SPECIAL BOARD OF ADJUSTMENT NO. 1163

PARTIES) UNITED TRANSPORTATION UNION
)
TO)
)
DISPUTE) CERTAIN RAILROADS REPRESENTED BY THE
) NATIONAL CARRIERS' CONFERENCE COMMITTEE

STATEMENT OF DISPUTE:

The interpretation and application of Side Letter No. 2 of Document "A" and Side Letter No. 3 of Document "B" of the August 20, 2002 National UTU Agreement, as described in Side Letter No. 8 to Documents "A" and "B" of the 2008 Agreement ("side letter dispute"). That is: "The parties agree that at the earliest opportunity in the next national bargaining round, the matter of relating the existing service scales in effect on each participating road to training and experience will be addressed."

MEMBERS OF THE SPECIAL BOARD OF ADJUSTMENT:

Robert E. Peterson, Arbitrator (Chairman)

Malcolm B. Futhey, Jr.,
International President, United Transportation Union

Robert F. Allen
Chairman, National Railway Labor Conference

FOR THE UNITED TRANSPORTATION UNION:

Clinton J. Miller, III, Esq., General Counsel
Arthur Martin, III, Assistant President
James R. Cumby, International Vice President
John W. Babler, International Vice President
Roy G. Boling, International Vice President
Robert D. Kerley, International Vice President
James A. Huston, General Chairperson
Delbert G. Strunk, Jr., General Chairperson
Doyle K. Turner, General Chairperson

FOR THE NATIONAL CARRIERS' CONFERENCE COMMITTEE:

Thomas E. Reinert, Jr., Esq., Morgan, Lewis & Bockius, LLP
Jonathan C. Fritts, Esq., Morgan Lewis
Marianne Hogan, Morgan Lewis
A. Kenneth Gradia, Vice Chairman, National Railway Labor Conference
Joanna Moorhead, General Counsel, NRLC
John F. Hennecke, Director of Labor Relations, NRLC
Harold R.Mobley, Vice President, Norfolk Southern Railway Company
Andrew Shepard, Assistant Director, Labor Relations, Norfolk Southern
Gene L. Shire, Senior Director Labor Relations, BNSF Railway Company

BACKGROUND:

Under date of August 20, 2002, rail carriers listed in attached Exhibit "A" who are represented by the National Carriers' Conference Committee (the "Carriers") entered into two separate agreements with the United Transportation Union ("the UTU"), one identified as Document "A" that covers Carriers employees other than Yardmasters; the other, identified as Document "B", covering Yardmasters. Both agreements are commonly known as the 2002 UTU National Agreement.

The parties agreed in Article VI, "Service Scale," of Document "A" that any employee who was subject, on June 30, 2004, to certain stated provisions of the UTU Implementing Agreement of November 1, 1991 involving service scale wage levels would be brought up to the full rate of their position when working as a conductor/foreman, brakeman/helper, hostler, or engineer, the latter on a carrier party to the Agreement on which the UTU represented locomotive engineers.

Further, as concerns Article VI, it was agreed that all employees whose seniority in train or engine service was established on or after July 1, 2004 would be subject to a service scale rate of pay, with Section 3 of Article VI of Document "A" of the 2002 UTU National Agreement reading as follows:

Section 3

Each carrier covered by this Article shall establish a Service Scale that shall be applicable to all employees whose seniority in train or engine service is established on or after July 1, 2004. Such Service Scale shall conform to the rules in effect on such carrier on June 30, 2004 that adjust employee compensation based on length of service (including the aforementioned Article IV, Section 5 where and to the extent applicable). The carrier shall make arrangements with the

applicable organization representative(s) for a process to review such preexisting rules prior to establishment of the Service Scale.

As also concerns Article VI of the 2002 UTU National Agreement, Side Letter No. 2 (referenced in the above Statement of Dispute), and dated August 20, 2002, reads as follows:

Mr. Byron A. Boyd, Jr.
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Boyd:

This confirms our understanding with respect to Article VI – Service Scale of Document "A" of the Agreement of this date.

