

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 32760, SUB-FILE 44

214002

IN THE MATTER OF ARBITRATION BETWEEN UNION PACIFIC RAILROAD COMPANY
AND THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
(Arbitration Review)

CARRIER'S RESPONSE TO PETITIONER'S MOTION FOR STAY

Respectfully submitted,

THOMPSON COBURN LLP

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INTRODUCTION

This matter arises from a New York Dock arbitration decision issued by James R. McDonnell in a dispute between the Brotherhood of Locomotive Engineers and Trainmen ("BLET") and Union Pacific Railroad ("UP"). The McDonnell Award arose out of a 2003 claim by BLET that alleged that UP had improperly required certain engineers who resided in St. Louis, Missouri, and Salem, Illinois, to hold assignments in Dexter, Missouri. BLET alleged that UP's actions had also affected other engineers and requested relief on behalf of all allegedly affected engineers. BLET's claims were based on two letter agreements entered into between the parties. Arbitrator McDonnell ruled that jurisdiction over the parties' dispute belonged to an arbitrator under § 3 of the Railway Labor Act, not a New York Dock arbitrator, and he declined to reach the merits of the dispute. On May 3, 2005, BLET filed an appeal of Arbitrator's McDonnell's decision with the Board.

On May 11, 2005, BLET filed the present Motion to Stay the effectiveness of the McDonnell Award. BLET's Motion completely misstates the issues presented to Arbitrator McDonnell. Ignoring the engineer assignment issue actually presented to Arbitrator McDonnell, BLET claims that Arbitrator McDonnell was asked to address the question of whether UP had the right to end the so-called "reverse lodging" arrangement that applied to certain engineers residing in and around Dexter. BLET's characterization of the issue presented to Arbitrator McDonnell is simply wrong; the elimination of "reverse lodging" was never placed before him. Declaration of Arthur Terry Olin ("Olin Dec."), attached hereto as Exhibit A, ¶¶ 2-3.

Obviously, BLET cannot use its pending appeal of the McDonnell Award as a guise to obtain a stay relating to the "reverse lodging" arrangement that was never before Arbitrator McDonnell. Moreover, as shown below, BLET's request for a stay should be denied because: (1) it is untimely under 49 C.F.R. § 1115.5, which required BLET to file its motion for stay at least 10 days before the action it seeks to enjoin (here, BLET filed its motion 1 day **after** UP had implemented the change); (2) it is moot given that UP has already implemented the changes at issue; (3) BLET has no chance

of prevailing on the merits; and (4) the harm to UP of granting a stay greatly outweighs the harm to BLET of denying a stay.

FACTUAL OVERVIEW

As discussed above, BLET is seeking to stay an issue not presented to Arbitrator McDonnell. This fact is obvious when one compares the relief that BLET seeks in its motion for stay (requiring UP to dismantle its already implemented elimination of "reverse lodging" for engineers living around Dexter) with the issues that BLET presented to Arbitrator McDonnell (whether UP had improperly required certain St. Louis and Salem-based engineers to take assignments in Dexter, and whether those engineers and others allegedly affected thereby should receive compensation). Therefore, this reply begins by addressing the two fact patterns underlying these two completely separate disputes.

A. The Issue Before Arbitrator McDonnell

BLET's Motion for Stay totally misrepresents the issue presented to Arbitrator McDonnell. Contrary to BLET's repeated misstatements, the dispute before Arbitrator McDonnell concerned persons who had their home terminals in St. Louis, Missouri, and Salem, Illinois. UP maintained certain assignments in the Dexter, Missouri, area, about a 3-4 hour drive from St. Louis. On occasion, jobs openings would exist in Dexter and be placed for bid by eligible engineers. If no one bid on the job, UP would, pursuant to its agreements with BLET, force the junior engineer to take the assignment. On occasion, this would require an engineer living in St. Louis or Salem to work in Dexter.

BLET was unhappy with this arrangement, pointing out that it had been the parties' intent that engineers residing in Dexter protect vacancies arising there before an engineer at another location would be forced to Dexter. UP also believed that it would usually be more equitable to have the Dexter-based engineers protect the Dexter-area assignments first. Therefore, UP and BLET entered into an October 18, 1999, letter agreement that required Dexter-based engineers to protect openings in the Dexter area under certain circumstances. Copies of Side Letter No. 11 and the October 18, 1999, Letter of Understanding are attached to the Olin Dec. as Aff. Exs. 1-2 respectively.

Subsequently, in or about October 2003, BLET file a claim alleging that UP had failed to comply with the terms of the October 18, 1999, Letter of Understanding by forcing certain St. Louis and Salem-based engineers to accept assignments on an extra board located in Dexter. Olin Dec. ¶ 2. BLET sought compensation for these engineers and others allegedly affected by UP's actions, and commenced arbitration under Article I, § 11 of New York Dock. Arbitrator McDonnell was appointed as neutral. UP contended that jurisdiction over the dispute did not lie under New York Dock, but instead under § 3 of the Railway Labor Act. As UP noted, Article I, § 11 of New York Dock only allowed arbitrators appointed thereunder to resolve disputes "with respect to the interpretation, application or enforcement" of New York Dock. BLET's claims, however, raised no issue regarding the New York Dock conditions or benefits, but instead raised routine assignment, seniority, and bumping questions. Indeed, the issues BLET placed before Arbitrator McDonnell, quoted on pages 2-3 of the McDonnell Award, a copy of which is attached hereto as Exhibit B, do not relate at all to any New York Dock benefits:

