

ARBITRATION BOARD NO. 472

In the Matter of Arbitration)	
between)	
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY)	FINDINGS
(EASTERN LINES, EXCLUDING NORTHERN AND SOUTHERN)	AND
DIVISIONS))	AWARD
and)	
BROTHERHOOD OF LOCOMOTIVE ENGINEERS)	

QUESTION AT ISSUE:

"Under what conditions may Carrier establish inter-divisional service in unassigned freight service between Fort Madison, Iowa and Argentine, Kansas?"

APPEARANCES:

FOR THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY:

D. H. Hise, Assistant to Vice President-Labor Relations
J. M. Harrell, Manager-Labor Relations
W. F. Kilpatrick, Assistant to General Manager
H. C. Henry, System General Road Foreman of Engines

FOR THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS:

E. L. Hayden, Vice President
C. A. McDaniel, General Chairman
L. A. Rockel, Vice General Chairman
S. W. Haessig, Local Chairman
M. E. Lambert, Representative

BACKGROUND:

On May 22, 1986, the Atchison, Topeka and Santa Fe Railway Company (the "Carrier") served notice of its intent to establish interdivisional service between Fort Madison, Iowa and Argentine, Kansas. Although not specifically stated, the proposed service called for the elimination of Marceline, Missouri as the home terminal for the Fourth Subdivision of the Carrier's Illinois Division.

The Carrier's notice, which was served jointly on the Brotherhood of Locomotive Engineers (the "BLE") and the United Transportation Union (the "UTU") read:

"This will serve as Carrier's notice pursuant to Article VIII of the May 13, 1971 BLE National Agreement and Article IX of the October 31, 1985 UTU National Agreement, of its intent to establish interdivisional pool freight service between Fort Madison, Iowa and Argentine, Kansas. Attached for your information is a copy of the press release issued today.

It is suggested initial conference be held in Chicago, 7th floor conference room, commencing at 10:00 A.M., Tuesday, June 10, 1986 and continuing June 11.

Please advise."

Representatives of the Carrier and the BLE met on June 10, July 1, August 28, and September 18 and 19, 1986, to discuss the notice and to negotiate the terms and conditions of the interdivisional run through service as required by Article VIII of the May 13, 1971 BLE National Agreement and Article IX of the Award of Arbitration Board No. 458, dated May 19, 1986.

Agreement providing for the interdivisional service was reached between the Carrier and the BLE on September 19, 1986; however, the agreement failed ratification by the membership of the BLE in November of 1986.

Representatives of the Carrier and the BLE thereafter met in conference on January 20 and 21, 1987, and a revised agreement was submitted for BLE membership ratification. The BLE members again voted not to ratify the proposed agreement.

Thereafter, by letter dated March 18, 1987 to the National Mediation Board, the Carrier requested establishment of an arbitration board. The Carrier's letter read as follows:

"Carrier served notice on BLE General Chairman C. A. McDaniel, Jr., May 22, 1986, of its intent to establish interdivisional pool freight service between Fort Madison, Iowa and Argentine, Kansas.

The parties are unable to reach an agreement. Therefore, pursuant to the provisions of Article IX of the May 19, 1986 BLE National Agreement, request is made for establishment of an arbitration board. The parties are agreeable to the appointment of Mr. R. E. Peterson as arbitrator. He has been contacted and is agreeable to accepting the assignment, and the hearing will be held on May 19, 1987, in Chicago, Illinois."

At hearings before this Board the parties presented well documented ex parte submissions in defense of their respective position in this case. Their oral arguments were also well-reasoned and forcefully expressed, especially when it became apparent that there was a sharp divergence over whether or not the terms of the tentative agreement of January 21, 1987 were reflective of mat-

ters which were to be properly given consideration by this Board.

The Carrier argued that the tentative agreement was null and void since it had not been ratified. In its place, the Carrier submitted to this Board its draft of a revised or proposed agreement. This agreement differed substantially from the agreement negotiated with the BLE on January 21, 1987, and was referred to by the BLE representatives as a "bare bones" agreement that does violence to the negotiating process.

