

**PUBLIC LAW BOARD NO. 6498**

**PARTIES ) UNITED TRANSPORTATION UNION**  
**TO )**  
**DISPUTE) THE BURLINGTON NORTHERN AND SANTA FE RAILWAY**

**QUESTION AT ISSUE:**

Shall the Carrier's proposal as set forth in Notice dated October 31, 2001, as amended by letter dated December 12, 2001, notifying the United Transportation Union of its desire to extend switching limits to the extent indicated at Houston, Texas be granted?

**FINDINGS:**

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

When the Burlington Northern and Santa Fe Railway (Carrier or BNSF) determined that conferences with representatives of both the United Transportation Union (Organization or UTU) and the Brotherhood of Locomotive Engineers (BLE) failed to mutually resolve certain issues that it submits are necessary to enable it to provide more adequate and efficient switching service to current and potential customers in the Houston, Texas area, the General Director-Labor Relations sent the following letter of October 31, 2001 to the General Chairpersons of the Organization who represent Carrier employees in train service, namely, Messrs. L. L. Overton, P. W. Tibbit, and G. D. Welch. A similar letter was sent at the same time to representatives of the BLE pursuant to rules applicable to engine service employees.

Pursuant to Article VI, Section 1, of the January 27<sup>th</sup>, 1972 National Agreement notice is hereby given of BNSF's intent to extend the switching limits at Houston, Texas as follows:

The entire Mykawa Subdivision to and including Alvin

West on the Galveston Subdivision from and including Alvin to MP 22 at or near Algoa, including the siding and maintrack on the UP trackage rights territory on the Angelton Subdivision MP 341.2 at or near Brownie

East on the Galveseton Subdivision from and including Alvin to MP 43 at or near Duke

West on the Houston Subdivision to MP 107 at or near Dobbin

West on the UP Trackage Rights Glidden Subdivision to and including the Interlocking Limits at Tower 17

North on the UP Trackage Rights Palestine Subdivision to MP 190 at or near Conroe

North on the UP Trackage Rights Lufkin Subdivision to MP 46 at or near Cleveland

East on the UP Trackage Rights Beaumont Subdivision to MP 387 at or near Dyersdale Junction

East on the UP Trackage Rights Lafayette Subdivision to MP 325 at or near Dayton

West on the UP Trackage Rights Baytown Subdivision MP 48.7 to MP 21 from at or near Dayton Junction to and including Durham Yard.

I suggest that we meet in an effort to negotiate and (sic) understanding to effect the extensions commencing at 8:00 a.m. November 28, 2001 through 12:00 noon on November 29, 2001 in the Carrier facilities in Spring, Texas. The meeting will be joint with the Brotherhood of Locomotive Engineers.

I will look forward to seeing you there.

As scheduled, representatives of the Carrier met with representatives of the UTU and the BLE on November 28 and 29, 2001. At the conference, and by separate letter of November 28, 2001, the General Director-Labor Relations notified the representatives of both the UTU and the BLE that the above mentioned notice of October 31, 2001 was amended. Amendments to certain of the switching limits at Houston, Texas as initially set forth in the October 31, 2001 letter, and two additional items, were described in the November 28, 2001 letter to be as follows:

East on the Galveston Subdivision from and including Alvin to MP 43 at or near Duke *is changed to read*, East on the Galveston Subdivision from and including Alvin to and including the station of Duke.

West on the Houston Subdivision to MP 107 at or near Dobbin *is changed to read* West on the Houston Subdivision to and including the station of Tomball.

North on the UP Trackage Rights Palestine Subdivision to MP 190 at or near Conroe *is changed to read* North on the UP Trackage Rights Palestine Subdivision to the end of double track at or near MP 210.8.

North on the UP Trackage Rights Lufkin Subdivision to MP 46 at or near Cleveland *is changed to read* North on the UP Trackage Rights Lufkin Subdivision to and including the station of Humble.