1. Whether the Carrier violated the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement, or any other BLE Agreement, by forcing Engineers from the St. Louis-Dexter and Salem-Dexter freight pools to the Extra Board at Dexter, Missouri?
2. If so, what shall the remedy be?
3. Whether the Dexter Extra Board Engineers displaced by the Carrier's action in Question No 1, that were forced to assignments at other locations, such as St. Louis, Missouri, and Dupo, Illinois, were forced-assigned in violation of the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement?
4. If so, what is the remedy?
5. Whether the forced-assignment of Engineers from St. Louis, Missouri and Dupo, Illinois, to assignments at Dexter, Missouri, violated the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Merger Implementing Agreement?
6. If so, what shall the remedy be?
7. Whether those Engineers improperly displaced at Dexter, Missouri, by the Engineers forced-assigned to that location by the Carrier's actions in Questions Nos. 1 and 5, and were subsequently forced to assignments at Trainmen, were so assigned in violation of the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement?
8. If so, what shall the remedy be?

BLET countered that because the October 18, 1999, Letter of Understanding amended Side Letter No. 11, and because Side Letter No. 11 was signed at the same time as the Merger Implementing Agreement for the St. Louis Hub that was entered into following the UP's merger with the Southern Pacific Transportation Company, the matter raised a New York Dock dispute. BLET thus claimed that a New York Dock arbitrator has jurisdiction over the dispute.

The parties held an arbitration hearing before Arbitrator McDonnell on August 24, 2004. Olin Dec. ¶ 2. On April 14, 2005, Arbitrator McDonnell issued his award rejecting BLET's arguments and finding that he had no jurisdiction to resolve the parties' dispute. Ex. B. Arbitrator McDonnell found that Side Letter No. 11 was simply a side agreement that "more specifically defined" affected employees' standard working conditions, rather than their entitlement to benefits under New York Dock. Therefore, given that Arbitrator McDonnell's only authority was under New York Dock, he found that he did not have jurisdiction to reach the merits of the parties' dispute.

B. The Issue Raised By BLET's Motion For Stay

BLET's Motion for Stay addresses an entirely different issue, and one that, despite BLET's repeated misstatements to the contrary, was never put before Arbitrator McDonnell. Olin Dec. ¶¶ 2-3. BLET asks the Board to prohibit UP from ending a so-called "reverse lodging" arrangement that permitted certain engineers to effectively have Dexter as their home terminal. Thus, while BLET's claim before Arbitrator McDonnell concerned the assignment of St. Louis and Salem-based engineers to positions at Dexter (and the allegedly resulting job changes affecting other UP engineers), the stay BLET requests addresses the rights of persons living in Dexter to effectively retain Dexter as their home terminal and the attendant "reverse lodging" benefits.

The "reverse lodging" issue concerns the St. Louis-Dexter and Salem-Dexter runs. UP, in keeping with its desire to minimize the number of home terminals for engineers, wanted all engineers on these runs to maintain their home terminals in St. Louis or Salem, respectively. However, as an accommodation to the engineers living in the Dexter area, UP agreed to the terms of Side Letter No.

11, which permitted eligible engineers to maintain “reverse lodging” for a fixed time period. Eligible engineers electing “reverse lodging” would be allowed to treat Dexter as their home terminal and St. Louis or Salem as their away-from-home terminal, contrary to the basic structure of these runs.

Permitting “reverse lodging” has had serious financial consequences for UP. Railroad operations are designed so that employees spend more time at their home terminals than at their away-from-home terminals. In fact, UP must pay engineers additional money when they spend excessive time at their away-from-home terminals. Therefore, when “reverse lodging” engineers are at St. Louis or Salem (the true home terminals for these runs), they become eligible for this additional pay. Because operations are designed so that engineers have more time at the home terminal, “reverse lodging” engineers collect the additional pay at a far greater rate than other employees. Since its inception in 1988, the Dexter “reverse lodging” arrangement has cost UP approximately \$21.5 million (over \$3 million per year). Olin Dec. ¶ 7.

As noted above, the “reverse lodging” arrangement permitted by Side Letter No. 11 was not of indefinite duration. Under ¶ 5 of Side Letter No. 11, UP was permitted to end the “reverse lodging” arrangement on 30 days’ notice provided anytime on or after April 1, 2005. Olin Dec. Aff. Ex. 1. On April 4, 2005, in accordance with ¶ 5 of Side Letter No. 11, UP gave 30 days’ notice of its intent to end “reverse lodging.” A copy of this notice is attached to the Olin Dec. as Aff. Ex. 3.

BLET now contends that UP had, by agreeing to the October 18, 1999, Letter of Understanding, waived its right to end the “reverse lodging” arrangement. On its face, BLET’s argument is absurd. The October 18, 1999, Letter of Understanding (Olin Dec. Aff. Ex. 2) says absolutely nothing about UP’s right to end the reverse lodging arrangement. Instead, it addresses the completely unrelated issue of when Dexter-based engineers can be required to work Dexter-area assignments. UP respectfully requests that the Board review the language of Side Letter No. 11 and the October 18, 1999, Letter of Understanding, which clearly show BLET’s arguments to be meritless.

BLET had considerable time after its receipt of UP's April 4 notice to timely request that the Board stop UP from ending the "reverse lodging" arrangement. However, BLET failed to do so, and on May 10, 2005, UP commenced abolishing the approximately 26 "reverse lodging" assignments, while simultaneously creating the same number of jobs in these pools with St. Louis or Salem as the home terminal. Contrary to BLET's hyperbolic predictions, the process has moved very smoothly. Olin Dec. ¶ 5. Indeed, the abolishment of 26 engineers jobs (less than ½ of 1% of the engineer assignments on the UP) and the resulting exercise of seniority by UP engineers is a matter that UP and BLET address on a nearly daily basis. Id. As discussed above, all of the abolished jobs were immediately replaced with similar assignments, and no engineers were furloughed.

