



DENNIS R. PIERCE
GENERAL CHAIRMAN



Brotherhood of Locomotive Engineers

GENERAL COMMITTEE OF ADJUSTMENT
BNSF/MRL

801 CHERRY STREET, SUITE 1010
FT. WORTH, TX 76102
TEL (817) 338-9010 • FAX (817) 338-9088

**MONTANA
RAIL LINK**

VICE CHAIRMEN
M. O. WILSON
S. J. BRATKA
D. W. MAY

J. H. NELSON
SECRETARY-TREASURER
4237 ORCHARD DRIVE
GALESBURG, IL 61401

**ALL LOCAL CHAIRMAN
BNSF NORTHLINES/MRL**

February 27, 2002
File: Remote Control Arbitration Update
PLEASE POST

Dear Sirs and Brothers:

Enclosed for your review and files is this Committee's position letter concerning the operation of remote controlled locomotives, sent this date to Vice President Labor Relations John Fleps. For those of you who are not aware, the Carrier has abolished the daylight yard assignment and its corresponding relief assignments at Mandan, North Dakota, replacing them with a remote controlled assignment comprised of ground crew members only. From what we have been advised, this is just the beginning as the Carrier intends to implement this type of service on a system wide basis. As we have previously advised, the Court has ruled that this dispute is minor in nature and that arbitration is the method of resolution. We have prepared the attached position letter as part of our preparation for arbitration, but have advised the Carrier that we are willing to meet with them, on property, to resolve our differences. We will be meeting with the Officers of the International Division, as well as the General Committees of the other involved properties to prepare for arbitration in the near future and will advise as more information is available.

We are very frustrated with the position that this Carrier has taken, and this letter is not our first attempt to bring the parties together to discuss the matter. It is a matter of record that locomotive engineers become demoted when their assignments are abolished, and that the junior trainmen/switchmen then get furloughed when our members enter their craft in demoted status. For that reason as well as others, we are of the opinion that the Carrier's current method of implementation is not in the best interest of trainmen/switchmen or locomotive engineers, and we have shared that opinion with not only the Carrier, but with our UTU counterparts as well. My predecessors in this Office have spoken before of the "race to the bottom" mentality that we find ourselves in time and time again, and this situation appears to be no different. Although your ground crew counterparts may see this new service as a windfall, we honestly believe that the long term impact will negatively affect them as much if not more than it impacts our membership. Please review the attached documents and if you have any questions or suggestions, please contact the Office.

Fraternally yours,

Dennis R. Pierce
General Chairman



DENNIS R. PIERCE
GENERAL CHAIRMAN



Brotherhood of Locomotive Engineers

GENERAL COMMITTEE OF ADJUSTMENT
BNSF/MRL

801 CHERRY STREET, SUITE 1010
FT. WORTH, TX 76102
TEL (817) 338-9010 • FAX (817) 338-9088

VICE CHAIRMEN
M. O. WILSON
S. J. BRATKA
D. W. MAY

MONTANA
RAIL LINK

J. H. NELSON
SECRETARY-TREASURER
4237 ORCHARD DRIVE
GALESBURG, IL 61401

John J. Fleps
Vice President-Labor Relations
Burlington Northern Santa Fe Railway
P. O. Box 961030
Fort Worth, TX 76161-0030

February 27, 2002
File: Remote Control

Dear Mr. Fleps:

This is in reference to the Car duty time 6:30 am, at Mandan, the corresponding relief assignment North Dakota is now being performed by ground crew members only, and not by locomotive engineers. With all due respect to recent court actions, this is to advise you that the BLE and BNSF on this portion of the agreement regarding motive power used for the propulsion of employees holding seniority in Mandan, North Dakota are in direct conflict with the Yard Assignment 101S, and its requirement that a locomotive engineer assigned to

LC's
COPY

Assignment 101S, on switching at Mandan, assignment comprised of the remote controlled device. The current parties positions in effect between the BLE and BNSF on the operation of all forms of motive power assigned to the propulsion of the current actions at Mandan, North Dakota hereby requested that the assignment be restored with a locomotive engineer assigned to

Memorandum of Agreement dated January 23, 1944 clearly stipulates in Article 3:

"In the application of this agreement it is understood that the existing duties and responsibilities of locomotive engineers will not be assigned to others"

The operation of all forms of motive power in general yard switching is an existing duty of the craft of locomotive engineer and your decision to turn over the operation of the locomotive to another craft not only violates the quoted agreement, but also violates the understandings in place between the BLE and BNSF predecessors.

