

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

INTERNATIONAL ASSOCIATION OF
SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS,
TRANSPORTATION DIVISION
24950 Country Club Blvd., Ste. 240
North Olmsted, OH 44070

SMART-TD GENERAL COMMITTEE
OF ADJUSTMENT GO-001
1603 N. State Hwy CC
Nixa, MO 65714

Civil Action No. 1:20-cv-04220

SMART-TD GCA GO-009
4707 College Blvd., Ste. 108
Leawood, KS 66211

SMART-TD GCA GO-393,
1858 Keller Pkwy, Ste. D
Keller, TX 76248

Plaintiffs,

v.

BNSF RAILWAY COMPANY,
2600 Lou Menk Drive
Fort Worth, TX 76131

Defendant.

**SMART-TD'S COMPLAINT FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF UNDER THE RAILWAY LABOR ACT**

Plaintiffs, the Transportation Division of the International Association of Sheet Metal,
Air, Rail and Transportation Workers¹ ("SMART-TD"), SMART-TD GO-001, SMART-TD

¹ United Transportation Union ("UTU") and the Sheet Metal Workers International Association have merged to form SMART. The former UTU is now the Transportation Division of SMART.

GO-009, and SMART-TD GO-393, seek a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and injunctive relief against Defendant BNSF Railway Company (“BNSF” or “the Carrier”).

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question), 1337 (Act regulating commerce, *viz.*, the Railway Labor Act, 45 U.S.C. § 151, *et seq.*), and 2201 (declaratory judgments).

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 (b) and (c) because BNSF operates through this judicial district, and because BNSF is subject to personal jurisdiction here.

PARTIES

3. Plaintiff SMART-TD, formerly United Transportation Union, is the duly authorized representative for the purposes of the Railway Labor Act (“RLA” or “the Act”) of the crafts or classes of train service employees, including Conductors, employed by BNSF, and is a “representative” as defined by Section 1 Sixth of the RLA, 45 U.S.C. § 151 Sixth. SMART-TD is located at 24950 Country Club Boulevard, Ste. 340, North Olmsted, Ohio 44070. SMART-TD’s General Committees of Adjustment (“GCA”) are semi-autonomous mid-level bodies responsible for negotiating and policing the collective-bargaining agreement (“CBA”) under their jurisdiction. SMART-TD GCA GO-001, the subordinate body with jurisdiction over certain predecessor railroads including the former Great Northern lines, is located at 1603 N. State Hwy CC, Nixa, MO 65714. The General Chairperson (“GC”) of GCA GO-001 is J.M. LaPresta. SMART-TD GCA GO-009, the subordinate body with jurisdiction over the former Atchison Topeka & Santa Fe (“AT&SF”) Proper is located at 4707 College Blvd., Ste. 108, Leawood, KS 66211. The GC of

GCA GO-009 is S. Swiatek. SMART-TD GCA GO-393, the subordinate body with jurisdiction over the former AT&SF Western lines is located at 1858 Keller Pkwy, Ste. D, Keller, TX 76248. The GC of GCA GO-393 is K. Kime.

4. The Brotherhood of Locomotive Engineers and Trainmen (“BLET”), a non-party to the instant action, is the duly authorized representative for the purposes of the RLA of the crafts or classes of engine service employees, including Engineers, employed by BNSF, and is a “representative” as defined by Section 1 Sixth of the RLA, 45 U.S.C. § 151 Sixth. As the representative for Engineers, BLET negotiates and enforces the CBAs for those employees in the engine service craft, whereas SMART-TD negotiates and enforces the CBAs for those employees in the train service craft.

5. Defendant BNSF is a carrier by rail as defined in the ICC Termination Act, 49 U.S.C. § 10102, and a carrier as defined in Section 1 First of the RLA, 45 U.S.C. § 151, First. BNSF is the product of, *inter alia*, a common control and merger of Burlington Northern Railroad Company (“BN”) and Atchison, Topeka and Santa Fe Railway Company (“ATSF”), which was approved by the Interstate Commerce Commission (presently the Surface Transportation Board) in an order served August 23, 1995. BNSF conducts significant rail operations in this judicial district. BNSF is headquartered at 2600 Lou Menk Drive, Fort Worth, Texas, and operates within this judicial district.

