory to be traversed.
- 7.2. Nothing contained in this Section is intended to prohibit these Conductors from being used on trains that traverse only part of the specified territory, provided Conductors are then handled forward to the opposite terminal. Likewise, nothing in this Agreement is intended to prohibit these Conductors from combining trains or exchanging trains with other Conductors destined to the same terminal.

8. En Route Meal Period

In order to expedite the movement of trains operating between Enid and Springfield, crews will not stop their train to eat. The current trip rate includes the historical meal allowances and there is no additional compensation due.

NOTE: This does not preclude a crew from seeking food items at retail locations in close proximity to where they may be standing in the clear of the main track awaiting other rail traffic, or for unforeseen reasons, so long as this does not create undue delay to the operation. It is understood that the crew will be required to obtain permission from the Dispatcher prior to leaving the train to obtain food. Should this request be denied, no penalty is due.

9. Called and Released

- 9.1. When a crew is called, reports for duty, and is not used, they will be allowed one-half of a basic day at through freight rate and stand first out, but if held more than 4 hours, they will be allowed a basic day and stand first out.
- 9.2. If a call is canceled before the employee leaves his residence or (away from home) lodging facility, the foregoing sentence (and payments) do not apply.

NOTE: If the Carrier attempts to cancel the call within 30 minutes from issuance, the Trainman is "assumed" to have been notified prior to leaving his residence and/or lodging facility.

- 9.3. Trainmen who perform some service but who are released before leaving their initial terminal, will be paid a basic day at through freight rate and be restored to the first-out position. They will not be called again until they are rested and it is recognized that other crew(s) may be called around them without penalty while they are resting.
- 9.4. The provisions of 9.1, 9.2 and 9.3 above, do not apply to individual extra men when the call and release occurs at their extra board terminal, but instead, such extra men will be handled (and paid) in accordance with applicable system Agreement rules.

10. Lay Offs

Trainmen in this pool will lay off at their home terminal, except in case of emergency, such as illness or injury, and will report to their home terminal only. In the event it is necessary to lay off at the away-from-home terminal as described above, Trainmen will be permitted to ride a train to the home terminal provided they notify the Dispatcher and Supervisor in advance when laying off at their away-from-home terminal.

11. On/Off Duty Points

Trainmen working in this long pool service will have a fixed point for going on and off duty in Enid and Springfield. The fixed points may be changed by the Carrier by giving 10 day advance written notice to the Local Chairman.

12. Familiarization

Trainmen who become assigned to this Enid-Springfield pool, as well as Trainmen who are unable to hold a position at Enid as the result of implementation of this Agreement, will be allowed compensation for any required familiarization at their new location. In the event there is no formal agreement for familiarization compensation at their new location, these employees will be compensated one day at the Conductor extra board rate of pay for each day they are required to familiarize. During familiarization, Trainmen will also be eligible to receive held away-from-home terminal allowances and all applicable meal allowances.

13. Preservation Clause

Except as specifically provided for herein, the SLSF Schedule will apply to Trainmen working in this service. In addition, unless specifically provided herein, nothing contained herein shall be construed as modifying, amending or superseding any of the provisions of agreements or schedule rules, or the Merger Protection Agreements, as implemented between the BNSF Railway and the UTU / SMART-TD.

This Agreement shall take effect on _____, 2013, and shall remain in effect until modified or changed in accordance with the provisions of the Railway Labor Act, as amended.

For BNSF Railway Company:

For SMART – Transportation Division:

M.H. Siegele, Jr.
AVP, Labor Relations

R S. Knutson
General Chairman, SMART - TD

R. A. Boldra
General Director, Labor Relations

S. F. Green
Assistant General Chairman, SMART – TD

Attachment A
Order of Selection List for the Enid-Springfield ID Run

Based on the mileages each of the 3 Zones brings to this 307 mile run, prior right Enid employees are entitled to 38.9%, prior right Cherokee employees are entitled to 47.3% and prior right Springfield employees are entitled to 13.8%. Pool assignments at Enid will be made in accordance with the Order of Selection list below, which is built in "groups of 7" (repeats itself every 7 turns).