The issue of remotely controlling locomotives is not a new issue to this Committee, or to the former Burlington Northern portion of the merged BNSF property. In 1970, the then recently merged Burlington Northern implemented pilot projects at Kansas City and Pasco that utilized remote controlled technology in humping operations. The theory then was the same as the theory now, remotely controlling the locomotive by radio communication device. I have included the involved correspondence between our predecessors in the matter and upon review, I think you will agree that your most recent actions are in conflict with the commitments given the BLE as resolution of our previous dispute. In his February 5, 1971 letter, your predecessor, T.C. Debutts, Vice President Labor Relations advised the former CB&Q General

Committee of the following regarding the implementation of the involved remote control technology:

“Should WABCO LSR-1 Low Speed Locomotive Regulation Systems be applied to additional locomotives, they will be installed with the intent of assisting rather than eliminating the functions of the engineer.”

The correspondence, as well as the dispute in the case at Kansas City closed with BLE-CB&Q General Chairman Saltee's response dated February 17, 1971 wherein he advised:

“With confirmation from your office of the statements and understandings set forth herein above and without prejudice to our position that the control, manipulation, or operation from any point or source whatsoever, of locomotive power in service on the rails of Burlington Northern shall be vested solely in the craft of locomotive engineers as presently constituted by law, schedule rules, agreements, and practices, however established, we accept the installation of the WABCO LSR-1 Low Speed Locomotive Regulation System as an integral part of the locomotive and encompassed in the jurisdiction and responsibility of the locomotive engineer as presently or hereafter recognized by law, schedule rule, agreement, or practice however established.”

Your attention is also directed to further correspondence from your predecessor, T.C. Debutts, Vice President Labor Relations dated October 12, 1971, addressed to Northern Pacific General Chairman G.R. Bichsel. In this letter Mr. DeButts provided a description of the implementation of remote technology similar to that used in the Kansas City dispute and he stated:

“I believe after you have read it, you will readily agree that there is no basis for your expressed concern that we are turning the operation of the locomotive over to another craft.”

The technology involved in the both of the 1971 disputes was designed to operate the controls of the locomotive remotely by a radio communication device and understandings that the Carrier reached with this Committee's predecessors at the time are clear and concise. By virtue of its actions at Mandan, North Dakota, the Carrier has now violated the assurances that the Organization was given in resolution of our previous dispute. We have collectively worked under these assurances for the past thirty years and they cannot be unilaterally dismissed by the Carrier.

In more recent handling, this Committee and the Carrier arbitrated resolution of a dispute involving remote controlled locomotives operated by carmen within the mechanical confines at Havelock, Nebraska in 1994. The resulting award, PLB 5464, Award No. 11, dismissed the Organization's claims based on a doctrine of laches decision. In his Award, Referee Vernon stated that this was due to the fact that the Carrier had “forcefully stated its position” in 1988, denying the Organizations appeal in the matter, and the Organization did not file claims or

respond in a timely manner. The "forceful" position taken by the Carrier in that case was that remote controlled locomotives were devices clearly contemplated under the terms of Article III, Self Propelled Machines, of the 1964 National Agreement. There was no assertion that this was so called "new technology" that had replaced the engineer, rather the Carrier took the position that these remote controlled locomotives were devices clearly described under the existing 1964 Agreement between the parties. The Carrier further asserted that due to the fact that the remote controlled "self propelled machine" was used within the confines of the mechanical facility at the Havelock Shops, engineers need not be assigned pursuant to Article III. In his letter to then General Chairman Keppen, dated August 29, 1988, your predecessor, James B. Dagnon, Senior Vice President Labor Relations described the remote controlled locomotive at Havelock when he stated as follows:

"Article III, Section 1(a) of the National Agreement defines what a self propelled machine is. **Such a definition clearly applies to the machine involved herein.** Section 1(b) clearly states that the provisions of Article III ". . .will not apply to the operation of self propelled vehicles or machines in confined areas such as shop tracks, supply areas, tie yards and so forth. . .". Section 3 of the same article provides that operating employees "need not be used on self propelled vehicles or machines" except as specifically prescribed in Article III."