*South on the UP Galveston Subdivision to and including the station of Graham, as well as the new railroad construction of industrial track by the San Jacinto Corporation from Graham to and including the Bayport Loop.*

*Yard crews may go on and off duty at South Yard, Dayton, Pearland, Alvin or Casey.*

The Carrier and the BLE reached tentative agreement. The Carrier and the UTU were not able to reach agreement, it basically being the position of the Organization that the parties reached an impasse because it asserts that the Carrier is, among other things, seeking to: (1) effect a coordination covered by protective conditions under the guise of a request to extend switching limits; (2) get around differing rates of pay and crew consist agreements; (3) have an unfettered right to run from former BN road territory to former ATSF road territory and vice versa in interdivisional service; (4) coordinate former main lines; (5) handle unit rock trains through Houston to their destination on the former ATSF and former BN without changing crews; (6) terminate former ATSF jobs at Galveston and bring those jobs into the Houston Terminal in a relocation of forces; (7) extend switching limits in every direction in one notice; and, (8) contrary to the commonly called "cram down" agreement between the parties, seeking to impose one rules agreement to cover the proposed area. Further, it is the position of the Organization that an extension of switching limits agreement necessitates inclusion of provisions for: (1) employee protection; (2) a commitment to retain all current jobs and assignments, with elimination only through attrition; and, (3) abandonment of any expansion of Houston Belt & Terminal Railroad (HBT) yard service territory.

The Organization asserts that "efficiency to customers is not provided by the Carrier as required by the Controlling Agreement." It points to certain areas that would be effected by an extension of switching limits as currently being serviced by road switcher assignments and other road jobs that it maintains adequately meet customer needs. The Organization also argues that on some of the main line where an extension of switching is requested that there are not any industries or there are no industrial complexes that the

BNSF serves. In this respect, the Organization says that the Carrier "cannot improve what they do not have (customers) on these territories."

Following the exchange of several letters between counsel for the Carrier and counsel for the Organization it was agreed that there be established a Procedural Public Law Board to determine whether the Carrier letter of October 31, 2001, as amended, was proper pursuant to Article VI of the 1972 UTU National Agreement. It was further agreed that should the Procedural Board find that the Carrier notice was duly served pursuant to Article VI of the 1972 UTU National Agreement, that a Merits Board would then be established to address the several issues at impasse.

On April 12, 2002 Procedural Public Law Board No. 6497, with Francis X Quinn as the chair and neutral member, issued an award affirming that the Carrier notice was proper pursuant to Article VI of the 1972 UTU National Agreement. The Findings of the Procedural Board, which followed a review of the issues in dispute, reads as follows:

It is clear that Section 1 of Article VI of the 1972 National Agreement does not restrict the Carrier's right to extend switching limits involving more than one seniority district. It seems that as long as the Carrier can show improved efficiency and/or improved customer service, the switching limits may be extended.

The procedural case at hand is fairly simple. The UTU wants this Board to find that the switching limits is a "Major Transaction," subject to labor protection and the "Cram Down" Agreement. Such is not the case. The record is clear, the Houston Terminal has already been consolidated pursuant to Norfolk and Western conditions. There are no remaining rearrangement of forces, seniority allocation, or consolidation issues. The Houston Terminal is a BNSF yard and has been for over three years and is subject to all the provisions contained in the 1972 National Agreement. Therefore, the question at issue can only be answered in the affirmative. The Carrier's notice dated October 31, 2001, as amended, notifying the UTU of its desire to extend switching limits at Houston, Texas, was proper pursuant to Article VI of the 1972 UTU National Agreement. The Carrier has satisfactorily answered all procedural objections, and the merits of this question are now properly before the Merits Board. The Merits Board will meet on May 14, 2002, to resolve the merits of the question at issue.

This Public Law Board (the Board) was thus established to hear and decide the Question at Issue as set forth above.

Article VI, Switching Limits, of the 1972 UTU National Agreement reads in part here pertinent as follows:

Existing agreements are amended to read as follows:

The employees involved, and the carriers represented by the National Carriers' Conference Committee, being desirous of cooperating in order to meet conditions on the various properties to the end that efficient and adequate switching service may be provided and industrial development facilitated, adopt the following:

Section 1. Except as provided in Section 2 hereof, where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman or General Chairmen of such intention, whereupon the carrier and the General Chairman or General Chairmen shall, within 30 days, endeavor to negotiate an understanding.

