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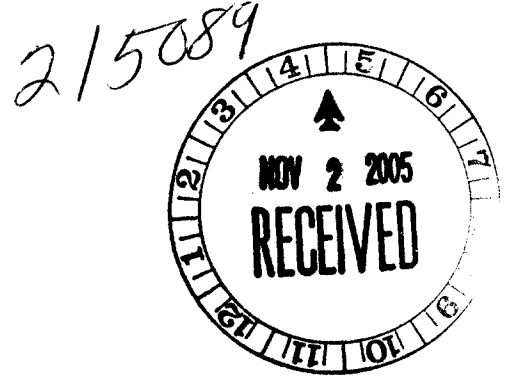
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November 2, 2005
BY HAND-DELIVERY

Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, NW
Washington, DC 20423-0001

Re: STB [I.C.C.] Finance Docket No. 32549 (BURLINGTON NORTHERN, INC. –
CONTROL AND MERGER– SANTA FE PAC. CORP. & ATCHISON, TOPEKA &
SANTA FE RY. CO.)

Dear Mr. Williams:

Enclosed for filing are an original and ten copies of the following pleading on behalf of
the Brotherhood of Locomotive Engineers, A Division of the Rail Conference of the International
Brotherhood of Teamsters:

PETITION OF THE BROTHERHOOD OF LOCOMOTIVE
ENGINEERS AND TRAINMEN TO ENFORCE ARBITRATION
AWARD OR, IN THE ALTERNATIVE, COMPLAINT
REGARDING NON-COMPLIANCE WITH A LABOR
ARBITRATION AWARD

The same filing is included in pdf format on the enclosed disk.

Pursuant to Section 1002.2, a check for the \$200 filing fee accompanies this filing.
Thank you.

Sincerely,

Michael S. Wolly

cc: Counsel for BNSF

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TRANSPORTATION BOARD

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BEFORE THE SURFACE TRANSPORTATION BOARD

In the Matter of:

STB [I.C.C.] Finance Docket No. 32549

**BURLINGTON NORTHERN, INC. - CONTROL AND MERGER- SANTA FE PAC.
CORP. & ATCHISON, TOPEKA & SANTA FE RY. CO.**

**PETITION OF
THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
TO ENFORCE LABOR ARBITRATION AWARD
OR, IN THE ALTERNATIVE,
COMPLAINT REGARDING NON-COMPLIANCE WITH
A LABOR ARBITRATION AWARD**

The Brotherhood of Locomotive Engineers and Trainmen, A Division of the Rail Conference of the International Brotherhood of Teamsters, ("BLET" or "the union"), through its counsel, Michael S. Wolly, Zwerdling, Paul, Kahn & Wolly, P.C., 1025 Connecticut Ave. NW, Suite 712, Washington, D.C. 20036, submits the following Petition, pursuant to Section 1117 of the STB's Regulations or, in the alternative, Complaint pursuant to Section 1111.1 of the STB's Regulations:

1. BLET is the collective bargaining representative for locomotive engineers employed by BNSF Railway Company ("BNSF"). It has its headquarters at 1370 Ontario Street, Cleveland, Ohio 44113-1702. Prior to January 1, 2004, BLET was known as the Brotherhood of Locomotive Engineers.

2. BNSF is the employer of certain employees represented by BLET. BNSF has its headquarters at 2650 Lou Menk Drive, Fort Worth, Texas 76161.

3. On August 23, 1995, the Interstate Commerce Commission ("ICC") approved the merger of Burlington Northern Railroad Company ("BN") and Atchison Topeka and Santa Fe Railway Company ("ATSF") in Finance Docket No. 32549 Decision No. 38 - Burlington Northern, Inc. – Control and Merger– Santa Fe Pacific Corp. & Atchison, Topeka & Santa Fe Ry. Co., 10 I.C.C. 2d 661, 1995 WL 528184 (I.C.C.) (1995). In that decision the ICC imposed the conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern Terminal District, 360 I.C.C. 60 (1979), aff'd sub nom. New York Dock Ry. v. U.S., 609 F.2d 83 (2d Cir. 1979), ("New York Dock") on the transaction. 1995 WL 528184 at *93. Following the merger, the merged carrier was named The Burlington Northern & Santa Fe Railway Company. On January 24, 2005, the carrier changed its name to BNSF Railway Company.

4. The Board has jurisdiction over BLET's Petition/Complaint pursuant to 49 U.S.C. §§ 10501 and 11701 because this dispute involves interstate transportation by rail carriers and employee protective conditions imposed on a rail merger transaction by the I.C.C. pursuant to 49 U.S.C. § 11347.

5. Since the Board approved the merger, BLET and BNSF entered into numerous implementing agreements in response to notices served by BNSF pursuant to Section 4 of New York Dock to implement various aspects of the merger transaction.

6. On March 10, 2000, BNSF and the BLET entered into Implementing Agreement 17. Exhibit A hereto. The stated purpose of that agreement was to "address a diversion of traffic from the former Frisco's Tulsa-Madill-Ft. Worth corridor to the former Frisco and Santa Fe's Tulsa-Black Bear-Oklahoma City-Ft. Worth corridor [and] the changes in operations necessitated by this diversion."