Among other things, the Carrier's new agreement proposed that there be a single pool operation and that the home terminal should be Fort Madison, Iowa, rather than a two-ended pool operation, with home terminals at both Fort Madison, Iowa and Argentine, Kansas, as set forth in the tentative agreement of January 21, 1987.

The Carrier maintained that it has the sole right to designate the home terminal in an interdivisional run through service, and asserted that from the very first meeting on June 10, 1986 with representatives of the BLE that it had clearly enunciated the proposition that if the parties failed to be in agreement to move the Marceline, Missouri home terminal engineers to Argentine, Kansas, then the move for such Marceline engineers would have to be to Fort Madison, Iowa.

The BLE disputed the Carrier's contention. It maintains that such a position was either not advanced or not clearly understood during the negotiating conferences. Further, the BLE contends that in any event no negotiations were held concerning engineers being moved from the Marceline, Missouri terminal to the Fort Madison, Iowa terminal, and submits that the Carrier's notice of May 22, 1986, supra, was silent as to the location to which the Marceline engineers were to be moved for home terminal purposes.

The parties also expressed to this Board some latent disagreement regarding certain of the conditions which had been made a part of the tentative agreement, but which they felt for various reasons should not now be contained in either the tentative agreement or a new agreement.

The parties especially disagreed on issues related to moving and real estate matters for engineers who have Marceline, Missouri as their home terminal at the present time. The Carrier contended that Article IX of the May 19, 1986 BLE National Arbitration Award sufficiently covered relocation matters in its reference to the provisions of the Washington Job Protection Agreement (the "WJPA").

The BLE urged that not only was the WJPA insufficient, but the options negotiated in the tentative agreement should be enlarged and also apply. The BLE further contended that inasmuch as the award of the Joint Interpretation Committee established under Article XVI of the October 31, 1985 UTU National Agreement made reference to comparable housing being retained from the UTU 1972 National Agreement, that the findings of such award should also

be applied to the BLE in the interests of making the 1985 UTU and 1986 BLE National Agreements somewhat uniform or compatible. The Carrier took vigorous exception with this position, stating that this Board was not the proper forum to consider such an argument since it was tantamount to an equity argument, which it says this Board lacks the authority to grant.

FINDINGS AND OPINION OF THE BOARD:

The Board believes that the agreement negotiated between the parties and tentatively agreed upon under date of January 21, 1987 should be implemented in disposition of the dispute here at issue. It is an agreement which appears to have represented the best good faith efforts by both parties to arrive at a mutually satisfactory arrangement to provide for the implementation of interdivisional pool freight service between the terminals of Fort Madison, Iowa and Argentine, Kansas in a reasonable, efficient and practicable manner, and an agreement which protects affected engineers in a fair and equitable manner.

The January 21, 1987 agreement evidences that both parties were ably represented by persons who were not only experienced in the art of negotiation, but, more particularly, most familiar with the complexities involved in establishing a two-ended pool operation on a single seniority district.

Although the Board can appreciate the right of the local to invoke its BLE Constitutional privilege to not ratify the tentative agreement, it must be recognized that regardless of the amount of time one could spend in negotiating an agreement, that no amount of effort will solve or cure all individual worker or management needs or desires. The purpose of collective representation is to entrust individual rights with accredited representatives so as to avoid the pitfalls of bargaining on an individual basis. Thus, as indicated above, the Board would place great weight upon the fact that able and competent representatives for both the BLE and the Carrier had indicated acceptance of the January 21, 1987 agreement as negotiated. At the same time, the Board believes that for it to attempt to arbitrarily change that which had been agreed to would no doubt only lead to further controversy.

As to certain specific contentions of the parties, the Board is fully aware of the Carrier's right to designate the location of a new home terminal in establishing interdivisional operations, providing the Carrier complies with the requirements of the applicable rules. In this particular case, however, the Carrier did not designate in its initial notice to the BLE the specific location to which it desired to move those engineers who had their home terminal at Marceline, Missouri. The Carrier and the BLE did, however, negotiate and reach tentative agreement on the basis of moving the engineers from Marceline to Argentine, Kansas.

