

SPECIAL BOARD OF ADJUSTMENT
(Established under Section 11, Appendix III of Finance Docket 28250)

Parties to Dispute: BNSF Railway Company
and
The Brotherhood of Locomotive Engineers & Trainmen

Question at Issue: Is BNSF's Notice served under Section 4 of the New York Dock Conditions to coordinate operations between Fort Worth, Texas, and Arkansas City, Kansas, Tulsa, Oklahoma, and Amarillo, Texas, proper, and if so, are the terms and conditions negotiated by the parties appropriate for coordinating the operations and integrating the workforce?

Background: The Special Board of Adjustment, composed of Melissa A. Beasley, Director of Labor Relations for BNSF Railway Company, Stephen D. Spcagle, Vice President of BLEET, and Dr. Francis X. Quinn, Chair, met in Fort Worth on September 22, 2008, in accordance with the Agreement between the parties dated August 12, 2008, establishing this Special Board of Adjustment.

Due to the realignment of unassigned pool freight service between Kansas City and Temple, Texas, BNSF has two unassigned service pools operating between Fort Worth, Texas, and Oklahoma City, Oklahoma. One pool is subject to the former Burlington Northern Railroad's collective bargaining agreements, and the other is subject to the agreement provisions applicable to the former Santa Fe. The

merged company, BNSF Railway, desires to combine these pools pursuant to the provisions of the New York Dock Conditions imposed by the I.C.C. in Decision No. 38 of Finance Docket No. 32549 (the BN-SF common control/merger proceeding).

On August 27, 2007, BNSF served notice under Section 4 of the New York Dock Conditions, as imposed by the I.C.C. in Decision No. 38 of Finance Docket No. 32549 (the BN-SF common control/merger proceeding), to implement certain changes in operations in the Fort Worth to Arkansas City, Fort Worth to Tulsa, and Fort Worth to Amarillo territories. It was necessary to broaden the scope of the notice designed to combine the two unassigned service pools due to the nature of BLET's seniority districts and the fact that prior coordinations had resulted in a group of engineers being excluded from certain seniority rosters in the area based upon a previous arbitral oversight. Therefore, BNSF informed BLET in the August 27 Notice that:

Since the implementation of unassigned pool freight service between Fort Worth and Oklahoma City that was established pursuant to Award 1 of Public Law Board 6860 (former Santa Fe agreement), it is BNSF's desire to combine this pool with the existing pool operating between these same terminals that are governed by the former "Frisco" agreements. Since this will involve coordination of operations and seniority, it is also BNSF's desire to fully integrate the operation of the collective bargaining agreements in this area so as to most rationally allow employees to access positions, as well as standardize and rationalize certain crew administration issues.

BNSF served notice to establish Special Board of Adjustment under Section 11, Appendix III of Finance Docket 28250 to adjudicate the issue. The parties executed an agreement to do just that on August 12, 2008. This issue is properly before this Tribunal for adjudication.

Findings:

The Board understands that there are two important elements of this case. First, the Interstate Commerce Commission approved the merger of BN and Santa Fe. In a Decision served on August 23, 1995, the Commission approved the proposed merger, subject to the labor protective conditions set out in New York Dock, determining that the merger was in the public interest and to the public's benefit:

Public benefits may be defined as efficiency gains that may or may not be shared with shippers and which include cost reductions and service improvements. Cost reductions, regardless of whether they are passed on to shippers, are public benefits because they permit a railroad to provide the same level of rail services with fewer resources or a greater level of rail services with the same resources. . . . The effects of shifting traffic patterns due to better service and lower rates on resource use for the economy as a whole should also be included in the public benefits. . . ."

Secondly, while effectuating the integration of forces between Fort Worth and Oklahoma City, a right flowing from the decision of the I.C.C. and provided pursuant to the New York Dock conditions, BNSF and BLET reached agreement, at least in principle, that was acceptable to the parties empowered to make and maintain agreements.

