

BEFORE A BOARD OF ARBITRATION

New York Dock Case 331

In the Matter of Arbitration )  
Between )  
Brotherhood of Locomotive Engineers )  
("BLE") )  
And )  
Union Pacific Railroad Company )  
("UP") )

OPINION AND AWARD

Members of the Board of Arbitration

Eckehard Muessig, Chairman  
Don Hahs, Organization Member  
Scott Hinckley, Carrier Member

## I. INTRODUCTION

On August 6, 1996, the Surface Transportation Board ("STB") in Finance Docket 32760 approved the common control and merger of the rail carriers controlled by the Union Pacific Rail Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) ("UP") and the rail carriers controlled by the Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation and the Denver and Rio Grande Western Railroad Company) ("SP"). The STB imposed the labor protective conditions contained in New York Dock ("NYD").

Following the STB approval, the Carrier began to serve Section 4 NYD notices to the various BLE General Chairmen concerning its desire to initiate negotiations relative to the terms and conditions of Implementing Agreements to consummate the approved transaction. Subsequently, the Carrier and the BLE General Chairmen as well as the local committees which they represented successfully negotiated NYD Implementing Agreements applicable to the various "Hubs" established by the Carrier. However, this Arbitration arose because the BLE committees could not agree among themselves on certain matters primarily related to the integration of seniority at the various Hubs.

On January 18, 2000, the Board of Arbitration held a hearing at the Carrier's Houston, Texas facility. The following BLE General Chairmen appeared and testified with respect to the questions before the Board that affected their respective committees:

R. A. Poe	C. R. Rightnower
W. R. Slone	D. E. Thompson
M. A. Young	

## DISCUSSION, FINDINGS AND CONCLUSION

The Carrier's position on the general issue of seniority is well-summarized in a letter from Mr. John Marchant, Vice-President of Labor Relations, sent to the BLE International Vice-President. In relevant part, it stated as follows:

"The final issue which was discussed pertained to integration of seniority as a result of post-merger consolidations and implementing agreements. BLE asked if Union Pacific would defer to the interested BLE committees regarding the method of seniority integration where the committees were able to achieve a mutually agreeable method for doing so. In that regard, Union Pacific would give deference to an internally devised BLE seniority integration solution, so long as; 1) it would not be in violation of the law or present undue legal exposure; 2) it would not be administratively burdensome, impractical or costly; and 3) it would not create an impediment to implementing the operating plan."

Subsequently, the seniority issues on which the BLE committees could not agree were submitted to the Arbitration Board in the form of seven cases containing the questions at issue. The submissions, over the signature of each of the General Chairmen, contained detailed arguments in support of each committee's position.

The Carrier, in its submission to the Board, presented its analysis of the seven questions.

This Award will list each of the seven cases, the questions at issue (which have been formulated from the submissions of the parties), a brief narrative (when appropriate), followed by our holding. There will not be a detailed recitation of each and every argument or contention advanced by the parties to each case. Nonetheless, this does not mean that these were not fully considered by the Board in its deliberations.

Before addressing each of the seven cases, several observations must be made at the outset. First, the Carrier, in its Operating Plan filed with its merger application, indicated that it would implement a "hub and spoke" operating scheme for the merged railroad. As a part of the merger process, individual Hub Agreements had to be negotiated with the BLE. However, the parties were only able to negotiate two Hub Agreements at a time. While this negotiating process was taking place, the Carrier, when it needed additional forces, relied on the various Collective Bargaining Agreements to obtain staff.

After a Hub Agreement was negotiated, it was sent to each BLE member for ratification vote. After ratification, the Agreements were signed using the same date as they were originally initialed by the negotiating parties. It was only at that point that the integration process began in earnest, including merging of seniority rosters and familiarization trips to the locations. Because another craft may have been involved in arbitration, there were occasional delays in this process. In view of these circumstances, many months could pass from the time an Agreement was ratified and its final implementation.

Second, as a general observation, in our holdings in these cases, the Board recognizes that there is perhaps not one "right" decision in each and every case. In some instances, our decisions were not easily reached and, during our lengthy deliberations, we acquired an appreciation of the problems faced by the parties to this dispute. In any event, when reaching a decision, the Board was guided by the basic principle of "what is right, not who is right." We tried not to lose sight of the reality that seniority protects and secures an employee's right in relation to the rights of other employees in the same seniority grouping. When in doubt and when a logical basis existed, our decisions reasonably lean to the more senior employees.