ARGUMENT

Without citing to any legal authority, BLET now moves to require UP to restart "reverse lodging" under the guise of a motion to stay Arbitrator McDonnell's Award. BLET has the burden to establish that it is entitled to what the courts describe as an "extraordinary remedy." Cuomo v. United States Nuclear Regulatory Comm'n, 772 F.2d 972, 978 (D.C. Cir. 1985). As shown below, BLET's Motion should be denied for the following reasons: (1) it is improper because a stay of Arbitrator McDonnell's Award does not provide BLET with the remedy it seeks; (2) it is untimely given that 49 C.F.R. § 1115.5 required BLET to file its motion for a stay 10 days before UP took the actions at issue, not 1 day after UP took those actions; (3) it is moot, because UP has already implemented the changes at issue; (4) BLET has no chance of success on the merits; and (5) the harm to UP of issuing a stay greatly outweighs the harm to BLET of denying a stay.

1. BLET's Appeal of the McDonnell Award Does Not Provide a Basis For Its Requested Relief

According to its caption, BLET's Motion requests that the Board stay the McDonnell Award, which simply found that a New York Dock arbitrator lacked jurisdiction to determine whether UP had improperly required certain engineers to protect assignments in Dexter. However, as discussed

above, the relief that BLET actually requests has nothing to do with the issues placed before Arbitrator McDonnell. Instead, BLET requests that the Board require UP to reverse its already implemented elimination of the “reverse lodging” arrangement.

BLET repeatedly states that Arbitrator McDonnell was asked to address the elimination of “reverse lodging.” BLET’s statement is flatly untrue. Olin Dec. ¶¶ 2-3. The issues that BLET placed before Arbitrator McDonnell are quoted above and in the McDonnell Award itself. Arbitrator McDonnell was never asked to rule on UP’s right to end the “reverse lodging” arrangement. In fact, as discussed above, BLET began the process that led to the McDonnell Award in late 2003, and the parties held their hearing before the Arbitrator on August 24, 2004. Olin Dec. ¶ 2. Obviously, UP’s April 4, 2005, notice, issued over 7 months after this hearing, could not have been addressed by Arbitrator McDonnell.

BLET cannot request a stay of an action that was not part of the arbitration award under review, and the instant Motion should therefore be denied.

2. BLET’s Request for a Stay is Untimely

BLET’s Motion also fails to comply with the requirements of 49 C.F.R. § 1115.5, which mandated that BLET have filed its stay request at least 10 days before UP implemented the action at issue. In this case, although BLET had notice of UP’s intention to end “reverse lodging” within a day or two of UP’s April 4, 2005, notice, it did not file its Motion for Stay until May 11, 2005, 1 day **after** UP’s implementation of those changes. BLET’s request for a stay is therefore untimely.

In its recent decision involving these same parties, Union Pac. Corp. – Control and Merger – Southern Pac. Transp. Corp., STB Finance Docket No. 32760 (Sub-No. 43) (Arbitration Review) (January 19, 2005), the Board held that sophisticated parties such as UP and BLET must either meet Board deadlines or timely request extensions thereof. BLET did neither. Moreover, the Board recognized that no late filing would be permitted absent a showing of good cause. BLET, however, offers no explanation for its late filing. For these reasons, BLET’s Motion should be denied.

3. BLET's Request for a Stay is Moot

As discussed above, UP has already eliminated the "reverse lodging" arrangement. All affected employees have been notified and have taken new assignments. Olin Dec. ¶ 5. While 49 C.F.R. § 1115.5 permits the Board to stay an arbitration award pending appeal, BLET is actually requesting that the Board order UP to undo its already implemented changes. BLET's requested relief is not permitted by § 1115.5. Given that the changes at issue have been made, BLET's request for a stay is moot.

4. BLET Cannot Show a Likelihood of Success on the Merits

In addition, in order to obtain a stay, BLET certainly must show a "strong likelihood of success on the merits." Hilton v. Braunskill, 481 U.S. 770, 776 (1987). Thus, BLET must show that its argument that the October 18, 1999, Letter of Understanding waived UP's right to eliminate the "reverse lodging" arrangement is much more likely correct than incorrect.

BLET cannot satisfy this burden. Again, UP respectfully requests that the Board review Side Letter No. 11 and the October 18, 1999, Letter of Understanding. Side Letter No. 11, ¶ 5, is explicit. UP can provide 30 days' notice to end "reverse lodging" at any time after April 1, 2005. UP provided that notice on April 4, 2005. The October 18, 1999, Letter of Understanding says absolutely nothing about this issue. It addresses the completely separate issue of when engineers based in Dexter must protect assignments in Dexter. It contains no language that can be read to waive UP's right to end "reverse lodging."

Indeed, BLET recognized, as late as 2003, UP's right to end the reverse lodging arrangement in May 2005. In a September 17, 2003, letter (attached to the Olin Dec. as Aff. Ex. 4), BLET Local Chairman David W. Grimes twice stated that UP had the right to end the "reverse lodging" arrangement beginning in May 2005. Thus, even a BLET official has admitted the obvious: that the October 18, 1999, Letter of Understanding had no impact on the right of UP to end that arrangement.

