BEFORE
PUBLIC LAW BOARD NO. 7142
CASE NO.13
AWARD NO.13

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN (Western Lines)	)	**PARTIES TO THE DISPUTE**
vs.	)	
CSX TRANSPORTATION, INC.	)	

QUESTION AT ISSUE:

As stated by the Carrier:

Is the Company precluded by Article 84 of the BLET Single System Agreement (SSA) and Article IX of the 1986 BLET National Agreement as interpreted in Arbitration Award 458, from imposing the following CSXT Labor Agreements for Interdivisional Service?

As stated by the Organization:

1. Is the Carrier's notice dated July 1, 2010 to establish Interdivisional Service between Manchester, GA and Chattanooga, TN proper under Article 84 of the BLET Single System Agreement?

2. If the answer to question 1 above is yes, what are reasonable terms and conditions for establishing the proposed interdivisional service between Manchester, GA and Chattanooga, TN?

Background:

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Organization involved in this dispute are respectively Carrier and Organization within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Public Law Board Agreement dated January 2, 2008, (as amended) that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings. The parties to this dispute have each agreed to waive the 10 day notice requirement for exchanging briefs, as specified in Article 6 of the PLB Agreement.

By letter dated July 1, 2010 the Carrier notified the Organization of the their intent to establish Interdivisional (ID) freight service to operate between Manchester, GA and Chattanooga, TN under Article 84 of the BLET Single System Agreement.

Subsequent to the serving of the notice, the parties conducted several negotiating sessions resulting in a tentative agreement which was submitted by the Organization to the BLET Local Chairmen for ratification on September 19, 2011. By letter dated October 1, 2011, the Carrier advised the Organization of its intent to invoke the provisions of Article 84, Section

4, Paragraph A and arbitrate the matter within thirty (30) days. The Organization failed to complete the ratification process. The Carrier subsequently withdrew its endorsement of the six (6) dollar meal enroute allowance from consideration in the agreement.

Organization's Position:

The Organization acknowledges that it understands the Carrier's need and entitlement to the requested service but disputes that the proposed agreement meets the "reasonable and practical" threshold intended by framers of 1986 BLET National Agreement, from which Article 84 of the BLET Single System Agreement draws its essence. The Organization requests that this Board impose additional conditions on this service such as; the six (6) dollar meal in route allowance, a one year driving allowance for employees protecting the service; crews receive continuous held away from home terminal time after fifteen (15) hours and if held at the away from home terminal for twenty-three (23) hours the crew will either be deadhead to the home terminal or paid a penalty day if held for service.. The Organization argues these conditions are both reasonable and practical and the language in Article 84 empowers this Board with both the authority and responsibility to incorporate these conditions as part of settlement of this dispute.

Carrier's Position:

The Carrier contends their notice met all the requirements specified in Article 84 of the BLET Single System Agreement and Article IX of the 1986 BLE National Agreement. The Carrier also argues that these agreements preserve their right to interdivisional service when the proposed agreements are to eliminate restrictions and/or increase operational efficiency to better serve its customers and remain competitive in the rail industry. The Carrier argues that their notice contains both reasonable and practical conditions as mandated in Article 84 of the BLET Single System Agreement and Article IX of the 1986 BLET National Agreement. Additionally, the Carrier submits the following awards supporting their position: PLB 7463, Award No.1 (Radek), PLB 5563, Award No. 1 (O'Brien) and PLB 7285, Award No. 1 (Domzalski).

AWARD

After a thorough review of the record, and the eloquent and well-presented arguments by both parties at a hearing in Jacksonville, FL on November 11, 2011, the Board concludes that the Carrier's notice of September 23, 2011 (Attachment A) is proper and that the provisions contained therein meet the reasonable and practical conditions mandated in Article 84 of the BLET Single System Agreement and Article IX of the 1986 BLET National Agreement. The parties agreed to the additional six (6) dollar meal enroute allowance contingent upon ratification of a voluntary agreement. Following the failed ratification, the Carrier was entitled to withdraw this enhanced provision from consideration. This decision is based on the unique facts and circumstances in the instant case and is thus not to be viewed as setting a precedent in any other interdivisional service disputes.

Roger K. MacDougall
Chair and Neutral Member

Myron Becker
Carrier Member

Gil Gore
Organization Member

Dated: November 18, 2011 At: Chicago, IL

Attachment A PLB 7142 Award 13

CSXT Labor Agreement 1-041-10

File 8010-01MAN-CHAT

MEMORANDUM OF AGREEMENT

Between

CSX TRANSPORTATION, INC.