7. On May 2, 2003, BNSF served notice under Section 4 of the New York Dock ("NYD") conditions to amend Agreement 17 so as to allow more diversions of traffic and more flexibility in running trains on the Tulsa-Black Bear-Oklahoma City-Ft. Worth corridor. Specifically, the carrier wanted to divert additional trains from the Frisco route between Kansas City and Fort Worth to the Santa Fe corridor and that the diverted trains would be handled by the engineers working in the existing Fort Worth-Oklahoma City and Oklahoma City-Tulsa pools. Meetings between the carrier and the two General Chairmen for the BLET General Committees of Adjustment ("GCA") which represent the engineers who would be affected by the carrier's proposed changes – Rick Gibbons on behalf of the GCA representing the former St. Louis - San Francisco Railway Lines ("Frisco") lines and Pat Williams on behalf of the GCA representing the former Atchison, Topeka & Santa Fe Railway ("Santa Fe") lines – resulted in a tentative agreement known as Agreement 17A. Agreement 17A, however, was not ratified by the members of the union on the former Santa Fe lines.

8. BNSF therefore referred the matter to arbitration pursuant to Section 4 of the NYD conditions. The arbitration committee imposed Agreement 17A on the parties in an award dated June 11, 2004. Exhibit B hereto.

9. Article 1 of Implementing Agreement 17A established which pools of employees would be assigned to which trains. Article 1, Section B provided: "All trains moving between Tulsa (and beyond) and Ft. Worth (and beyond) will be handled by the former Frisco pools at Ft. Worth and Oklahoma City." Article 1, Section C provided that "[a]ll trains moving between Arkansas City, Kansas (and beyond) and Ft. Worth (and beyond) will be handled by the former Santa Fe pools at Arkansas City, Gainesville and Temple (and

the Santa Fe extra list at Alliance) as appropriate. ” Section C provided further that “[f]ormer Santa Fe pools will also handle trains originating or terminating at stations along the Black Bear/Perry-Ft. Worth corridor (other than the consolidated Ft. Worth and Oklahoma City terminals) at least to the next crew change point.” Article 1, Section D “prohibited” “[t]rading of trains (or swapping trains) between the former Santa Fe pools (or extra boards) and the former BN pools (or extra boards), while en route or at the initial terminal.”

10. Article 3 of Implementing Agreement 17A addressed allocations of engineer positions within each pool.

11. There are two side letters to Implementing Agreement 17A. One side letter provides for specific changes to be made to Section 1 A and B if “a line sale or lease resulting in a cessation of BNSF train operations along the line from Sapulpa to Irving” occurs. The other side letter provides that “since, under Article 3, Section 2B, junior engineers will be force assigned to positions, demoted engineers at Oklahoma City, Ft. Worth (Zone 2 Madill ID Agreement), Enid, Tulsa (Zone 1 Madill ID Agreement) and Sherman prior rights will be allowed to bid on an engineers’ position even if in a demoted status.”

12. Article 4, Section 3 of Implementing Agreement 17A states:

This agreement will become effective upon 5 days’ written notice from the carrier, after execution by the parties. It may later be changed by mutual agreement or in accord with applicable law.

13. On July 21, 2004, BLET General Chairman Gibbons sent an email to BNSF Director-Labor Relations Wendell Bell asking when the carrier intended to implement Implementing Agreement 17A. Gibbons noted that forty days after issuance of the award

imposing Implementing Agreement 17A, "the allocation in the pools has not changed and the TSP [the pool assignments] on trains has not changed" and he demanded that the award be implemented. On August 4, 2004, he sent Bell a letter reproducing the text of the July 21, 2004 e-mail and reminding Bell that the carrier had yet to implement the award. Exhibit C hereto.

14. On August 12, 2004, Bell sent Gibbons and Williams a letter (Exhibit D hereto) that stated

"Under Article 4, Section 3 of BNSF Merger Implementing Agreement 17A as imposed by the Arbitration Committee's Award, this is the 5-day notice to put Article 3 and the side letters into effect."

15. Gibbons responded with a September 1, 2004 letter (Exhibit E hereto), in which he stated that "as we have previously discussed and corresponded on this matter, we feel the Carrier does not have the right nor the authority to parcel out portions of this award imposed by the Arbitration Committee."

16. Subsequent conversations and correspondence between BLET and BNSF failed to resolve this dispute.

17. BNSF has not undertaken the changes provided for in Article 1 of Implementing Agreement 17A.

18. The carrier continues to refuse to implement any provisions of Implementing Agreement 17A other than Article 3 and the side letters. Because of the carrier's failure and refusal to implement all of Implementing Agreement 17A, and particularly Article 1, trains destined for Tulsa and beyond are not being manned by former Frisco crews, as Article 1 requires. Thus, BLET members on the former Frisco lines are being denied work to which

Implementing Agreement 17A entitles them.

19. Compliance with arbitration awards rendered pursuant to New York Dock is a condition of BNSF exercising any authority granted it by the ICC to effectuate the merger of BN and ATSF.

20. The arbitration award imposing Implementing Agreement 17A is "final, binding and conclusive" in accordance with New York Dock Article I, Section 4 (4). BNSF's conduct violates that award.

21. BNSF's conduct constitutes an unlawful attempt to parse an arbitration award so that it only has to comply with the part it likes while not complying with other requirements of the award that were a quid pro quo for the part it likes.

22. By its conduct, BNSF has violated its obligations under the ICC's decision of August 23, 1995 and New York Dock.

For these reasons, the Board should:

- a. order BNSF to comply fully with the arbitration award imposing Implementing Agreement 17A, and
- b. direct BNSF to pay all locomotive engineers represented by BLET who are covered by Implementing Agreement 17A for all monetary losses each of them incurred as a result of BNSF's wrongful conduct, and
- c. award to BLET its reasonable attorney's fees and costs incurred in bringing this proceeding, and
- d. grant such other and further relief as the Board deems appropriate in the circumstances.