1	Cherokee	15	Cherokee
2	Enid	16	Enid
3	Cherokee	17	Cherokee
4	Enid	18	Enid
5	Springfield	19	Springfield
6	Cherokee	20	Cherokee
7	Enid	21	Enid
8	Cherokee	22	Cherokee
9	Enid	23	Cherokee
10	Cherokee	24	Enid
11	Enid	25	Cherokee
12	Springfield	26	Enid
13	Cherokee	27	Springfield
14	Enid	28	Cherokee

Further equalization of work between the 3 Zones will be accomplished as provided in Article 3.3.

NOTE:

1/7 = 14.2%

3/7 = 42.9%

Supplement No. 1 – Alert Calling

Upon implementation of the Enid to Springfield ID Agreement, the following will apply:

1. The Carrier will develop a system that will give Trainmen at their home terminal at least a 6 hour advance notification of when they will receive a call for duty, and thereafter, a 10 hour window when they can expect to be put on duty.
2. Upon arrival/markup at the home terminal, Trainmen in this pool will be placed to the bottom of the Secondary Board and will be moved to the “Alert” Board at least 6 hours prior to receiving a call for duty. Trainmen will be notified of their move to the Alert Board via the Carrier’s “push” technology.
3. Trainmen who receive a call for duty in less than 6 hours after being moved to the Alert Board may decline such call and retain their first-out position. It is understood that another crew may be used around them in such cases without penalty for runaround.
4. Trainmen will be placed on duty within 16 hours after being moved to the Alert Board. If not, they may choose, at their discretion, to be placed back to the first-out position on the Secondary Board.
5. As soon as the programming for this system is implemented, Trainmen will utilize the program’s features to indicate whether or not they will accept calls for duty that are less than 6 hours from being moved to the Alert Board, and whether or not they wish to be placed back to the first out position on the Secondary Board if they are not placed on duty 16 hours after being moved to the Alert Board.
6. Although the Parties have agreed that no penalty payment is due when Trainmen receive a call for duty in less than 6 hours from being moved to the Alert Board, or when not placed on duty within 16 hours of being moved to the Alert Board, such occurrences should be the exception rather than the rule. When the number of failures becomes problematic, the parties will meet to discuss remedial actions, including as a last resort, the cancellation of this process by either party without the other’s concurrence.

For BNSF Railway Company:

For SMART-TD:

M.H. Siegele, Jr.
AVP, Labor Relations

R S. Knutson
General Chairman, SMART - TD

Agreed-to Questions and Answers

Involving Issues Associated with the Enid / Springfield Interdivisional Pool

The parties understand that this is a comprehensive list of items submitted during negotiations and that there may be the need for additional questions and answers as the project develops.

Section 5

Q1. Are the relocation benefits in Section 5 in lieu of all relocation benefits under Washington Job Protection?

A1. Yes.

Q2. Are the relocation benefits in Section 5 also in lieu of other protective benefits under Washington Job Protection?

A2. Yes. These payments are in lieu of any displacement or dismissal allowances resulting from the application of Article XIII of the UTU 1972 National Agreement, and will not be used for other calculations like vacation or Productivity Fund payment. Likewise, this payment will not be used for guarantee calculation or offset.

Q3: If one of the initial Tulsa or Springfield pool turns is reduced from the pool and subsequently put back on, but is awarded to a different employee than the one who was initially awarded the position, is a new relocation benefit package available?

A3: No. According to the Note under Section 5.6, only if and when an additional pool turn is added and maintained for 6 consecutive months is a new relocation benefit package available. In this case, that would be the 4th Cherokee turn or the 2nd Springfield turn.

Q4: In the event a Trainman elects to accept the \$30,000 relocation package and is subsequently disabled and eligible to collect RRB disability, would the employee be subject to recovery of any relocation allowances.

A4: No, under this scenario the employee would not be required to forfeit any relocation allowances they have already received, but would not be eligible for future allowances.

Section 14

Q1: Do the provisions of Section 14 (Familiarization) apply to extra board positions and equalization turns?

A1: Yes.

Supplement No. 1

Q1: Item 3 of Supplement No.1 allows employees to decline a call received less than 6 hours from being moved to the Alert Board. Will employees exercising this option be restored to the turn they held prior to exercising this option?

A1: No.

Q2: Item 4 of Supplement No.1 allows employees to elect to be placed back to the first-out position on the Secondary Board if they are not placed on duty within 16 hours after being moved to the Alert Board. Will employees exercising this option be restored to the turn they held prior to exercising this option?

A1: No.