

ARBITRATION BOARD NO. 554

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In the Matter of Arbitration :
 Between :
Union Pacific Railroad Company : OPINION AND AWARD
 And :
Brotherhood of Locomotive Engineers :
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INTRODUCTION

On March 14, 1994, the Union Pacific Railroad Company (the "Carrier") served notice to the Brotherhood of Locomotive Engineers ("BLE" or the "Organization") that, pursuant to Article VII, Section 2 of the Award of Arbitration Board No. 458, dated May 19, 1986, it wished to "negotiate a rule which would permit establishment of road switcher ("Dodger") in accordance with the terms and conditions" of a proposed agreement it had developed. On April 25, 1994, the Organization rejected the Carrier's proposal, asserting there was a "Dodger Agreement" already in place on the property and, therefore, it saw no need to change the existing arrangement.

Following meetings between the parties who were unable to agree on the Carrier's proposed agreement, the Carrier withdrew its proposal on February 7, 1995. The Carrier then stated its intent to pursue the matter to arbitration. Subsequently, the undersigned was selected to serve as Arbitrator and to render a final and binding Award.

BACKGROUND

Section 2 - New Road Switcher Agreements, Article VII of the May 19, 1986 BLE National Agreement reads as follows:

- (a) Carriers that do not have rules or agreements that allow them to establish road switcher assignments throughout their system may serve a proposal for such a rule upon the

interested general chairman or chairmen. If agreement is not reached on the proposal within 20 days, the question shall be submitted to arbitration.

(b) The arbitrator shall be selected by the parties or, if they fail to agree, the National Mediation Board will be required to name an arbitrator.

(c) The arbitrator shall render a decision within 30 days from the date he accepts appointment. The decision shall not deal with the right of the carrier to establish road switcher assignments (such rights is recognized), but shall be restricted to enumerating the terms and conditions under which such assignments shall be compensated and operated.

(d) In determining the terms and conditions under which road switcher assignments shall be compensated and operated, the arbitrator will be guided by and confined to what are the prevailing features of other road switcher agreements found on Class 1 railroads, except that the five day yard rate shall apply to any assignment established under this Section."

The Organization's position in this matter is that there are already road switcher agreements on the property, as noted by its Exhibit C in its submission to this Board and in its basic Agreement with the Carrier. Therefore, the Organization submits that, because the Carrier already has the right to put "traveling switchers" at established through-freight terminals, there is no need to amend the parties' current Agreement. Thus, the Organization presents the question at issue as follow:

"Can the Carrier rewrite a roadswitcher agreement under PLB 458 when there are already road switchers agreements on the property?"

The Carrier's position is summarized in a letter to the Organization on March 29, 1995. That letter, in pertinent part, stated:

- 1) In general discussion, you agreed that the Company has the right put on traveling switchers at any location under the terms of the National Agreement. The primary issue is whether or not a standard Traveling Switcher Agreement reached pursuant to the National Agreement automatically replaces existing road switcher agreements.

- 2) I asked you what your position would be if we grandfathered existing road switchers; would you then agree to adopt the proposed standard agreement? You would not answer the question and would not commit one way or the other.
- 3) I read through the Company proposal and all sections were acceptable to you as is. Again, the only primary issue was the question of whether or not the standard agreement would replace existing agreements and secondarily, whether or not Side Letter No. 1 should be included with the Agreement.
- 4) In our discussion, it developed that you had not put the Company proposal out for ratification.

Accordingly, the Carrier submits that the following question is before the Board: "Is the Road Switcher Agreement ("RSA") negotiated by the parties, but not ratified, appropriate in 'terms and conditions under which road switcher assignments shall be compensated and operated' on the Carrier's property."

The Carrier's final proposal reads as follows:

"In keeping with precepts set forth in Article VII of the May 19, 1986 BLE National Agreement, the parties signatory hereto agree the terms and conditions set forth herein shall govern establishment and operation of traveling switcher assignments.

It is agreed the terms and conditions for establishing and operating traveling switchers are as follows:

- Section (1) Traveling switcher assignments will be made with a regularly set starting time and with a regularly assigned on and off-duty point with a thirty-five (35) mile radius or sixty (60) miles in one direction mileage limitation on a five, six or seven-day per week basis.

Note #1 In accordance with Side Letter #23 of the May 19, 1986 BLE National Agreement - 'JOINT STATEMENT CONCERNING EFFORTS TO IMPROVE THE COMPETITIVE ABILITIES OF THE INDUSTRY'-if business increases at an existing industry or a new shipper locates in close proximity

to the established limits, the Carrier may service it with an existing road switcher by providing ten (10) days notice.

Note #2 Industries that are served by current TSE agreements and are beyond a thirty-five radius or sixty (60) miles in one direction, will not be affected by this Agreement.

