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U.S. DISTRICT COURT
DISTRICT OF COLORADO

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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

02-B-0946 (MTW)
Case No.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS GENERAL COMMITTEES
OF ADJUSTMENT,

Plaintiffs,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Brotherhood of Locomotive Engineers (BLE) General Committees of Adjustment, through their undersigned attorney, Susan J. Tyburski, seek declaratory and injunctive relief against Defendant Union Pacific Railroad Company to prohibit the implementation of remote control technology to operate locomotives and eliminate the positions of locomotive engineers pending the promulgation of appropriate tests and regulations applicable to, and the proper inspection of, such remote control technology by the United States Department of Transportation and the Federal Railroad Administration, as required by the Federal Railroad Safety Act of 1970, as amended, 49 U.S.C. §§ 20101 *et seq.*, and the Locomotive Inspection Act, as amended, 49 U.S.C. §§ 20701 *et seq.*; and pending the mandatory arbitration of a related labor

dispute by the National Railway Adjustment Board under the Railway Labor Act, 45 U.S.C. §§ 151 *et seq.*

PARTIES, JURISDICTION AND VENUE

1. This action arises under the Federal Railroad Safety Act of 1970, as amended, 49 U.S.C. § 20101 *et seq.*, and the Locomotive Inspection Act, as amended, 49 U.S.C. § 20701 *et seq.* Plaintiffs seek a declaratory judgment declaring that Defendant's operation of locomotives with remote control technology without appropriate federal regulation, testing and inspection violates the Locomotive Inspection Act, as amended, 49 U.S.C. §§ 20701 *et seq.* Plaintiffs also seek an injunction in aid of worker and public safety to prohibit the implementation of remote control technology to operate locomotives before the promulgation of appropriate tests and of regulations applicable to, and the proper inspection of, such remote control technology by the United States Department of Transportation and the Federal Railroad Administration, as required by the Federal Railroad Safety Act of 1970, as amended, 49 U.S.C. §§ 20101 *et seq.*, and the Locomotive Inspection Act, as amended, 49 U.S.C. §§ 20701 *et seq.*

2. This action also arises under the Railway Labor Act, 45 U.S.C. §§151 *et seq.* Plaintiffs seek an injunction in aid of the mandatory arbitration of issues concerning the implementation of remote control technology of locomotive engineer work before the National Railway Adjustment Board under Section 3 of the Railway Labor Act, 45 U.S.C. § 153 First (i).

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 2201(a) and 2202.

4. Plaintiffs are six BLE General Committees of Adjustment which are designated by the Brotherhood of Locomotive Engineers to represent locomotive engineers employed by the Union Pacific Railroad Company, which is a party to collective bargaining agreements administered by the General Committees. These six Committees represent locomotive engineers in the Eastern District, Northern Region, Eastern Region, Southern Region, Western Region and Western Lines of the Union Pacific Railroad Company. Plaintiffs are "representatives" of "employees" as those terms are used in Section 1 Fifth and 1 Sixth of the Railway Labor Act, 45 U.S.C. §§ 151 Fifth, 151 Sixth. Plaintiffs bring this action on their own behalf, as well as on behalf of the locomotive engineers they represent.

5. Defendant Union Pacific Railroad Company is a common carrier by rail subject to the jurisdiction of the Surface Transportation Board (STB) under Chapter 105 of the Interstate Commerce Act, 49 U.S.C. §§ 10501, *et al.*; a carrier as defined in § 1 First of the Railway Labor Act, 45 U.S.C. § 151 First; and a railroad carrier as defined by the Federal Railroad Safety Act of 1970, as amended, 49 U.S.C. §§ 20101 *et seq.*, and the Locomotive Inspection Act, as amended, 49 U.S.C. §§ 20701 *et seq.*

6. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c) because Defendant Union Pacific Railroad Company is a corporation doing business within the State of Colorado, is subject to personal jurisdiction in this judicial district and therefore resides in this judicial district. Further, Plaintiffs represent locomotive engineers in this judicial district, and Union Pacific railyards within this judicial district are targeted for the elimination of locomotive engineer work through the implementation of remote control technology by Defendant.

7. Defendant's railroad terminal operations primarily involve switching to assemble and disassemble trains, and to pick up and deliver cars to customers in and around the terminal. These cars contain all sorts of commodities, including hazardous and nuclear materials. In most terminal operations, one or two ground service employees are paired with a locomotive engineer. The locomotive engineer, from inside the locomotive cab, operates and controls the movement of the 150 ton locomotive with train. The locomotive engineer uses his skill, experience and judgment to manipulate the throttle and brake, adjusting for the tonnage of the train and the grade and condition of the track, while receiving radio and/or hand signals from the ground service employees. Locomotive engineers are specifically trained and certified to operate locomotives under FRA regulations, 29 C.F.R. Part 240.

