

OPS ____-00

BNSF MERGER IMPLEMENTING AGREEMENT 18

between

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY CO.

and

UNITED TRANSPORTATION UNION

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. The purpose is also to enable the company created by consummation of the BNSF merger to be immediately operated in the most efficient manner as one completely integrated railroad.

2. This agreement addresses local and switching service in the territory between Houston and Galveston.

IT IS AGREED:

Article 1 - Elimination of Duplicative Service in the Houston - Galveston Area

Section 1

A. The BN local assignment that handled traffic in the Houston - Galveston corridor, including switching at Texas City and Galveston, has been abolished. The Santa Fe local assignment that handled traffic in the Houston - Galveston corridor, including switching at stations and industries between Houston and Galveston, has also been abolished.

B. In lieu of those two local assignments, a variety of service patterns have since been used: one local assignment, two road switchers and so on. This agreement is intended to apply to and govern whatever service pattern is used to provide local and switching service in this corridor.

C. Any BNSF local or road switch assignment operating in the Houston - Galveston corridor may perform any work that that type of assignment may perform at any point or station along the corridor, regardless of pre-merger ownership or affiliation.

utime18/1.15.01

Section 2

In order to preserve work equities in this area, the following arrangements are made:

- A. Before the merger, there were 10 Santa Fe assignments and 1 BN assignment working in the Pearland - Galveston area; in other words, a 91% - 9% work equity division. It is not possible, at this late date, to do a detailed work analysis of these assignments.
- B. Figured on the "percentage of equity" basis of the assignments, the following is the work allocation which will govern the assignments south of Houston:
 - 1. ATSF
 - 2. ATSF
 - 3. ATSF
 - 4. ATSF
 - 5. ATSF
 - 6. BN
 - 7. ATSF
 - 8. ATSF
 - 9. ATSF
 - 10. ATSF
 - 11. ATSF
- C. If there are 11 or more assignments, the BN prior righted people will have their allocation for a full calendar year. If there are fewer than 11 assignments, BN prior righted people will have their allocation for a portion of the calendar year, as follows:
 - 10=11 months
 - 9=10 months
 - 8= 9 months
 - 7= 8 months
 - 6= 7 months
- D. The allocations will only be open to former BN employees with seniority dates prior to September 22, 1995. If there are no such bidders, the allocated positions may be filled by any other employee, in seniority order.
- E. If there are such bidders, the allocated assignment would work under former JTD rules, and relief for that assignment would be provided by the JTD's Houston extra board. If there are no such bidders, the allocated assignment would work under former ATSF rules, and relief for that assignment would be provided by the Santa Fe's Houston satellite extra board.

Section 3

Any employees who were adversely affected as a result of the job abolishments set forth above will be entitled to displacement and/or dismissal allowances as set forth in Articles 5, 6 and 11 of the New York Dock Conditions.

Article 2 - General

Section 1.

A. All pre-existing agreements that conflict with the terms of this agreement are superseded to the extent of the conflict.

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. 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 2

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. This agreement will expire and be of no further force and effect when there are no more former JTD employees with seniority dates that precede September 22, 1995.

Signed and accepted at _____ this _____ day of _____, 2001

for UNITED TRANSPORTATION
UNION

for THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY CO.

General Chairman



General Director - Labor Relations

General Chairman

Approved:

Vice President

**united
transportation
union**

General Committee of Adjustment
(Conductors - Trainmen - Yardmen - Enginemen)
BNSF - Santa Fe RR Company
Texas Division
P.O. Box 3069
Temple, TX 76505



P. W. Tibbit
General Chairman

TO:

WA Bell

FAXCOM NUMBER:

7482

DATE:

4-1-03

FROM:

UNITED TRANSPORTATION UNION

P.W. TIBBIT, GENERAL CHAIRMAN

FAXCOM NUMBER: 254-742-1613

COMMENTS:

Per our phone conversation

1. Award

2 Exhibit 4

3 Exhibit 7

Paul

TOTAL NUMBER OF PAGES INCLUDING COVER LETTER:

17

PLEASE CALL 254-742-1124 IF YOU DO NOT RECEIVE ALL THE PAGES.

