

ARBITRATION BOARD NO. 567

PARTIES TO DISPUTE:

Union Pacific Railroad Company
and
United Transportation Union
and
Brotherhood of Locomotive Engineers

QUESTIONS AT ISSUE:

Brotherhood of Locomotive Engineers:

May the Union Pacific Railroad (UPRR) establish new Interdivisional Pool Freight service at the South Morrill terminal and Bill terminal as proposed in Memorandum of Agreement #1607019848, pursuant to Article IX of the BLE Arbitration Award No. 458 dated May 19, 1986 as amended by BLE Implementing Document effective November 1, 1991 which set forth the report and recommendations of Presidential Emergency Board No. 219, as modified by Special Board No. 102-29?

If the answer is yes, under what conditions may such Interdivisional service be operated?

United Transportation Union:

May the Union Pacific Railroad (UPRR) establish new Interdivisional Pool Freight service at the South Morrill terminal and Bill terminal as proposed in Memorandum of Agreement #2607019848, pursuant to Article IX of the UTU National Agreement dated October 31, 1985 as amended by UTU Implementing Document effective November 1, 1991 which set forth the report and recommendations of Presidential Emergency Board No. 219, as modified by Special Board No. 102-29?

If the answer is yes, under what conditions may such Interdivisional service be operated?

Carrier:

Under what conditions may Interdivisional train operation between South Morrill, Nebraska and the coal mines of the Powder River Basin be implemented?

FINDINGS:

Under date of August 7, 1998, the parties to this dispute jointly petitioned the National Mediation Board to establish an Arbitration Board to hear and decide the dispute here involved relating to the proposed establishment of Interdivisional/Intraseniority Service. The parties agreed upon the undersigned to serve as the Neutral Chairman of this Board. The agreement of the parties establishing the Board clearly provides "The Award of this Board shall contain only the Neutral Member's signature."

The Board met in Washington, D.C., on August 27, 1998. At the hearing Carrier was represented by Director Labor Relations C. R. Wise. The United Transportation Union was represented by General Chairman J. W. Babler. The Brotherhood of Locomotive Engineers was represented by General Chairman B. D. MacArthur. During the hearing the parties presented extensive written submissions and oral arguments reflecting their respective positions concerning Carrier's intent to establish Interdivisional Service between South Morrill, Nebraska, and the coal mines of the Powder River Basin.

The record presented to the Board reveals that on August 14, 1997, Carrier served notice on both organizations (BLE and UTU) pursuant to Article IX of the UTU 1985 National Agreement and the BLE Arbitration Board 458 to establish ID service from South Morrill through Bill, Wyoming. A proposed agreement was sent to the organizations on August 26, 1997. Subsequently meetings were held on September 3 and November 22, 1997, and January 13, April 28 and 29, and May 28, 1998. As a result of these extended negotiations a proposed agreement was reached by the parties. A final edition of the proposed agreement was sent to the organizations on June 28, 1998, in that such agreement was then subject to ratification. The agreement failed to pass the ratification vote. For this record, the Board will refer to the final agreement reached by the parties as "PROPOSAL A."

When the employees failed to ratify PROPOSAL A, Carrier thereafter withdrew PROPOSAL A from further consideration and has submitted to this Board a so-called "Plan B" which it contends contains all of the contractual conditions for Interdivisional Service as stipulated in Article IX of the UTU 1985 National Agreement as well as the BLE Arbitration Board 458.

The organizations have notified this Board that there were three areas which led to the rejection of PROPOSAL A and these three areas are characterized as follows:

- (1) The service between South Morrill and Bill is not ID service, but Carrier receives all the benefits of ID conditions of the proposed agreement. The employees argue that if Carrier elects to relieve a crew at Bill, it should be required to pay this crew mileage to the mine (this is commonly referred to as payment for "district miles").
- (2) The employees allege that the employees at Bill are granted automatic certification for the protection benefits outlined in Article IV of the proposal, while the South Morrill employees at the South Morrill Terminal received no protection benefits but are subject to displacement by Bill employees.
- (3) The employees further allege that overtime is calculated in a less favorable fashion for this group of employees. It is argued that the employees here involved should be compensated overtime after ten (10) hours on runs of 166 miles or greater.

While this Board can certainly understand the feelings of the employees who will be working under the final agreement covering this proposed Interdivisional Service from South Morrill to the mines, the Board must also recognize that it is virtually impossible to satisfy the desires of each employee when negotiating a contract covering many employees. Neither do such negotiated contracts grant to the Carrier all that it desires to secure in order to improve its operations in the most economical manner. The bargaining table is a "give and take" proposition and there is ample evidence that such "give and take" was displayed during the lengthy negotiations between the parties. The Board is confident that the issues raised by the employees, as set forth above, were clearly and concisely presented at the bargaining table and that such issues did not survive. This Board therefore is not inclined at this time to insert such provisions in an agreement which was reached by competent and experienced negotiators for both the Carrier and Organizations.