Given that BLET cannot show a “strong likelihood of success on the merits” on the issue on which it seeks a stay, its Motion for Stay should be denied.¹

5. The Great Harm UP Will Suffer if a Stay is Ordered Cannot be Remedied, While Any Harm Suffered by BLET Can be Remedied

To gain a stay, BLET must also show that it will suffer irreparable harm in the absence of a stay, and that UP will not be substantially harmed. Hilton, 481 U.S. at 776. BLET cannot satisfy this burden. In fact, a stay will greatly harm UP, while BLET will have a monetary remedy for any harm that is caused by denial of a stay.

As discussed above, the “reverse lodging” arrangement created by Side Letter No. 11 is expensive to UP. In fact, the arrangement has, over the past 7 years, cost UP approximately \$21.5 million dollars, or over \$3 million per year. If a stay is granted, these costs will continue to mount. Olin Dec. ¶ 7. Moreover, if a stay is granted and it is later determined that UP was entitled to take the actions at issue, UP will be unable to recoup any of its losses. Obviously, there is no remedy that can be had against the BLET for the continued payment of monies caused by the “reverse lodging” arrangement. Therefore, a stay will simply cost UP hundreds of thousands or millions of dollars.

On the other hand, BLET will have a remedy if it prevails. Regardless of whether the matter is resolved by a New York Dock arbitrator or by an arbitrator sitting pursuant to § 3 of the Railway Labor Act, if UP’s conduct has caused BLET members losses, UP can be required to compensate affected engineers for those losses. Thus, while UP can receive no compensation, BLET members

¹ BLET does not even argue that it has a strong likelihood of success on the “reverse lodging” issue on which it seeks a stay. Instead, BLET limits its discussion to its likelihood of success on the jurisdictional ruling made by Arbitrator McDonnell on the engineer assignment question. Obviously, BLET’s ability to prevail on that issue is irrelevant to its request for a stay of the termination of “reverse lodging.” Moreover, BLET is simply wrong about its chances of success on its appeal of the issue actually presented to Arbitrator McDonnell. The questions BLET presented to Arbitrator McDonnell, on their face, have nothing to do with New York Dock. Article I, § 11 of New York Dock only permits arbitrators appointed thereunder to decide issues relating to the “interpretation, application, and enforcement” of the New York Dock conditions. Seniority and bumping disputes, such as those raised in BLET’s statement of issues to Arbitrator McDonnell are instead subject to arbitration under § 3 of the Railway Labor Act. Notably, BLET cites no authority to support its position that a New York Dock arbitrator such as Arbitrator McDonnell has jurisdiction over such issues.

can be made whole. Indeed, courts have held that even the fact that employees could be improperly discharged does not constitute irreparable harm because of the existence of a backpay and reinstatement remedy. Niagara Hooker Employees Union v. Occidental Chem. Corp., 935 F.2d 1370, 1379 (2nd Cir. 1991). Here, of course, the harm is considerably less, as there is no threat that any employee will be furloughed as a result of the elimination of "reverse lodging."

Finally, BLET simply overstates the harm to its members caused by the ending of the "reverse lodging" arrangement. As discussed above, less than 1/2 of 1% of the engineer jobs are affected, and no job loss is possible because all abolished jobs were immediately reestablished. Like all large carriers, UP often rearranges its operating workforce, which frequently has the impact of requiring engineers to exercise their seniority to protect new jobs. BLET and UP have worked through these issues any number of times. That is what has occurred here. Olin Dec. ¶ 6.

WHEREFORE, for all of the foregoing reasons, UP respectfully requests that BLET's Motion for Stay be denied.

Respectfully submitted,

THOMPSON COBURN LLP

By Clifford A. Godiner

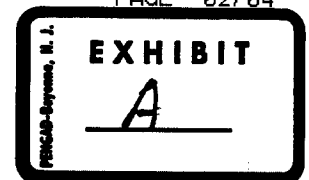
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Attorneys for Carrier

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served, via United States mail, first class postage prepaid, this 17th day of May 2005 on Thomas H. Geoghegan & Carol Nguyen, Despres, Schwartz & Geoghegan, 77 West Washington St., Suite 711, Chicago, IL 60602.

Clifford A. Godiner



DECLARATION OF ARTHUR TERRY OLIN

Arthur Terry Olin, pursuant to 28 U.S.C. § 1746, declares the facts stated herein are known to me to be true, based on my personal knowledge or on information received in the ordinary course of the discharge of my employment responsibilities:

1. My name is Arthur Terry Olin. I am General Director-Labor Relations (Arbitration & Negotiations) for Union Pacific Railroad Company ("UP"). My address is 1400 Douglas Street, Mail Stop 0710, Omaha, NE 68179. As General Director-Labor Relations, I have overall responsibility for negotiation, implementation, interpretation, and arbitration of collective bargaining agreement provisions UP has with the Brotherhood of Engineers & Trainmen ("BLET") and the United Transportation Union for the entire Union Pacific system.

2. I have reviewed BLET's Motion for Stay relating to its appeal of the April 14, 2005, award of Arbitrator James R. McDonnell. BLET's Motion seems to confuse two completely separate issues. I participated in the arbitration before Arbitrator McDonnell, which concerned which engineers could be required to fill certain assignments in the area around Dexter, Missouri. The claim at issue was filed in October 2003, and the arbitration hearing was held on August 24, 2004. The arbitration hearing focused almost entirely on the questions of whether Arbitrator McDonnell possessed proper jurisdiction under New York Dock to address the questions posed to the arbitration panel relating to the assignment of engineers under the applicable provisions of the collective bargaining agreement – most notably, the October 18, 1999 Letter of Understanding between UP and BLET.

3. BLET's request for a stay, however, addresses a completely separate subject: the question of whether UP had relinquished its right to end the "reverse lodging" arrangement created by a letter agreement between the parties known as Side Letter No. 11. This issue was **never** presented to Arbitrator McDonnell (nor any other arbitrator).