In the matter of the arbitration between
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
and
THE UNITED TRANSPORTATION UNION
Before the New York Dock Section 4 Board

Dr. Francis X. Quinn
Chairman

The Arbitration Board met on December 6, 2001, in Fort Worth, Texas, pursuant to
Section 4 of New York Dock Protective Conditions.

Appearances

Wendell Bell	Director of Labor Relations, BNSF
M.B. Futhy, Jr.	Vice President, UTU
P.W. Tibbit	General Chairman, UTU
Dale Welch	General Chairman, UTU

Question at Issue

What should be the Implementing Agreement in connection with the Houston-Galveston
assignments?

Background

Burlington Northern and Santa Fe merged on September 22, 1995. Prior to that time,
both companies had yards in the Houston area and adjoining yards on Galveston Island. The
route between Houston and Galveston was owned by Santa Fe; BN was a tenant pursuant to a
grant of trackage rights. Both the BN and the Santa Fe had locals operating between Houston
and Galveston. Both assignments traversed the same route. Both set out and picked up
interchange at Texas City Junction. Due to the timing of that interchange, both started out of

Houston at about the same time, and often followed each other along the track. This is the sort of transportation inefficiency that a merger was supposed to eliminate as a part of its public benefits. Shortly after the merger, the BN assignment was abolished, and the Santa Fe assignment performed all necessary service in this territory. Section 4(b) of the New York Dock Conditions, by its terms, is supposed to prevent implementation of merger-related changes that result in job abolishments until an Implementing Agreement is reached or an Award of a Section 4 Arbitration Board is rendered.

Prior to the merger, the Santa Fe Railway owned the territory involved in this case. This territory was a part of the Galveston Local 773's seniority district. There were a variety of Road Service jobs working in this territory: Road Switchers at Mykawa, Alvin, and Galveston, as well as Local Service between Galveston and Mykawa. There was also one BN Local between Houston and Galveston. This BN assignment was on this territory under a trackage rights arrangement that granted access to Galveston over the Santa Fe lift bridge. This BN Local did not perform any local work between Houston and Galveston other than interchange cars with the Texas City Railroad at Texas City.

Following the merger, the BN Local was abolished, and the cars that were previously being handled by that Local were combined with the remaining Santa Fe Local between Galveston and Houston. The abolishment of the BN Local and subsequent combining of their traffic with the Santa Fe Local prompted a December 11, 1996 letter from General Chairman G.D. Welch to W.A. Bell for a meeting to discuss "the allotment of ground forces."

A meeting on the issues was held between the parties on September 2, 1997, wherein the Carrier agreed to New York Dock certify the involved employees on the BN side, and the

temporary arrangement would remain in effect until a final implementing agreement could be reached.

It is the position of some of the members of Local 773 that Implementing Agreement 18 did not reflect a fair and equitable arrangement of forces. It is also the position of some members of Local 773 that any claims to equity positions were forfeited when former BN forces failed to protect an assignment bulletined, and some members of Galveston Local 773 do not feel that Implementing Agreement 18 fulfills the mandates of Article 90 of the UTU Constitution in preserving prior seniority rights of employees to service on their former seniority districts.

A variety of solutions have been applied to this situation. Sometimes, there were two assignments, which eased the strain considerably; sometimes, a single assignment was shared in some way. But a formal Implementing Agreement was not reached. The result was that the company served a formal Notice under Section 4 of the New York Dock Conditions, and the matter is properly before this arbitrator.

Findings

After review of the complete record, we find there is no basis for rejection of the proposed Agreement. BN actually didn't have a great deal of involvement in the Houston area pre-merger. This agreement reflects mere 9% equity. This proposed Agreement takes a couple of innovative approaches; first, it applies "percentage of equity" methodology. But then it goes beyond that to reflect a diminishing equity share, on a time (monthly) basis, if there are a lower number of assignments in the area. This corrects the grievances where a minor player was granted an assignment, and the allocation stayed that way indefinitely. The proposed Agreement makes it

easy for Santa Fe forces to take all the work if pre-merger BN people (most of whom aren't at Houston) don't choose to exercise the rights that they are granted.