The parties agree that at the earliest opportunity in the next national bargaining round, the matter of relating the existing service scales in effect on each participating road to training and experience will be addressed.

Please acknowledge your agreement by signing your name in the space provided below.

Yours very truly,
/s/ R. F. Allen
Robert R. Allen

I agree:

/s/ Byron A. Boyd, Jr.
Byron A. Boyd, Jr.

Article V, "Service Scale," of aforementioned Document "B" (Yardmasters) of the August 20, 2002 National UTU Agreement addresses the issue of service scale rates of pay, and reads as follows:

Section 1

Any employee who is subject, on June 30, 2004, to Article III of the June 15, 1987 National Agreement shall be compensated, on and after

July 1, 2004, at the full rate of the position when working as a yardmaster.

Section 2

Local rules that adjust compensation for employees based on length of service on carriers that are not covered by the aforementioned Article III are hereby amended in the same manner as provided in Section 1.

Section 3

Each carrier covered by this Article shall establish a Service Scale that shall be applicable to all employees entering service on or after July 1, 2004 on positions covered by an agreement with the organization signatory hereto. Such Service Scale shall conform to the rules in effect on such carrier on June 30, 2004 with respect to the yardmaster craft that adjust employee compensation based on length of service (including the aforementioned Article III where and to the extent applicable). The carrier shall make arrangements with the applicable organization representative(s) for a process to review such preexisting rules prior to establishment of the Service Scale.

Side Letter No. 3, dated August 20, 2002, (referenced in the above Statement of Dispute) which attached to Document "B" of the 2002 UTU National Agreement involving Article V and service scale rates of pay reads as follows:

Mr. Byron A. Boyd, Jr.
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Boyd:

This confirms our understanding with respect to Article V – Service Scale of Document "B" of the Agreement of this date.

The parties agree that at the earliest opportunity in the next national bargaining round, the matter of relating the existing service scales in effect on each participating road to training and experience will be addressed.

Please acknowledge your agreement by signing your name in the space provided below.

Yours very truly,
/s/ R. F. Allen
Robert F. Allen

I agree:

/s/ Byron A. Boyd, Jr.
Byron A. Boyd, Jr.

The aforementioned "next national bargaining round" referenced in above cited Side Letter Nos. 2 and 3 commenced under date of November 1, 2004 with an exchange by the parties of Section 6 Notices pursuant to terms of the RLA for changes in terms of existing agreements or additions thereto on specific topics.

In particular, as concerns the dispute here at issue, the UTU Section 6 Notice included a bargaining proposal identified as Item 1, "Service Scale," that reads as follows:

> Establish or modify existing agreement provisions to:
>
> (a) Completely and permanently eliminate service scale rates where such service scale exists.
>
> (b) Completely and permanently eliminate the two-tiered pay system caused by the October 31, 1985 National Agreement and like agreement on properties not party thereto.

The Section 6 notices were discussed in conferences in early 2005 and thereafter in further conferences over the next several years involving the respective proposals of the parties for disposition of their respective collective bargaining demands.

Included in proposals advanced by the UTU was that service scale rates of pay provide that employees in training programs be compensated at a service scale equivalent to 80 percent of the applicable pro-rata rate; 90 percent upon completion of the training for a period of one year; and, at the expiration of the one year period the employee who completed training be considered to be experienced, and thereafter compensated at 100 percent of the applicable pay rates, retroactive to the employee's date of hire.

Although the Carriers recognized the above referenced URU proposal relative to training and wage rates as a legitimate subject for bargaining, it maintained that the UTU proposal was a significant economic issue. The Carriers said the cost of the

UTU proposal was too expensive, asserting it would have cost $200 million in 2006 alone and $756 million from July 2008 through 2012. The Carriers therefore maintained that any change or elimination of service scale rates of pay need by offset by other economic factors, such as by means of lesser increases in basic daily rates of pay then the subject of negotiation.

The Carriers also proposed to the UTU, among other things, that it deal with its (UTU) proposal in local *quid pro quo* negotiations on each individual railroad.