Respectfully submitted,



Michael S. Wolly
ZWERDLING, PAUL, KAHN & WOLLY
1025 Connecticut Avenue, NW Suite 712
Washington, D.C. 20036
(202) 857-5000

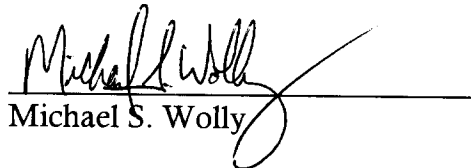
Attorney for BLET

CERTIFICATE OF SERVICE

This is to certify that a copy of the attached Complaint was served upon the BNSF Railway Company by facsimile and first class mail, postage prepaid, this 2nd day of November 2005 at the following addresses:

David Pryor, Esq.
BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, Texas 76161

Donald J. Munro
GOODWIN PROCTER LLP
901 New York Avenue NW
Washington, DC 20001


Michael S. Wolly

A

BNSF MERGER IMPLEMENTING AGREEMENT 17

between

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY CO.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

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

2. This agreement addresses a diversion of traffic from the former Frisco's Tulsa - Madill - Ft. Worth corridor to the former Frisco and Santa Fe's Tulsa - Black Bear - Oklahoma City - Ft. Worth corridor. It also addresses the changes in operations and terminals necessitated by this diversion.

IT IS AGREED:

Article 1 - Scope of this Agreement

Section 1

A. This agreement is strictly limited to freight trains moving between Tulsa and Oklahoma City and between Tulsa and the consolidated Ft. Worth terminal and grain trains which move from Tulsa to Galveston and Eagle Pass via the Ft. Worth consolidated terminal. These trains formerly moved between Tulsa and Oklahoma City via Sepulpa or between Tulsa and Ft. Worth via Madill.

B. No trains (except TUL-FTW as specified above) of any kind currently handled by the former Santa Fe employees in the various pools operating between Ft. Worth and Kansas City will be handled or operated by the pools established here.

C. Trading of trains (or swapping trains) between the former Santa Fe pools (or extra boards) and the former BN pools (or extra boards), while en route or at the initial terminal is prohibited.

Article 2 - Terminals, Train Operation Etc.

Section 1

Ft. Worth and Oklahoma City are established as the home terminals for the crews that are handling the trains covered by this agreement; Oklahoma City will be the away-from-home terminal for employees from Ft. Worth; Tulsa will be the away-from-home

terminal for employees from Oklahoma City.

Section 2

A 1. At Ft. Worth, a pool will be established to handle all trains covered by this agreement operating between Ft. Worth and Oklahoma City. Engineers' positions in this pool will be allocated on the following basis:

Turn 1-6	former BN (SLSF)
Turn 7	former ATSF
Turn 8	former BN (SLSF)
Turn 9-10 and higher	(Repeat sequence of turns 7 and 8)

A 2. On the assignments in this pool allocated to the former BN (SLSF), allocations will be on a 50-50 basis between the employees on the Ft. Worth District and the employees on the former Sherman District with engineers' seniority on that district as of April 15, 1981. As attrition of these employees occurs, assignment in this pool allocated to former BN employees will be awarded in accordance with the employees' standing on the Ft. Worth District roster. If no such bids are received, bids from the former ATSF would be accepted; if none, the assignment will be force assigned in the usual manner from the Ft. Worth District roster.

A 3. On the assignments in this pool allocated to the former ATSF, the senior employee from the Cleburne, Gainesville and Arkansas City prior rights seniority districts will be awarded the position. If no such bids are received, bids from the former BN (SLSF) would be accepted; if none, the assignment will be force assigned in the usual manner from the Ft. Worth District roster.

B. At Oklahoma City, a pool will be established to handle all through freight trains operating between Oklahoma City and Tulsa. For its establishment, all positions in this pool will be re-advertised, and then awarded in accordance with the allocation set forth in this paragraph. Assignments in this pool will initially be allocated on a 50-50 basis between employees on the Tulsa District and Western District (subject to "prior rights" of former Oklahoma City District employees as defined in Memorandum of Agreement dated January 21, 1999) with seniority as engineer on the effective date of this agreement. As attrition of these employees occurs, assignments in this pool will be awarded based upon the employees' standing on the Western District roster (subject to "prior rights" of former Oklahoma City District employees as defined in Memorandum of Agreement dated January 21, 1999).

Article 3 - Extra Service, Train Operation Etc.

Section 1

A. The trains handled by the Oklahoma City pool may operate between the terminals of Tulsa and Oklahoma City via either the Sapulpa or the Black Bear route.

B. Mileages for these runs are as follows:

Ft. Worth - Oklahoma City	190
Tulsa - Oklahoma City (via Sapulpa)	114
Tulsa - Oklahoma City (via Black Bear)	154

Section 2

A. All temporary vacancies and extra service in the pool at Ft. Worth will be handled by the Ft. Worth District Engineers' Extra Board. Former Sherman District Engineers will have an allocation of one position on that Extra Board.

B. All temporary vacancies and extra service in the pool at Oklahoma City will be handled by the Oklahoma City District Engineers' Extra Board. Tulsa District engineers with a seniority date as engineer as of the effective date of this agreement will have an allocation of one position on that Extra Board.

Section 3.

A. Hours of Service relief on trains destined to Ft. Worth will be by yard crews when the train is within the limits permissible under national agreements. If no yard crew is readily available to perform this service, or if the train has died outside those limits, employees assigned to the Ft. Worth District Engineers' Extra Board will be used.