The reason this proposed Agreement wasn't adopted by the parties without intercession of arbitration is that the former Santa Fe Galveston Local 773 rejected it and kept rejecting it. Some contend that Santa Fe owned the track. True, but this is irrelevant; no one claims that the BN Local was sneaking around out there unauthorized. Instead, it was operating pursuant to a bona fide grant of trackage rights. As such, BN forces were there by right and are entitled to some involvement in the selection of forces determination required by Section 4 of the New York Dock Conditions. They cannot be excluded simply because Local 773 does not like them or regards them as interlopers who did not bring much to the party. They were there, and that must be recognized. This proposed Implementing Agreement does an unusually good job of recognizing what they are entitled to without, at the same time, giving them more than they are entitled to.

Because there are a plethora of versions of that Agreement, to say that the negotiated Implementing Agreement should be imposed almost begs the question: Which draft should be imposed? After reaching a perfectly good agreement in negotiation by the principals, Local 773 was not satisfied. The upshot was that, in a series of attempts to mollify concerns, ever more language was stripped out or added, all in an effort to secure concurrence.

What is to be imposed is what the principals came away from the table with, what they thought was a good and fair bargain before this single Local began to stand in the way. And that would be Exhibit 4, with just one change: to incorporate the single constructive suggestion made during the long efforts to secure ratification by Local 773 – and that is the language of Article 1, Section 2E, from the Company Exhibit 7 draft. That one paragraph should be substituted for the


same paragraph in the Company Exhibit 4 draft. Otherwise, Company Exhibit 4 is what the Board will impose. For the Board to impose Exhibit 4, with that single modification, is "to adopt the same terms their leaders found acceptable."

Award

The Implementing Agreement in connection with the Houston-Galveston assignments is what is known as "Exhibit 4" with the incorporation of Article 1, Section 2E, from what is known as Exhibit 7:

If there are such bidders, the allocated assignment would work under former JTD rules, and relief for that assignment would be provided by the JTD's Houston extra board. If there are no such bidders, the allocated assignment would work under former ATSF rules, and relief for that assignment would be provided by the Santa Fe's Houston satellite extra board.

That Agreement is appended hereto and adopted by reference in this Award.


FRANCIS X. QUINN
Arbitrator

December 15, 2001

OPS ____-00

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B. In lieu of those two local assignments, a variety of service patterns have since been used: one local assignment, two road switchers and so on. This agreement is intended to apply to and govern whatever service pattern is used to provide local and switching service in this corridor.

C. Any BNSF local or road switch assignment operating in the Houston - Galveston corridor may perform any work that that type of assignment may perform at any point or station along the corridor, regardless of pre-merger ownership or affiliation.

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Section 2

In order to preserve work equities in this area, the following arrangements are made:

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- B. Figured on the "percentage of equity" basis of the assignments, the following is the work allocation which will govern the assignments south of Houston:
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- C. If there are 11 or more assignments, the BN prior righted people will have their allocation for a full calendar year. If there are fewer than 11 assignments, BN prior righted people will have their allocation for a portion of the calendar year, as follows:
 - 10=11 months
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- D. The allocations will only be open to former BN employees with seniority dates prior to September 22, 1995. If there are no such bidders, the allocated positions may be filled by any other employee, in seniority order.

- E. If former BN employees are filling the conductor's allocation, the allocated assignment would work under former JTD rules, and relief for that assignment would be provided by the JTD's Houston extra board.

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Signed and accepted at _____ this _____ day of _____, 2000

for UNITED TRANSPORTATION for THE BURLINGTON NORTHERN
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General Director - Labor Relations

General Chairman

Approved:

Vice President

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- B. 2. If more than eleven assignments are established to work in this territory south of Houston, the parties will promptly meet to agree on an equitable distribution of the additional assignments.
- C. If there are 11 or more assignments, the BN prior righted people will have their allocation for a full calendar year. If there are fewer than 11 assignments, BN prior righted people will have their allocation for a portion of the calendar year, as follows:
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UNION AND SANTA FE RAILWAY CO.

General Chairman

General Director - Labor Relations

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