

APPENDIX B - INTERDIVISIONAL SERVICE

NORTH PLATTE – SOUTH MORRIL ID AWARD

NATIONAL MEDIATION BOARD

In the Matter of Arbitration Between
UNION PACIFIC RAILROAD COMPANY

AND
THE

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
AWARD

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Decision Pursuant
TO ARTICLE IX
SECTION 4 OF

MAY 19, 1986
NATIONAL

ARBITRATION BOARD NO. 517
James L. Dayton, Union Arbitrator
W. Scott Hinckley, Carrier Arbitrator
Dana Edward Eischen, Neutral Arbitrator

APPEARANCES

For the Company:

Geneva S. Dourisseau
Assistant Director-Labor Relations

For the Union:

Michael Young
General Chairman-BLE UP/Eastern District

PROCEEDINGS

On December 12, 1990, the Carrier served a proposal in accordance with Article IX of the May 19, 1986 National Arbitrated Award to establish Interdivisional Service between North Platte, Nebraska and Northport, Nebraska and South Morrill, Nebraska.

The parties met in negotiations on December 19, 1990, January 14, 1991, February 6, 1991, and February 15, 1991 but were unable to enter into an agreement. The BLE raised a procedural objection to the Carrier's notice, and the Carrier served notice that it intended to implement its proposed run in accordance with Section 4 of Article IX. During the February 15, 1991, meeting the parties entered into an Agreement wherein the Carrier agreed not to implement as proposed and the Organization agreed to handle the matter to expedited arbitration. The parties agreed that only the terms and conditions of the run would be handled in arbitration, including whether current agreements would be carried forward to this proposed Interdivisional Service.

The Parties selected Dana Edward Eischen, Esq. to serve as neutral arbitrator and chairman of Arbitration Board No. 517. In accordance with the agreement to expedite the arbitration process, the Board convened a hearing in Las Vegas, Nevada on April 4, 1991. At that hearing both parties were represented and afforded full opportunity to present oral and documentary evidence in support of their positions. The record was closed at the conclusion of that hearing and the Board subsequently convened in Executive Session to render its Opinion and Award after study and deliberation upon the voluminous record.

ISSUE

Throughout these proceedings the Organization has argued and preserved the threshold question whether the service, proposed by the Carrier's Notice of December 12, 1990, actually is new Interdivisional Service between North Platte, Nebraska, and South Morrill, Nebraska, as contemplated by the terms and conditions of Article IX of the Award of Arbitration Award No. 458; or merely an attempt by the Carrier to impose the significantly more favorable conditions of Article IX of the Award of Arbitration Board No. 458 on a pre-existing Interdivisional Service Run.

If, *arguendo*, the Board determines that Carrier's Notice actually proposed new Interdivisional Service, then the substantive issue presented for arbitration is:

What are the appropriate terms and conditions of the Carrier's proposed Interdivisional Service between North Platte, Nebraska and Northport/South Morrill, Nebraska?

BACKGROUND

Trains presently move from North Platte, Nebraska to South Morrill, Nebraska along two different routes and are handled by three separate crews; each separate crew operating under separate and unique work rules. A brief recap of the routes and source of governing work rules are as follows:¹

- (1) Crews operating North Platte to North Port or South Morrill via the North Platte Branch. This is the most direct route and is covered by an agreement dated July 18, 1984.¹

¹ 1 The Board notes that in addition to the current operations, there have been temporary reroute agreements due to track work covering the movement of trains to South Morrill. These agreements were temporary in nature and by agreement between

(2) Crews operating in Interdivisional Service from North Platte to Cheyenne will handle cars destined for South Morrill from North Platte to Egbert, a point enroute. After cars are set out at Egbert, the crew either continues on to Cheyenne, Wyoming with remaining cars or deadheads to Cheyenne. These crews are governed by the Interdivisional Service Agreement of December 16, 1972.