And its employees represented by

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

Pursuant to the provisions of Article 84 – Intraseniority/Interseniority District Service of System Agreement CSXT No. 1-023-07, it is agreed that assigned and/or unassigned interdivisional freight service may be operated between Manchester, Georgia through Atlanta, Georgia to Chattanooga, Tennessee, under the following conditions:

ARTICLE I

Upon ten days' advance written notice to the General Chairman of the Brotherhood of Locomotive Engineers and Trainmen interdivisional freight service may be established to operate between Manchester, Georgia and Chattanooga, Tennessee. When such service is operated, the conditions hereinafter set forth shall apply.

ARTICLE II

1. Manchester, Georgia will be the home terminal for engineers operating in the service described herein. Chattanooga, Tennessee will be the away from home terminal. Initially, this service will be protected by a freight pool or the extra board. Frequency and schedule of train service permitting, regular assignments may be established.

2. Engineers performing this service will be compensated for actual miles operated on a continuous time basis. All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on May 31, 1986 by the number of miles encompassed in the basic day as of that date. Weight-on-drivers additives will apply to mileage rates

calculated in accordance with Section 2 B. of Article 84 of System Agreement CSXT No. 1-023-07.

3. When Engineers are required to report for duty or are relieved from duty at a point other than the on and off duty points fixed for the service covered by this Agreement, the Carrier shall authorize and provide suitable transportation for such engineers to the on and off duty points as provided by the BLET Single System Agreement, CSXT No. 1-023-07.

4. ID Service crews will not be tied up en-route but will be deadheaded to the final destination or returned to the home terminal and will be allowed the trip mileage.

5. In order to expedite the movement of interdivisional runs operated under this agreement, the Carrier shall determine the conditions under which the crews may stop to eat. When such crews are not permitted to stop to eat, they will be paid an allowance of $1.50 for the trip.

6. Reverse lodging will be available under the terms and conditions noted in Article 21 of CSXT No. 1-023-07.

ARTICLE III

1. Initially, freight service operated under this Agreement will be allocated to SCL engineers assigned at Manchester and L&N engineers assigned at Atlanta on the following percentage basis for service between Manchester and Chattanooga (214 actual miles).

   L&N - 63%

   SCL - 37%

2. CMC mileage records will be accessible to Local Chairmen for determining any pro-ration of work between seniority districts.

3. Equity for L&N engineers at Atlanta will be made available on the percentage basis noted above with positions advertised in regular assignments or pool service at Manchester.

4. Engineers in the service will mark off and report at Manchester, Georgia, the home terminal, except in cases of emergency. Vacancies occurring at the away-

Section 7 Protection

A. Every employee adversely affected either directly or indirectly as a result of the application of this rule shall receive the protection afforded by Sections 6, 7, 8 and 9 of the Washington Job Protection Agreement of May 1936, except that for the purposes of this Agreement, Section 7(a) is amended to read 100% (less earnings in outside employment) instead of 60% and extended to provide period of payment equivalent to length of service not to exceed six (6) years and to provide further that allowances in Sections 6 and 7 be increased by subsequent general wage increases.

B. Any employee required to change his residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement and in addition to such benefits, shall receive a transfer allowance of four hundred dollars ($400.00) and five (5) working days instead of the "two working days" provided by Section 10(a) of said Agreement. Under this Section, change of residence shall not be considered "required" if the reporting point to which the employee is changed is not more than thirty (30) miles from his former reporting point.

C. If any protective benefits greater than those provided in this Article are available under existing agreements, such greater benefits shall apply subject to the terms and obligations of both the Carrier and employee under such agreements, in lieu of the benefits provided in this Article.

Attachment "B"

CSXT Labor Agreement 1-041-10

THE FOLLOWING QUESTIONS AND ANSWERS CONSTITUTE AGREED-UPON INTERPRETATIONS OF ATTACHMENT "A" – LABOR PROTECTIVE CONDITIONS:

1. Q. Must a "Displaced employee" exercises his seniority to an equal or higher-paying job to which he would be entitled in order to qualify for displacement allowance?

   A. Not necessarily. However, a "displaced employee" failing to do so will be treated for purposes of the guarantee as occupying an available higher paying position subject to application of the one-for-one principle.