BNSF negotiated with the BLET, in good faith, over the course of several months and reached an agreement in principle. During these negotiations, the parties realized that to properly accomplish the coordination and integration of forces, it would be necessary to consolidate certain seniority rosters. In a case of "unintended consequences," the parties recognized that, as a result of the "Muessig Arbitration Award," engineers hired on or after December 7, 2000, had been given "common" seniority in this region; however, this Award overlooked engineers hired prior to that date, resulting in junior engineers having contractual access to positions that were unavailable to senior engineers. In order to properly effectuate the consolidation of forces in this region, the parties agreed that all engineers should be afforded common seniority, while maintaining protection for "prior right" (pre 9/20/95) engineers. As a result, the parties spent several months consolidating and dovetailing rosters in order to achieve this goal.

The method the parties applied in this endeavor is outlined in depth in the body of the proposed agreement. In addition to creating common seniority for all engineers in the region, the parties also negotiated a new expanded seniority district comprised of four "zones." The parties recognized that as a result of the unassigned pool freight realignment,

and the fact that Fort Worth, Texas, is one of BNSF's major terminals, it makes sense to make Fort Worth (sometimes referred to as Alliance) the main source of supply for engineers in this region. The parties also recognized that it would be advisable to place in motion forces that would moderate the distances between the home base and outlying locations where engineers could or would be force assigned. The parties addressed this element in depth in the body of the proposed agreement. In short, the consolidation and dovetailing of the rosters, in conjunction with the newly established "zones," operates to the benefit of both parties.

The proposed agreement is the result of months of negotiation. Agreement was reached in principle between the parties and was submitted by the B.I.E.T to their membership for ratification. Despite the failed ratification, the fact that an agreement was reached in principle proves that the parties view the conditions contained therein as being fair, reasonable, and equitable.

See PLB 94, Award No. 476, where Neutral Moore states:

The attached proposal presented on January 6, 1994 is the result of good faith bargaining by skilled negotiators. Accordingly, this Board fails to find any reason that the Agreement negotiated between the parties should not be in the best interests of both parties.

As in Arbitration Board No. 481, this Board holds similar findings which are:

Although the Board can appreciate the right of the local to invoke its constitutional privilege to not ratify the tentative agreement, it must be recognized that regardless of the amount of time one could spend in negotiating an agreement, that no amount of effort will solve or cure all individual worker or management needs or desires. The purpose of collective representation is to entrust individual rights with accredited representatives so as to avoid the pitfalls of bargaining on an individual basis.

We conclude that BNSF has the right to consolidate, coordinate, and integrate forces between Fort Worth, Texas, and Oklahoma City, Oklahoma. Based upon the nature of the preexisting seniority districts, and the necessity of making Fort Worth the primary source of supply for engineers, consolidation of several seniority rosters is fair, reasonable, and equitable. The parties negotiated extensively and arrived at an agreement that was acceptable to both parties. Its terms and conditions are now imposed by this Board. There is simply no rational foundation to do otherwise. We must answer the question at issue in the affirmative. The Notice is proper and the terms are appropriate for coordinating the operation and integrating the workforce.


FRANCIS X. QUINN
Chair and Neutral Member

STEPHEN D. SPEAGLE
Organization Member

MELISSA A. BEASLEY
Carrier Member

September 26, 2008
Fort Worth, Texas

BNSF MERGER IMPLEMENTING AGREEMENT

Between The

BNSF RAILWAY COMPANY

And The

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND
TRAINMEN**

The purpose of this agreement is to provide for expedited changes in service and operations to effectuate the common control approved by the I.C.C. in Finance Docket No. 32549.

1. For purposes of this agreement, "prior rights" engineers shall be any engineer establishing seniority as such on or before September 22, 1995.
2. The former "Frisco" (BN) and former Santa Fe unassigned service pools operating between Alliance, Texas and Oklahoma City shall be combined.
 - 2.1 Initially, the pool shall be allocated to former Frisco and former Santa Fe on a __79% ATSF to 21% Frisco_ basis.
 - 2.2 Prior rights Frisco employees with a seniority date prior to November 1, 1985 working on an SLSF allocated turn shall be governed by the agreement provisions and rates of pay applicable to the former Frisco.
 - 2.3 All employees not identified in 2.2 will be governed by agreement provisions and rates of pay applicable to the former ATSF.
 - 2.4 BNSF shall determine the conditions under which engineers in this service may stop to eat. When trainmen are not permitted to stop and eat, the trainman shall be paid an additional allowance of \$1.50.
3. Each quarter, on April 1, July 1, October 1 and January 2, the parties shall determine allocation in this pool in the following manner.
 - 3.1 Pool crew starts in this pool on trains that traverse the route between Oklahoma City and Arkansas City shall be considered ATSF starts.