B. Hours of Service relief on trains destined to Tulsa will be by yard crews when the train is within the limits permissible under national agreements. If no yard crew is readily available to perform this service, or if the train has died at or east of Morrison, the Tulsa Engineers' Extra Board will be used; if the train has not reached Morrison, an Oklahoma City Tulsa pool engineer will be used.

C. Hours of Service relief on trains destined to Oklahoma City from Ft. Worth will be by yard crews when the train is within the limits permissible under national agreements. If no yard crew is readily available to perform this service, or if the train has died outside those limits, it will be permissible to use the first-out Ft. Worth crew at Oklahoma City to perform the hours of service relief. Upon arrival at Oklahoma City, the relieving crew will be immediately deadheaded home. Otherwise, first, a pool or second, an extra board crew from the home terminal would be used to provide the necessary relief.

D. Hours of Service relief on trains destined to Oklahoma City from Tulsa will be by yard crews when the train is within the limits permissible under national agreements. If no yard crew is readily available to perform this service, or if the train has died outside those limits, the Oklahoma District Engineers' Extra Board will be used.

Article 4 - Other Matters

Section 1

The Company will attempt to give "prior rights" Sherman district employees (who do not move their residences from Sherman/Madill to Ft. Worth and who are assigned at Ft. Worth) a 3-hour advance call when they are being called to go on duty at Ft. Worth. The Company will attempt to give "prior rights" Tulsa district employees (who do not move their residences from Tulsa to Oklahoma City and who are assigned at Oklahoma City) a 3-hour advance call when they are being called to go on duty at Oklahoma City. It is recognized that this may not be practical or possible in all cases, but a good-faith effort will be made. However, penalties will be governed by a two-hour standard.

Section 2

A. For a one year period after initiation of operations, Tulsa District engineers who are successful bidders for Tulsa-allocated positions at Oklahoma City, as well as any former Sherman District engineers who are successful bidders for Sherman-allocated positions at Ft. Worth, and who make an actual *bona fide* change in residence will receive all the benefits of the BLE Moving Benefits Package, signed on February 19, 1996.

Payments will not be made during the first 60 days after the initiation of operations. Employees who occupy permanent positions at Ft. Worth and Oklahoma City on the 60th day can request moving benefits under the BNSF/BLE Moving Benefits agreement. It is understood that the carrier will determine the number of moving benefit packages available, but in any event moving packages will only be payable to employees who do not presently work at Ft. Worth or Oklahoma City and who make bona fide moves to Ft. Worth, or Oklahoma City and such packages will not be offered after 1 year.

B. Beginning on the date assigned and continuing for 2 years thereafter, any employee who is assigned to one of the new positions and has received the BLE Moving Benefits Package cannot be displaced by a senior employee, unless the senior employee is unable to hold an assignment on his/her home seniority district. (This does not preclude normal seniority exercise and choice of assignments among employees in the newly established pools.)

C. Any employees who are awarded, or force assigned to these newly-established positions and who elect to receive the benefits of the BLE Moving Benefits Package will have a right of return to their former location by virtue of exercising their pre-existing seniority rights only upon the expiration of a two year period running from the date they took the new assignment. Any other employees who are awarded, or force assigned to these newly-established positions will have a right of return to their former location by virtue of exercising their pre-existing seniority rights.

D. The transfer allowances and lump sum allowances set forth in the BLE Merger Moving Benefits package will be available only after the employee has made and completed a bona fide change in residence.

E. Engineers who do not live in the Ft. Worth area on the date of this agreement who take permanent assignments in Ft. Worth and who do not accept a lump sum allowance in lieu of moving or any moving benefits and elect to waive any entitlement to such benefits will receive a driving allowance when they drive a personal vehicle to Ft. Worth to work. However, if a engineer elects to move after receiving the driving allowance, the amount of the driving allowance received by the engineer will be used to offset any monies paid by the company for the move. The company will pay the IRS authorized mileage allowance to such engineers until six years after the date of this agreement.

Section 3

A. Section 14 of the Ft. Worth - Madill ID Agreement of March 27, 1981 will apply to the pre-November 1, 1985 employees who work on the runs established here.

B. Section 15 of the Ft. Worth - Madill ID Agreement of March 27, 1981 will apply to the pre-November 1, 1985 employees who work on the runs established here.

C. The Frisco extra board guarantee will apply to both of the pools established here for the first six months after this run is established. The parties also understand and agree that this guarantee may be extended beyond that time, particularly if there is excessive deadheading between Oklahoma City and Tulsa.

D. If this agreement ratifies, the four (4) engineers in the Oklahoma City - Tulsa pool on January 7, 2000 will be automatically certified as displaced/dismissed employees within the meaning of Section 5 and 6 of the New York Dock Conditions.

Article 5 - General

Section 1.

A. The parties have negotiated this Agreement mindful of the fact that their futures are linked and that we must work together to succeed over the long term. Therefore, the parties mutually pledge and commit themselves to act reasonably in the application of this agreement.

B. The parties will meet within 90 days of the implementation of this Agreement to review its operation.

Section 2

A. All pre-existing agreements that conflict with the terms of this agreement are superseded to the extent of the conflict. All preexisting agreements that do not conflict with the terms of this agreement remain in full force and effect.

B. This implementing agreement is made pursuant to the New York Dock (360 I. C. C. 60, 84-90) which, by this reference, are incorporated here.