The Board does believe, however, that the language of PROPOSAL A should be clarified so as to indicate the minimum mileage guarantees for the Interdivisional Service contemplated by the agreement. To assist in this clarification, the Board has revised the language in PROPOSAL A and copies of certain pages of the proposal, necessary to effect this clarification, are attached to this Award. The parties should cooperate in making certain the additional language (shaded for emphasis) is properly incorporated into the agreement and that the language to be omitted (lined out for emphasis) is properly deleted.

While it is true that Carrier has argued before this Board that it has withdrawn PROPOSAL A and is now resting on its so-called Plan B, the Board finds this to be nothing more than an immediate adverse reaction to the notice that PROPOSAL A was not ratified. Carrier likewise has much invested in the bargaining talks which led to the agreement on PROPOSAL A and it is the opinion of this Board that the adoption of PROPOSAL A, as agreed upon at the bargaining table, and amended by this Award, will amply cover its request to implement Interdivisional Service between South Morrill, Nebraska, and the coal mines of the Powder River Basin.

Inasmuch as the Board has made certain recommendations to clarify the language of PROPOSAL A, the Board will retain jurisdiction of this dispute for a period of sixty (60) days following the date hereof so as to permit the Board to assist the parties in finalizing the agreement should such assistance become necessary.

As noted in the Bench Decision rendered at the meeting of this Board on August 27, 1998, and confirmed in an Interim Decision sent to the parties on August 31, 1998, Carrier was granted the right to commence implementation of this Interdivisional Service.

The answer to the questions posed by the Organizations is in the affirmative and the conditions for operation of this Interdivisional service are as set for the in PROPOSAL A as agreed upon by the parties and sent to the Organizations on June 28, 1998, and amended by this Award. (For identification purposes the BLE Agreement bears number 1607019848 whereas the UTU Agreement bears number 2607019848.) The adoption of PROPOSAL A as amended by this Arbitration Board also serves to answer the question posed by Carrier.

F. T. Lynch, Neutral Chairman

DATE: September 29, 1998

**BLE MEMORANDUM OF AGREEMENT #1607019848
BETWEEN THE
UNION PACIFIC RAILROAD COMPANY
FOR THE TERRITORY
CHICAGO AND NORTH WESTERN
AND THE
BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**New Interdivisional Pool Freight Operations
South Morrill and Bill, Wyoming**

The Union Pacific Railroad Company (hereinafter referred to as Carrier) and the Brotherhood of Locomotive Engineers (hereinafter referred to as the Organization), pursuant to the provisions set for the in the May 19, 1986 BLE National Arbitration Award, have arranged to implement new interdivisional pool freight service operations between South Morrill, Nebraska, and the Coal Mines of the Powder River Basin.

NOTE: As used in this Agreement the term interdivisional pool freight service includes interdivisional, interseniority district, intradivisional, and/or intraseniority district service.

Accordingly, the new interdivisional pool freight service operations established under this Agreement will be as follows:

ARTICLE 1 — TRAIN OPERATIONS

Section 1 — New Pools

- (a) On the date of implementing this Agreement, new interdivisional pool freight service will be established with a home terminal of South Morrill. Wright and Bill, Wyoming, will be the away-from-home terminals. As set forth in this Agreement, the South Morrill pool will not perform any other service except straightaway pool freight service. The South Morrill Extra Board will protect all other services as well as vacancies in pool freight and unassigned work train service.
- (b) On the same date of implementing this Agreement, new interdivisional pool freight service will be established with a home terminal of Bill. Gillette will be the away-from-home terminal. As set forth in this Agreement, the Bill pool will perform all services with the extra board only protecting vacancies, unassigned work trains and unassigned helper service.
- (c) For purposes of this Agreement and until notified otherwise by Carrier, the lodging facilities at Wright and Gillette will be the designated on/off-duty points.
- (d)(1) The one-way district mileage for these new interdivisional operations will be: South Morrill – Bill = 146; South Morrill – Wright = 188; Bill – Gillette = basic day.
- (d)(2) The above listed one-way district miles will be the minimum mileage for service and/or combination service and deadhead.