In the circumstances, we do not think it would be prudent of this Board to sanction, at this late date, the desire of the Carrier

to change the entire scope of the run through negotiations, much less change the location to which the Marceline engineers are to be moved, without the benefit of there having first been proper notice and appropriate negotiation with the BLE.

Accordingly, it must be concluded that since the Carrier and the BLE chose to proceed with negotiations on the basis of the Marceline engineers being moved to Argentine, Kansas in arriving at the January 21, 1987 tentative agreement, it must follow that Argentine, Kansas be held to be the home terminal for the Marceline home terminal engineers coincident with the implementation of the run through service between Fort Madison, Iowa and Argentine, Kansas.

Now, as concerns the position of the BLE that the Moving/Real Estate provisions of the tentative agreement of January 21, 1987 should be amended or modified so as to provide, in particular, for comparable housing, or a special allowance, to home owners being relocated to what the BLE says would be a higher-cost real estate area. The Board finds that such issue must be dismissed. It was not an issue discussed on the property and there is no evidentiary showing of record that it is something which this Board has the authority to properly address, albeit may be an issue for another forum to decide. Further, it is significant that disputes related to moving and loss-on-sale-of-home costs are, in pursuance of the WJPA, subject to outside binding arbitration if the parties fail to otherwise agree on such matters.

Finally, the Carrier was apprehensive that since some provisions of the January 21, 1987 agreement, as negotiated, go beyond the dictates of Article IX of the May 19, 1986 National Arbitration Award, such as the option for engineers to apply for lump sum payments when qualifying for the benefits of WJPA moving and real estate allowances, that a precedent would be established if those provisions were made a part of this Board's award. The Board feels this apprehension is unwarranted.

In holding that the tentative agreement of January 21, 1987 should be applied as negotiated, the Board is merely adopting the conditions of the specific sections as negotiated and agreed upon between the parties in this particular case. The Board does not intend for the agreement itself or this Board's action in holding that it be adopted, to be looked upon as a precedent with respect to the above mentioned optional lump sum moving and real estate allowance or any issue which may properly be argued to exceed that which an arbitrator could impose in a run through dispute in application of those provisions of Article IX, Section 4, of the May 19, 1986 National Arbitration Award whereby it is stated: "The arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above."

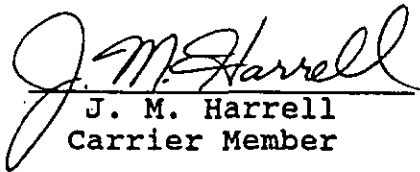
For the above reasons, this Board will hold that the tentative agreement reached January 21, 1987 between the parties should be implemented for interdivisional run through service between Fort Madison, Iowa and Argentine, Kansas.

AWARD:

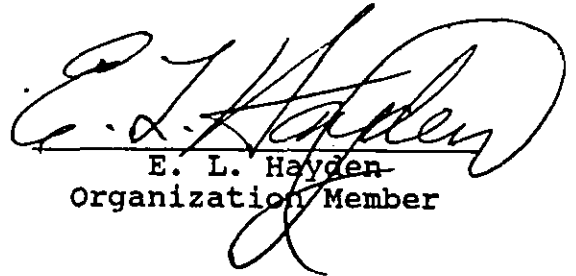
The Carrier may establish interdivisional pool freight service between the terminals of Fort Madison, Iowa and Argentine, Kansas under those conditions set forth in the agreement negotiated between the parties and tentatively agreed upon under date of January 21, 1987.