CLAIM FOR RELIEF

Collective Bargaining under the Railway Labor Act

6. Collective bargaining between railroads and their employees’ representatives over rates of pay, rules and working conditions is governed by the RLA. Collective-bargaining agreements thereunder are amended through the service of written notice of intended changes in

agreements affecting rates of pay, rules or working conditions, pursuant to Section 6 of the RLA, 45 U.S.C. § 156. Such proposals, called “Section 6 Notices,” are negotiated in conferences between representatives designated and authorized by the carrier or carriers, and by the collective bargaining representative(s) of their employees. 45 U.S.C. §§ 152 Second, 156. If conferences fail, the dispute is subject to mediation by the National Mediation Board (“NMB”). 45 U.S.C. § 155 First. If mediation fails, the President of the United States may appoint a Presidential Emergency Board (“PEB”) to investigate and issue recommendations for settlement of the dispute. 45 U.S.C. § 160. Until these procedures are exhausted, and for thirty days thereafter, parties must maintain the status quo established by existing agreements. 45 U.S.C. §§ 152 First, 152 Seventh, 156, 160.

The Status Quo Requirement under the Railway Labor Act

7. Pursuant to § 2 First, 45 U.S.C. § 152 First, the Act requires that the parties make and maintain agreements. As noted, the Act also provides very specific and mandatory procedures for how agreements can be changed or modified. Until these procedures are exhausted, and for thirty days thereafter, parties must maintain the status quo established by existing agreements. 45 U.S.C. §§ 152 First, 152 Seventh, 156, 160.

8. Section 2 First of the RLA, provides:

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

45 U.S.C. § 152 First (emphasis added).

9. Furthermore, the RLA mandates a very specific procedure to change working conditions. Section 6 of the RLA, provides:

Carriers and representatives of the employees shall give at least thirty days’ written notice of an intended change in agreements affecting rates of pay, rules or working

conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice.

45 U.S.C. § 156.

10. Taken together, these sections of the RLA require carriers to maintain the status quo with respect to rates of pay, rules, and working conditions until the mandatory notice, negotiation, and mediation procedures of the Act are completed.

11. Federal courts are empowered to issue injunctions to stop unilateral action by a rail carrier during this process of resolution.

12. SMART-TD and BNSF are parties to several agreements that control and detail the terms and conditions of employment for the class and/or craft of train service employees represented by SMART-TD, and also to various work practices which have become an integral and implicit part of those agreements though not set forth therein.

13. BLET and BNSF are parties to several agreements that control and detail the terms and conditions of employment for the class and/or craft of engine service employees represented by BLET, and also to various work practices which have become an integral and implicit part of those agreements though not set forth therein.

14. In general, employees in the class and/or craft of engine service must be Engine Service Qualified (ESQ). Train service positions do not require that employees be ESQ.

NCCC's and BNSF's Section 6 Notice

15. Several railroads, including BNSF, are presently participating in national handling, *i.e.* bargaining on a multi-carrier basis, with SMART-TD with respect to Section 6 notices served by each side upon the other in November of 2019. At the same time, BNSF is also attempting to participate in local handling with the respective SMART-TD GCAs.

16. On November 1, 2019, the National Carriers Conference Committee (“NCCC”), acting on behalf of the railroads in national handling, served a Section 6 notice on SMART-TD President Ferguson proposing changes to the parties’ CBAs. Copies of said Section 6 notice were also forwarded to the SMART-TD GCs by letter dated November 1, 2019, from BNSF Vice President Labor Relations Rob Karov.

17. This Section 6 notice provided, in pertinent part, that the Railroads seek:

Additional discretion [to] add flexibility over which crafts (as well as employees with certain qualifications within a craft) may perform work in various circumstances, when such work may be assigned and performed, the duration of time the work may be performed, and the circumstances under which work rules may be relaxed to meet customer demands.

BNSF’s Unilateral Change Mandating Yard Foreman Be Engine Service Qualified Is a “Major Dispute” In That It Changes the Terms and Conditions of Employment of Train Service Employees Without Negotiating.

18. The position of Yard Foreman is one that is within the craft or class of train service, represented by SMART-TD, and subject to the terms and conditions under the appropriate CBAs between SMART-TD and BNSF.

19. A Yard Foreman is a freight conductor that has been awarded and/or assigned to a job within a rail yard. When assigned to a yard switcher crew, a Yard Foreman is the primarily responsible for the safe and proper switching of inbound and outbound trains. In addition, a Yard Foreman is responsible for: advising his/her crew members on safety related issues, train movements, track switch alignments, the coupling and uncoupling of rail cars, air hose connections, FRA air brake inspections of rail cars where car department personnel are not available, and the federal Hours Of Service/payroll (timekeeping) responsibilities for all members of the crew. A Yard Foreman is also responsible for servicing local industry customers close to their assigned rail yard.

20. A Remote Control Yard Foreman, has the same duties as a Yard Foreman, but additionally directs the movement of a remote control locomotive with an operator control unit (“OCU”). Typically, the remote control engine is unoccupied. Its movements are within by a remote control zone that the Remote Control Yard Foreman is in charge of.

21. The Yard Foreman position does not, and has never required that the employee filling the position be engine service qualified (“ESQ”).