(3) Crews headquartered in Cheyenne are deadheaded to Egbert, take the train to South Morrill, and are then deadheaded back to Cheyenne. These crews work under the general work rules found in the Collective Bargaining dated December 1, 1979.

A review of these separate agreements clearly indicates that the terms and conditions vary from Agreement to Agreement. This lack of uniformity might well be expected in contracts negotiated years apart.

DISCUSSION

At the outset, the Organization interposes objections to the substantive arbitrability of this dispute. The threshold question concerns whether the notice proposed by the Carrier merely is an extension or rearrangement of Interdivisional Service, upon which current conditions should be preserved. The Organization points out that an overwhelming majority of the trains will travel via the North Platte Branch, and argues forcefully that the terms and conditions specified in the Agreement dated July 18, 1984 should be carried forward to this proposal. The BLE cites Issue No. 3 of the Informal Disputes Committee of the 1986 National Arbitration Award in support of its position.

In Issue No. 3 of the 1986 National Arbitration Award, the Informal Disputes Committee ruled that existing interdivisional runs could be extended or rearranged for legitimate reasons. There is some dispute as to whether the July 18, 1984 Agreement is an Interdivisional Run Agreement; but the December 16, 1971 agreement, also involved in this service, is acknowledged by all parties as an Interdivisional Run Agreement. The Disputes Committee ruling, therefore, has application to this dispute. The ruling in Issue No. 3 basically provided for findings of fact to determine whether the Carrier's notice was "designed solely to obtain the more favorable conditions in the 1986 National Agreement."

This Board is mindful of Award No. 1 of Public Law Board No. 4372, which dealt with the same procedural question on another Carrier. That Award stated:

"The proposed interdivisional service is the proper establishment of a new interdivisional service. The proposed service is geographically distinguishable and different from any existing run by the added length and inclusion of Holyoke. Further, the process of operation will be substantially different. Moreover, the improvements in the line which allow swifter operations and thus, shorter runs, make the proposed service

the parties entered into on a non-precedent basis and will not be considered in the formulation of this Award.

essentially a different operation because the transit time helps determine the character of the operation."

In this case, Carrier's proposal to have one pool headquartered at North Platte operate all trains to South Morrill, in lieu of the current method requiring an elaborate and costly crew handling process, constitutes a significant change in total operations. The proposed method of operation will be substantially different, as it will eliminate many deadheads and provide for more efficient operations. We conclude that Carrier's proposal in the present case is valid under the benchmark of Issue No 3. and, therefore, subject to the jurisdiction of this Board under Article IX, Section 4 of the May 19, 1986 National Award.

The Board has reviewed with care the terms and conditions proposed by both Parties, as well as the terms and conditions outlined in supporting Awards cited by each Party. We are convinced that, except where noted, terms and conditions set forth in National Agreements generally should be given precedence over those that substantially deviate from language mutually agreed to at the National Level of bargaining. Accordingly, we find and award that if Carrier establishes the proposed service, terms and conditions should be as indicated in the following attached Award.

AWARD OF ARBITRATION BOARD 517,

In the event the Carrier establishes interdivisional service between North Platte, Nebraska and South Morrill/Northport, Nebraska, the terms and conditions set forth below shall apply to such service:

1. Home Terminal - North Platte, Nebraska, shall be the Home Terminal for employees working in Interdivisional Service created by the Carrier's proposal.

(The Board notes that the Organization has protested strongly the establishment of a single home terminal for this proposed operation. However, considering the fluctuation in equalization of mileage which will be created by the operation, as well as the organizations arguments concerning possible temporary nature of the proposed operation, we find the method of equalization set down in Item 13 of this Award adequately and fairly resolves this matter without the need to rule regarding the propriety of moving or establishing home terminals.)

2. On and Off Duty Points - Northport shall be the off-duty point for crews working North Platte - Northport and South Morrill shall be the off-duty point for crews working North Platte - South Morrill via Gering or Egbert. Northport shall be the on-duty point for crews working Northport - North Platte and South Morrill shall be the on-duty point for crews working South Morrill - North Platte via Gering or Egbert.

