

ARBITRATION AGREEMENT

Between

BURLINGTON NORTHERN AND SANTA FE RAILWAY CO.,
CONSOLIDATED RAIL CORP.,
CSX TRANSPORTATION, INC.,
KANSAS CITY SOUTHERN RAILWAY CO.,
NORFOLK SOUTHERN RAILWAY CO.,
and
UNION PACIFIC RAILROAD CO.

And Their Employees

Represented By

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

And Their Employees

Represented By

UNITED TRANSPORTATION UNION

IT IS AGREED THAT:

1. The rail carriers identified above (hereafter “the carriers”) are subject to the provisions of the Railway Labor Act (45 U.S.C. § 151 et seq.) and are “carriers” within the meaning of the Act. The Brotherhood of Locomotive Engineers (hereafter “BLE”) and the United Transportation Union (hereafter “UTU”) are the duly designated representatives of employees of the carriers party to this Agreement within the meaning of the Act.

2. Two arbitration boards—a procedural board (hereafter the “Procedural Board”) and the other a Special Board of Adjustment designated as SBA No. ____ (hereinafter referred to as the "Board") shall be established pursuant to the provisions of Section 3, Second of the Railway Labor Act, 45 U.S.C. § 153, Second, to resolve the dispute(s) among the parties shown on Attachment "A".

3. The following shall govern the establishment of the Procedural Board:

Upon execution of this Agreement, the parties shall request that the National Mediation Board promptly provide them by fax the names of seventy-five (75) arbitrators on its current list, which shall include all (but not more than 75) arbitrators who have issued awards in at least five

non-discipline railroad industry disputes during the past twelve (12) months (“Initial List”). Within seven (7) days of receipt of the Initial List, each party shall submit to the NMB a confidential list of up to 15 names of arbitrators on the Initial List whom that party prefers not be part of the selection process for appointment to this Board. The NMB shall then promptly provide the parties with a final list of 22 arbitrators (“Final List”), whose names the NMB shall select from those remaining on the Initial List after removing the names of those arbitrators whom the parties identified on their non-preferred lists. Within seven (7) days after receipt of the Final List, the parties then shall each strike 7 names from the Final List, by successive alternating strikes, until there is one name remaining and that person shall be the Procedural Neutral and sole member of the Procedural Board; the order of strikes shall be determined by the drawing of numbers from a hat or such other means as may be mutually agreed.

4. The Procedural Board shall decide the procedure for the Board to render a valid and binding Award by selecting one of the following proposals:

BLE PROPOSAL:

The signatures of a majority of the Board affixed to the Award shall be competent to constitute a valid and binding Award, provided that in the event of a deadlock, the vote of the neutral Chairman shall become determinative and he shall have the authority to issue an Award over his signature only.

UTU PROPOSAL:

The signatures of a majority of the Board’s members affixed to the Award shall be competent to constitute a valid and binding award.

CARRIERS’ PROPOSAL:

A second neutral (“Deadlock Neutral”) shall be appointed to the Board and shall attend all Board hearings and be served with all filings by the parties, but shall not participate in the Board’s executive sessions or deliberations. After the record is closed, the Deadlock Neutral shall promptly render his written vote on the question(s) before the Board in a confidential filing with the Director of Arbitration of the NMB. The Deadlock Neutral’s vote shall be unsealed only in the event of a deadlock and shall be determinative as to the question(s) before the Board.

The Deadlock Neutral shall be selected in the manner specified in Paragraph 8.

5. The parties shall exchange initial written submissions in support of their procedural proposals within twenty (20) days after execution of this Agreement, and shall exchange reply submissions ten (10) days after that. Each party shall provide copies of its submissions to the Procedural Neutral. The Procedural Neutral shall conduct a hearing on the matter before him within fourteen (14) days of his receipt of all submissions and shall issue his Award within

twenty (20) days after the close of the hearing.

6. The Board shall have jurisdiction only over the dispute(s) shown on Attachment "A". 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 the authority to create any new rules, add contractual terms or change existing agreements governing rates of pay, rules and working conditions.

7. The Board shall consist of three partisan members, one appointed by each of the parties and a neutral arbitrator who shall serve as Chairman of the Board. The partisan members are: Don Hahs for the BLE, Byron Boyd for the UTU, and Robert Allen for the Carriers. A party may change its designated member at any time prior to commencement of the hearing by written notice to the other Board members. The neutral arbitrator selected shall have no interest in the controversy to be arbitrated, no connection with or partiality to any of the parties to the arbitration, and shall be unbiased as to such parties.