22. BNSF now attempts to unilaterally change working conditions for Yard Foreman without engaging in mandatory bargaining in violation of the RLA. Specifically, on or around early July 13, 2020, BNSF notified SMART-TD General Chairpersons LaPresta, Swiatek, and Kime of its intentions to bulletin “hybrid” jobs and the Chicago and Seattle areas, with the requirement that the Yard Foreman position must now be ESQ. This means such train service employees would additionally be required to qualify and be certified as Engineers, a different and distinct craft represented by the BLET, to perform engineer duties, including operating the locomotive using the fixed, on-board controls, so that they can operate the train beyond the RCO zone. Such unilateral action creates a new an onerous obligation on train service employees changing the terms and conditions of their employment.

23. BNSF has recognized its obligation to negotiate over such “hybrid” operations with both BLET and SMART-TD prior to implementation in the past. In fact, by agreement dated June 26, 2007, BNSF and BLET negotiated and entered into an agreement (hereinafter referred to as “the 2007 BLET-BNSF Agreement”) which permitted BNSF to conduct hybrid operations with Engineers in some limited circumstances. Upon notification of the instant dispute, BLET notified BNSF of its objections to BNSF’s intended action.

24. Further, BNSF has previously recognized the obligation to bargain over hybrid operations is a necessary prerequisite with SMART-TD. In or around 2014, BNSF and SMART-TD GO-001 commenced negotiations regarding BNSF's proposal, in part, which would allow for "hybrid" service, as defined therein. Such agreement would have specifically required the foreman to be qualified to operate the locomotive using the fixed, on-board controls, as BNSF seeks to mandate in the instant dispute, and further provided for a "hybrid service allowance" of \$29.28 per tour of duty. (SMART-TD GO-001/BNSF 2014 Master Conductor Agreement, Article I(c), Article VI(D)). Said agreement stated, in pertinent part:

In all "hybrid" service, as herein defined, the minimum ground service crew shall be one foreman and one helper. One of these employees shall be required to be qualified to operate the locomotive using the fixed, on-board controls, as the service may require. Hybrid service is remote control yard service where some portion of service performed during a particular tour of duty may be conducted using fixed, on-board controls by one of the ground service members of the hybrid yard crew.

(SMART-TD GO-001/BNSF 2014 Master Conductor Agreement, Article I(c)) (emphasis added).

The draft side letter clarified that Article I(C) "contemplates the establishment and/or operation of 'hybrid' assignments" and that the parties would "agree to meet and reach agreement on how this process will be handled at each location where such assignments will be operated." The parties reached a tentative agreement, meaning both sides agreed to its terms, subject to ratification or approval by SMART-TD GO-001's membership as is required by SMART-TD's Constitution. While that agreement ultimately failed membership ratification, through engaging in the bargaining process, BNSF acknowledged that it was required to negotiate such terms prior to any implementation related thereto.

25. At this time, there is no provision in any SMART-TD agreement which would permit BNSF to create hybrid positions absent bargaining.

26. With regard to the instant dispute, BNSF has made no attempt to negotiate with the SMART-TD GCAs prior to implementation of the hybrid operations. Rather, BNSF articulated a frivolous position in a June 24, 2020, email to General Chairperson Swiatek, relying in part on its newly contrived theory of Article VIII, Section 3(a) of the 1985 UTU National Agreement, which dealt with incidental work for ground service employees.

27. Through its actions, BNSF has unlawfully changed SMART-TD agreement provisions without bargaining.

28. Despite the Union's best efforts to resolve the matter, BNSF has refused.

29. By its actions set forth above, BNSF is violating its obligation to make and maintain agreements as required by Section 2 First and Section 6 of the RLA, 45 U.S.C. §§ 152 First, 156, and has violated the status quo requirement, entitling SMART-TD to declaratory and injunctive relief.

30. By its actions set forth above, BNSF has failed to negotiate changes and maintain the status quo during such period in violation of Section 2 First and Section 6 of the RLA, 45 U.S.C. §§ 152 First, 156, entitling SMART-TD to a status quo injunction.

WHEREFORE, Plaintiffs request that this Court:

A. Issue a Declaratory Judgment that BNSF's actions unlawfully change the status quo and violate the Carrier's obligations under the RLA;

B. Bar BNSF from implementing any change with regard to unilaterally implementing "hybrid" positions and/or requiring that foremen be ESQ without first exhausting the Section 6 process;

C. Issue injunctive relief enjoining Defendant BNSF, its officers, agents, servants, employees, attorneys and those persons in active concert or participation with it from

implementing its hybrid position and/or ESQ requirement until the parties have exhausted the Section 6 process;

- D. Award SMART-TD its costs and attorney's fees incurred in this proceeding; and
- E. Grant SMART-TD such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Kevin C. Brodar

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