NOTE: Employees working North Platte-Northport may be transported to either North Platte or the South Morrill lodging facility at the completion of the service trip to Northport.. Employees working Northport - North Platte may be transported to Northport from either North Platte or the South Morrill lodging facility prior to starting the service trip from Northport.

(Our primary rationale for this aspect of the Award may be found in a long line of grievance arbitration precedent addressing payments for transportation to and from lodging facilities distanced from the away-from-home on and off duty points, typified by NRAB Award 1-22879 by referee David Dolnick).

3. Miles of Run - Crews working in this Interdivisional Service will be allowed the following miles:

Between North Platte and Northport	- 122 miles
Between North Platte and South Morrill via Gering	- 166 miles
Between North Platte and South Morrill via Egbert	- 268 miles

NOTE 1: Mile Pole 162.1 at South Morrill will function as the arrival and departure point at that location for trains operating from/toward the direction of Egbert.

NOTE 2: Mile Pole 157.0 at South Morrill will function as the arrival and departure point at that location for trains operating from/toward the direction of Gering.

NOTE 3: Mile Pole 112.5 at Northport will function as the arrival and departure point at that location.

4. Rate of Pay - The provisions of the May 19, 1986 Arbitration Award No. 458 and as amended by future National Agreements shall apply.

5. Overtime –

(a) Engineers on the roster on the date of this Award will be allowed overtime on the route via Egbert after 12 hours on duty and on the route via the North Platte Branch after 10 hours on duty unless the National Agreement provides for a more favorable overtime.

(It should be evident that the above is a compromise between the positions taken by each party. Although the threshold issue was resolved in favor of Carrier, the Organization made a colorable showing that the change may be temporary in nature. If, arguendo, such were the case, Carrier will have acquired the "more favorable conditions" of Article IX of the Award of Arbitration Board No. 458 should the operation return fully to the direct North Platte to-South Morrill route. The Board remained cognizant of this contingency in crafting reasonable and practical terms and conditions regarding overtime which deviate somewhat from those set forth in the National Agreement. Changes in the basic day at the National level have also had an impact on the overtime divisor which will change yearly.

Both parties presented compelling arguments in support of their positions and the Board obviously found merit in aspects of each presentation on this volatile issue. In fashioning an Interdivisional Agreement as a Board of Interest Arbitrators, we have the power to impose a compromise solution which is at once reasonable, practical and equitable. Due to the unique facts of this case, the terms of this section are a fair and equitable compromise method of determining overtime, but without precedent to other Interdivisional Service proposals.)

(b) Engineers establishing seniority dates on the applicable rosters after the date of this Award will be allowed overtime on any route in accordance with the overtime divisor established by the then current National Agreement.

6. Transportation - 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.

(In these sections the Board has adopted without modification the language appearing in Article IX Section 2 of the May 19, 1986 National Award.)

7. Meal Allowance and Eating Enroute –

(a) 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.

(In these sections the Board has adopted without modification the language appearing in Article IX Section 2 of the May 19, 1986 National Award.)

(b) 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 and eat, crew members shall be paid an allowance of \$1.50 for the trip.

8. Suitable Lodging - Suitable lodging will be provided by the Carrier in accordance with Section 1 of Article II of the June 25, 1964 National Agreement.

9. Employee Protection - Article IX, Section. 7 of the May 39, 1986 National Arbitration Award provides for protective benefits for employees adversely affected as a result of the application of this new I.D. Service. In light of the unique service-being instituted, the Board directs the partisan members to develop basic implementing conditions for the guidance of those who may be adversely affected.

This Board shall retain jurisdiction of this Section, and, if an implementing agreement for Section 7 of Article IX of the May 19, 1986 National Arbitration Award is not reached within 30 days, the matter will be decided by the Board.

