

PUBLIC LAW BOARD NO. 5563

Case No. 1

Award No. 1

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-and-

UNION PACIFIC RAILROAD COMPANY

QUESTION AT ISSUE:

Is the Carrier's notice of September 24, 1993, to establish interdivisional service between Kansas City and St. Louis proper in light of the decision of Arbitration Board No. 437 dated March 19, 1984?

FINDINGS:

This board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

In March of 1983, the Union Pacific Railroad Company (hereinafter referred to as the Carrier or the UP) had the opportunity to obtain new business involving "Trailers on Flat Cars" (TOFC). The Carrier reached a verbal agreement with its operating crafts to institute interdivisional service between St. Louis and Kansas City, Missouri commencing March 28, 1993, handling TOFC traffic.

On September 8, 1983, the Brotherhood of Locomotive Engineers (hereinafter referred to as the BLE or the Organization) and the UP reached an agreement establishing the conditions governing interdivisional freight service between St. Louis and Kansas City. However, that agreement failed ratification by the BLE membership and the parties submitted the dispute to arbitration. On March 19, 1984, Arbitration Board No. 437 issued an Award establishing the conditions governing interseniority district freight service between St. Louis and Kansas City. This Award was issued in accordance with the May 13, 1971 BLE National Agreement.

Under the Award of Arbitration Board No. 437, the Carrier was allowed to operate one interdivisional train in each direction between St. Louis and Kansas City. However, the Carrier was allowed to increase the number of trains in this interdivisional service provided that the parties confer and negotiate appropriate changes in the Agreement to conform to the increased operation. The Award further provided that the Jefferson City Engineers will be permitted to operate on a "step-on-stop-off" arrangement on eastbound trips at Jefferson City. The Carrier has not operated this interdivisional service for several years.

Article IX of the May 19, 1986 BLE Arbitrated National Agreement (Arbitration Board No. 458) allowed individual Carriers to establish interdivisional freight or passenger service subject to the procedures set forth in Article IX. Article IX was more favorable to the nation's Carriers than the May 13, 1971 BLE National Agreement which also allowed railroads to institute interdivisional service. Section 5 of Article IX stated that interdivisional service in effect on the date of this Agreement [June 1, 1986] is not affected by this Article.

Following the Award of Arbitration Board No. 458, an Informal Disputes Committee was established to resolve questions involving the purpose and intent of the 1986 Arbitrated Agreement. In Issue No. 3, the Informal Disputes Committee addressed the question whether Carriers may extend or rearrange interdivisional service established prior to the effective date of Article IX. The Informal Disputes Committee ruled, in pertinent part, as follows:

"...The Carriers have the right to establish extended or rearranged interdivisional service and it constitutes new service within the meaning of Article IX unless it is a substantial re-creation of the prior interdivisional service designed solely to obtain the more favorable conditions in the 1986 National Agreement...."

On September 24, 1993, the UP served notice on the BLE pursuant to Article IX of the Award of Arbitration Board No. 458 of its intent to establish interdivisional service between Kansas City and St. Louis. Under the Carrier's proposal, Jefferson City, Missouri, will be discontinued as a home terminal and crew change point for crews used in this interdivisional service. St. Louis would become the home terminal for all crews in the pools protecting this service.

The Organization responded that Article IX, Section 5, of the Award of Arbitration Board No. 458 prohibited the Carrier from seeking a new interdivisional agreement for the St. Louis-

Kansas City corridor since it already had an interdivisional service agreement for this territory as a result of the Award of Arbitration Board No. 437. The Carrier advised the Organization that because the existing interdivisional agreement covered a very limited type of service that was not intended to supplant existing pool service and because it could not expand the existing interdivisional runs without negotiating changes, Article IX of the Award of Arbitration Board No. 458 gave it the right to propose new interdivisional service that will supplant most, if not all, pool service between St. Louis and Kansas City. The Organization informed the Carrier that it had no objection to the UP adding as many trains to the existing agreement pool in interdivisional service between St. Louis and Kansas City and that no negotiations were necessary.