In the event the carrier and the General Chairman or General Chairmen cannot agree on the matter, the dispute shall be submitted to arbitration as provided for in the Railway Labor Act, as amended, within 60 days following date of last conference. The decision of the Arbitration Board will be made within 30 days thereafter. The award of the Board shall be final and binding on the parties and shall become effective thereafter upon seven days' notice by the carrier.

It is evident as concerns the position of the Organization that prior agreements between the parties and past arbitration decisions have already covered or provided for certain of the subject matters that the Organization contends are necessary to an agreement to extend the switching limits at Houston, Texas, or, conversely, determined the subject matter to have no applicability to consummation of an extension of switching limits agreement. In this respect, the Board concurs with the following statement that was made by Carrier's Senior General Attorney in a letter of January 23, 2002 to the General Counsel for the UTU concerning various issues advanced by the Organization in opposition to the Carrier notice:

[T]he initiative in Houston simply is not an Article I Section 4 transaction or a "cram down" situation. The seniority of former BN and former Santa Fe employees vis-à-vis the Houston Belt and Terminal employees has *already* been resolved and the trackage involved has *already* been appended to the existing BN and Santa Fe seniority districts. The decision of what agreement applies to the former HB&T property assumed by BNSF has *already* been resolved and, at the request of then UTU President Charles Little, that agreement is the Houston Belt and Terminal Agreement. All that BNSF is doing is exercising existing prerogatives under the HB&T Schedule Agreement and the 1972 National Agreement

to extend switching limits into and out of Houston. Admittedly, this may allow a train originating on the former BN to traverse the lines of the former ATSF within the terminal. However, under Article VIII Section 1 of the 1985 National Agreement road crews may, "Get or leave their train at any location within the initial and final terminals..." and that is all that will happen under BNSF's proposal. UTU cannot compel a *New York Dock* proceeding simply because it does not like the manner the carrier exercises its existing rights. The integration of forces/selection of agreement process as modified by the February 11, 2000 agreement has *already* been satisfied in this case by virtue of the January 16, 1998 agreement and the subsequent Quinn arbitration decision.

In this same connection it is noted that in its Findings that Procedural PLB No. 6497 said the Houston Terminal has already been consolidated pursuant to Norfolk and Western conditions and "the Houston Terminal is a BNSF yard and has been for over three years and is subject to all the provisions contained in the 1972 National Agreement."

Unfortunately, because of their diverse positions on the dispute, no agreement was reached between the Carrier and the UTU on any issue. In this respect, the Carrier says that since there is no tentative or failed agreement for the Board to consider that should the Board find that BNSF's request be granted, the only result should be the expansion of the HBT Collective Bargaining Agreement to fill the expanded Houston Complex. This position of the Carrier notwithstanding that in correspondence of record the Carrier had stated that it was willing to offer the Organization "a similar arrangement" to that provided the BLE, with the understanding there would be, as with the BLE, a uniform application of one collective bargaining agreement throughout the expanded terminal, i.e., the HBT Schedule of Rules Agreement.

The Organization urges that the Board may not properly give any consideration whatever to the fact that the Carrier and the BLE reached agreement on the issue, albeit the matter had to eventually be submitted to arbitration when one of the two BLE committees subject to the agreement did not ratify the tentative agreement. At the same time, the Organization states in its ex parte submission to the Board: "The Carrier is only trying to get relief from crew consist provisions as indicated by their refusal to offer train service employees the identical agreement as engine service employees." In this respect, the Organization says:

From the outset of negotiations, the Carrier made it clear that crew consist relief was a centerpiece to the new operations planned. The Carrier wanted to operate with conductor or foreman only. HB&T has provisions for foreman only operations where neither the former BN nor ATSF provide for conductor only on the assignments in question. This is reflected in correspondence issued by General Chairman Tibbit, (Exhibit No. 13), responded to by Labor Relations Officer Gene Shire, (Exhibit No.