10. Pick Ups and Set Outs Enroute - Crews working in this Interdivisional Service may be required to make pick-ups and set-outs during their tour of duty. They shall be governed by the provisions of Article VIII Section 1 of the May 19, 1986 National Arbitration Award if yard crews are on duty at points where such movements are made.

11. Extra Boards –

(a) A guaranteed extra board shall be established at South Morrill, Nebraska. The extra board shall be governed by the October 25, 1985 Guaranteed Extra Board Agreement entered into by the parties, to cover Fourth District Engineers.

(b) Extra work in unassigned short turnaround service, irregular branch line service, turnaround service, unassigned branch line service, short straightaway service, relief service, and other unclassified services shall be manned by the South Morrill extra board as follows:

1. Between South Morrill and Sidney on the west side of South Morrill; and
2. Between South Morrill and M.P. 112.5 at Northport on the east side of South Morrill.
3. Work train service between M.P. 0 and M.P. 145.9 on the North Platte Branch that is operated by extra board employees will be manned by the North Platte extra board.

(c) Should the South Morrill Extra Board be exhausted, the Cheyenne Extra Board shall be used as the first source of supply prior to using pool freight crews at the away-from-home terminal of South Morrill.

Nothing in this Section prevents the use of pool freight crews from being deadheaded to a train and taking it on to the far terminal.

12. Apportionment of Work - Fourth District employees will be entitled to the number of miles (155) run between Sidney and South Morrill via Egbert as set forth in Section 13 below.

13. Equalization of Work - Due to the unique set of facts in this case which provides for two routes to be used and a constantly varying number of miles per month run over the Fourth District, Equalization shall be handled as follows:

(a) Assignments at North Platte shall be available only to Third District employees.

(b) Assignments on the Extra Board at South Morrill shall be available only to Fourth District Employees.

1. The Carrier shall provide to the Local Chairmen by the tenth of each month the number of trains run via Egbert the previous calendar month. At the end of every three calendar months the miles shall be calculated for equalization using the number of train miles run between Sidney and South Morrill. These miles shall first be offset against any South Morrill extra board miles paid for in the same time period.

The mileage due the Fourth District shall be equalized using the Cheyenne-North Platte Interdivisional Pool. The Fourth District Local Chairman and the Carrier shall determine whether the equalization shall be accomplished through the use of the existing Extra Board or through an addition to the pool. This should be based on the number of miles owed.

Example (1): During the 90-day time period, 10,800 train miles were run between Sidney and South Morrill. The extra board at South Morrill was paid 10,800 miles resulting in no miles being owed the Fourth District.

Example (2): During the 90-day time period, 14,000 train miles were run between Sidney and South Morrill. The extra board at South Morrill was paid 10,800 miles resulting in 3,200 miles owed the Fourth District. This would equate to 7.0 round trips in the North Platte - Cheyenne Interdivisional Pool. (7.3 round trips rounded off to the nearest full round trip.)

2. If the number of miles is less than the number of miles paid to the South Morrill Extra Board, no equalization shall be due the Third District.

(Due to the potential for a Fourth District employee moving to North Platte and then being unable to hold at that location due to mileage equalization it is decided that the above method, though unique, it; a fair and equitable manner of equalization without the need to relocate employees to a new home terminal, thus disposing of that disputed issue. The use of the North Platte Cheyenne pool is warranted because that pool currently handles trains to Egbert that are destined for South Morrill.)

14. Mileage Regulation –

(a) The pool shall be regulated based on 11 starts per month out of the home terminal. Adjustments shall be made semi-monthly. As in mileage regulations this provision does not create a guarantee of 11 starts, per turn per month and does not create a basis for time claims but will be used by the parties in the regulation of the number of turns in the pool.

(The Board recognizes that this is a unique method of pool regulation but finds that the special situation presented warrants a unique solution. This pool has three different mileage factors, with the further complication that the May 19, 1986 National Arbitration Award provides for differing pay provisions involving deadheads and arbitraries. Due to the wide range of mileage potential, the Board believes that starts per month offers a more equitable method.)