#### CASE NO. 1

The Board concludes that there are two separate questions to this case. The first question is:

"Question 1: In the Salina Hub (phase II) are all employees who were in engineer training on the day of implementation May (1999) prior righted to engineer positions or are only those employees who were in engineer training on July 16, 1998 entitled to prior rights?"

Relevant here is Article II of the Salina phase II Agreement which reads as follows:

#### ARTICLE II - SENIORITY CONSOLIDATIONS

- A. To achieve the work efficiencies and allocation of forces that are necessary to make the Salina Hub operate as a unified system, a new seniority district will be formed

and a master Engineer Seniority Roster-UP/BLE Salina Merged Roster #1 will be created for engineers holding seniority in the territory comprehended by this Agreement on the effective date thereof. Prior rights Zone 1 is already intact and will remain unchanged by this Agreement. A new prior rights Zone 2 will be created under this Agreement. Such two prior rights zone rosters shall constitute the new UP/BLE Salina Merged Roster #1.

- B. Prior rights seniority rosters will be formed covering Zone 2 as outlined above. Placement on this roster and awarding of prior rights to such zone shall be based on the following:
  - 1. Zone 2 - This roster will consist of former UP engineers with rights on MPUL Wichita (Roster No. 058111) and former SSW engineers with rights on SSW Pratt (Roster No. 304101) and SSW Herington (Roster No. 303101).
- C. Entitlement to assignment on the prior rights zone roster described above shall be by canvass of the employees from the above affected former rosters contributing equity to such zone.
- D. Engineers on the above-described prior rights Zone 2 roster and the existing Zone 1 roster shall be dovetailed with zone prior rights into one (1) common seniority roster.
- E. All zone and common seniority shall be based upon each employee's date of promotion as a locomotive engineer (except those who have transferred into the territory covered by the hub and thereby established a new date).
- F. Any engineer working in the territories described in Article I. on the date of implementation of this Agreement, but currently reduced from the engineers working list, shall also be given a place on the roster and prior rights.
- G. The total number of engineers on the Zone 2 prior rights roster will be mutually agreed upon by the parties, and then merged with the existing Zone 1 prior rights to form the master UP/BLE Salina Merged Roster.

The above-cited provisions did not address the status of those persons who were in training to be engineers. However, this issue was addressed by the parties when they formulated Side Letter No. 18, dated July 16, 1998. It provides as follows:

As discussed, there are currently a group of engineers in training for Dalhart/Pratt. Under the SSW Agreement and seniority provisions, some of these trainees bid the training vacancies from Herington with the hope they could hold seniority in the Salina Hub after implementation of the merger. It was agreed that these trainees would stand to be canvassed for establishment of seniority in the Salina Hub if the roster sizing numbers are such that there are roster slots for them. If not, there is no requirement that they be added to the Salina Hub roster.

The three General Chairmen involved could not agree: one argued that the additional classes should be granted prior rights, two contended that employees who entered engineer training after the date of the letter (July 16, 1998), but prior to implementation, should be granted prior rights.

The Board is guided in reaching its decision by a review of how this issue has been addressed in a number of other Hub Agreement. For example, we note the following:

Salt Lake Hub - Article II, F - "Student engineers in training on December 1, 1996 will be assigned prior rights based on the area designated in the bulletin seeking application for engine service."

Denver Hub - Article II, A, 3 - "New Employees hired and placed on the new roster on or after December 1, 1996, will have no prior rights but will have roster seniority rights in accordance with the zone and extra board provisions set forth in this Agreement."

Both of these Hubs were implemented July 1, 1997 due to arbitration with the UTU which delayed the implementation.