4. A copy of Side Letter No. 11 is attached as Affidavit Exhibit 1. A copy of the October 18, 1999, letter of understanding is attached as Affidavit Exhibit 2.

5. Pursuant to ¶ 5 of the Side Letter No. 11, UP advised BLET of its intent to discontinue the "reverse lodging" benefits for Dexter-based engineers in correspondence dated April 4, 2005. A copy of that notice is attached as Affidavit Exhibit 3. Pursuant to its notice and in accordance with the provisions of ¶ 5 of Side Letter No. 11, UP commenced discontinuation of the "reverse lodging" benefits on May 10, 2005. This meant that UP commenced abolishing approximately 26 "reverse lodging" assignments, while simultaneously creating the same number of jobs in these pools with St. Louis or Salem as the home terminal. As of this date, all of the engineers eligible to receive the "reverse lodging" benefits have been notified by UP of the forthcoming change and that their current position was being abolished. The affected engineers have placed themselves on new positions in accordance with applicable collective bargaining agreement provisions. This process has gone smoothly, which is not surprising. The abolishment of 26 engineers jobs (less than ½ of 1% of the engineer assignments on the UP) and the resulting exercise of seniority by other UP engineers is a matter that UP and BLET address on a nearly daily basis without problems.

6. Attached hereto as Affidavit Exhibit 4 is a copy of correspondence dated September 17, 2003, to UP's Executive Vice President - Operating Services, Mr. D. J. Duffy, from BLET's Vice General Chairman (and Local Chairman) D. W. Grimes. Mr. Grimes, on behalf of BLET specifically acknowledges UP's right to terminate the "reverse lodging" arrangement in May 2005. BLET's current claim that UP gave up this right is completely incorrect, and completely inconsistent with Mr. Grimes' September 17, 2003, letter.

7. Since its inception, the Dexter "reverse lodging" arrangement has cost UP approximately \$21.5 million, including fringe benefits (over \$3 million per year). If UP was required to restart "reverse lodging," these costs would also start again.

I declare under penalty of perjury that the foregoing is true and correct. Executed
on this 17th day of May, 2005.


Arthur Terry Olin

April 15, 1998

MR D E PENNING
GENERAL CHAIRMAN BLE
12531 MISSOURI BOTTOM RD
HAZELWOOD MO 63042

MR D E THOMPSON
GENERAL CHAIRMAN BLE
414 MISSOURI BLVD
SCOTT CITY MO 63780

MR JOHN R KOONCE
GENERAL CHAIRMAN BLE
5050 POPLAR AVE STE 501
MEMPHIS TN 38157

Gentlemen:

This refers to the Merger Implementing Agreement for the St. Louis Hub entered into this date.

In Side Letter No. 21 of the Merger Implementing Agreement for the North Little Rock/Pine Bluff Hub entered into on October 9, 1997, Carrier made certain written commitments regarding engineers residing at Illmo and Poplar Bluff. The purpose of this Side Letter is to more specifically define the rights and responsibilities of said engineers at Poplar Bluff and Illmo in line with the Merger Implementing Agreement for the St. Louis Hub and said Side Letter No. 21.

This Side Letter addresses three (3) specific groups of engineers:

- A. Former UP engineers assigned to the UP Dupo - Poplar Bluff freight pool (home terminal St. Louis) who have continued to reside at Poplar Bluff under a "reverse lodging" arrangement.
- B. Former UP engineers assigned to the UP Salem - Poplar Bluff freight pool (home terminal Salem/Poplar Bluff) who have continued to reside at Poplar Bluff under a "reverse lodging" arrangement.
- C. Former SSW and UP engineers at Illmo and Poplar Bluff who, as a result of the Implementing Agreement, will have their home terminal changed to St. Louis.

Pursuant to the terms of Articles I.A.2. and I.A.5. of the Implementing Agreement covering the St. Louis Hub, the consolidated pool operating between St. Louis and Dexter will be home terminalled at St. Louis, and the pool operating between Salem and Dexter will likewise be home terminalled at Salem. It is the intent and desire of the Carrier that all engineers assigned to this pool who presently reside in Illmo and Poplar Bluff be relocated to St. Louis and Salem. However, considering the large number of engineers who reside at these locations who are reasonably close to retirement age, the Carrier has expressed its willingness to enter into an attrition arrangement for a fixed period of time in order to permit engineers to maintain their residences in the Poplar Bluff and Illmo areas for said period of time while protecting these pools. The terms and conditions of this interim arrangement are as follows:

Side Letter No. 11
April 15, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
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1. Former SSW and UP engineers who are required to relocate to St. Louis or Salem shall be considered eligible for the relocation benefits set forth in Article VII.B. of this Implementing Agreement.
2. Former SSW engineers who are assigned to either of these pools who decline to relocate to St. Louis or Salem and exercise the "reverse lodging" option provided in Article I.A.2.g. of the Implementing Agreement shall be considered eligible for the relocation benefits under Article VII.B. of this Implementing Agreement. If such engineers should subsequently relocate to St. Louis under the provisions of this Side Letter or otherwise, such relocation shall be considered to be a seniority move and shall not trigger any further relocation benefits under this Implementing Agreement.
3. Those former UP engineers assigned to the UP Dupo - Poplar Bluff and Salem - Poplar Bluff freight pools who have continued to reside at Poplar Bluff under a "reverse lodging" attrition arrangement may elect to relocate to St. Louis or Salem, and if so relocated, shall be considered eligible for the relocation benefits set forth in Article VII.B. of this Implementing Agreement. If such employees decline to relocate and elect to exercise the "reverse lodging" option provided in this Agreement, they shall become subject to the provisions of the immediately preceding Section 2 hereof. As agreed in Item 2 of Side Letter No. 21 to the NLR/PB Merger Implementing Agreement, it is undisputed that the distance between Poplar Bluff and Dexter shall not be an issue regarding entitlement of such engineers to such relocation benefits.
4. Those engineers described in Sections 2 and 3 above who decline to relocate to St. Louis or Salem and are subsequently forced to relocate because they are unable to hold a regular assignment at Dexter/Poplar Bluff, such relocation shall be considered to be a seniority move and shall not trigger any further relocation benefits under this Implementation Agreement.
5. Effective upon service of a notice by the Carrier, which cannot be served any sooner than April 1, 2005, the "reverse lodging" attrition arrangements set forth in this Implementing Agreement shall become null and void. On and after that date, all engineers described in Sections 1, 2 and 3 above shall be required to protect their respective freight pools at the designated home terminal locations if they choose to continue to occupy such assignments. This change shall be effected by the service of a thirty (30) day notice by the Carrier of its intent to do so.
6. The provisions of this Side Letter No. 11 shall only apply to engineers residing in Poplar Bluff or Illmo or vicinity, and protecting service at such location or vicinity, on October 10, 1997 (date of Carrier's St. Louis Hub Notice).

Side Letter No. 11
April 15, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Page 3

7. It is understood this Agreement does not operate to preclude an engineer from receiving full relocation benefits under Article VII.B. when required to relocate to Dexter to protect the Dexter-Memphis pool, extra board, or any other assignments established at that location.
8. Under the unique circumstances surrounding this Side Letter, engineers at Poplar Bluff and Illmo and vicinity will not be required to provide proof of relocation to Dexter in order to receive the relocation benefits under Article VII.B.1. and 2., but must do so to receive the additional benefit under Article VII.B.3.

The above-described arrangements are designed to deal with a peculiar situation under specific circumstances, and shall not be referred to by either party in any other proceeding or negotiations.

If the foregoing adequately and accurately sets forth our agreement and understanding in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,

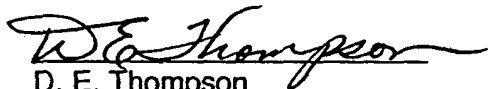


M. A. Hartman
General Director - Labor Relations

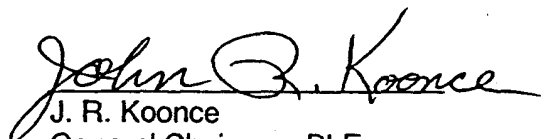
AGREED:



D. E. Penning
General Chairman, BLE



D. E. Thompson
General Chairman, BLE



J. R. Koonce
General Chairman, BLE

cc: D. M. Hahs
Vice President BLE

J. L. McCoy
Vice President BLE

W.S. HINCKLEY
GENERAL DIRECTOR-
LABOR RELATIONS-OPERATING-SOUTH

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(402) 271-3689 5201

October 18, 1999
110.61-21-303

Mr. C.R. Rightnower
General Chairman BLE
320 Brookes Dr. Suite 115
Hazelwood, Mo 63042

Mr. D. E. Thompson
General Chairman BLE
414 Missouri BLVD
Scott City, MO 63780

Gentlemen:

This refers to Side Letter No. 11 of the St. Louis Hub Agreement. That side letter, along with corresponding sections of the Hub Agreement provide for certain engineers to work at Dexter in the St. Louis - Dexter and Salem - Dexter pools. This arrangement was meant to provide employment at that point on an attrition basis for a number of years without the need to force "non Dexter" engineers to that location.

Recently a number of engineers were forced to Dexter and it was brought to the attention of the Carrier by the SSW General Chairman that it was the intent of the parties to enter into an agreement to require engineers at Dexter in these two pools to fill other vacancies at Dexter prior to forcing other engineers to Dexter. It was pointed out that similar agreements have been made at other locations such as Jefferson City and Pratt with similar attrition arrangements.

In keeping with the parties intent the following is agreed to at Dexter:

"If there are unfilled positions on the extra board, locals or other road assignments (including the Dexter - Memphis pool) with a home terminal at Dexter or in the vicinity, the junior engineers at Dexter, (in the St. Louis - Dexter and Salem - Dexter pools) who are entitled to reverse lodging and held away will be required to cover such positions or assignments. Engineers covered by Side Letter No. 11 who are force assigned under these provisions will not have their TPA's reduced and will be treated as holding the highest paying assignment at Dexter. When engineers who hold these positions return to the pools, they shall again be eligible for the "reverse" provisions they are currently entitled."

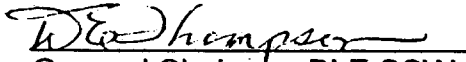
"An extra board will be maintained at Dexter, Missouri to protect engineer vacancies as per the St. Louis Hub Agreement. This extra board will be maintained at a level of no less than 30% (all fractions are amended downward) of the total number of engineer positions protected by the Dexter extra board."

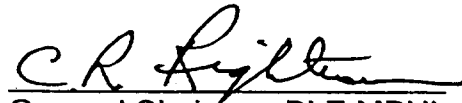
If the foregoing adequately and accurately sets forth our joint understanding on this matter please so indicate by signing in the space provided for that purpose. I have sent each of you a copy with the signature copies to General Chairman Thompson. When signed by him, please send them to General Chairman Rightnowar for his signature and forwarding on to me. Your expeditiously handling will assist in releasing any engineers currently forced to Dexter.