(b) The Board will retain jurisdiction for up to (15) months from the implementation date of this Award for possible review based upon experience under this mileage regulation formula. This is not meant to fix an open-ended

review and will be available only for a three-month period following the first anniversary of the implementation date of this Award. Thus, after one year from the date of the implementation of this Award, either party may request such a review of this provision. Failure to request a review within the three-month period following the anniversary date will result in this Section becoming permanent.)

15. Miscellaneous Provisions –

- (a) As there are other issues not addressed by either party in writing, the Basic Interdivisional Service Agreement dated December 16, 1971 will apply if not in conflict with the terms and conditions set forth in this Award.
- (b) Because of the unique conditions inherent in this case, the Board views this Award as applicable only to the December 12, 1990, proposed service.
- (c) Carrier must give the Organization twenty (20) days notice prior to implementation.

/s/ Dana Edward Eischen

Dated at Ithaca, New York on April 12, 1991

W. S. Hinckley

Carrier Member

Date: April 26, 1991

J. L. Dayton

Employee Member

Date: April 26, 1991

IMPLEMENTING CONDITIONS
between
UNION PACIFIC RAILROAD COMPANY
and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

The parties have met in accordance with Section 9 of the Award of Arbitration Board No. 517 dated April 12, 1991. As a result of that Award the parties have agreed to the following conditions for the implementation of the employe protective benefits set forth in the Award:

(1) All Engineers in the current North Platte - South Morrill/North Port pool from the date of the Award (April 12, 1991) until the implementation date of the Award shall be certified as being an "affected" employe as pertains to Sections 6, 7, 8 and 9 of the Washington Job Protection Agreement of May 1936.

NOTE: The above does not limit who may be an "affected" employe and other employes may claim protection through the normal process as provided in the Washington Job Protection Agreement.

(2) Employes certified in Section (1) will use their 1990 W-2 income statement to determine the protected rate exclusive of any expense money, meals, lodging, separation money from other crafts and any other non-compensated service money, but would include vacation pay for train or engine service.

(3) Employes not certified in Section (1) who are determined to be affected shall have their twelve month protected period determined by the appropriate Section of the Washington Job Protection Agreement.

(4) Employes certified in Section (1) will not be required to bid from the North Platte-South Morrill/North Port pool to retain their protected rate. However, if they leave the pool for any reason they will then be required to place on the highest-rated position available or be treated as such.

(5) The protected rate will be based on a monthly dollar amount only and will not involve hours worked. The offset for layoffs will be based on actual earnings lost.

Length of Service for determining the number of years of protection coverage shall include both Train and Engine Service and will be subject to a maximum of six years. A protected Engineer cut back to train service shall have their trainman earnings be used as an offset to their Engineer's protective allowance. An employe shall be allowed a protective allowance in only one craft and no duplicate benefits shall be permitted.

(6) There are no required change of residences as a result of this agreement.

(7) The Carrier shall provide a form for all employes to use when claiming protective benefits. The Form shall be used monthly and must be filed within 60 days from the end of the month-claimed.

(8) Unless modified above Sections 6, 7, 8 and 9 of the Washington Job Protection Agreement as modified by Section 7 of Article IX of the May 19, 1986 National Arbitration Award shall apply.

(9) The foregoing terms and conditions shall fulfill the requirements as directed in Section 9 of the Award of Arbitration Board No. 517. This is without precedent or prejudice to either parties' positions concerning Article IX of the May 19, 1986 National Arbitration Award and shall not be cited by either party in any other negotiations or disputes.

Signed at Omaha, Nebraska, this 7th day of May, 1991.

/s/ J. L. Dayton
Vice President -
Organization Board Member

/s/ W. S. Hinckley
Director - Labor Relations
Carrier Board Member