Roseville Hub - Article II, B, 5 - "Student engineers in training on or before September 1, 1997 will be assigned prior rights as engineers based on the area designated in the bulleting seeking applications for engine service." (implemented February 1999)

Los Angeles Hub - Article II, B, 2 - "All engineers who entered training after January 13, 1998 and are promoted in the Hub after January 13, 1998 will be considered common engineers (holding no prior rights), and placed on the bottom of the roster. Those engineers who entered training prior to January 13, 1998 and are promoted after that date will be entitled to any prior rights set forth in this agreement. This includes those who entered training and have been hostling." (to be implemented January 16, 2000)

The above examples show that the parties intended to have a specific date as to when prior rights would be cut-off and that employees who entered training after that cut-off date would be common employees.

Side Letter No. 18 does not contain a specific date. However, in our judgment it does provide an indication of the parties intent when they pointed to those engineers "currently" in training. Thus, we conclude that those engineers in training on July 16, 1998 are granted prior rights and those in training after July 16, 1998 are not granted prior rights.

The other question in Case No. 1 is:

"Question 2: What is the correct number of prior righted pool turns for former SSW engineers in the Herington-Kansas City pool and the Herington-Pratt pool as indicated in Article 1,B.2 and Attachment "B" of the Expanded Salina Hub merger implementing agreement?"

Key to resolution of this question is Article 1,B.2 and 3 of the Expanded Salina Hub Agreement ("Salina Hub Agreement"). In relevant part, it reads as follows:

2. The existing former SSW Herington to Kansas City pool operation will be preserved under this Agreement with Herington as the home terminal. Kansas City will serve as the away-from-home terminal. Engineers operating between Herington and Kansas City may utilize any combination of UP or SSW trackage between such points. This pool shall be slotted, and Attachment "B" lists the slotting order for the pool. Former SSW engineers shall have prior rights to said pool turns. The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement. If turns in excess of that number are established or any of such turns be unfilled by a prior rights engineer, they shall be filled from the zone roster, and thereafter from the common roster.
  - a. \* \* \* \*
  - b. \* \* \* \*
3. The existing former SSW Pratt to Herington pool operation will be preserved under this Agreement, except the home terminal will be changed to Herington. Pratt will serve as the away-from-home terminal. Sufficient number of engineers will be relocated to Herington to effect this change. This pool shall be slotted, and Attachment "B" lists the slotting order for the pool. Former SSW engineers shall have prior rights to said pool turns. The

Carrier and Organization shall mutually agree on the number of turns subject to this arrangement. If turns in excess of that number are established or any of such turns be unfilled by a prior rights engineer they shall be filled from the zone roster, and thereafter from the common roster.

Side Letter No. 15, dated July 16, 1998, to the Salina Hub Agreement advised the affected BLE General Chairmen that the Carrier would convene a meeting "to develop equity data for roster formulation and slotting of freight pools associated with the Salina Hub." The letter also stated that, if the BLE could not agree among themselves as to the equity percentages for roster slotting and formulating, the Carrier would make the final decision.

Attachment B, identified above, showed 12 pool allocations for each of the pools. The Agreement was put out for a vote, showing the number as "12" for each pool. However, the two committees could not agree on the allocation number. This disagreement must now be settled by the Board.

The Board has carefully considered the position of the respective Committees as set forth in their submissions and as forcefully expressed by the General Chairmen before the Board.

We conclude that this matter is best resolved by adopting the data shown in the Carrier's record. In this respect, the Board relies on the Carrier's letter of November 19, 1998 to the BLE. This letter contains a change to Attachment B. The change reflects the approximate number of turns operating Herington to Kansas City as thirty-eight (38) and Herington to Pratt as eighteen (18). The Board holds these numbers to be proper and they are so adopted by this Award.

#### CASE NO. 2

The first issue to be resolved is: "What is the proper roster ratcheting method for the three zone rosters at Longview?"

As noted earlier, the UP/SP merger took place over time and unfolded as a series of Hub negotiations were completed. Employees were given an opportunity to select seniority in a given Hub.

The Longview Hub Agreement was negotiated and then initialed on August 13, 1997. Article III provided for the creation of equity rosters for three separate zones, from three different groups of employees (UP, SSW and SP). Each of the BLE committees made concerted efforts to obtain as many prior rights as possible for its committee members.