Yours truly,


W. S. Hinckley

Agreed:


General Chairman BLE SSW


General Chairman BLE MPUL

UNION PACIFIC RAILROAD COMPANY

Robbin D. Rock
Director
Labor Relations Dept.

1400 Douglas Street - Stop 0710
Omaha NE 68179-0710
(402) 544-4353



April 4, 2005

(110.61-21)

U. S. CERTIFIED MAIL - 7002 0460 0001 3205 0220
Return Receipt Requested
E-Mail - CRR9007@aol.com
FAX - 314-895-0104

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLET
320 BROOKES DR STE 115
HAZELWOOD MO 63042

Dear Sir:

This is in reference to Side Letter No. 11 contained in the St. Louis Hub Merger Implementing Agreement between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers and Trainmen.

Your attention is directed towards Section 5 of Side Letter No. 11, which reads as follows:

"5. Effective upon service of notice by the Carrier, which cannot be served any sooner than April 1, 2005, the 'reverse lodging' attrition arrangements set forth in this Agreement shall become null and void. On and after that date, all engineers described in Sections 1, 2 and 3 above shall be required to protect their respective freight pools at the designated home terminal locations if they choose to continue to occupy such assignments. This change shall be effected by the service of a thirty (30) day notice by the Carrier of its intent to do so."

In accordance with Section 5, this letter shall serve as the required thirty (30) day notice by Union Pacific that engineers described in Section 1, 2 and 3 of Side Letter No.

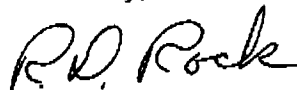
C. R. Rightnowar
April 4, 2005
Page 2

11 shall be required to protect their respective freight pool at the designated home terminal if they choose to continue to occupy such position.

In order to expedite this arrangement and provide engineers an opportunity to determine which position they desire to occupy. All affected positions will be re-bulletined.

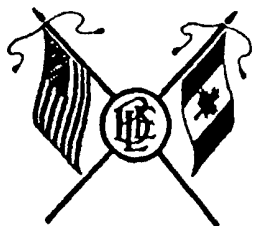
If you have any concerns or questions, please contact me within ten (10) days in order to address your concerns within the thirty (30) days provided in the Agreement.

Sincerely,



R. D. Rock
Director – Labor Relations

cc: Joe Santamaria
Dan Witthaus
Mark Payne
Pat Kenny
Shane Keller
A. T. Olin



Brotherhood of Locomotive Engineers

Division 42
Union Pacific Railroad

793 County Road 467 • Poplar Bluff, MO 63901 • 800-892-9645 • Fax (573) 686-1887

D W Grimes
LOCAL CHAIRMAN

D W Dugger
ASST. LOCAL CHAIRMAN

L J Gier
PRESIDENT

L F Done
SECRETARY-TREASURER



September 17, 2003

SEP 19 2003

Mr. Dennis Duffy
Executive Vice President of Operations
Union Pacific RR
1416 Dodge Street, Room 1206
Omaha, NE 68179

Dear Sir:

It has been a while since I called or have written to you but recent events over the past week have made it necessary for me to contact your office again.

Since the St. Louis Hub Agreement was implemented in November 1998 cutting expenses related to that agreement at Dexter Mo. has been the focus of Management, Labor Relations, CMS and The Harriman. For almost five years we have worked through several attacks on the agreement relating to the reverse lodging provisions contained in it and this week application of a side letter to the agreement is to be implemented.

In a last ditch effort to try to save some of your employees from having to move I have a proposal I would like you to consider. I have tried to get Labor Relations and The Harriman people to consider this but have been met with total opposition to anything other than the elimination of Dexter as it now exists. The issue seemed to have a promotion or bonus attached to the person who could effectively eliminate the reverse lodging agreement.

I could save you some money now and forever and avoid forcing numerous employees to St. Louis, Salem and possibly Villa Grove from Dexter and at the same time forcing employees from those locations to Dexter.

Since the merger you have hired approximately forty people in the Dexter area. About twenty-five of them are working as engineers out of Dexter. In the application of the agreement CMS will begin pulling reverse lodging engineers off of their assignments and forcing them to take positions on the Dexter engineers

extra board, Dexter to Memphis freight pool, Dexter to New Madrid coal pool, or local of TSE protected by the Dexter extra board. This will pull some twenty-five to thirty engineers off of their jobs and bump the twenty-five or so junior engineers out of the Dexter area to St. Louis, Salem or Villa Grove. At the same time it will allow junior engineers to bid in positions which were held by engineers with twenty-five to thirty years of seniority. I can't even begin to describe the heartburn this will create.

What I propose is not a new theory but a resurrection of an old agreement that worked well for seventy years prior to the UP-SP merger in the Dupo to Poplar Bluff Freight pool agreement. I would give up the reverse lodging provisions of the St. Louis Hub Agreement now instead of May of 2005 for the right to use the hotel at either end of the road and the right to continue to lay off at Dexter from now on.

This is how it works, all of the freight turns in the St. Louis to Dexter pool would be home terminalled at St. Louis and all of the freight turns in the Salem to Dexter pool would be home terminalled at Salem. Held away time would only apply at Dexter. It would be easy to manage as it only applies at that point. When an engineer bids in a position he declares which end of the road he would lay off at. He can lay off at that point but can only make a seniority move from St. Louis or Salem. The Dexter extra board would cover the vacancies for engineers that lay off in Dexter and the St. Louis or Salem extra boards would continue to cover those areas as they do now.

What this allows is for you to manage the away from home terminal time much more efficiently, now instead of 2005 and will save you expenses in this pool forever. If a Dexter engineer lays off at Dexter you save whatever HAHT he would have been paid. He must on mark up at Dexter, work north and back south before being eligible to make any HAHT. The extra board employee doesn't make HAHT in St. Louis or Salem, as the job is home terminalled there and he is covered by the guaranteed extra board agreement.