- 3.2 Pool crew starts in this pool on trains that do not traverse the route between Oklahoma City and Arkansas City shall be considered Frisco starts.
 - 3.3 The numbers derived above shall be added together and the respective percentages of ATSF starts and Frisco starts shall determine the percentage allocation in this pool.
 - 3.4 The involved Local Chairmen shall determine the appropriate allocation. In the event they do not agree, the matter shall be referred to the General Chairmen for handling with the General Director of Labor Relations.
4. Traffic operated between Enid and Tulsa shall be handled by former Frisco crews.
5. Traffic operated between Enid and Oklahoma City shall be handled by former Frisco crews between Enid and Perry/Blackbear, and by ATSF crews between Perry/Blackbear and Oklahoma City.
 - 5.1 The provisions of this Section recognize that the current operation requires the use of two crews between Enid and Oklahoma City. Should conditions change so that the move may be performed by a single crew, the parties will promptly meet to determine if there are equity issues that are to be addressed.
6. Traffic operated between Enid and Arkansas City shall be handled by former ATSF crews.
7. Traffic operated between Arkansas City and Tulsa shall be handled by former ATSF crews between Perry/Blackbear and Arkansas City, and then by former Frisco crews between Perry/Blackbear and Tulsa.
 - 7.1 When former Frisco engineers are utilized as provided by this Section 7, trains on the Red Rock Subdivision shall utilize Oklahoma City engineers and trains on the Avard Subdivision shall utilize Enid engineers.

8. Seniority shall be handled as provided below.
 - 8.1 A pre-merger prior-rights roster shall be created for seniority rosters 221, C-401, EN-11 and EN-32 and shall include all engineers establishing seniority as such on or before September 21, 1995.
 - 8.2 A post-merger prior-rights roster shall be created for seniority rosters 221, C-401, EN-11 and EN-32 and shall include all engineers establishing seniority as such on or after September 22, 1995 and before December 7, 2000.
 - 8.3 The pre-merger rosters for seniority districts 221, C-401 and EN-11 shall be dovetailed and placed below the pre-merger roster of EN-32. Then the pre-merger rosters for C-401, EN-11 and EN-32 shall be dovetailed and placed below the pre-merger roster of 221. Then the pre-merger rosters of EN-11, EN-32 and 221 shall be dovetailed and placed below the pre-merger roster of C-401. Then the pre-merger rosters of EN-32, 221 and C-401 shall be dovetailed and placed below the pre-merger roster of EN-11. This process shall increase the size of the pre-merger rosters.
 - 8.4 Upon completion of the pre-merger roster creation provided by Section 8.3, the post-merger prior-rights rosters for seniority districts 221, C-401 EN-11 and EN-32 shall be dovetailed and placed below the new pre-merger roster of all four rosters.
 - 8.4.1 EN 26 is included in 8.1 through 8.4 by virtue of the fact it is part of EN-32. The new EN-26 roster shall be constructed in the same manner as the EN-32 roster as outlined above.
 - 8.5 Engineers establishing seniority on 221, C-401, EN-11 and EN-32 on or after December 7, 2000 (including engineers in Locomotive Engineer Training on the effective date of this agreement) shall rank behind the post-merger rosters created by Section 8.4.
 - 8.6 Upon completion of the process provided by Sections 8.1 through 8.5, seniority rosters 221, C-401, EN-11 and EN-32 shall be dovetailed (including the pre-merger prior-rights, post-merger prior rights and engineers establishing seniority after December 7, 2000 on each roster) and placed on the bottom of seniority roster G-401.