Side Letter No. 11 of the Longview Hub Agreement set forth a final roster process. It reads in part as follows:

Finally, whether or not the above process result in a voluntary agreement which addresses these matters, Carrier will join with the Organization, within ninety (90) days of implementation of the last of those merged Hubs described above, to execute a one-time upward "ratcheting" of all rosters in all such Hubs which have been consolidated on the basis of work equity. This adjustment, which consists of assigning all vacant equity roster slots to engineers who are occupying identical, lower equity slots which may have occurred as a result of the phased consolidation of the Hubs and exercises of moves between Hubs which might occur under Side Letter No. 5 to this Standby Seniority Implementing Agreement. It is clearly understood that upon completion of this one-time upward ratcheting of merged rosters, such rosters are considered closed to any future adjustments.

The parties met in an effort to reach agreement on the final roster. Unfortunately, they were not able to agree and this question is now before the Board for final resolution.

The parties are in dispute as to the status of those employees who filled the additional 10 slots in the Zone 2 roster and vacant 10 slots in the Zone 3 roster. Simply put: Do these employees participate in the ratcheting process?

It appears from the record that the parties intended to prior right a number of positions on each zone roster. Further, it also appears that there were not enough employees from the appropriate pre-merger rosters to fill all equity slots and that, as a consequence, they were filled by long-term employees from other rosters. A review of the records of the employees in question indicates that they all have at least 20 years of service. As long-term employees who were originally given slots in the agreed upon roster numbers, it

would be appropriate to ratchet them upwards as they were on rosters that contributed to the equity. If they were fairly new hires who had not personally contributed any pre-merger equity, then it would not be appropriate to ratchet them upward. If the parties had not intended to ratchet these long-term engineers upward, then at the time they were placed on the roster in the "equity" slots, the parties should have gone on record as stating that they were to be excluded from the ratcheting process.

Therefore, in consideration of the above reasoning, we conclude that in Zone 2, the Junior SSW Engineer to be ratcheted upwards is T. W. Brown. In Zone 3, the Junior SSW Engineer to be ratched upward is J. V. Rogers.

The final issue is the process that should be used with respect to A/B slots on the roster. The parties had agreed to fill the original roster only with working engineers. Those working as Carrier officers, those who were on leave or those who had been fired were not put in equity slots to afford those working the full use of their equity.

However, when one of the above excluded engineers returned to duty, he would be placed in a roster slot and that number on the roster then would have two engineers designated as A and B. No one was ratched down on the roster. With the current ratcheting, these slots will be handled in the following manner. If a spot above the A position is vacant, the A employee will move up. The B employee then will exclusively hold the numbered position with no A or B designation on that position. No employee will be ratched up to a B position.

CASE NO. 3

The question in this case is: "Which former HBT engineers should be afforded Zone 5 prior rights? (Zone 5 is a roster created by a merger implementing agreement.)"

Before the merger in Houston, the UPRR, SPRR and the Houston Belt and Terminal Railroad ("HBT") co-existed at that facility.

To facilitate the consolidation of the forces at the Houston Hub, the BLE, the UPRR and SPRR agreed to a Standby Seniority Merger Implementing Agreement on January 17, 1997 ("January 17th Agreement"). The January 17th Agreement provided for seniority consolidation and prior rights within the Houston Hub zones. The two BLE General Chairmen and the Carrier, on that same date, signed Side Letter No. 1 to that Agreement. In pertinent part, it stated:

B. All former HBT employees who transfer to Union Pacific as a result of UP assumption of operation of Settegast Yard shall be entitled to protection benefits contained in the merger implementing agreement for the territory covered by Zones 3, 4 and 5 on an equal basis with all other Union Pacific engineers in those territories. Length of service on the HBT shall be included in determining length of protection under the New York Dock conditions.

Also, on January 17, 1997, the parties signed Side Letter No. 4 which in relevant part stated "the parties reached conceptual agreement that Zone 5 would be protected by a prior rights roster consisting of the five (5) former roster having yard prior rights."

The Board concludes that a reasonable construction of the January 17 Agreement and related documents is that prior rights shall be granted only to those Engineers who had an engineer's date on or before December 1, 1996 or who were in training to become a Locomotive Engineer on or before December 1, 1996. In reaching this conclusion, we particularly note that under Article II, Seniority Consolidation of the January 17 Agreement sets December 1, 1996 as a "cut-off" date in all key elements as follows:

Article II reads:

To achieve the work efficiencies and allocation of forces that are necessary to make the Houston Hub operate efficiently as a unified system, a new seniority district will be formed and a master Engineer Seniority Roster--UP/BLE Houston Hub Merged Roster #1--will be created for the employees assigned in the Houston Hub on December 1, 1996. (Emphasis added).