8. Defendant has, without bargaining with the BLE, begun to implement remote control technology which consists of an on-board computer installed in the locomotive, and a remote control device or unit, carried by an employee outside the locomotive, that sends signals to the on-board computer.

9. On September 26, 2001, Defendant, along with a number of other railroads, signed a "letter of intent" with the United Transportation Union, which represents ground service employees, indicating that remote control devices will be operated by ground service employees, rather than by locomotive engineers.

10. The implementation of remote control devices operated by ground service employees would eliminate the locomotive operation work, and thus the positions, of the locomotive engineer assignments represented by Plaintiffs.

11. On January 14, 2002, U. S. District Court Judge Joan B. Gottschall entered an order finding, *inter alia*, that the issue of whether the railroads' implementation of remote control technology violated the railroads' collective bargaining agreements with the BLE was a "minor dispute" subject to the jurisdiction of the National Railway Adjustment Board under Section 3 of the Railway Labor Act, 45 U.S.C. Sec. 153 First (i). Burlington Northern and Santa Fe Railway Co., et al. v. Brotherhood of Locomotive Engineers, Case No. 01C7743 (N.D. Ill. January 14, 2002).

12. Pursuant to Judge Gottschall's January 14, 2002 order, the issue of whether the railroads' implementation of remote control technology violates existing collective bargaining agreements has been submitted to a mandatory arbitration process through the National Railway Adjustment Board under Section 3 of the Railway Labor Act, 45 U.S.C. § 153 First (i). A hearing has not yet been conducted.

13. Despite the submission of this labor dispute to the National Railway Adjustment Board, Defendant has recently commenced the automation of locomotive engineer functions through the implementation of remote control technology in various Union Pacific railyards employing locomotive engineers represented by Plaintiffs.

14. Since the implementation of remote control technology in various Union Pacific railyards by Defendant, a number of accidents have occurred involving remote controlled locomotives.

FIRST CLAIM FOR RELIEF

(INJUNCTION IN AID OF WORKER AND PUBLIC SAFETY)

15. Plaintiffs incorporate herein the allegations set forth in paragraphs 1 through 14 of this Complaint.

16. Section 202 of the Federal Railroad Safety Act of 1970, 49 U.S.C. § 20103, requires the United States Secretary of Transportation to prescribe regulations and issue orders for every area of railroad safety. The Secretary of Transportation has delegated this responsibility to the Administrator of the Federal Railroad Administration.

17. Section 20702 of the Locomotive Inspection Act, 49 U.S.C. § 20702, requires the United States Secretary of Transportation to, *inter alia*, conduct inspections of locomotives and their "parts and appurtenances," and ensure that every railroad carrier inspects locomotives and their "parts and appurtenances," and repairs every defect, pursuant to regulations prescribed by the Secretary.

18. Section 20701 of the Locomotive Inspection Act, 49 U.S.C. § 20701(1), requires that Defendant may only use a locomotive on its railroad line "when the locomotive or tender and its parts and appurtenances ... are in proper condition and safe to operate without unnecessary danger of personal injury."

19. Section 20701 of the Locomotive Inspection Act, 49 U.S.C. § 20701(2), requires that Defendant may only use a locomotive on its railroad line "when the locomotive or tender and its parts and appurtenances ... have been inspected as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter."

20. Section 20701 of the Locomotive Inspection Act, 49 U.S.C. § 20701(3), requires that Defendant may only use a locomotive on its railroad line "when the

locomotive or tender and its parts and appurtenances ... can withstand every test prescribed by the Secretary under this chapter."

21. The remote control technology - i.e., the on-board computers and remote control devices or units - which are being installed in, and utilized to operate, locomotives by Defendant constitute "parts and appurtenances" within the meaning of the Locomotive Inspection Act, as amended, 49 U.S.C. §§ 20701 *et seq.*

22. The on-board computers and remote control devices or units which are being installed in, and utilized to operate, locomotives by Defendant have never been inspected by the Department of Transportation or the Federal Railroad Administration, as required by Section 20702 of the Locomotive Inspection Act, 49 U.S.C. § 20702.

23. No federal regulations have been prescribed by the Department of Transportation or the Federal Railroad Administration requiring Defendant to inspect and, if necessary, repair the on-board computers and remote control devices or units which are being installed in, and utilized to operate, locomotives, as required by Section 20702 of the Locomotive Inspection Act, 49 U.S.C. § 20702.