The Carriers and the UTU subsequently entered into agreement in disposition of their then respective contract demands under date of July 1, 2008 (the "2008 UTU National Agreement"). An impasse continuing to exist, however, over interpretation and application of aforementioned Side Letter No. 2 of Document "A" and Side Letter No. 3 of Document "B," the parties agreed to place resolution of their respective positions on such matter to final and binding arbitration.

In this latter respect, a Side Letter No. 8 was made a part of Documents "A" and "B" of the 2008 UTU National Agreements. The side letters are identically worded, except as concerns internal references to either Document "A" or Document "B." The Side Letters, each dated July 1, 2008, read as follows, with a Board notation insert with respect to the wording of Document "B":

> Mr. Malcolm B. Futhey, Jr.
> President
> United Transportation Union
> 14600 Detroit Avenue
> Cleveland, Ohio 44107
>
> Dear Mr. Futhey:
>
> This confirms our understanding with respect to Document "A" [Document "B"] of the Agreement of this date.
>
> The parties agree to refer their dispute over the interpretation and application of Side Letter #2 [Side Letter #3] to the August 20, 2002 National UTU Agreement, Document "A" [Document "B"], to final and binding arbitration as set forth below.*
>
> 1. The dispute shall be resolved by a Special Board of Adjustment that will be established within thirty (30) days after the date of this Agreement. Such SBA shall consist of three members, one partisan member, selected by the UTU, one partisan member selected by the NCCC, and a neutral member jointly selected by the

parties who will serve as Chairman. Each party shall bear the fees and expenses of its respective partisan member. All other costs associated with the SBA, including the fees and expenses of the neutral member, shall be borne equally by the parties.

2. The SBA agreement shall provide for written submissions and an oral hearing at which each side may present evidence and argument in support of its position.

3. The SBA shall issue its decision in writing within thirty (30) days after the close of the oral hearing. A majority vote on any issue presented to the SBA for decision shall be a final and binding disposition of that matter.

4. Either party may refer any matter or issue that it deems unresolved or inadequately addressed by the SBA's decision for further handling by the National Wage and Rules Panel established by and functioning pursuant to Article XIII of the Award of Arbitration Board No. 559, Appendix D, Document "A", as amended by Article VIII of the August 20, 2002 National UTU Agreement, Document "A".

* The pertinent language in dispute provides as follows:

"The parties agree that at the earliest opportunity in the next national bargaining round, the matter of relating the existing service scales in effect on each participating road to training and experience will be addressed."

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,
/s/ R. F. Allen
Robert F. Allen

I agree:

/s/ Malcolm B. Futhey, Jr.
Malcolm B. Futhey, Jr.

On September 3, 2008 the parties entered into an Arbitration Agreement, with Article 2 of the Agreement reading as follows as concerns the dispute here before the Board:

> 2. A Special Board of Adjustment (the "Board") shall be established pursuant to the provisions of Section 3, Second of the RLA to resolve the parties' dispute concerning the interpretation and application of Side Letter No. 2 of Document "A" and Side Letter No. 3 of Document "B" of the August 20, 2002 National UTU Agreement, as described in Side Letter No. 8 to Documents "A" and "B" of the 2008 Agreement ("side letter dispute"), and the parties may state their own Question(s) at Issue with regard to that dispute. The Board shall have jurisdiction only over the side letter dispute. No other claims, issues or disputes shall be submitted to the Board except by mutual consent of the parties to this Agreement. The Board is not empowered and has no jurisdiction to act or decide the matter(s) before it as an "interest arbitration" board. The Board shall not have authority to create any new rules, add contractual terms or change existing agreements governing rates of pay, rules and working conditions.

The parties selected Robert E. Peterson to be the Chair and Neutral Member of the Special Board of Adjustment. Thereafter, by letter of September 4, 2008, the parties requested the National Mediation Board (the "NMB") to provide a numerical designation for the Special Board of Adjustment Board.

By letter of October 1, 2008 the NMB docketed the parties' request as Special Board of Adjustment No. 1163 (the "Board"), and issued an appointment certification for Mr. Peterson to serve as the Chair and Neutral Member of the Board.