Article II, Section B Subsection 7 reads:

Any engineer working in one of zones on or before December 1, 1996 (emphasis added) but currently reduced from the engineers working list, shall also be given a place on the roster and prior rights in the appropriate zone.

Article II, Section E reads:

Engineers assigned to the new merged roster after implementation shall be assigned to a zone based on the Carrier's determination of the needs of service at that time in the Houston Hub but without prior rights. Student engineers in training on or before December 1, 1996, (emphasis added) will be assigned a zone based on the area designated in the bulletin seeking application for engine service.

Moreover, Article II of the Memorandum of Agreement of March 18, 1998 section 2 reads:

In conjunction with MP's assumption of control and operations of Settegast Yard, and the concomitant transfer of HBT engineers to MP, former HBT engineers will be placed on the Houston Terminal Seniority District - Zone 5 seniority roster in accordance with applicable provisions of the Standby Seniority Merger Implementing Agreement, dated January 17, 1997, including Side Letter No. 4 thereof, for the Houston Hub and Spoke. (Emphasis added).

Article III of the Memorandum of Agreement of March 18, 1998 Settegast Yard Assignments / Temporary Vacancies also reads:

Regular assignments and temporary vacancies for yard assignments established on the trackage rights lines will be filled in accordance with the provisions of Merger Implementing Agreement for Houston Hub Zones 3, 4 and 5, dated April 23, 1997 and the Standby Seniority Merger Implementing Agreement for the Houston Hub and Spoke, dated January 17, 1997. (Emphasis added).

Subsequent to the Houston Hub implementation and the Letter Agreement of March 18, 1998 (noted above), the two BLE General Chairmen involved signed another Letter Agreement on April 7, 1998, which in relevant part, included a method by which HBT engineers affected by the March 18, 1998 "Trackage Rights Agreement" would be assigned to the Houston Hub.

The argument has been made that this document conveyed the same rights to the newly transferred engineers as was granted to the original merged engineers. However, the Board, after careful review, does not reach the same conclusion. In April 1998, over one year after the Hub Agreement was signed, the merger roster was set. To grant similar rights to the transferred engineers as were granted to the original merger engineers, is not reasonable because several of these engineers were promoted after the approval of the merger. If the newly transferred engineers were granted the same rights, it would have resulted in a different equity arrangement for assignments and would have placed engineers in a different roster position than originally established.

For all of the foregoing reasons, we hold that December 1, 1996 is the controlling date, as noted earlier.

CASE NO. 4

Here, the question is: "What seniority date will be used (system or point) on the DFW Master Dovetail Roster for common assignments when the prior rights period in the DFW Hub expires?"

Relevant to this question is Article II of the Dallas-Fort Worth Hub Agreement and Side Letter No. 5. Article II in pertinent part reads:

II. Seniority and Work Consolidation

The following seniority consolidations will be made:

- A. 1. A new seniority district, known as the DFW Hub, will be formed and a master UP/BLE DFW Hub merged Engineer's Seniority Roster, will be created from engineers assigned/working in the territory comprising the new DFW Hub and those outside the Hub who have rights to place in the Hub and elect to place in the Hub. (See section H of this Article II for integration of Longview Hub seniority)
- B The new rosters will be created as follows:
  1. Engineers assigned on the seniority rosters identified in Section A above will be dovetailed based upon their current engineer's seniority date or consolidated seniority date,

whichever is applicable. For UP engineers it will be the pre KATY merger seniority date, not the 1989 merger date. This shall include any engineer working in train service or as a hostler in the DFW Hub. If this process results in engineers having identical seniority dates, seniority ranking will be determined by the employee's earliest retained firemen's date with the Carrier and if still identical then on the earliest retained hire date.

2. All engineers placed on the roster may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this agreement and the controlling collective bargaining agreement.