Robert E. Peterson, Chairman
and Neutral Member



J. M. Harrell
J. M. Harrell
Carrier Member



E. L. Hayden
E. L. Hayden
Organization Member

Chicago, IL
June 26, 1987

AGREEMENT

between

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

and its employes represented by the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
EASTERN AND WESTERN LINES

(Excluding Northern and Southern Divisions)

IT IS AGREED:

Pursuant to Article IX, BLE National Agreement of May 19, 1986, The Atchison, Topeka and Santa Fe Railway Company may establish interdivisional (ID) service for pool freight engineers as set forth below:

Terminals

Interdivisional pool freight engineers will operate between the terminals of Ft. Madison, Iowa and Argentine, Kansas. Ft. Madison will be the home terminal. Marceline, Missouri will no longer be a terminal for unassigned freight service. Pool freight engineers in interdivisional service will only protect ID runs, and will not be used in turnaround service, except as provided herein.

Held-Away-From Home Terminal

Engineers in interdivisional pool freight service held at their away-from-home terminal will be paid continuous time for all time held after expiration of sixteen hours from the time relieved from previous duty exclusive of any time resulting from the engineer calling for rest under Article 13 of the Engineers' Agreement, at the rate paid for last service. If held sixteen hours after the expiration of the first twenty-four hour period, they will be paid continuous time for the time so held during the next succeeding eight hours, or until the end of the second twenty-four hour period, and similarly for each twenty-four hour period thereafter. HAFHT time shall cease at the time pay begins for the next service, or when deadheading, at the time the train departs on its road trip. If transportation other than train is used for deadheading, HAFHT time shall cease at the time of departure of the other mode of transportation. There shall be no duplication of payment for deadhead time and HAFHT time.

NOTE: If an engineer is called and released, held time will not be broken. However, there will be no duplicate payment for held time and time on duty.

Meals En Route

In order to expedite the movement of these interdivisional pool freight runs, the Carrier shall determine the conditions under which such engineers may stop to eat. When engineers are not permitted to stop to eat, they will be paid an allowance of \$1.50 for the working trip, unless engineers qualify for payment under the meals en route agreement dated June 18, 1982.

Basis of Pay

All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on May 31, 1986 by the number of miles encompassed in the basic day as of that time.

Current actual miles run are as follows:

Eastbound - Engineer	221 miles
Westbound - Engineer	223 miles

Providing Relief for HSL Crews

In connection with relieving interdivisional pool freight engineers tied up under the Hours of Service Law, the following will prevail when it is necessary to call a road engineer out of the terminal:

WESTBOUND TRAINS

Between Ft. Madison & Marceline - including Marceline	ID pool freight engineer standing first out at Ft. Madison
Between Marceline & Argentine	ID or extra board engineer at Argentine

EASTBOUND TRAINS

Between Argentine & Marceline - including Marceline	ID pool freight engineer standing first out at Argentine
Between Marceline & Ft. Madison	Junior pool or extra board engineer at Ft. Madison

Protecting Other Than ID Service

All service, other than ID between Ft. Madison and Marceline, will be protected by the Ft. Madison junior pool or extra board. All

service, other than ID between Marceline and Argentine, will be protected by the first-out ID engineer at Argentine or the first-out extra board engineer, if an extra board is manned at Argentine. Regular assignments will continue to be protected by regularly assigned employees.

Vacations

A pool freight engineer in interdivisional service will be permitted to advance the starting date of a scheduled vacation period to coincide with the start of layover days.

Moving/Real Estate

Article IX, Section 7 of the May 19, 1986 Agreement, will be applicable to any engineer whose principle residence was Marceline on January 1, 1986, and who was required to change his/her residence as a result of the implementation of this Agreement.

Protection

Article IX, Section 7 of the May 19, 1986 Agreement will be made a part of this Agreement.

This Agreement shall become effective 8:01 A.M. _____ and shall remain in effect subject to the provisions of the Railway Labor Act, as amended.

Signed at Chicago, Illinois this day of , 1987.

FOR THE BROTHERHOOD OF LOCOMOTIVE
ENGINEERS:

FOR THE CARRIER:

General Chairman, BLE

Vice President - Personnel
and Labor Relations

APPROVED:

Vice President, BLE

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