The parties filed extensive pre-hearing Opening Submissions with numerous support Exhibits with the Board, and thereafter Rebuttal Submissions in setting forth their respective positions on the dispute.

A hearing was held by the Board in a conference room at the offices of the NMB in Washington, DC on December 4, 2008, at which time both parties presented oral and rebuttal argument in further support of their respective positions.

By letter of December 26, 2008 the Board requested and was granted a fourteen (14) day extension of time for the issuance of a written award due to the extensive documentation and argument presented in both the submissions and at the oral hearing.

FINDINGS AND OPINION OF THE BOARD:

It is the position of the UTU that aforementioned Side Letter Nos. 2 and 3 were entered into by the parties as part of the 2002 UTU National Agreement in recognition of the fact that although terms of the 2002 UTU National Agreement brought employees hired prior to July 1, 2004, who had then been subject to a five-year service scale compensation system, to the full rate of their positions, that new entrants to service, upon completion of training programs, would be performing the same duties and having full responsibility of covered positions to the same extent as employees hired prior to July 1, 2004, but without the newly hired having benefit of commensurate compensation.

Among its various arguments that upon completion of training all employees be paid the same rate of pay as those in service prior to July 1, 2004, the UTU offered the following rationale as concerns employees in train service:

> Service Scale (a.k.a. Entry Rates) on the CSXT (former B&O property) followed the national pattern of 1-step (90% to 100% after 1 year) in 1978 when every crew on the property had a conductor/yard foreman and a minimum of two (2) brakemen/yard helpers. With the adoption of the October 31, 1985 National Agreement new hires on the property endured a five (5) step process of entry rates (starting at 75% rate with annual increases of 5%). At that time, the CSXT former B&O property had but the first generation of crew consist agreements, adopted on June 14, 1982, requiring each crew to have a minimum of one conductor/yard foreman and one brakeman/yard helper, with the second brakeman/ yard helper being eliminated by attrition only.
>
> Currently all thru-freight trains on CSXT are being operated Conductor-only, with the vast majority of locals, district switchers and yard assignments also being operated without any brakeman/helper. Gone are the days when a newly hired employee could rely upon his conductor or fellow brakeman to bail him out or answer a question. Today, due to the accelerated training program adopted by the Carrier, that newly hired employee is the conductor and works without the aid of any additional ground crew whatsoever.
>
> Today's newly hired conductors on CSXT are required to be proficient in technology never contemplated in 1985. Conductors/yard foremen operate remote control equipment, report car handling, secure work orders, fill out required federal Hours of Service documents, and even report their time using technology that

was never envisioned in 1985. They also receive hazardous material and transportation security training that was not an issue of concern in 1985. The level of their technical training is ongoing and continues to escalate.

The UTU maintains that it is for the above and other various reasons that the meaning and intent of Side Letter Nos. 2 and 3 of the 2002 UTU National Agreement was to mandate that in the next round of negotiations the parties would enter into mutual agreement for the elimination of service scale rates of pay, or, in a failure to do so, any dispute over such issue would be referred to interest arbitration for resolution.

The UTU also submitted that the Burlington Northern Santa Fe Railroad, for example, has no service scales when employees work as conductors or foremen, and that service scales are greatly diminished on significant portions of the Union Pacific Railroad.

The UTU says the Board should find that the Carriers violated the 2002 UTU National Agreement and the remedy be that the Board direct the parties enter into a negotiating period of 60 days and mandate that the parties submit the dispute for adjustment to interest arbitration under Section 7 of the RLA, if the dispute remains unadjusted after the negotiating period.

The Carriers dispute the contentions of the UTU. The Carriers maintain that Side Letter Nos. 2 and 3 intended a commitment only to address or deal with the matter of service scale wage levels as they relate to training and experience in the next national bargaining round; not an "agreement to agree" to any particular reduction of the service scale levels or elimination of them in the next round of negotiations.