14). The Carrier allowed the BLE the right to use their road agreements in the expanded area but would not afford the same right to the UTU. This was driven solely by the crew consist arrangements.

The Board does not find merit in the Organization contention that consideration may not be given to the agreement that the Carrier entered into with the BLE.

It is evident that the Carrier was seeking to reach agreement with the Organization on terms that it stated in correspondence of record would constitute "a similar arrangement" with that arrived at with the BLE. Here, it is noted that the Carrier letter of October 31, 2001 to the General Chairpersons of the Organization stated that the scheduled meeting on its notice "will be joint with the Brotherhood of Locomotive Engineers." Further, a Carrier letter of December 10, 2001 to the General Chairpersons of the Organization relative to conferences that had been held on November 28 and 29, 2001, included reference to the Carrier and the BLE having reached a tentative agreement covering the extension of switching limits in the Houston area, the letter stating:

Finally, BNSF and BLE have reached a tentative agreement covering the extension of switching limits in the Houston area. A copy of the initialed agreement is also attached for your reference. I am willing to offer UTU a similar arrangement. However, as with the BLE, there must be a uniform application of one collective bargaining agreement throughout the expanded terminal. Since we are expanding the switching limits of the HB&T Yard and all yard employees in Houston are currently working under the HB&T Schedule, as amended, that revised schedule would apply. Furthermore, please note that while the proposed switching limits have not been changed from those identified in my November 28, 2001 letter, we have in several cases included specific milepost locations.

The record also shows that on December 14, 2001 that General Chairperson Tibbit wrote the following letter to the Carrier General Director—Labor Relations as concerns a stated interest in discussing the same tentative agreement that the Carrier had reached with the BLE:

This will confirm receipt of your December 10, 2001 letter, Certified Mail, Return Receipt Requested #P875-025-348 concerning switching limits at Houston, TX.

This will also confirm our telephone conference the morning of December 11, wherein I informed you that I would be interested in discussing with you the same agreement that was tentatively reached between the carrier and the Brotherhood of Locomotive Engineers. You advised me at that time that you would have to have one yard agreement in place and that would be the former Houston Belt & Terminal agreement.

I informed you that I would contact the other involved parties and get back with you. By copy of this letter, I am informing those parties.

Pursuant to Article II(a) of the May 13, 1971 BLE National Agreement the failure to reach agreement on extending the switching limits in the Houston area was submitted to arbitration, namely, Public Law Board No. 6524, with Robert M. O'Brien as the chair and neutral member.

PLB No. 6524 held that the tentative agreement that failed ratification should be adopted. At the same time, PLB No. 6524 rejected Carrier argument that certain provisions of the tentative agreement that are not normally included in the extension of switching limit agreements not be imposed by reason of the delay that the Carrier sustained in extending the Houston switching limits. PLB No. 6524 said that the tentative agreement that failed ratification struck a fair balance between the efficiency and economy which the Carrier will achieve by extending the switching limits at Houston and the rights of engineers working in the Terminal.

In the light of the above considerations and overall study of the voluminous record, the Board finds that the Carrier has shown that its request to extend switching limits at the Houston Terminal is properly within the meaning and intent of the authority granted under Article VI of the 1972 UTU National Agreement. The Carrier has shown that the requested extension of switching limits will permit it to provide more adequate and efficient switching service to current and potential customers in the Houston Terminal area. It will also permit the Carrier to remain competitive with the Union Pacific (UP) and changes resultant from merger of the UP with the Southern Pacific (SP) that have provided the UPSP a significant presence in the Houston Terminal area. As the Carrier has shown and states: "This [extension of switching limits] shall be accomplished by offering more regular and frequent service; by increasing the velocity of its trains; by being able to offer competitive rates to its customers and finally by encouraging further industrial development in the vicinity of the Gulf Ports."