- Section (2) Traveling switcher assignments may be required to, without penalty, operate into, out of and through terminal of their run, or into, out of or through any point of their assignment, or over any part of their assignment as many times as may be required.
- Section (3) Pay provisions pertaining to initial and final terminal switching and/or delay and terminal switching will not apply to these assignments.
- Section (4) Engineers in such service will be paid the five-day yard rate for the entire trip or day's work. Eight hours or less shall constitute a day's work. Overtime will be computed on the minute basis and will be paid for all time on duty in excess of eight hours' service. Miles run shall not be taken into account for pay purposes.
- Section (5) The National Holiday Agreement shall apply to road switcher without regard to mileage operated.
- Section (6) An assigned road switcher engineer who is required to work less than the bulletined number of days of the assignment will be paid a day's pay for each day not worked. If traffic is temporarily interrupted because of snow blockade, washouts, wrecks or similar obstructions, and it is impossible to perform regular service, the guarantee does not apply provided the engineer is notified at least four (4) hours prior to going on duty.

Section (7) Except as specifically provided herein, nothing contained in this agreement shall be construed as modifying, amending or superseding any of the provisions of schedule agreements.

This Agreement shall become effective immediately and shall remain in effect until revised or cancelled in accordance with the procedures prescribed by the Railway Labor Act, as amended.

Signed at Omaha, Nebraska, this _____ day of _____, 1994."

"QUESTIONS AND ANSWERS
TRAVELING SWITCHER AGREEMENT

Section (1)

1. Q. Does this Agreement give the Carrier the right to replace locals with TSE's?
A. Yes, however a TSE may not be designated as a local under the Letter Agreement dated April 24, 1946 of the applicable agreement.
2. Q. May the established starting time of a TSE be changed?
A. Yes, but if over one (1) hour from time established on last bulletin, the job will be rebulletined. In one (1) hour or less, will be notified prior to end of previous shift.
3. Q. Is the off-duty point the same as the on-duty point?
A. Yes.
4. Q. Are there any restrictions on TSE's at those locations where there are no yard crews assigned or on duty?
A. A TSE can perform all duties a road crew can do at such locations under the applicable rules.

5. Q. Are there any restrictions on a TSE at those locations where a yard crew(s) is assigned and on duty?
- A. Yes. A TSE may perform any duties in connection with its own train. No general yard switching may be performed if a yard crew is on duty.

Section (2)

1. Q. Is there any restriction on how many times a TSE may run back and forth over the limits of their assignment?
- A. No, there is free movement over the territory of the assignment.
2. Q. Is there any restriction how often a TSE may operate into and out of or through terminals?
- A. No, see the preceding answer.

General

1. Q. What eating rule applies to TSE's?
- A. TSE's are governed by paragraph 5 of the July 23, 1981 Memorandum of Agreement (Eating on Line of Road).
2. Q. Will TSE's operating under existing agreements be abolished and/or re-established?
- A. No, but it is understood the pre-existing agreements are superseded and the assignments will now be governed under the provisions of this Agreement."

"Side Letter No. 1
1860.65-1

Mr. M. L. Royal, Jr.
General Chairman - BLE
413 West Texas
Sherman, TX 75090-3755

Dear Sir:

This has reference to Traveling Switcher Agreement executed this date and need to address assignment which may operate over more than one seniority district.

It was agreed that in those instances where an assignment is established at a location and the limits, as set forth in Section (1) of the Agreement, will encompass more than one seniority district and it is to be operated on multiple seniority districts, the appropriate local chairmen will promptly determine the proration (within thirty days from date job is established); should they be unable to agree the General Chairman and Director of Labor Relations will make the determination.

If the foregoing fairly sets forth our understanding regarding this matter, please so indicate by signing in the space provided below.

Yours truly,

T. L. Wilson, Sr.
Director-Labor Relations

I CONCUR:

M. L. Royal, Jr.
General Chairman - BLE"

FINDINGS

The evidence supports the Carrier in this matter. At the outset, it is clear under the terms of the governing National Agreement that the Carrier has the right to an agreement permitting the establishment of road switcher assignments. Without belaboring the point, unduly restricting the establishment of road switchers is contrary to the intent of the enabling provisions of the BLE National Agreement. Likewise, Public Law Board No. 959, Award No. 262 dated February 19, 1993 (Arbitrator Criswell) recognized that road switchers may cross seniority districts.

The Carrier's proposed RSA is identical to the Agreement adopted by the UTU for the same territory in question here which further supports the conclusion that the Carrier's proposal should be adopted. Indeed, the same question now before this Board was addressed by Arbitrator Dennis when he held:

"The commonality of interests that these two two groups of employes share is obvious. It is equally obvious that harmony among the pay and work rules governing these two groups must exit. As a practical matter, efficient rail operations demand no less."

And last, I also note that the proposed RSA is also consistent with the UTU Road Switcher Agreement in the Carrier's Eastern District as well as those on other properties, including for example, the Chicago North Western Railroad.

Therefore, while I recognized and have duly considered the Organization's strong opposition in its submission and in its presentation before me to the Carrier's proposal, its advocacy runs counter to the clear intent of the parties' National Agreement and as supported by arbitral awards and other similar agreements.

AWARD

The Carrier's Road Switcher Agreement is presented in the body of this Award and as shown in the Carrier's submission (Exhibit "H") to this Board is adopted as the foundation of Award in this case. I find that the Carrier's position is correct.



Ekehard Muessig
Arbitrator

Dated: August 3, 1995