The Carriers submit the issue was addressed or discussed in collective bargaining conferences leading up to mutual adoption of the 2008 UTU National Agreement. It says that the UTU refused to address any modification or elimination of service scale rates of pay in terms of any change not resulting in additional pay-related costs, may not be viewed as a failure to have addressed the issue. The Carrier, again asserting that the cost of eliminating service scale rates of pay for 2006 alone was then estimated to exceed $200 million, and would have cost $756 million from July 2008 through 2012.

Further, the Carries maintain that UTU proposals to eliminate service scales demonstrates that the UTU was not seeking ways to relate service scales to training and experience, but rather an additional wage increase in addition to what the Carriers say was a generous wage and benefit package that was already on the bargaining table.

There is no question in study of the positions of the parties that service scale wage levels was a part of negotiations in the last round of national bargaining, although it does not appear to have been done so in depth. For instance, as concerns UTU argument that there has been a reduction in crew size over the years, while factual, nothing of record shows the extent to which certain of those changes resulted from the *quid pro quo* of past collective bargaining between the parties or technological developments and the introduction of laborsaving equipment that may also be said to have contributed to an efficiency of operations.

While the UTU says that introduction of extensive or accelerated training programs has enhanced the ability of new hires to more quickly grasp and successfully perform the duties of the positions for which they have been trained, it is evident that differing programs of training exist throughout the rail industry. For example, one program was said to permit up to 26 weeks of training, but almost universally this program is condensed by the carrier to 12 weeks' duration. Another program was said to cover a period of 15 to 19 weeks; another to encompass a mix of classroom and on-the-job training (OJT), i.e., three weeks classroom, followed by four months OJT, another 10 days classroom, and one final month of OJT, before taking a promotional examination; and, another that class room instruction and experience was as determined by management.

Moreover, while the subject of training as referenced in Side Letter Nos. 2 and 3 of the 2002 UTU National Agreement could be said to be established through a recognized training program, it appears to the Board that nothing of record shows any discussion as to what would constitute "experience" as referenced in the Side Letters, or something generally recognized as gained from time and exposure to varied on-the-job circumstances.

It well may be that the existence of service scale rates of pay has created dissatisfaction and pressures for adjustment on the part of certain new entrants to service. However, it must be considered that such a method of compensation is not uncommon in the work place, and the subject of extensive collective bargaining. Rate ranges are often established with the intent that new employees will be hired at the bottom of the range, while those employees with long years of service remain in the upper wage bracket. A step rate system of compensation is also not unusual when the labor market has an excess of candidates seeking employment. In this same respect, other terms of collective bargaining agreements give recognition to a separation of benefits based upon length of employment, such as, for example, contractual clauses related to time off with pay for vacations, sick days, and personal leave days.

In the light of the above considerations and given the intent of Side Letter Nos. 2 and 3 to have called only for the issue to be addressed in the next round of negotiations, it was not unreasonable for the Carriers during the last round of

negotiations leading to adoption of the 2008 UTU National Agreement to have emphasized that UTU proposals for changes or elimination of service scale rates of pay be offset by costs associated with other economic provisions the subject of negotiation. Certainly, the presentation of counter-demands in addressing contract proposals of an opposing party is a recognized and important part of collective bargaining.

That the UTU rejected counter-demands of the Carriers that cost offsets for changes or elimination of the service scale rates of pay come from, among other things, general wage increases being negotiated for the benefit of its entire membership, is understandable given that the Carriers proposal to eliminate service scale rates of pay was said to have called for an offsetting across-the-board 9.2 percent wage reduction for all employees, regardless of tenure, albeit the Carrier says it had also proposed eliminating only the last step of the service scales in exchange for a 0.5 percent reduction in the proposed wage increase then on the bargaining table..

Notwithstanding the extent of any economic offset that the Carriers maintained need be discussed in the give and take of collective bargaining for a change or elimination of service scale rates of pay, it appears that the UTU found it difficult at the time to face the challenge of balancing an allocation of any portion of the general wage increase that was being negotiated for the benefit of the vast majority of its membership for the advantage of a select number of relatively new entrants into train and yardmaster service. At the same time, it seems to the Board that while satisfactory resolution of the issue continues to exist, employees subject to the service scale rates of pay did nonetheless gain a wage benefit under the 2008 UTU National Agreement in that their service scale rates of pay increased as a consequence of negotiated increases in all basic rates of pay.