As held in the awards of prior arbitration boards in disputes involving the interpretation and application of the 1972 UTU National Agreement, the fact that the extension of switching limits allows a carrier to replace road crews with yard crews, replace generally more restrictive road rules with generally more flexible yard rules, replace road switchers with yard engines, or give cause for there to no longer be a need to change crews at a given location, are not impediments to the right of a carrier to extend switching limits under the 1972 UTU National Agreement. Clearly, changes in road service rules by reason of an expansion of yard service into former road territory are not to be confused with differences in rules that remain in effect as concerns a separation between road and yard areas that continue unchanged or unaffected by the extension of switching limits.



The Board being of a belief that there is need for a high degree of uniformity of agreement covering employees in train and engine service so as to provide more adequate and efficient switching service to current and potential customers, it will be the decision of the Board that an agreement like that reached by the Carrier and the BLE pursuant to the Carrier notice of October 31, 2001, as amended, and affirmed by PLB No. 6524, be conformed and adopted by the Carrier and the Organization, with, however, the yard agreement of the former HBT to be applicable to the expanded switching area.

The Board makes its determination relative to applicability of the yard agreement of the former HBT in recognition, as stated above, that the 1972 UTU National Agreement contemplates and has been interpreted as intending that a yard agreement be expanded where a carrier exercises its right, as stated in Section 1 of Article VI, "to change existing switching limits where yard crews are employed." It also seems to the Board that notwithstanding any impact that such a decision will have on current crew consist agreements that there will continue to be a need for certain assignments in the expanded switching area to be crewed with more than a conductor/foreman and that an expansion of service should increase rather than decrease employment opportunities.

**AWARD:**

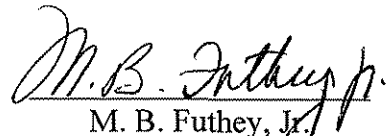
The Question at Issue is answered in the affirmative, subject to the conditions as set forth in the above Findings of the Board.



Robert E. Peterson  
Chair & Neutral Member



Gene L. Shire  
Carrier Member



M. B. Futhey, Jr.  
Organization Member

Fort Worth, TX

Dated: 07-30-02

**IMPLEMENTING DOCUMENT**  
**Pursuant To**  
**AWARD OF PUBLIC LAW BOARD 6498**

1. Pursuant to Carrier's notice dated October 31, 2001, as amended by letter dated December 6, 2001, the switching limits at Houston, Texas are extended as follows.
  - 1.1 The entire Mykawa Subdivision to and including Alvin.
  - 1.2 West on the Galveston Subdivision from and including Alvin to MP 22 at or near Algoa, including the siding and maintrack on the UP trackage rights territory on the Angelton Subdivision MP 341.2 at or near Brownie.
  - 1.3 East on the Galveston Subdivision from and including Alvin to and including the station of Duke, MP 47.
  - 1.4 West on the Houston Subdivision to and including the station of Tomball, MP 87.
  - 1.5 West on the UP Trackage Rights Glidden Subdivision to and including the Interlocking Limits at Tower 17, MP 36.3
  - 1.6 North on the UP Trackage Rights Palestine Subdivision to the end of double track at or near MP 210.8.
  - 1.7 North on the UP Trackage Rights Lufkin Subdivision to and including the station of Humble, MP 18.
  - 1.8 East on the UP Trackage Rights Beaumont Subdivision to MP 387 at or near Dyersdale Junction.
  - 1.9 East on the UP Trackage Rights Lafayette Subdivision to MP 325 at or near Dayton.
  - 1.10 West on the UP Trackage Rights Baytown Subdivision MP 48.7 to MP 21 from at or near Dayton Junction to and including the end of the trackage rights.
  - 1.11 South on the UP Galveston Subdivision to and including the station of Graham, as well as the new railroad construction of industrial track by the San Jacinto Corporation from Graham to and including the Bayport Loop.