D. Prior rights shall be phased out on the following basis:

1. For the first three years after implementation the pools shall retain prior rights up to the baseline level of 100%. At the start of the fourth year the prior rights shall fall to 67% and at the start of the fifth year at 33% and at the start of the sixth year all pool turns shall be assigned off the common roster.
2. DFW Hub Yard assignments and Arlington and GSW TSE assignments prior rights shall be reduced at the same time as the pool assignments except beginning with the 4th year all third shift assignments will be assigned using the common roster, beginning with the 5th year all second shift assignments will be assigned using the common roster and beginning with the 6th year all assignments will be filled using the common roster.

Side Letter No. 5 reads as follows:

H. Longview Hub seniority and DFW Hub seniority shall be consolidated in the following manner:

1. Prior to the phase out of all prior rights in the DFW Hub, jobs advertised in the DFW Hub that do not receive a DFW prior rights bid will be assigned from the DFW common roster. If there are no bids received from the DFW common roster, then the assignments shall be assigned from the Longview common roster. Like wise, jobs advertised in the Longview Hub that do not receive a prior rights bid will be assigned from the Longview common

roster. If there are no bids received from the Longview common roster then the assignment shall be assigned from the DFW common roster. If no bids are received, then the jobs going "no bid" will be assigned in accordance with the respective DFW or Longview Hub Agreement.

2. A new consolidated DFW-Longview dovetailed master common roster will be formed by combining the DFW and Longview dovetailed common seniority rosters into one master dovetailed common roster. Subsequent to the prior rights phase out in the DFW Hub, all jobs in the DFW-Longview Hub will be assigned from the consolidated DFW-Longview master dovetailed common roster.

Thus, pursuant to the above-cited Agreements, prior rights are retained for six years and, as the prior rights are phased out, common rights are applied or used. Accordingly, it would clearly violate a basic notion of fairness if all Engineers in the merged Hub were not granted seniority in a like manner, i.e., equally treated.

In summary, simply stated, does the creation of a Hub and the subsequent phase out of prior rights mean that the Hub should be treated as a neutral site? We conclude that it should be. Therefore, the Engineers earliest continuous seniority date, regardless of which railroad the seniority was held is appropriate.

#### CASE NO. 5

Here the question is: "What is the rightful date of SSW engineer D. O. Kern? Is it the date shown on the seniority rosters provided by General Chairman Thompson (6/12/78), or is it the date that the former SSW rosters were top and bottomed (11/15/83)?"

As in Case No. 4, the earliest continuous Engineer Seniority date is to be used.

#### CASE NO. 6

The question here is: "Is the agreed to template (82/16/6%) to be applied to that group of engineers in the DFW Hub above the pre-merger numbers (310UP, 42SP and 23 SSW)? If so, the SSW would be

entitled to two additional slots. Do the prior rights stop at this same number? After the prior rights number is finalized, how are slots above that number filled?"

At the arbitration hearing, the parties agreed that the prior rights cap was 372 positions.

With respect to the positions after 372, we conclude that Engineers should be placed on the roster in order of seniority, without regard to which former railroad or seniority district they were previously employed.

CASE NO. 7

In this case, the question is "Are the twelve engineers who responded to the October 10, 1998 promotion notice at Kansas City entitled to prior rights in Zone 2 of the Kansas City Hub?"

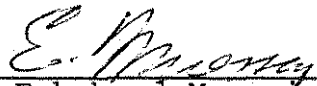
The significant events leading to Question No. 7 occurred on October 10, 1998 when the Carrier bulletined Trainmen for bids for twelve (12) positions to enter Engineer Training. The bulletin was closed on October 25, 1998 and the twelve (12) employees (subject to the question above) were the successful bidders.

The Board has carefully reviewed the submission of the General Chairmen as well as their forceful and well-reasoned arguments before us. The essential issue in this case is the same as in Case No. 1. We settle this case by applying the same reasoning as in Case No. 1.

The Agreement creating Zone 2 was signed on July 2, 1998. The twelve (12) Trainmen responded to a notice dated October 10, 1998 some three and one-half months after the effective date. Accordingly, for the same reasons as in Case No. 1, the trainees are not prior righted and the answer to the above question is in the negative.

AWARD

As stated in the Findings and Conclusions.

  
\_\_\_\_\_  
Eckehard Muessig  
Neutral Member

Dated: 2-8-2000