The parties were unable to resolve their differences regarding the propriety of the Carrier's September 24, 1993, notice. They agreed to submit the aforementioned issue to this Procedural Board for resolution. The Board met in St. Louis on November 2, 1994.

In the light of the decision of the Informal Disputes Committee in Issue No. 3, the Carrier has the right, pursuant to Article IX of the Award of Arbitration Board No. 458, to propose new interdivisional service between St. Louis and Kansas City. However, if the proposed interdivisional service is merely a substantial re-creation of the prior interdivisional service allowed by Arbitration Board No. 437 designed solely to obtain the more favorable conditions in the 1986 BLE National Agreement then its proposal is barred by Article IX, Section 5, of that Agreement.

Notwithstanding the Organization's contention, this Board is not convinced from the evidence before us that the interdivisional service proposed by the Carrier in its September 24, 1993 notice was a substantial re-creation of the prior interdivisional service between St. Louis and Kansas City that was instituted pursuant to the Award of Arbitration Board No. 437. Rather, there were several significant differences in the newly proposed service even though it would operate over the same territory as the pre-existing interdivisional service. In our view, the Carrier's proposal was not a pretext to take advantage of the more favorable conditions granted Carriers by Article IX, Section 2, of the 1986 BLE National Agreement.

Perhaps the most salient distinction in the Carrier's September 25, 1993, proposal is the elimination of Jefferson City, Missouri, as a home terminal for Engineers. If agreed to, this proposal will allow the Carrier to run interdivision trains through Jefferson City without stopping. It has no right to do this now. This will eliminate these trains stopping at Jefferson City even though under the agreement now in effect these

Engineers operate on a "step-on-stop-off" arrangement on eastbound trips at Jefferson City. Under the Carrier's proposal St. Louis will be the only home terminal for all Engineers in the interdivisional service. To this Board, this is a material distinction from the current interdivisional service allowable between St. Louis and Kansas City.

It must also be noted that the current interdivisional service agreement only allows the Carrier to operate one train per day each way in interdivisional service although the Organization is not opposed to expanding this service to additional trains. Under the Carrier's proposal most, if not all, pools would be operated in interdivisional service over this territory. The Carrier would also have the right to use the interdivisional service to supplant present pool service which it is unable to do under the present interdivisional service agreement. Additionally, it is significant to note that the Carrier cannot expand its present interdivisional service of one train in each direction without first entering into negotiations with the BLE.

This Board recognizes that the interdivisional service contemplated in the Carrier's September 24, 1993, notice would operate over the same geographical area and involves the same kind of irregular freight service that the Carrier now may operate in interdivisional service. Nevertheless, the Carrier is proposing new interdivisional service in the St. Louis-Kansas City corridor that is materially different from the service instituted in 1984. Inasmuch as this newly proposed service is not merely a substantial re-creation of the interdivisional service established in 1984, the Carrier's notice is proper under Article IX of the Award of Arbitration Board No. 458.

This Board wishes to clearly state that we are not finding, either explicitly or implicitly, that the interdivisional service proposed by the Carrier meets the conditions set forth in Article IX, Section 2, of the 1986 BLE National Agreement. Of course, in the event the Organization and the Carrier are unable to agree on the conditions governing the service proposed by the Carrier in its notice of September 24, 1993, that dispute must be resolved in accordance with Section 4 of Article IX. This Board is simply finding that the Carrier's proposal is not barred by Section 5 of Article IX of the Award of Arbitration Board No. 458.

AWARD:

The Carrier's notice of September 24, 1993, to establish interdivisional service between Kansas City and St. Louis is proper.

Robert M. O'Brien

Robert M. O'Brien, Neutral Member

E.L. Hayden

E.L. Hayden, Organization Member

T.L. Wilson

T.L. Wilson, Carrier Member

Dated:

1/30/95