2. The Houston Terminal shall be divided into three (3) prior-rights zones.
  - 2.1 The HBT zone shall encompass all territory within the pre-existing switching limits of the HBT.
  - 2.2 The BN zone shall encompass all territory from the pre-existing HBT switching limit on the rail-line toward Teague to the new switching limit established to and including Tomball (Section 1.4 above)
  - 2.3 The ATSF zone shall encompass all remaining territory, not covered by 2.1 or 2.2 hereof, within the newly established switching limits at Houston.
3. Prior Rights
  - 3.1 HBT prior rights employees are employees who established seniority on HBT prior to January 16, 1998 and shall have prior rights to assignments within the HBT Zone.
  - 3.2 BN prior rights employees are employees who established seniority on the BN JTD Seniority Roster prior to September 22, 1995 and shall have prior rights to assignments within the BN Zone.
  - 3.3 ATSF prior rights employees are employees who established seniority on the ATSF Northern and Southern Divisions Seniority Roster prior to September 22, 1995 and shall have prior rights to assignments within the ATSF Zone.
4. Extra Service
  - 4.1. An extra board shall be established at Houston, subject to HBT prior rights, to protect extra service within the Houston Zone.
  - 4.2 An extra board shall be established at Pearland, subject to ATSF prior rights, to protect extra service at Pearland and the territories identified under Section 1 of this Agreement in paragraphs 1.1, 1.2, 1.3, 1.5, 1.6, 1.7, 1.8, and 1.11 (except as provided under Section 4.1)
    - 4.2.1 The Boards established under Sections 4.1 and 4.2 at Houston may be used to supplement each other, without penalty to BNSF.

- 4.2.2 In the event ATSF prior rights employees fail to protect equity established by Section 4.2 for a period of six full consecutive months, BNSF may serve notice to combine the extra boards established by Section 4.1 and 4.2 at Houston. Equity allocations on the combined board shall be determined by UTU.
  - 4.3 An extra board shall be established at Casey, subject to BN prior rights to protect extra service on the BN Zone.
  - 4.4 An extra board shall be established at Dayton, subject to ATSF prior rights, to protect extra service at Dayton and the territories identified under Section 1 of this Agreement in paragraphs 1.9 and 1.10 (except as provided under Section 4.1)
  - 4.5 Except as provided under Section 4.2.1, when it becomes necessary to supplement one extra board with another extra board within the terminal, the earnings realized by the employee shall not be used to offset guarantee.
5. There shall be no restriction on any job within the expanded Houston Terminal performing service at any location within the expanded terminal, except as provided under 5.1 below.
- 5.1 Jobs held by prior-right employees from one zone shall not be used to replace jobs assigned to prior-right employees in any other zone. That is to say that while there is no restriction as far as any job performing any work within the expanded terminal, the parties understand and agree that so long as there is sufficient work available in a zone, that work is to be performed by a job with a prior-right employee assigned within that zone.
    - 5.1.1 For example, it would be a violation of this agreement to relieve a ATSF zone job held by an ATSF prior-rights employee upon the expiration of eight (8) hours and have either a HBT or BN zone job perform switching in the ATSF zone for 2 or 3 or more hours when the spirit of this agreement contemplates that normally general yard switching performed in any zone should be performed by a prior-righted employee on a job headquartered in that zone.
- 6 Road crews may be required to receive or deliver their train at any location within the expanded terminal.

- 6.1 If by operation of this provision a road crew is obligated to traverse additional miles, such additional actual miles traveled shall be added to the miles of the assignment, including those miles traveled upon return to the designated off-duty location.
- 7 Yard assignments within the expanded terminal may be established at South Yard, Dayton, Pearland, Alvin or Casey.
- 8 Employees who perform 12 hours of continuous time on duty while assigned to any extra board addressed herein may request, and shall be granted, twelve (12) hours rest without deduction of extra board guarantee.
- 9 The parties agree to meet at least every six (6) months to review the distribution of work throughout the expanded terminal to determine whether the equities are being properly maintained in concert with the intent of the agreement. Furthermore, this section shall not serve to prevent any representative of any portion of UTU interest in the Houston terminal from requesting more frequent meetings.

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Robert E. Peterson  
Chairman

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Gene L. Shire  
Carrier Member

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M.B. Futhey, Jr.  
Organization Member

Houston, Texas.  
Dated: August 9, 2002