Section 2 — Pool Operation

- (a) South Morrill interdivisional pool freight crews will be permitted to operate west (compass direction north) from South Morrill up to but no farther than Reno Junction, BN Mile Post 40.6 (Small Road). Except as provided in Section 6, the crews will operate in straight-away service, tying up at Wright or Bill.
- (b) Bill interdivisional pool freight crews will be permitted to operate west (compass direction north) from Bill to the end of Carrier's line in straight-away service tying up at Gillette or in turnaround service and/or combined deadhead service returning to Bill, Wyoming. Bill pool crews may also operate south to BN Mile Post 90.5 (Trinity Car Shops).
- (c) Interdivisional pool crews at South Morrill and/or Bill may receive or leave their trains at any point within their designated territory. Carrier will provide the crews transportation to/from the on/off duty point which in all cases will be considered in combination with their service trip. The first available means of transportation will be provided to employees.
- (d) Except in those emergency situations outlined in Section 6 of this Article, crews will not be transported/deadheaded by trains. Other forms of transportation will be used and Carrier will avoid, when possible, the use of commercial bus lines.
- (e) South Morrill crews tied up at Bill or Wright and Bill crews tied up at Gillette, will upon call for subsequent service operate and/or deadhead to their home terminal. The crews will not be tied up again at another away-from-home terminal except under the conditions set forth in Section 6 of this Article.

Section 3 — Rotary Pools

- (a) Subject to Section 4 of this Article, the new interdivisional freight service pools under this Agreement will be rotary pool freight service with first in, first out conditions to apply at both the home and the away-from-home terminals. The arrival time of the crews will determine the first in conditions. However, at the request of the Local Chairman and with the concurrence by CMS, the pool at South Morrill may be changed to "blueprint" conditions.
- (b) Employees granted additional rest (over and above the hours prescribed by the Hours of Service Law) at the home and away-from-home terminal, in accordance with Schedule Rules, will be permitted to retain their turn in the pool and in the event it becomes first out prior to completion of the employee's rest, the pool turn will remain in that standing until the employee is available.
 - (1) Employees by-passed by other crews under this Subsection (b) will not be considered runaround.

Section 4 — Selection for Away-From-Home Terminal (AFHT) Crews

As stated in Section 3(a), rotary pool, first-in/first-out conditions will apply at the AFHT's. In this regard, each AFHT will be considered a separate pool for crews and crew selection will be based on rest and the location of the loaded trains for operation east (compass direction south) under the following steps:

- (1) For trains north of BN Mile Post 40.6 (West Reno):
 - first call ... rested AFHT Bill crews at Gillette
 - second call ... rested home terminal pool crews at Bill

- (2) For train at or south of Mile Post 40.6, but at or north of BN Mile Post 52.3 (East Reno):
 - first call ... rested AFHT South Morrill crews at Wright
 - second call ... rested AFHT South Morrill crews at Bill
- (3) For trains south of Mile Post 52.3:
 - first call ... rested AFHT South Morrill crews at Bill
 - second call ... rested AFHT South Morrill crews at Wright

Section 5 — Extra Boards

- (a) The extra board at South Morrill will protect all vacancies in the interdivisional pool as well as short turnaround, unassigned work train and/or other unassigned service. The extra board will also protect all hours of service relief as set forth in Section 6.
- (b) The extra board at Bill, Wyoming, will protect all vacancies in the interdivisional pool, as well as unassigned helper, and/or other unassigned service. The Bill Interdivisional Pool will protect all House of Service relief as set forth in Section 6 under the following conditions:

Section 6 — Hours of Service

- (a) For South Morrill crews relieved under the hours of service between Bill and Mile Post 213, the Bill pool will protect the service in both directions. For relief between South Morrill and Mile Post 253, the South Morrill Extra Board will protect the service in both directions.
- (b) Between Mile Post 213 and 253, Hours of Service relief for South Morrill crews may be performed by either the South Morrill Extra Board or the Bill pool.
- (c) For relieving under Item (a) or (b) above, the following will apply:
 - (1) Trains operating west (compass direction north):
 - If the South Morrill Extra Board is used, the extra board employees will continue the straightaway operation, tying up at Bill or Wright. The South Morrill crew relieved will return to South Morrill, paid no less than 146 miles or time on duty, whichever is greater and placed last out in the pool.
 - If the Bill pool is used, the employees will continue the normal train operation and upon completion of service will be returned to Bill in combined service. The South Morrill crew relieved will be deadheaded in combined service to Bill (paid not less than 146 miles or time on duty, whichever is greater) or Wright (paid not less than 188 miles or time on duty, whichever is greater).
 - (2) Trains operating east (compass direction south):
 - If the South Morrill Extra Board is used, the extra board employees will continue the straightaway operation, tying up at South Morrill. The South Morrill crews relieved will be deadheaded in combined service to South Morrill. If the South Morrill crew took charge of their train at Reno Jct., they will be paid no less than 188 miles or time on duty, whichever is greater. Otherwise, crews will be paid no less than 146 miles or time on duty, whichever is greater.
 - If the Bill pool is used, the employees will continue the straightaway operation and upon arrival at South Morrill will be deadheaded in combined service back to Bill. The South Morrill crews will be deadheaded in combined service to South Morrill and paid as set forth above.