In any event, as the Board views it, the decision on the part of the UTU not to want to engage in negotiation of offsets for changes or elimination of service scale rates of pay or to dilute increases then being proposed for all basic rates of pay, does not serve to support a contention that the Carriers refused to address the matter of relating existing service scales on each participating rail carrier to training and experience.

For the Board to hold that the Carrier must bargain with the UTU or engage in interest arbitration on the issue would be to unilaterally change the terms of the 2008 UTU National Agreement and give the UTU benefit of something that it was not able to attain at the bargaining table as concerns both the 2002 and 2008 UTU National Agreements. This the Board cannot do for clearly under terms of the Arbitration Agreement, Article 2, *supra*, we have not been extended such authority. Rather, the Arbitration Agreement makes it a point of expressly stating that the Board has no jurisdiction to do so.

Even assuming, *arguendo*, the Board possessed such authority, which, again, we do not, the question would remain what issues or other terms of the 2008 UTU National Agreement would have to be considered as open to permit negotiation of offsets to accommodate a change or elimination of service scale rates of pay.

In the light of the above considerations and overall study of the record, the Board does not find UTU argument sufficiently persuasive to conclude that it was the intention of the parties upon entering into Side Letter Nos. 2 and 3 that the term, addressed, was mutually understood to have intended that if the parties did not reach mutual agreement on the matter of service scale rates of pay in the next round of negotiations that such matter would be subject to interest arbitration.

Side Letter Nos. 2 and 3 are viewed by the Board in the context of having been a mutual commitment on the part of the parties to be prepared to address the matter of service scale wage levels as a part of the next round of collective bargaining talks; not that the commitment obligated there would be mutual resolution of the issue.

Clearly, words used in agreements are to be given there usual, customary and ordinary meaning unless another meaning is dictated by usage in the actual setting where the word is used. Here, under the facts of record, it is the Board's considered opinion that the word addressed was not intended to mean agreement. If it had been so intended it would seem to the Board that negotiators of the agreement language would have so stated there was to be agreement on the issue in the next national bargaining round.

Lastly, the Board would note that it is also not persuaded that any legal precedent as offered or advanced by the UTU is sufficient to conclude that the issue in dispute be placed to interest arbitration.

That the parties were not able to reach a mutual consensus on this matter in an exchange of proposals is not viewed, however, as having the door closed with respect to the parties addressing this subject. For example, the parties have in fact already agreed to utilize a jointly-created body that was established to operate as a forum in which purely voluntary solutions to matters in dispute could be pursued. Per the parties' agreement in paragraph 4 of Side Letter No. 8 to Documents "A" and "B" of the 2008 Agreement:

> Either party may refer any matter or issue that it deems unresolved or inadequately addressed by the SBA's decision for further handling by the National Wage and Rules Panel established by and functioning pursuant to Article XIII of the Award of Arbitration Board No. 559, Appendix D, Document "A", as amended by Article VIII of the August 20, 2002 National UTU Agreement, Document "A".

In summary, Side Letter Nos. 2 and 3 called for the issue of service scales to be addressed in the next national bargaining round; the issue was addressed or considered as a part of the give and take of that collective bargaining round, albeit without resolution; and, the failure of the parties to have reached mutual agreement does not foreclose the issue from again being the subject of collective bargaining when advanced pursuant to the terms of applicable national or local agreements.

AWARD: The dispute at issue is disposed of as set forth in the above Findings.

/s/ Robert E. Peterson

Robert E. Peterson
Chair & Neutral Member

/s/ R. F. Allen

Robert F. Allen
Carriers Member

/s/ M. B. Futhey, Jr.

Malcolm B. Futhey, Jr.
Organization Member

"Dissenting Opinion Attached."