- 8.7 Engineers holding seniority on roster G-401 on the effective date of this agreement (including engineers in Locomotive Engineer Training on the effective date of this agreement) shall be placed on the bottom of rosters 221, C-401, EN-11, EN-32 and EN-26 with seniority dates as described below:
 - 8.7.1 Engineers establishing seniority on roster G-401 prior to December 7, 2000 shall have a seniority date equal to that of the effective date of this agreement. Engineers establishing seniority on roster G-401 on or after December 7, 2000 (including engineers in Locomotive Engineer Training on the effective date of this agreement) shall have a seniority date equal to one date past the effective date of this agreement.
- 8.8 Engineers on rosters 221, EN-11, EN32 C-401 and G-401 shall be dovetailed creating Roster X-401.
- 8.9 In the event engineers possess the same seniority date as an engineer, ranking shall be established as follows:
 - 8.9.1 The engineer's fireman's seniority date or ground service date, whichever is earliest.
 - 8.9.2 The engineer with an earlier fireman's or ground-service seniority date shall rank ahead of an engineer with a later fireman's or ground-service seniority date.
 - 8.9.3 If ranking cannot be determined pursuant to Section 8.8.1, then the engineer older in chronological age shall be ranked ahead of younger engineers.
 - 8.9.4 If ranking has not been determined pursuant to the operation of Sections 8.8.1 or 8.8.2, then ranking shall be determined by drawing numbers from a container.
9. Engineers with a seniority date established prior to December 7, 2000 who acquire seniority on a new seniority roster pursuant to the terms of this agreement shall have the right to exercise this newly-acquired seniority, but they may not be force assigned to any job or position to which they would not have been subjected to force assignment prior to the effective date of this agreement.

- 9.1 Engineers on G-401 who are placed to the bottom of any seniority roster with a new seniority date equal to the effective date of this agreement shall have the right to exercise this newly-acquired seniority, but they may not be force assigned to any job or position to which they would not have been subjected to force assignment prior to the effective date of this agreement. Engineers on G-401 who are placed to the bottom of any seniority roster with a new seniority date being one date past the effective date of this agreement may be force assigned.
10. Engineers establishing seniority after the effective date of this agreement (including engineers in Locomotive Engineer Training) shall establish seniority on all five seniority rosters.
11. A new expanded seniority district shall be created encompassing the geographical area including the Fort Worth Subdivision between and including both Fort Worth (ATSF) and Gainesville; the Red Rock Subdivision between Gainesville and to and including Arkansas City; the Madill Subdivision between and including Irving and Madill south, the Creek Subdivision between and including Madill north and Tulsa (including the entire Tulsa Seniority District); the Wichita Falls Subdivision between and including Fort Worth (BN) and Wichita Falls; the Chickasha Subdivision between Quanah and MP 668.73; and the Red River Subdivision between Wichita Falls and Amarillo, including the FWD jobs at Quanah. This shall be known as the Texhoma Seniority District
 - 11.1 Zone 1 of the Texhoma Seniority District shall be comprised of the Madill and Creek Subdivisions (including the entire Tulsa Seniority District), not including Irving.
 - 11.2 Zone 2 of the Texhoma Seniority District shall be comprised of the Fort Worth subdivision (including Fort Worth) to and including both Gainesville and Irving.
 - 11.3 Zone 3 of the Texhoma Seniority District shall be comprised of the Wichita Falls, Chickasha (to MP 668.73) and Red River Subdivisions.
 - 11.4 Zone 4 of the Texhoma Seniority District shall be comprised of the Red Rock Subdivision, including that portion of the Chickasha Subdivision between Oklahoma City and MP 549, but not including Gainesville. This Zone shall not be used to fill vacancies on any other Zone of the Texhoma Seniority District.