This position, namely that remote controlled locomotives are self propelled machines clearly contemplated under Article III of the 1964 National Agreement was set forth in 1988, was upheld in arbitration in 1995 and has now been the on property application between the parties for the past 14 years. In its haste to assign the duties of the engineer to another craft in the immediate case, the Carrier has apparently overlooked the remaining language of the 1964 Agreement. Section 2 of Article III of the 1964 Agreement states as follows:

"Rules or practices under which a locomotive engineer, or fireman, where presently required, is employed on on-rail self-propelled vehicles or machines for the purpose of operating the machine in the performance of all the work for which the machines are designed are retained."

Although Article III of the 1964 National Agreement made certain uses of self propelled machines permissible without the assignment of a locomotive engineer, it in no way shape or form changed the pre-existing application of the rules on this property regarding the requirement to assign a locomotive engineer when the so called "self propelled machine" was only used for motive power to switch cars. In Special Board of Adjustment No. 718, Award No. 14, Referee Seidenberg stated as follows in a dispute concerning proper application of Article III:

"The Board, on the record before it, finds that a reasonable construction of Sections 2 and 3 of Article III of the 1964 National Agreement, based on existing rules and practices on the property, is that the only engine service employees needed or required hereafter to operate a self-propelled machine are **the engine**

service employees engaged in operating the vehicle for the express purpose for which the vehicle was designed or planned .”

In the instant case, the remote controlled locomotive was planned and designed for the express purpose of performing general yard switching, and as with any self propelled machine used for that purpose, must be operated by a locomotive engineer. In fact, this Committee referably settled claims for violations of Article III of the 1964 National on August 1, 1996, well after the Vernon Award upheld the Carrier’s position that remote controlled locomotives were self propelled machines. The settlement states in pertinent part:

“It was agreed to allow those claims where a timeslip was timely filed on behalf of the first-out Engineer on the extra board at 0800 hours each date, in accordance with the following understanding.

These claims are based on the following factual set of circumstances. The Carrier used the crane for several days in a row to switch and move gondola loaded with ties so that a different machine could unload those ties. **On these dates, this crane preformed no other function other than to switch and move gondolas, and was not an integral part of the process of unloading ties.**

In was agreed that Article III of the 1964 National Agreement eliminated the necessity of utilizing engineers on self-propelled machines in most circumstances when such a machine was used in maintenance, repair, construction, or inspection work. Numerous forums have reaffirmed this right. In an on-property 1994 decision, Award No. 1 of PLB 5434, Referee Lieberman rejected the argument that self-propelled machines were used to supplant work trains. Those machines switched cars and unloaded ballast in road territory, without train orders. There was no other machine involved in that function and the movement of the cars was an integral part of the ballast unloading process. The manufactured function of the machine was not the determining factor. The determining factor was the actual service performed.

This settlement recognizes that **a self-propelled machine providing motive power in order to allow another machine to perform loading or unloading operations is not integrally involved in the work being performed and it was understood that such future occurrences would be resolved consistent with the settlement.”**

It is clear from the application delineated in our 1996 understanding that self propelled machines that are not an integral part of construction, repair or inspection work, and are only used to provide motive power, will be operated by locomotive engineers. Prior to the implementation of remote controlled service at Mandan, there was no current dispute between the parties on the application of these agreements governing the use of self-propelled machines. However, it now appears that the Carrier has forgotten that it was the party that initially took the position that

remote controlled locomotives are indeed self propelled machines and that application and practice now governs this property due to Referee Vernon's Award.

As the Organization has established that the remote controlled locomotive is a "self-propelled machine", it must now turn to the prevailing former Northern Pacific agreement at Mandan, North Dakota. The on property agreement, governing, "The manning of self propelled machines on the rails of this Company by Locomotive Engineers", dated May 1, 1955 is still applicable on the former Northern Pacific portion of this property. The Agreement states in pertinent part:

"Locomotive Engineers will be used on self-propelled machines, which are now or may hereafter be placed in operation, when moving under their own power on rails of this company with the understanding that the following exceptions will be made:

- (a) Self-propelled machines that can be removed from and replaced on track by hand or by power operated apparatus by employees whose services are required in connections with such machines.
- (b) Weed burners or sprayers, including extinguisher cars accompanying them, and ballast scarifiers.
- (c) Rail detector cars when not equipped with standard draw-bars.
- (d) Reconditioned automobiles with flanged wheels, and other track motor cars used by division officers as inspection cars.
- (e) Self-propelled machines, used for the purpose of cleaning out cinder pits, loading and unloading of coal, sand and company material, when movements are confined to the round house and shop yard tracks. Such machines may pick up a car first out to be loaded or unloaded, as outlined here, and dispose of such car; the car to be loaded or unloaded to be placed in and removed from roundhouse and shop yard by a yard engine crew where yard service is maintained. Idler car or tender will not be counted as a car.
- (f) Self-propelled machines used in connection with car repair yards, rail and material yards and store department yards for the purpose of handling heavy material, and whose movements are confined exclusively to these yards. Such machines may pick up a car first out to be loaded or unloaded, as outlined herein, and dispose of such car; the car to be loaded or unloaded to be placed in and removed from such yards by yard engine crew where yard service is maintained. A twin or multiple load will be considered as one car.

- (g) When pile driver with no more than one car in addition to trailer car is attached moves back and forth at point of work for the purpose of picking up and setting of piling. Point of work is defined as a restricted area not exceeding the area between a point where full use can be made of the nearest switch where cars may be set out or picked up and point at which work is being performed.
- (h) Wrecking cranes, ditchers, lidgerwoods, et cetera, performing their usual work will be excepted when the locomotion of these machines is provided by the power of a locomotive in charge of a locomotive engineer.

Note: A wrecking crane may make movements in connection with picking up a wreck without a locomotive engineer being in charge, provided a work train with a locomotive engineer is employed thereon is used in connection with the wreck.

(2) Under no circumstances will self propelled machines be permitted to perform switching of cars without the assignment of a locomotive engineer, except as outlined in exceptions.”

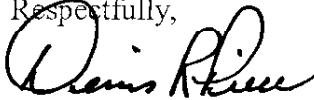
The agreement quoted above leaves no doubt that a locomotive engineer must be assigned to the remote controlled “self-propelled machine” currently in use at Mandan, North Dakota. The function of the self propelled machine in dispute is to “perform switching” and therefore the operation of the unit is the duty of a locomotive engineer. This position is consistent with our understandings governing self propelled machines across all of the former roads represented by this Committee. I must reiterate our request that the Carrier immediately restore the engineer’s assignment abolished at Mandan and assign the operation of whatever form of motive power is being used to the assigned engineer.

In closing, I must advise that this Committee is extremely disappointed with the choices that the Carrier has made in implementing additional remote controlled operations in Mandan, North Dakota. We have shown that this Organization was assured on more than one occasion that the installation of additional remote controlled technology would be to assist the engineer, not to eliminate him. We were also assured that the operation of the locomotive would not be assigned to other crafts. When additional remote controlled technology then arrived within the car shops at Havelock some 14 years ago, the Carrier took the position that these “self propelled machines” could be operated by other than engineers within the shops under the 1964 National Agreement. In taking that position, the Carrier accepted all that went with it, namely that when these same self propelled machines performed general switching outside of shop confines, engineers would be assigned and would operate them. The Organization has lived with that understanding for the past 14 years and it is now the Carrier’s turn to live within these understandings as well. By virtue of these agreements, the operation of these units in switching service is a duty belonging to the craft of locomotive engineer, and these duties cannot be assigned to another craft.

This Committee, as well as the other BLE Committees on this property, has approached you and the other members of your staff to the point of annoyance, offering to meet with the Carrier and resolve our differences in a manner that protects not only the interests of the operating employees, but those of the Carrier as well. To date we have been given no venue to accomplish this task. Instead, the Carrier has moved forward, removing the most productive, highly trained, and only licensed operating employee, the locomotive engineer, from the operation, violating our agreements by doing so. We do not feel that this decision is in the long term best interest of the Carrier, nor will it help BNSF reach the levels of productivity and/or safety that are attainable with experienced locomotive engineers at the controls of remote control units.

I will reiterate that we are willing to meet with you and your staff to resolve these differences, and would ask that you advise if you are willing to do so.

Respectfully,



Dennis R. Pierce
General Chairman

Enclosures

cc: Carl Ice, Senior Vice President Operations, (with enclosures)
Dave Dealy, Vice President Transportation, (with enclosures)
Mark Kotter, AVP, Operations, (with enclosures)
Milton Siegele, AVP, LR, (with enclosures)
Randy Luther, Director LR, (with enclosures)
D.M. Hahs, BLE International President, (with enclosures)
Steve Speagle, BLE Vice President, (with enclosures)
Rick Radek, BLE Vice President, (with enclosures)
All Local Chairmen, (without enclosures)
BNSF General Chairmen, (with enclosures)