C. Except as specifically provided, nothing in this implementing agreement shall be interpreted to expand or contract protective benefits provided in the New York Dock Conditions imposed by the Interstate Commerce Commission and incorporated here by paragraph B of this section.

Section 3

This agreement will become effective upon 5 days' written notice from the carrier, after execution by the parties. It may later be changed by mutual agreement or in accord with applicable law.

Signed and accepted at FT Worth TX this 10th day of MARCH, 2000

for BROTHERHOOD OF
LOCOMOTIVE ENGINEERS

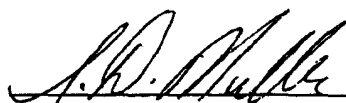
for THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY CO.

TE Murphy

Doddell Sell

General Chairman

General Director - Labor Relations


General Chairman

Approved:


Vice President

**ARBITRATION COMMITTEE ESTABLISHED
PURSUANT TO ARTICLE I, SECTION 4,
OF THE NEW YORK DOCK PROTECTIVE CONDITIONS**

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-and-

BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

QUESTION AT ISSUE

What should be the Implementing Agreement for revised operations in the Black Bear/Perry, Oklahoma to Fort Worth, Texas corridor?

ARBITRATION COMMITTEE

Robert M. O'Brien – Chairman and Neutral Member
Stephen Speagle – Employee Member
Wendell Bell – Carrier Member

BACKGROUND

On August 23, 1995, the Interstate Commerce Commission (ICC) approved the merger of the Santa Fe Railway Company (Santa Fe) and the Burlington Northern Railroad Company (Burlington Northern) into the Burlington Northern and Santa Fe Railway Company (BNSF or the Carrier). The ICC imposed the New York Dock Labor Protective Conditions on the merger.

In accordance with the New York Dock Conditions, the Carrier and the Brotherhood of Locomotive Engineers (hereinafter referred to as the BLE or the

Organization) negotiated an implementing agreement to consolidate the two former railroads. That agreement, dated March 1, 1996, is referred to as Implementing Agreement No. 1.

After the merger of the Burlington Northern and the Santa Fe in 1995, the Carrier had two routes between Kansas City and Fort Worth, Texas. The erstwhile St. Louis-San Francisco Railway Company (Frisco) route operated through Tulsa and Madill, Oklahoma to Irving, Texas then over to Fort Worth. The second route operated between Arkansas City, Kansas through Oklahoma City, Oklahoma and Gainesville, Texas to Fort Worth. This was former Santa Fe territory.

In 1994, the Frisco route handled 10 trains a day between Kansas City and Fort Worth and the Santa Fe route handled 16 trains a day. For a myriad of reasons, the Santa Fe route was more direct than the Frisco route. In 1996, the Carrier served two notices pursuant to Implementing Agreement No. 1 to reroute traffic from the Frisco route to the Santa Fe route. In 1998, the Carrier served two additional notices to divert traffic from the Frisco route to the Santa Fe route due to the sale of track between Tulsa and Oklahoma City as well as changes between Irving and Fort Worth, Texas. The latter territory was sold to the Dallas and Fort Worth Transit authorities, which began commuter service, Trinity Rail Express, between the two cities.

In the spring of 1998, the Carrier served notice under Merger Implementing Agreement No. 1 and the New York Dock Conditions to divert trains operating from Tulsa and Galveston and Tulsa and Eagle Pass on the Frisco route to the Santa Fe route. After difficult negotiations, the BLE and the BNSF reached Implementing Agreement No. 17 which addressed the diversion of these trains from the former Frisco's Tulsa-

Madill-Fort Worth corridor to the former Frisco and Santa Fe's Tulsa-Black Bear-Oklahoma City-Fort Worth corridor.

The new operation began on May 3, 2000. Two significant restrictions in Implementing Agreement No. 17 and side letters thereto proved unworkable for the Carrier. Firstly, the new Frisco pools were restricted to specific train symbols. And secondly, no intermediate work of any kind could be required of the Fort Worth pool except setting out bad order cars from their trains.

In an attempt to eliminate these two impediments in Implementing Agreement No. 17 as well as making preparations to darken the signal system on the Tulsa-Madill corridor, on December 19, 2002, the Carrier served a notice in accordance with Implementing Agreement No. 1 to divert additional trains from the Frisco route between Kansas City and Fort Worth to the Santa Fe corridor. The Carrier contemplated that the diverted trains would be handled by the existing Fort Worth-Oklahoma City and Oklahoma City-Tulsa pools.

The parties were unable to reach a resolution to amend Implementing Agreement No. 17. Therefore, on May 2, 2003, the Carrier served a notice under Section 4 of the New York Dock Conditions to amend Merger Implementing Agreement No. 17. The parties met on June 10 and 11, 2003, to discuss the Carrier's proposal to amend Implementing Agreement No. 17. On June 11, 2003, the BLE Frisco Committee, the BLE Santa Fe Committee and the Carrier reached a tentative agreement. All parties initialed the tentative agreement. It was entitled BNSF Merger Implementing Agreement No. 17A.

The preamble to the tentative agreement stated that it was intended to remedy the operational difficulties and train-symbol specific seniority limitations that arose from Implementing Agreement No. 17. The tentative agreement was also intended to govern subsequent diversions of trains from the former Frisco's Tulsa-Madill-Fort Worth corridor to the Tulsa-Black Bear/Perry-Oklahoma City-Fort Worth corridor.

Among other things, the tentative agreement defined pool activity by destination pairs rather than by train symbol. It also allowed crews to perform necessary work en route. Additionally, it provided that all trains moving between Tulsa and Fort Worth would be handled by former Frisco pools; and all trains moving between Arkansas City, Kansas and Fort Worth would be handled by former Santa Fe pools. The agreement also allocated turns between the Frisco and Santa Fe pools.