8. The neutral arbitrator for the Board shall be selected in the following manner:

Within three (3) days after the Procedural Neutral's decision pursuant to Paragraph 5 above, the parties shall request that the National Mediation Board promptly provide them by fax the names of seventy-five (75) arbitrators on its current list (excluding the Procedural Neutral), which shall include all (but not more than 75) arbitrators who have issued awards in at least five non-discipline railroad industry disputes during the past twelve (12) months ("Initial List"). Within seven (7) days of receipt of the Initial List, each party shall submit to the NMB a confidential list of up to 15 names of arbitrators on the Initial List whom that party prefers not be part of the selection process for appointment to this Board. The NMB shall then promptly provide the parties with a final list of 22 arbitrators ("Final List"), whose names the NMB shall select from those remaining on the Initial List after removing the names of those arbitrators whom the parties identified on their non-preferred lists. Within seven (7) days after receipt of the Final List, the parties then shall each strike 7 names from the Final List, by successive alternating strikes, until there is one name remaining and that person shall be the neutral Chairman (hereafter the "Board Chairman"); the order of strikes shall be determined by the drawing of numbers from a hat or such other means as may be mutually agreed. [In the event that a Deadlock Neutral must be appointed to the Board pursuant to Paragraph 5 because the Procedural Neutral selected the Carriers' proposal, (i) such selection shall occur immediately after selection of the Board Chairman, and (ii) if the Board Chairman is on the Final List for the Deadlock Neutral, he shall be replaced by the last individual struck from the Final List for the Board Chairman who does not appear on the Deadlock Neutral list.]

9. Each partisan member of the Board shall be compensated by the appointing party. The compensation of the neutral arbitrator(s), including necessary travel expenses and expenses actually incurred for subsistence, and all other expenses of the arbitration shall be borne equally

by the BLE, UTU, and the carriers.

10. The Board Chairman shall make all necessary rules for conducting the Board's hearings, consistent with the provisions of this Agreement: *Provided, however*, that the Board Chairman shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

11. The Board shall hold its hearings in Washington D.C. The hearings shall commence within ten (10) days after the exchange of reply submissions pursuant to Paragraph 12. The Board shall consider the case on an expedited basis, and shall issue its Award based on the record in the case within 30 days of the completion of the hearing and submission of post-hearing briefs, if any, provided that the parties may agree at any time upon extension of this date. Each member of the Board shall be entitled to participate in all Board deliberations, including any executive sessions, except as otherwise provided in this Agreement.

12. The parties shall exchange written submissions forty-five (45) days after the Procedural Neutral's decision. Reply submissions, including any rebuttal evidence, shall be exchanged 15 days after that. Copies shall be provided to the Chairman (and Deadlock Neutral, if applicable) at the time of each exchange.

13. Handling of this dispute(s) on the property(ies) is waived. Accordingly, the parties may in their written and oral presentations provide evidence in support of their positions which was not first presented on the property in the usual manner for grievance handling. Each party is charged with the duty and responsibility of including in its initial written submission all known evidence and argument upon which it intends to rely. No arguments or evidence may be presented at the hearing unless raised or included in one of the parties' pre-hearing submissions. Notwithstanding the foregoing, the Chairman may request the submission of additional information deemed necessary for the adjudication of the matter(s) before the Board from any or all parties at any time until the rendering of the Award, provided that any such request shall be made known to all parties at the time it is made and that any response to such request shall be provided to all parties at the time it is provided to the Chairman. There shall be no pre-hearing discovery among the parties or any live witness testimony or cross examination.

14. In its Award, the Board shall confine itself strictly to decisions as to the questions specifically submitted to it.

15. Any question(s) submitted by the parties to the Board may be withdrawn from arbitration at any time prior to the Board's making of its Award by giving notice to that effect signed by the duly accredited representatives of all the parties to the Chairman.

16. The Award of the Board shall become effective 14 calendar days after it is rendered and shall be final and binding on the parties, subject to the provisions of the Railway Labor Act,

with respect to the matters covered.

17. Any dispute arising as to the meaning, or the application of the provisions, of an Award made by the Board may be referred back for a ruling to the same Board by a party to this Agreement, provided that such request is made in writing within thirty (30) days after the effective date of the Award.

18. This agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party: *Provided, however,* that the agreement to arbitrate may at any time be revoked and canceled by the written agreement of all parties, signed by their duly accredited representatives.

19. The Board shall continue in existence until it has disposed of the matter(s) submitted to it under this Agreement, after which it shall cease to exist except for interpretation of its Award pursuant to Paragraph 17 above.

20. Two (2) copies of this Agreement shall be filed with the National Mediation Board.

21. Two (2) copies of the Award of this Board shall be filed with the National Mediation Board by the Chairman.

22. The time limits set forth in this Agreement may be extended by mutual consent of the parties.

This Agreement has been made and concluded this ____ day of June, 2002.

FOR THE ORGANIZATIONS:

FOR THE CARRIERS:

For BLE

For UTU

ATTACHMENT A

Question at Issue

BLE:

The assignment of other than locomotive engineers to operate locomotives via remote control in connection with the movement of cars, trains and/or engines in terminal operations is a violation of the exclusive rights of locomotive engineers to perform such service pursuant to existing BLE Agreements and established practice.

UTU:

Were the involved carriers proper in their assignment of trainmen (yard conductors and yard helpers) to perform remote control operations in their terminals?

CARRIERS:

The Carriers have implemented remote control locomotive technology, which eliminates any need for an on-board locomotive engineer, in connection with work assignments that involve the gathering and distribution of freight and/or equipment in and around terminals.

Under the Carriers' collective bargaining agreements with the Brotherhood of Locomotive Engineers and the United Transportation Union at issue in this case, may the Carriers assign use of remote control technology to ground service employees represented by the UTU, thereby eliminating the locomotive engineer position?