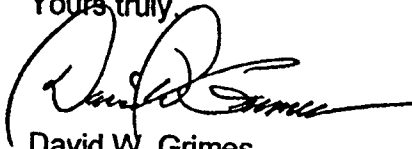
What we get out of this is the chance for the ones that live in the Dexter area, is the opportunity to work out our careers from home. This includes the forty employees that were hired at Dexter after the merger. Most of these forty new employees were assured by local management at the time they were hired that they would be able to work out of Dexter forever.

I believe this is a way both sides can come out of this issue with something we both want without upsetting the lives of fifty or more employees. I know you are a busy man but I would like to talk to you about this as soon as you are available.

I can be reached at the following numbers:

Home: 573-686-8921
Cell: 573-776-8333

Yours truly,

A handwritten signature in black ink, appearing to read "David W. Grimes", with a long horizontal flourish extending to the right.

David W. Grimes
Local Chairman
BLE Division 42



CASE NO. 1

ARBITRATION COMMITTEE

IN THE MATTER OF ARBITRATION

BETWEEN

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
AND TRAINMEN, GENERAL COMMITTEE OF ADJUSTMENT
CENTRAL REGION
ORGANIZATION**

AND

**UNION PACIFIC RAILROAD COMPANY
CARRIER**

FOR THE ORGANIZATION:

Charles R. Rightnowar

FOR THE CARRIER:

A. Terry Olin

NEUTRAL:

Dr. James R. McDonnell

HEARING DATE:

August 24, 2004

HEARING LOCATION:

Omaha, Nebraska

UNION PACIFIC RAILROAD COMPANY'S QUESTIONS-AT-ISSUE

Procedural Issue:

1. Is the matter of Union Pacific's alleged violation of the October 18, 1999 Letter of Understanding between Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers involving the assignment of proper rights engineers at Dexter, Missouri, a subject properly adjudicated pursuant to Section 11 of New York Dock?

Merits Issue:

2. If the answer to Question No. 1, above, is answered in the affirmative, is Union Pacific's assignment of engineers residing at/near Poplar Bluff, Missouri, or Illmo, Illinois, and possessing "reverse lodging and held-away" privileges pursuant to Article I, Section A, Paragraph 2, Subparagraph I and Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement, dated April 15, 1998, to positions with on-duty points at Dexter, Missouri, (other than the freight pool(s)) consistent with the provisions of the October 18, 1999 Letter of Understanding between Union Pacific and the Brotherhood of Locomotive Engineers?

ORGANIZATION QUESTIONS-AT-ISSUE

1. Whether the Carrier violated the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement, or any other BLE Agreement, by forcing Engineers from the St. Louis-Dexter and Salem-Dexter freight pools to the Extra Board at Dexter, Missouri?
2. If so, what shall the remedy be?
3. Whether the Dexter Extra Board Engineers displaced by the Carrier's action in Question No. 1, that were forced to assignments at other locations, such at St. Louis, Missouri, and Dupo, Illinois, were forced-assigned in violation of the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement?
4. If so, what is the remedy?
5. Whether the forced-assignment of Engineers from St. Louis, Missouri and Dupo, Illinois, to assignments at Dexter, Missouri, violated the October 18, 1999

Agreement, amending Side Letter No. 11 of the St. Louis Merger Implementing Agreement?

6. If so, what shall the remedy be?
7. Whether those Engineers improperly displaced at Dexter, Missouri, by the Engineers forced-assigned to that location by the Carrier's actions in Questions Nos. 1 and 5, and were subsequently forced to assignments at Trainmen, were so assigned in violation of the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement?
8. If so, what shall the remedy be?

DECISION

I have reviewed and analyzed all of the documents, evidence, and the written and verbal submissions presented by the parties in this dispute.

I find that the threshold question submitted by the Union Pacific Railroad Company's Question at issue is controlling.

I find that the answer to that question is in the negative.

After months of study I have concluded that I am not empowered to resolve the issue before me.

The Side Letter No. 11 dated April 15, 1998 does not find its genesis in the Merger Implementing Agreement, but rather, stands for what it is; a side letter. In paragraph two(2) of the Side Letter it states:

"The purpose of this Side Letter is to more specifically define the rights and responsibilities of said engineers at Poplar Bluff and Illmo in line with the Merger Implementing Agreement for the St. Louis Hub and Side Letter No. 21."

It is a stretch to claim that Side Letter No. 11 has a clear and direct connection to the Merger Implementing Agreement. It does not.

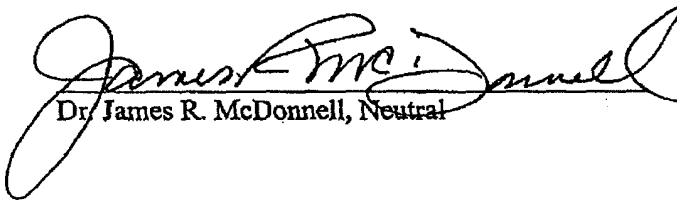
I cannot reach the merits in this case because the negative answer to Procedural Issue 1, submitted by the Carrier, will not allow it.

This matter does not find itself in the jurisdictional territory of a New York Dock arbitrator.

AWARD AND ORDER

This committee finds that it does not have jurisdiction to resolve the dispute presented.

All claims presented by the Organization in this matter are denied.



Dr. James R. McDonnell, Neutral

Charles R. Rightnowar, Organizational Member

Terry Olin, Carrier Member

April 14, 2005
Date