The BLE Frisco Committee ratified the tentative agreement but the BLE Santa Fe Committee did not ratify it. Accordingly, the matter was referred to this Arbitration Board (hereinafter referred to as the Board) in accordance with the New York Dock Conditions. The Board convened in Fort Worth, Texas on March 10, 2004. Based on the evidence and arguments submitted by the Organization and the Carrier at that hearing, this Board hereby renders the following decision.

FINDINGS AND OPINION

It is difficult for this Board to understand why Implementing Agreement No. 17A was not ratified by the BLE Santa Fe Committee. The tentative agreement that was reached on June 11, 2003, diverted trains from the Frisco Tulsa-Madill-Fort Worth route to the Santa Fe Tulsa-Black Bear/Perry-Oklahoma City-Fort Worth corridor thereby increasing work opportunities for Santa Fe pools. Representatives of the former Santa Fe

Committee initialed the final draft of the tentative agreement thereby acknowledging that the terms and conditions of the agreement were fair and reasonable for its members. For these reasons, we find that the Organization's objection to the tentative agreement is genuine but misplaced.

The Organization is concerned that former Santa Fe Engineers will not be afforded any of the work between Oklahoma City and Tulsa even though this is considered "new work" under the tentative agreement. The Organization erroneously concluded that former Santa Fe Engineers will have no work equity on the Oklahoma City-Tulsa territory. Section 2B. of the tentative agreement expressly provides that:

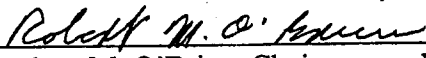
"If an allocated position goes no bid by people with prior rights to that allocation, the senior bidder without the applicable prior rights will be awarded the position. . . ."

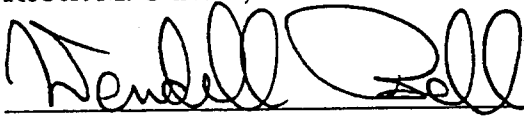
Thus, if an allocated position at Oklahoma City goes no bid by a prior rights Locomotive Engineer, the senior bidder without prior rights will be awarded the position regardless whether he/she is a former Santa Fe or former Frisco employee. Therefore, contrary to the Organization's belief, former Santa Fe Engineers do have a claim to work on the Oklahoma City-Tulsa territory.

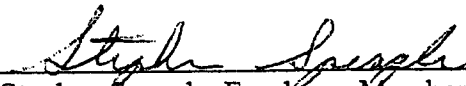
For all the foregoing reasons, this Board finds proposed Implementing Agreement No. 17A fair and reasonable to former Santa Fe Engineers, former Frisco Engineers as well as to the Burlington Northern and Santa Fe Railway Company. Therefore, this Board adopts that Implementing Agreement, which is incorporated herein and appended to this Award.

AWARD

BNSF Merger Implementing Agreement No. 17A is adopted for revised operations in the Black Bear/Perry, Oklahoma to Fort Worth, Texas corridor. That Implementing Agreement is appended hereto and incorporated into this Award.


Robert M. O'Brien, Chairman and Neutral Member


Wendell Bell, Carrier Member


Stephen Speagle, Employee Member

Dated: 6/11/04

BNSF MERGER IMPLEMENTING AGREEMENT 17A

between

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY CO.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

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

2. This agreement amends BNSF Merger Implementing Agreement 17 to remedy the operational difficulties and train-symbol-specific seniority limitations that arose from that earlier agreement and its subsequent side letters and interpretations. This agreement also covers subsequent diversions of trains from the former Frisco's Tulsa - Madill - Ft. Worth corridor to the Tulsa - Black Bear/Perry - Oklahoma City - Ft. Worth corridor and, under the BN-Santa Fe merger, fully integrates operations along the Oklahoma City corridor.

IT IS AGREED:

Article 1 - Scope of this Agreement

Section 1

A. This agreement covers all freight trains moving between Black Bear/Perry and the consolidated Ft. Worth terminal.

B. All trains moving between Tulsa (and beyond) and Ft. Worth (and beyond) will be handled by the former Frisco pools at Ft. Worth and Oklahoma City.

C. All trains moving between Arkansas City, Kansas (and beyond) and Ft. Worth (and beyond) will be handled by the former Santa Fe pools at Arkansas City, Gainesville and Temple (and the Santa Fe extra list at Alliance) as appropriate. Former Santa Fe pools will also handle trains originating or terminating at stations along the Black Bear/Perry - Ft. Worth corridor (other than the consolidated Ft. Worth and Oklahoma City terminals) at least to the next crew change point.

Example: On a Springfield-Davis train, an Oklahoma City Frisco pool crew would handle the train from Tulsa to Oklahoma City. Then, an Ark City-Gainesville ID pool crew would handle the train from Oklahoma City to Davis, and not a Ft. Worth Frisco pool crew even if a light engine movement is made from Davis on to Ft. Worth.

D. Trading of trains (or swapping trains) between the former Santa Fe pools (or extra boards) and the former BN pools (or extra boards), while en route or at the initial terminal is prohibited.

Article 2 - Train Operation

Section 1

It is recognized that all of these engineers may perform any necessary work at any location on this route under the terms of the applicable collective bargaining agreement.

Section 2

The Gainesville - Purcell turnaround local, the Ark City - Oklahoma City local, and the Ardmore and Oklahoma City road switchers will not be eliminated due to the terms and conditions of this agreement.