12. When filling permanent vacancies pursuant to the terms of the so-called "Primary Recall Agreement," (OPS 7-05), the Zones created by this agreement shall be recognized as such under that agreement.
13. When it becomes necessary to assign a demoted engineer across the Zone boundaries, the following will apply:
 - 13.1 Vacancies on Zone 1 shall be filled from Zone 2.
 - 13.2 Vacancies on Zone 3 shall be filled from Zone 2
 - 13.3 Vacancies on Zone 2 shall be filled in the following manner:
 - 13.3.1 Vacancies governed by the former SLSF collective bargaining agreements, from Zone 1.
 - 13.3.2 Vacancies governed by either the former FWD or ATSF collective bargaining agreements, from Zone 3.
 - 13.4 In the event it is necessary to force assign a position in the combined Alliance-Oklahoma City pool the following shall govern:
 - 13.4.1 Former ATSF equity slots will be force-assigned using employees off the G401 roster in Zone 2.
 - 13.4.2 Former Frisco equity slots will be force-assigned using employees off the EN32 roster in Zone 2.
 - 13.4.3 In the event that there are no available employees in Zone 2, then the language in Section 13.3 shall apply.
14. The guaranteed extra boards at Alliance shall be realigned as follows:
 - 14.1 Fort Worth Board 8 shall protect vacancies on yard positions within the expanded Fort Worth Terminal.
 - 14.2 Two road extra boards will be established; a North Extra Board and a South Extra Board.

14.2.1 The North Extra Board shall protect the following assignments and/or vacancies:

- Alliance to Oklahoma City Pool (including extra service such as Hours-of-Service Relief and work trains)
- Fort Worth to Madill Pool (Fort Worth assignments including extra service such as Hours-of-Service Relief and work trains)
- Locals & Roadswitchers belonging to the Frisco within the Fort Worth Consolidated Terminal, and those at Irving.
- Sherman Locals & Roadswitchers belong to the Frisco (Fort Worth assignments)
- Any trains going to the KCS via Wylie.

14.2.2 The South Extra Board shall protect the following assignments and/or vacancies:

- Alliance to Childress Pool (including extra service such as Hours-of-Service Relief and work trains)
- Alliance to Sweetwater Pool (Fort Worth assignments including extra service such as Hours-of-Service Relief and work trains)
- Alliance to Temple Pool (Fort Worth assignments including extra service such as Hours-of-Service Relief and work trains)
- Short Turnaround service from Alliance to Cleburne/Venus

14.2.3 If the North and South Extra Boards are used to supplement each other, employees will be compensated for such service over and above guarantee.

15. The Side Letter to Implementing Agreement 18(b) dated January 30, 2001, is hereby extinguished.

16. Vacations in the Alliance-Oklahoma City pool will be assigned in accordance with the November 1, 2005 Letter of Understanding.
17. Except as specifically modified herein, all agreement provisions, rules, practices and understandings remain in effect.

FOR THE
BNSF RAILWAY COMPANY:

FOR THE
BROTHERHOOD OF
LOCOMOTIVE ENGINEERS
AND TRAINMEN:

Assistant Vice President
Labor Relations

General Chairman Gibbons

General Director Labor Relations

General Chairman Morrison

Director Labor Relations

General Chairman Williams



Gene L. Shire
General Director
Labor Relations

BNSF Railway Company
P.O. Box 961030
Fort Worth, TX 76131
2600 Lou Menk Dr.
OOB Garden Level
Fort Worth, TX 76131
(817) 352-1076
(817) 352-7319
Gene.Shire@bnsf.com

Side Letter No. 1

In connection with Section 14 of this Agreement, the October 1, 1998 Letter of Understanding regarding the Alliance/Childress and Alliance/Sweetwater pools will be amended as follows:

From October 1 through March 31 of each year, the highest numbered Cleburne allocated turn in the Alliance/Childress pool (Alliance Board 42) shall be converted to a Sweetwater turn.

Sincerely,

Gene L. Shire

Accepted:

Austin Morrison – BLET General Chairman

Pat Williams – BLET General Chairman

Rick Gibbons – BLET General Chairman



Gene L. Shire
General Director
Labor Relations

BNSF Railway Company
P.O. Box 961030
Fort Worth, TX 76131
2600 Lou Menk Dr.
OOB Garden Level
Fort Worth, TX 76131
(817) 352-1076
(817) 352-7319
Gene.Shire@bnsf.com

Side Letter No. 2

In connection with Section 14 of this Agreement, when assigned to the extra boards created by this Agreement, employees will be governed by ATSF Rules and Rates of Pay.