24. No regulations have been prescribed by the Department of Transportation or the Federal Railroad Administration requiring Defendant to repair any defective on-board computers or remote control devices or units which are being installed in, and utilized to operate, locomotives, as required by Section 20702 of the Locomotive Inspection Act, 49 U.S.C. § 20702.

25. Defendant's operation of remote controlled locomotives prior to the issuance of appropriate federal regulations and tests, and prior to proper

inspections under such federal regulations and tests, violates Section 20701 of the Locomotive Inspection Act, 49 U.S.C. § 20701.

26. Implementation of remote control technology prior to the issuance of appropriate federal regulations and tests, and prior to proper inspections under such federal regulations and tests, endangers, and will cause irreparable harm to, railroad workers, railroad customers and the general public.

27. Plaintiffs have no adequate remedy at law to prevent the irreparable harm which would be caused by the implementation of remote control technology to operate locomotives beyond the issuance of the requested injunction.

28. The threatened irreparable harm to the locomotive engineers represented by Plaintiffs who will continue to work in railyards where remote control technology will be implemented, to other railyard employees, and to the general public outweigh any harm that the requested injunction might cause Defendant.

29. The granting of the requested injunctive relief will not harm the public interest, and in fact will further the public interest by protecting worker and public safety as required by the Federal Railroad Safety Act of 1970 and the Locomotive Inspection Act.

**SECOND CLAIM FOR RELIEF
(INJUNCTION IN AID OF ARBITRATION)**

30. Plaintiffs incorporate herein the allegations set forth in paragraphs 1 through 29 of this Complaint.

31. The Brotherhood of Locomotive Engineers has a reasonable likelihood of success on the merits of the remote control dispute currently before the National Railway Adjustment Board.

32. The elimination of locomotive engineer work through the implementation of remote control technology has caused and will cause irreparable harm to locomotive engineers represented by Plaintiffs by requiring locomotive engineers to transfer to different positions with more onerous work schedules and commuting requirements, and in some instances to relocate themselves and their families to entirely new communities.

33. The elimination of locomotive engineer work through the implementation of remote control technology has caused and will cause irreparable harm to other unionized employees of the Defendant through their displacement by more senior locomotive engineers, requiring such other employees to find other positions inside or outside Defendant's employment, and in some instances to relocate themselves and their families to entirely new communities.

34. The elimination of locomotive engineer work through the implementation of remote control technology will cause irreparable harm to Plaintiffs through the elimination of locomotive engineer positions, thereby depleting and ultimately eliminating the bargaining units represented by Plaintiffs.

35. The elimination of locomotive engineer work through the implementation of remote control technology will cause irreparable harm to the mandatory arbitration process required by the Railway Labor Act.

36. Plaintiffs have no adequate remedy at law to prevent the irreparable harm caused by the automation of locomotive engineers' work through the

implementation of remote control technology beyond the issuance of the requested injunction.

37. The threatened and actual harm to Plaintiffs, to the locomotive engineers they represent, to the other unionized employees who work for Defendant, and to the mandatory arbitration process required by the Railway Labor Act outweigh any harm that the requested injunction might cause Defendant.

38. The granting of the requested injunctive relief will not harm the public interest, and in fact will further the public interest by promoting the peaceful resolution of labor disputes under the mandatory arbitration procedures required by the Railway Labor Act.

REQUESTED RELIEF

Plaintiffs Brotherhood of Locomotive Engineers General Committees of Adjustment request that this Court grant the following relief:

A. Enter a declaratory judgment declaring that Defendant's operation of locomotives with remote control technology without appropriate federal regulation, testing and inspection violates the Locomotive Inspection Act, as amended, 49 U.S.C. §§ 20701 *et seq.*;

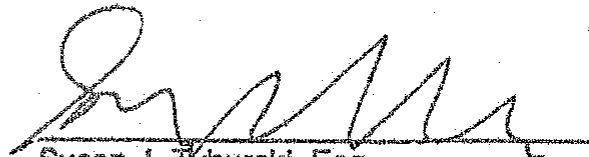
B. Enter an injunction in aid of worker and public safety prohibiting Defendant Union Pacific Railroad Company from automating locomotive engineer functions and permitting ground service personnel to operate locomotives via remote control technology pending the inspection of, and the promulgation of Federal Railroad Administration tests and regulations applicable to, such remote control technology;

C. Enter an injunction in aid of arbitration prohibiting Defendant Union Pacific Railroad Company from automating locomotive engineer functions and otherwise requiring Defendant to maintain the *status quo* concerning the job duties of locomotive engineers pending resolution of this labor dispute by the National Railway Adjustment Board;

D. Award Plaintiffs the costs and attorney's fees incurred in bringing this action; and

E. For such other and further relief as the Court may find just and proper.

Respectfully submitted this 15th day of May, 2002.



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