Article 3 - Allocations

Section 1

A. Engineers' positions in the Oklahoma City - Tulsa pool will be allocated on the following basis:

Turn 1-12	former BN (SLSF)
Turn 13	former ATSF
Turn 14	former BN (SLSF)
Turn 15 and higher	(Repeat sequence of turns 13 and 14)

B. Engineers' positions in the Ft. Worth - Oklahoma City pool will be allocated on the following basis:

Turn 1-10	former BN (SLSF)
Turn 11	former ATSF
Turn 12	former BN (SLSF)
Turn 13 and higher	(Repeat sequence of turns 11 and 12)

C. Engineers' positions in the Arkansas City end of the Arkansas City - Gainesville pool will be allocated on the following basis:

Turn 1-16	former ATSF
Turn 17	former BN (SLSF) ¹
Turn 18	former ATSF
Turn 19 and higher	(Repeat sequence of turns 17 and 18)

D. Engineers' positions in the Gainesville end of the Arkansas City - Gainesville pool will be allocated on the following basis:

Turn 1-12	former ATSF
Turn 13	former BN (SLSF) ¹

¹ Former BN (SLSF) engineers will not receive allocations under paragraphs C and D until an aggregate of 28 turns have been reached in the Arkansas City - Gainesville pool.

Turn 14
Turn 15 and higher

former ATSF
(Repeat sequence of turns 13 and 14)

Section 2

A. 1. Arkansas City engineers will take ATSF-allocated turns in the Oklahoma City - Tulsa pool.

A. 2. Gainesville engineers will take the ATSF-allocated turns in the Ft. Worth - Oklahoma City pool.

A. 3. Zone 2 (Madill ID Agreement) engineers will take the BN (SLSF) allocated turns at Gainesville; Oklahoma City and Zone 1 (Madill ID Agreement) engineers will take the BN (SLSF) allocated turns at Arkansas City. The manner in which the allocations will be shared (for instance, between Arkansas City and Gainesville; and between Oklahoma City and Tulsa) will be by a method worked out by the involved local chairmen. If the local chairmen are unable to agree on the method of distributing the allocations, the general chairmen and the general director of labor relations will resolve the matter.

B. If an allocated position goes no-bid by people with prior rights to that allocation, the senior bidder without the applicable prior rights will be awarded the position. For purposes of this agreement only, the junior demoted engineer at the location of the vacancy will be force assigned; if none, applicable schedule rules will govern.

Section 3

Employees taking an allocation at other than their own home terminal will not be afforded any moving benefits. Instead, if requested, the company will provide lodging for such successful bidders at the home terminal of the pool in which they are working.

Article 4 - General

Section 1

A. The parties have negotiated this Agreement mindful of the fact that their futures are linked and that we must work together to succeed over the long term. Therefore, the parties mutually pledge and commit themselves to act reasonably in the application of this agreement.

B. The parties will meet within 90 days of the implementation of this Agreement to review its operation.

Section 2

A. All provisions of pre-existing agreements that conflict with the terms of this agreement are superseded to the extent of the conflict. All provisions of preexisting agreements that do not conflict with the terms of this agreement remain in full force and effect.

B. This implementing agreement is made pursuant to the New York Dock Conditions (360 I. C. C. 60, 84-90) which, by this reference, are incorporated here.

C. Except as specifically provided, nothing in this implementing agreement shall be interpreted to expand or contract protective benefits provided in the New York Dock Conditions imposed by the Interstate Commerce Commission and incorporated here by paragraph B of this section.

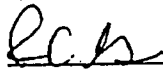
Section 3

This agreement will become effective upon 5 days' written notice from the carrier, after execution by the parties. It may later be changed by mutual agreement or in accord with applicable law.

Signed and accepted at _____ this _____ day of _____, 2003

for BROTHERHOOD OF
LOCOMOTIVE ENGINEERS

for THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY CO.


General Chairman


General Director - Labor Relations


General Chairman

Approved:


Vice President

BNSF



WENDELL BELL
General Director
Labor Relations

The Burlington Northern
and Santa Fe Railway Company

P.O. Box 961030
Ft. Worth, TX 76161-0030
2600 Lou Menk Dr., OOB-GL
Ft. Worth, TX 76131-2830
Phone 817.352.1028
Mobile 817.939.8429
Fax 817.352.7482
E-mail wendell.bell@bnsf.com

June 11, 2003

Mr. Rick Gibbons, GC
Bhd. of Locomotive Engineers

Mr. Pat Williams, GC
Bhd. of Locomotive Engineers

Gentlemen:

In connection with Article 3 – Allocations of BNSF Merger Implementing Agreement 17A, in the event of a line sale or lease resulting in a cessation of BNSF train operations along the line from Sapulpa to Irving, Section 1 A and B shall be changed to read:

A. Engineers' positions in the Oklahoma City – Tulsa pool will be allocated on the following basis:

Turn 1-14.	former BN (SLSF)
Turn 15	former ATSF
Turn 16	former BN (SLSF)
Turn 17 and higher	(Repeat sequence of turns 15 and 16)

B. Engineers' positions in the Ft. Worth - Oklahoma City pool will be allocated on the following basis:

Turn 1-13	former BN (SLSF)
Turn 14	former ATSF
Turn 15	former BN (SLSF)
Turn 16 and higher	(Repeat sequence of turns 14 and 15)

Please indicate your acceptance of this understanding by signing this letter.

