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SEP 10 2007

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Mr. J.A. Huston
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September 7, 2007

Mr. R.S. Knutson
General Chairman UTU
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Gentlemen:

Special Board of Adjustment (SBA) 1155 found that the Flow Back Agreement affects the Consolidated Kansas City Yards. Article 50 of the Consolidated Kansas City Yards Agreement (Consolidated Agreement) states that:

...both the former Santa Fe UTU general Committee of adjustment (Santa Fe Proper [Mr. Huston's GO-009]) and the former Burlington Northern UTU General Committee of Adjustment (CB&Q [Mr. Knuteson's GO-245]) hold joint jurisdiction in the Consolidated Kansas City Yards and neither may make an agreement, nor a precedent settlement, nor and agreed understanding, which affects the Consolidated Kansas City Yards without the other General Committee's approval.

GO-245 did not approve of the implementation of the Flow Back Agreement within the Consolidated Kansas City Yards. Therefore, SBA 1155 found that the implementation of the Flow Back Agreement at Kansas City violated Article 50 of the Consolidated Agreement. The Board reasoned:

BN-seniority-holding engineers are flowing back into the Yards under the Flow Back Agreement, into an ATSF-allocated position, **and then exercising their high level of BN ground seniority to obtain a "prior-rights" and better BN-allocated assignment**, thus pushing the other employees on the roster down into less desirable positions with less desirable rest days. In addition, the share of each crew consist protected ground-service employee in the BN productivity fund is being diminished because more employees are accumulating shares in the fund than would have in the absence of the Flow Back Agreement. While these adverse effects may have been unintended by the parties to the Flow Back

Agreement, the fact is that **the manner in which seniority is exercised within the Consolidated Yards has been affected.**
(emphasis supplied)

This language suggests to me that the “affect” occurs not when an engineer governed by former ATSF Agreements exercise ground service seniority to a ground-service position governed by ATSF Agreements, but when, after entering ground-service, that same individual then exercises different seniority (former BN seniority) to a BN-allocated position within the Consolidated Kansas City Yards. The Board further supports this conclusion, reasoning:

BNSF and GO-009’s assertion that the Flow Back Agreement only permits an engine-service employee in an ATSF position to flow back to an ATSF ground-service position **ignores the reality of how seniority is exercised throughout the Consolidated Yards.** Engine-service employees may flow back to only ATSF-allocated ground-service positions, **but once in ground service, nothing restricts them from moving into a BN-allocated position.** BNSF and GO-009 entered into Flow Back Agreement with full knowledge of how Yard seniority works, and they could have predicted (as they did regarding vacation) that the **Agreement would impact ground-service employees throughout the Yards, and not simply those in ATSF-allocated positions.** (emphasis mine)

It is clear to me, based upon the above language, that had the exercise of seniority been restricted to ATSF-allocated positions accessed by ATSF seniority, there would have not been any “affect” as contemplated by Article 50 of the Consolidated Agreement. In context, then, the idea of exercising seniority “throughout” the yards means moving from the jurisdiction of one collective bargaining agreement to another, i.e., utilizing acquired ATSF ground-service seniority to improperly access and utilize BN ground-service seniority. Stated another way, so long as the exercise of seniority is made pursuant to agreement provisions that are under the jurisdiction of either GO-245 (the BN seniority roster) or GO-009 (the Santa Fe seniority roster), Article 50 of the Consolidated Agreement is not violated. Frankly, in that light, the decision makes perfect sense.

As you are both aware, Article XIII of the 1985 National Agreement made groundmen the source of supply for engine-service. Absent agreements to the contrary, dual seniority (ground and engine) employees may not utilize their ground-service seniority to enter into the ground-service craft “...only in the event he or she is unable to hold a position in engine service ...” Pursuant to the 1996 National Agreement, we modified that provision with the former ATSF Committees in the form of the Flow Back Agreement. There is no such

agreement with GO-245. Therefore, even though an employee enters ground service under Flow Back utilizing ATSF seniority off of an ATSF seniority roster, that does not allow that individual to then exercise BN ground service seniority. That person does not have viable ground-service seniority to exercise under the BN agreements.

GO-245 argued during the hearing, and the Board seemed to recognize, that another potential "affect" is the dilution of 245's Productivity Fund as a result of a BN crew consist protected employee accessing a ground service position through the use of the Flow Back Agreement. This is obviously a legitimate concern. However, pursuant to the express terms of the Flow Back Agreement, when a BN crew consist protected employee exercises Santa Fe seniority to a Santa Fe ground service position, that individual is precluded from participating in any crew consist related benefits. Section 10 of the Flow Back Agreement reads:

Engine-service qualified groundmen returning to ground-service under the terms of this agreement, who are not otherwise qualified for "crew consist" related benefits, shall not, **as a result of this agreement** become eligible therefor. Such "not otherwise qualified" employees shall be treated, during all time in ground-service **resulting solely from the exercise of rights granted by this agreement, as "non-protected" groundmen ineligible for any form of payment** (including "protective condition" guarantees, productivity fund buyouts, or "crew consist" related allowances and arbitraries) or any benefits available to crew consist protected groundmen under any applicable crew consist agreements. (bold mine, underscore in the agreement)

It is clear to me that if an engine-service qualified groundman who returns to ground service utilizing the Flow Back Agreement (meaning exclusive use of Santa Fe seniority and agreement application), cannot, as a result of the Flow Back Agreement, become eligible for any form of payment available to so-called "protected employees," including the accumulation of productivity fund share counts. It is recognized that the Implementing Agreement, an agreement preceding the Flow Back Agreement by about five years, provides that the BN so-called crew consist protected employees would remain eligible for crew consist related benefits, even while working a Kansas City Santa Fe allocation pursuant to Santa Fe seniority. The Implementing Agreement certainly presumed that such an individual, while utilizing Santa Fe seniority, would also have viable BN seniority. As pointed out earlier, when an individual exercises ATSF ground-service seniority from an ATSF engine-service position pursuant to the ATSF's Flow Back Agreement, that individual no longer has viable BN seniority. That being the case, that individual, by using ATSF seniority under an exclusively ATSF agreement, loses any entitlement to crew

consist related benefits – regardless of whether those benefits are embodied in the crew consist agreement applicable to a completely different agreement (the BN Agreement), or an Implementing Agreement. The individual cannot exercise BN seniority and cannot enjoy any benefit associated with any former BN agreement provision.

With all of the foregoing considered, the proper satisfaction of the decision of SBA 1155 is to no longer allow employees moving from an ATSF engine-service position to an ATSF ground-service position to then exercise different seniority to a BN ground-service position. So long as any seniority move is confined to the jurisdiction of one seniority roster and agreement, there is no Article 50 “affect,” and this application will restrict the exercise of Flow Back seniority exclusively to ATSF seniority rosters and agreements.

Sincerely,

A handwritten signature in black ink, appearing to be "M. R. [unclear]", written in a cursive style.

Cc: Clint Miller