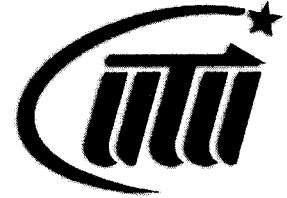


united transportation union
Burlington Northern & Santa Fe Railway General Committee of Adjustment GO-245



K.E. Trauernicht, 1st Vice Chairman
 J.A. Scott, 2nd Vice Chairman
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8250 West 80th Avenue
 The Meadows Centre, Units 7&8
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 Phone: (303) 420-1848
 September 19, 2007

S.M. Waller, 4th Vice Chairman
 S.M. Waller, Secretary

G.L. Shire
 General Director, BNSF Labor Relations
 P.O. Box 961030
 Fort Worth, Texas 76161-0030

Re: Continued Violation Of Article 50 & SBA No. 1155 Award

Dear Sir,

This letter is in response to your communication of September 7, 2007, in which you proposed to interpret the January 1, 2001 Flow Back Agreement so as to, in your opinion, "comply" with the Award by Special Board of Adjustment No. 1155 ("SBA 1155"). We disagree with your assumption that the Flow Back Agreement may be brought into compliance with Article 50 of the Consolidated Kansas City Yards Schedule through some wording machinations, which are in reality nothing more than cosmetic modifications to its provisions. As SBA 1155 concluded, the "application of the Flow Back Agreement . . . to the Consolidated Kansas City Yards without GO-245's approval violated, and continues to violate, Article 50 of the Consolidated Yards Schedule Agreement." Award at 33. Thus, what must occur to eliminate that continued violation of both Article 50 and Sections 2 First and 2 Seventh of the Railway Labor Act is for BNSF either to obtain GO-245's approval or to *immediately* cease and desist from applying the Flow Back Agreement in the Consolidated Kansas City Yards. Additionally, BNSF must notify all ground service employees who are working in the yard by virtue of that agreement that they must exercise their engine service seniority to return to engine service. We are willing to give the employees who must return to engine service until the end of this month to exercise their seniority.

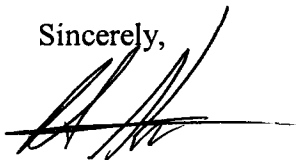
Your proposal that you may correct this past and continued violation of Article 50 by restricting the exercise of seniority to the ATSF allocated positions if an employee uses the Flow Back Agreement to return to ground service in the Consolidated Yards, is simply wrong for several reasons. First, Article 50 requires that BNSF obtain GO-245's approval before it attempts to apply an "agreed understanding" that "affects" the Consolidated Yards. And as SBA 1155 made clear, any agreement that deals with "the manner in which seniority is exercised within the Consolidated Yards," "affects the Consolidated Kansas City Yards . . .". Your proposed "understanding" would clearly "affect" the yards because you would allow engine-service employees who, but for the Flow Back Agreement, would not have been eligible to exercise ground-service seniority in the yards to hold positions in the yards that other employees in the yards would have been able to hold under the seniority they have due to the Implementing Agreement. This, in turn, limits the number and desirability of positions available throughout the consolidated yards.

Your approach to eliminating the “affect” as you mistakenly narrow that impact, ignores the fact that when senior ground service employees are allowed to flowback to an ATSF allocated position, the subsequent displacement pyramid will result in displacements to BN allocated positions; thus continuing the “affect.” Even if the employees displaced from the ATSF position have ATSF prior right seniority, the consolidated roster allows them to exercise a 1995 date to the BN allocated position. There is no “different seniority” as contended in your correspondence, only a limit to the “amount” of seniority that can be utilized by prior right employees. In other words, any employee hired within the last 12 years and working a BN allocated position in the consolidated yards is still *affected* by your proposal.

And second, you have no right to modify unilaterally the manner in which seniority may be exercised in the yard *once* an employee returns to ground service in the yards. The manner in which that seniority may be exercised is governed by the existing agreements, including the Implementing Agreement, and unless GO-009 and this Committee *agree* with BNSF to modify those agreements, those agreements continue to be controlling.

Your proposal to address the BN Productivity Fund issue by unilaterally and arbitrarily making “flowback” engineers ineligible to collect former BN productivity fund shares when working in ground service, is similarly without merit. Again, such a new interpretation of Section 10 of the Flow Back Agreement—which would be contrary to the manner in which you and GO-009 have interpreted that provision in the past—would be subject to Article 50 and require this Committee’s and GO-009’s approval before it could be applied to the Consolidated yards. Moreover, even if BNSF could unilaterally restrict participation in the BN Productivity Fund (which it may *not* do), implementing your proposal would violate our April 7, 2006 Memorandum of Agreement by which BNSF agreed that prior right BN yardmen “will be paid the BN rate of pay, the short crew allowance and qualify for trip credits for Productivity Fund payments (if eligible under respective Crew Consist Agreement) when working any Kansas City Consolidated Terminal yard job.” MOU at § 1.A. In short, BNSF and GO-009 have no right to modify the contractual productivity fund rights of former BN yardmen without GO-245’s approval. Thus, both Article 50 and the April 7, 2006 Memorandum of Agreement prohibit the band-aide approach you propose to avoid the clear import of SBA 1155’s Award and the clear commands of Sections 2 First and 2 Seventh of the Railway Labor Act. Accordingly, BNSF must *immediately* cease and desist from applying the Flow Back Agreement to the Consolidated Kansas City Yards. Please advise when BNSF intends to do so.

Sincerely,



R.S. Knutson
General Chairman

cc: J.A. Huston, UTU GC GO-009
P.C. Thompson, UTU International President
C.J. Miller III, UTU General Counsel
J.O'B. Clarke, Jr., Counsel GO-245
G.D. Ritter, LC UTU 5
J.C. Jones, LC UTU 5E