Sincerely,

Gene L. Shire

Accepted:

Austin Morrison – BLET General Chairman

Pat Williams – BLET General Chairman

Rick Gibbons – BLET General Chairman



Gene L. Shire
General Director
Labor Relations

BNSF Railway Company
P.O. Box 961030
Fort Worth, TX 76131
2600 Lou Menk Dr.
OOB Garden Level
Fort Worth, TX 76131
(817) 352-1076
(817) 352-7319
Gene.Shire@bnsf.com

Side Letter No. 3

During our negotiations, the parties agreed that if an away-from-terminal engineer is used in hours of service relief and not deadheaded back to the home terminal (but rather tied up back at the away-from-home-terminal) they would be compensated for all time consumed after legal rest until they are called again and are under pay. This payment would be at the same rate of pay as all other held-away-from-home payments are made.

Also, if an engineer is utilized in turnaround service as referenced above, they cannot be called again for anything but deadhead or working service back to the home terminal.

Sincerely,

Gene L. Shire

Accepted:

Austin Morrison – BLET General Chairman

Pat Williams – BLET General Chairman

Rick Gibbons – BLET General Chairman



Gene L. Shire
General Director
Labor Relations

BNSF Railway Company
P.O. Box 961030
Fort Worth, TX 76131
2600 Lou Menk Dr.
OOB Garden Level
Fort Worth, TX 76131
(817) 352-1076
(817) 352-7319
Gene.Shire@bnsf.com

Side Letter No. 4

During our negotiations, the parties agreed and understood that all provisions for transfer of engineer seniority will be preserved and administered as they were prior to the implementation of this agreement. This includes all agreements, understandings and interpretations of the former roads.

Sincerely,

Gene L. Shire

Accepted:

Austin Morrison – BLET General Chairman

Pat Williams – BLET General Chairman

Rick Gibbons – BLET General Chairman



Gene L. Shire
General Director
Labor Relations

BNSF Railway Company
P.O. Box 961030
Fort Worth, TX 76131
2600 Lou Menk Dr.
OOB Garden Level
Fort Worth, TX 76131
(817) 352-1076
(817) 352-7319
Gene.Shire@bnsf.com

Side Letter No. 5

During our negotiations, the parties agreed that due to the magnitude of the seniority issues within the proposal, a roster certification process should be established.

Therefore, the involved rosters will be posted by BNSF as near to the effective date of the agreement as possible. The employees will be notified via that posting that they will have no more than 90 days to forward a protest to the involved BLET General Chairman stating their exception to their placement, sequence, and/or seniority date in accordance with the agreement.

Once those matters are appropriately addressed, the involved BLET General Chairmen will deem the rosters as certified from any further disputes.

Sincerely,

Gene L. Shire

Accepted:

Austin Morrison – BLET General Chairman

Pat Williams – BLET General Chairman

Rick Gibbons – BLET General Chairman



Gene L. Shire
General Director
Labor Relations

BNSF Railway Company
P.O. Box 961030
Fort Worth, TX 76131
2600 Lou Menk Dr.
OOB Garden Level
Fort Worth, TX 76131
(817) 352-1076
(817) 352-7319
Gene.Shire@bnsf.com

February 12, 2008

Rick Gibbons
PO Box 28066
Kansas City, MO 64188

Pat Williams
101 N. Beverly ST
Crowley, TX 76036

Austin Morrison
7637 Canyon Drive
Amarillo, TX 79110

Gentlemen,

During our negotiations regarding the New York Dock Notice involving the Ft Worth to Oklahoma City pools, we discussed the possibility of negotiating mandatory rest day agreements such as the one in the Alliance-Temple pool.

By virtue of this correspondence, BNSF commits to producing templates to open negotiations for each of the established pools identified in the proposal draft and to include the new combined pool.

Where there is joint jurisdiction by more than one BLET Committee in a pool, all involved General Chairman will be involved in that process.

Sincerely,

Gene L. Shire