

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE No. 711 Sub-No. 1

PROPOSED CHANGES TO RULES
REGARDING RECIPROCAL SWITCHING

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**SUMMARY OF POINTS MADE IN
EX PARTE MEETING WITH BOARD MEMBER**

On February 21, 2017, representatives of the Brotherhood of Maintenance of Way Employees Division/IBT, Brotherhood of Railroad Signalmen, and International Association of Sheet Metal, Air, Rail and Transportation Workers/Mechanical Division (“Unions”), Richard S. Edelman, Leonard Parker and Charles Fraley met with Acting Chairman Ann Begeman and her attorney-advisor Allison Davis regarding the above-captioned matter in accordance with the Board’s order. Below is the summary of points made by the Unions in the ex parte meeting:

1. The Unions represent the maintenance of way, signal and sheet metal workers on all of the Class I railroads, as well as railroad workers on other railroads.
2. While issues like the reciprocal switching issue are often presented as a dispute between big railroads and small shippers, this dispute is primarily one between big corporations that are shippers and big railroads.
3. When railroad revenue is reduced, the railroads typically seek concessions in pay, benefits and work rules from their employees. At the present time the railroads are seeking concessions from their employees because of reduced revenue.
4. Any reduction in railroad revenues as a result of a change in the rules on reciprocal switching is likely to lead to additional demands for concessions or at least to an increase in the railroads’ resolve to obtain concessions.
5. The current structure of the industry and current arrangements for switching are the product of the consolidation transactions in the 1990s that were all reviewed and approved by the ICC and STB. Hundreds of parties participated in each transaction including all of the major shipper interests. In particular, the NIT League was a major participant in each of the consolidation cases.
6. The ICC and the STB engaged in extensive review and consideration of the proposed transactions, as well as requests for conditions sought by participants. The NIT League generally took a lead role in those proceedings and entered settlements with the applicants relatively early in the proceedings; those settlements were often viewed as addressing the shipper concerns and/or as setting a pattern for other settlements. Some other shipper groups entered their own

settlements and most settled before final decisions were issued.

7. Rail Labor generally fought the transactions, and these Unions consistently fought them through the final decisions.

8. In the end the transactions conditioned on the settlements were approved as in the public interest

9. Members of the Unions experienced substantial adverse impacts as consequences of those decisions.

10. Many workers lost their jobs or suffered downgrades of their positions. While employee protective conditions were imposed, due to changes in collective bargaining agreements as a result of Presidential Emergency Board 219, many employees were unable to benefit from the protections.

11. Even when income protection was provided there were still significant adverse impacts. Many workers were required to relocate, often significant distances. Many workers had to travel across multiple states to work and had to live away from home as the combined railroads consolidated workers into much larger seniority districts. And the railroads used the employee protective conditions to force major modifications of collective bargaining agreements outside Railway Labor Act processes, almost always to the detriment to members of the Unions.

12. The result of those changes was improved financial health of the industry, substantial improvement of rail infrastructure through reinvestment by more financially sound railroads, and significantly improved rail service for shippers.

13. The proposals for changes to reciprocal switching rules are an effort to partially re-litigate and revise the merger and control decisions of the 1990s that were deemed to be in the public interest.

14. In each of those transactions, the applicants asserted that improved networks, elimination of interchanges and single-line service would provide significant public benefits; in particular, they claimed that shippers would benefit by the combinations as a consequence of the new hub and terminal arrangements, enhanced through- service/single line service, improved average speeds, reduced terminal delays and fewer interchanges.

15. The NIT League and other shipper interests now seek to change some of the network, through-service, and interchange arrangements that resulted from the consolidations. Having supported those transactions, or acquiesced in them by settlements that required very little of the railroads, the NIT League and the others should not now be heard to seek changes to those arrangements where the outcome of the proposed changes would be a reduction of revenue for the railroads and a commensurate gain in revenue for shippers.

16. In the Unions' view, and in their experience, transfer of earnings from the railroads to the shippers will hurt railroad workers. Members of the Unions should not now face the prospect of further losses because certain shipping interests see an opportunity now to chip away at the product of the Board's balancing of competition, service, efficiency and other stakeholder interests.

In response to an inquiry as to whether the Unions oppose any change to the reciprocal switching rules or might be amenable to some modification to the rules, the Unions responded that they saw no basis for any change.

In response to an inquiry regarding Canadian rules and practices regarding switching, the Unions responded that they were not familiar with Canadian rules and practices, but noted that Canadian laws differ from American laws (both with respect to labor relations and transportation), and that the Canadian rail transportation system, which is primarily an east-west system, differs markedly from the American system which is more complex.

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