Sincerely,

Accepted:

General Chairman

BNSF



WENDELL BELL
General Director
Labor Relations

The Burlington Northern
and Santa Fe Railway Company

P.O. Box 961030
Ft. Worth, TX 76161-0030
2600 Lou Menk Dr., OOB-GL
Ft. Worth, TX 76131-2830
Phone 817.352.1028
Mobile 817.939.8429
Fax 817.352.7482
E-mail wendell.bell@bnsf.com

June 11, 2003

Mr. Rick Gibbons, GC
Bhd. of Locomotive Engineers

Dear Mr. Gibbons:

In connection with BNSF Merger Implementing Agreement 17A, and since, under Article 3, Section 2B, junior engineers will be force assigned to positions, demoted engineers at Oklahoma City, Ft. Worth (Zone 2 Madill ID Agreement), Enid, Tulsa (Zone 1 Madill ID Agreement) and Sherman prior rights will be allowed to bid on an engineers' position even if in a demoted status.

Please indicate your acceptance of this understanding by signing this letter.

Sincerely,

Accepted:

General Chairman



Brotherhood of Locomotive Engineers and Trainmen

General Committee of Adjustments

Burlington Northern and Santa Fe Railway Company
Missouri and Northern Arkansas Railroad
5040 South Harmony
Rogersville, MO 65742

R.C. Gibbons
General Chairman

R.J. Dumey
First Vice Chairman

T.L. Stipp
General Sec-Tres

Wendell Bell
Director-Labor Relations
BNSF Railway Co.
P. O. Box 961030
Fort Worth, TX 76161-0030

August 4, 2004
Re: Imp 17A Implementation
Sent via Email / USPS

Dear Wendell,

This letter is with regard to Implementing Agreement 17A which was recently arbitrated and subsequently signed and dated June 11, 2004. On July 21, 2004 I forwarded you an email which read:

Wendell,
I am in receipt of a signed copy of Imp 17A dated 06.11.04. When do you anticipate on implementing it? The Carrier approached this office over a year ago in a rush to get relief in manning particular trains and on-line work. We were there at every turn trying to cooperate and get what we felt was deserved. It has now been 40 days since the award was signed and yet the allocation in the pools has not changed and the TSP on trains has not changed. The side letter on demoted engineers bidding on assignments which was to help the ATSF requests still lies dormant until you pull the trigger. We are requesting you implement this language immediately and avoid any further delay. We should not be held hostage to what BNSF and UTU do with regard to this issue. We are not married to the trainmen in the cab and should get what is due us immediately. Please advise as to your intentions.
Sincerely,
Rick Gibbons

As of this date, we have not received a response nor acknowledgement of our request to proceed with implementation. Obviously, we do not understand the delay. Once again, please advise as to your intentions or better yet, do the right thing and allow crews under the jurisdiction of this office to reap the benefits of the aforementioned award. We are in hopes that we are not being held hostage to your discussions with the other organization in this matter or the ATSF Committee in their efforts to prevent our crews from manning the appropriate trains. This has gone on way too long.

Sincerely,

R.C. Gibbons
BLET General Chairman

Cc: Steve Speagle - BLET Vice President
Pat Williams - BLET / BNSF General Chairman

D

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Aug-12-04 01:11pm From-BNSF Labor Relations

BNSF



WENDELL BELL
General Director
Labor Relations

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The Burlington Northern
and Santa Fe Railway Company

P.O. Box 961030
Ft. Worth, TX 76161-0030
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Mobile 817.339.8429
Fax 817.352.7482
E-mail wendell.bell@bnsf.com

August 12, 2004

Mr. Rick Gibbons, GC
BLET

Mr. Pat Williams, GC
BLET

Gentlemen:

Under Article 4, Section 3 of BNSF Merger Implementing Agreement 17A as imposed by the Arbitration Committee's Award, this is the 5-day notice to put Article 3 and the side letters into effect.

Sincerely,



Brotherhood of Locomotive Engineers and Trainmen

General Committee of Adjustments

Burlington Northern and Santa Fe Railway Company
Missouri and Northern Arkansas Railroad
5040 South Harmony
Rogersville, MO 65742

R.C. Gibbons
General Chairman

R.J. Dumey
First Vice Chairman

T.L. Stipp
General Sec-Tres

Wendell Bell
General Director-Labor Relations
BNSF Railway Co.
PO Box 961030
Ft. Worth, TX 76161-0030

September 1, 2004
Re: **Imp 17A - Partial Implementation**
Sent via Email and USPS

Dear Wendell,

I am in receipt of your letter dated August 12, 2004 with regard to Implementing Agreement 17A and more specifically your "5-day notice to put Article 3 and the side letter into effect."

As we have previously discussed and corresponded on this matter, we feel the Carrier does not have the right nor the authority to parcel out portions of this Award imposed by the Arbitration Committee. Furthermore, to be selective in these matters and impose a portion of any award is a total breach of the mediation process. We do not feel you can support your actions through the Railway Labor Act and request that you revise your position to include the entire award and attached agreement. Your actions are preventing the fulfillment of said award and ultimately denying our members the work they deserve. By virtue of this letter we are requesting those effected under jurisdiction of this office to file claim against the Carrier for those trains manned and handled incorrectly.

We understand your hesitancy in this matter due to the Operating Supervisors wants and wishes, but feel that has absolutely no consequence involving the ruling of this third party. We ask that you immediately rectify the problem and contact all those involved in the matter as to this implementation.

Sincerely,


R.C. Gibbons
BLET General Chairman

Cc: Steve Speagle, BLET VP Assigned
Pat Williams, BLET General Chairman