Washington, DC
Dated: January 23, 2009

EXHIBIT A

COVERED CARRIERS

Alameda Belt Line
Alton & Southern Railway Company - 1
The Belt Railway Company of Chicago - 1
BNSF Railway Company
Central California Traction Company
Consolidated Rail Corporation
CSX Transportation, Inc.
- Atlanta and West Point Railway (former)
- The Baltimore and Ohio Railroad Company (former)
- The Baltimore and Ohio Chicago Terminal Railroad Company
- The Chesapeake and Ohio Railway Company (former)
- Consolidated Rail Corporation (former)
- Gainesville Midland Railroad Company
- Louisville and Nashville Railroad Company (former)
- Nashville, Chattanooga and St. Louis Railway Company (former)
- Seaboard Coast Line Railroad Company (former)
- Western Railway of Alabama (former)

The Kansas City Southern Railway Company
- Kansas City Southern Railway
- Louisiana and Arkansas Railway
- MidSouth Rail Corporation
- Gateway Western Railway
- Mid Louisiana Rail Corporation
- SouthRail Corporation
- TennRail Corporation
- Joint Agency

Longview Switching Company
Los Angeles Junction Railway Company
Manufacturers Railway Company

Norfolk & Portsmouth Belt Line Railroad Company
Norfolk Southern Railway Company
The Alabama Great Southern Railroad Company
Central of Georgia Railroad Company
The Cincinnati, New Orleans & Texas Pacific Railway Co.
Georgia Southern and Florida Railway Company
Tennessee, Alabama and Georgia Railway Company
Tennessee Railway Company
Oakland Terminal Railway
Port Terminal Railroad Association
Portland Terminal Railroad Company
South Carolina Public Railways
Terminal Railroad Association of St. Louis - 2
Union Pacific Railroad Company
Wichita Terminal Association
Winston-Salem Southbound Railway Company

* * * * *

1 - Trainmen only

2 - Yardmasters only

Dissent of Organization Member to Award No. 1 of SBA No. 1163:

I must respectfully dissent. To say, as does the majority of the Board, that "the issue [of entry rates] was addressed or considered as part of the give and take of [the 2004-08] collective bargaining round, albeit without resolution" plainly ignores the undisputed facts in the last round of national handling.

This dispute does not involve the give and take at the bargaining table in the 2004-08 national round. Rather, it concerns the deferred price the carriers agreed to pay in the involved side-letters to the August 20, 2002 UTU National Agreement. That price was the promise to address, or to use the carriers' dictionary definition, "deal with," the relationship of service scales (or entry rates) to training and experience. The carriers were not willing to discuss the service scale/training and experience nexus in January 2007 because they demanded withdrawal of the UTU proposal at that time. Even in the eleventh hour of negotiations in January 2008 the carriers suggested reference to local negotiations or a 9.2% across the board wage reduction.

The proffered 9.2% wage cut for all employees the carriers offered on the last day of negotiations did not fulfill their commitment to address the relationship of entry rates to training and experience. One should consider what the carriers' reaction would have been if the shoe was on the other foot. Assume the 2002 Agreement eliminated existing entry rates (as it in fact did for pre-July 1, 2004 employees), but did not re-institute entry rates for employees hired after June of 2004. And assume that in the '02 round UTU signed the same Side Letters committing that at the first opportunity in this round, the parties would address the relationship of entry rates to training and experience. Then assume that at the 11th hour of the negotiations in the last round, after the "pattern" for wages had been set, UTU made a proposal that all current employees would receive an across-the-board 25% wage increase, meaning there would be "entry rates" for new employees. They would make what is now standard rates and everybody else would make 25% more!

In those circumstances the carriers would hardly agree that UTU had fulfilled its commitment to "relate entry rates to training and experience." And this Board would hardly agree that the status quo (i.e., no entry rates) must continue because of UTU's offer, because an across-the-board wage hike for current employees has absolutely nothing to do with training and experience. As absurd as UTU's argument would be in that scenario, that's just how absurd and illogical the carriers' position is in the present circumstances. The Board simply should have found that the parties are obligated to establish the nexus between entry rates and training/experience, and that it should be done completely outside of and apart from the wages contained in the ratified 2008 contract because the commitment to make that nexus remains outstanding from the 2002 round.

M. B. Futhey, Jr.
Organization Member, SBA No. 1163