2. Q. Is an employee hired after the effective date of the transaction eligible for protection under this agreement under any circumstances?

   A. Yes, provided subsequent action taken by the carrier, pursuant to the Agreement, results in such employee attaining status as a "displaced employee" or a "Dismissed employee".

3. Q. A job is available to more than one protected employee with higher earnings than any of their guarantees. Will the earnings of the higher assignment be charged against the guarantees of all such employees?

   A. No. The one-for-one principle applies in that no more than one protected employee will be treated at any one time as occupying a higher rated position held by a junior employee.

4. Q. An employee performs service as an Extra Yardmaster, both prior to and subsequent to the effective date of the transaction. How will such service be computed?

   A. (1) Such service and time prior to the transaction shall be included in the test-period computations.

   (2) Compensation for such service and time paid for subsequent to the transaction shall be applied against the test period guarantee.

5. Q. Is it necessary that an employee be displaced from his assignment or position in order to establish eligibility for protective benefits under the Agreement?

   A. No, provided it can be shown that "such employee" is placed in a worse position with respect to his compensation.

6. Q. An employee with a guarantee of $1,900 per month fails to exercise seniority to obtain a position with posted earnings of $1,900 - $1,950. In a particular month, he earns $1,850. What payment, if any, would be due?

   A. None, subject to the one-for-one principle

7. Q. Employee Jones' guarantee is $1,850 per month, and he claims a job with posted earnings of $1,850 - $1,900 per month. A junior employee, Smith, has guarantee of $1,700 per month and claims a job with posted earnings of $1,900 - $1,950 a month. In a month, Jones has earnings of $1,750 and Smith earns $1,875 in the same month. Can the job to which smith is assigned be charged against Jones?

   A. No. Jones fulfilled his obligation by exercising seniority to an assignment with earnings equal to or exceeding his guarantee. Providing Jones has fulfilled all his obligations he will be due $50.

EXAMPLE

Jones is senior to Smith and their respective test period monthly components are as follows:

(Jones)	Monthly earnings, average	$1,600.00
	Monthly guarantee average	$1,800.00
	Monthly posted average	$1,850.00 - $1,900.00
(Smith)	Monthly earnings, average	$1,550.00
	Monthly guarantee average	$1,700.00
	Monthly posted average	$1,900.00 - $1,950.00

8. Q. Jones was available for service the entire month and earned $1,680. What compensation would be due Jones?

   A. the $1,680 he earned.

9 Q. Jones was available for service the entire month and earned $1,575. What compensation would be due Jones?

   A. His earnings of $1,575 plus $25, or $1,600, the amount of his monthly earnings guarantee.

10. Q. Jones marked off two (2) days (his assignment worked on each of the two days) during the month he earned $1,575. What compensation is due Jones?

   A. His is only due $1,575, his actual earnings, as he was not available for service equivalent to his test period monthly guarantee. The lost earnings from the two days deducted from his monthly guarantee would be less than his actual earnings. He would be entitled to his actual earnings only.

11. Q. May an employee called and used as an emergency conductor or engineer, as the case may be, be charged with a loss of earnings on his regular assignment or with higher earnings on other assignments account of being so used?

   A. No, as he is protecting his seniority as a conductor or an engineer in accordance with the requirements of the applicable Agreement.

12. Q. How is weekly vacation pay treated in computing guarantees under this Agreement?

A. Compensation for vacation during a calendar month is treated for the purposes of the guarantee, the same as any other compensation and creditable to that month. Thus if a vacation falls entirely within one month, the compensation shall be treated as all other compensation and creditable to that month. However, when vacation commences in one month and ends in another, the vacation compensation will be proportioned between the months (1/7 of the week's compensation for each day on vacation) in accordance with the number of vacation days falling in each month.

13. Q. In computing monthly guarantees, may a protected employee be charged with voluntary absences when directed or summoned by the Company to attend investigation, court, rules classes, etc.?

A. No, provided such loss of time is necessary in order to reasonably comply with such directive or instructions.

14. Q. If an employee elects to accept the protective conditions of this Agreement while otherwise eligible for protection under a former protective arrangement or agreement, will such employee resume protection under the former agreement at the expiration of the protective period under this Agreement?

A. Yes, provided protection under the former agreement has not been exhausted or expired.

15. Q. What is the meaning of "change in residence"?

A. A "change in residence" as referred to in the Agreement shall only be considered "required" if the reporting point of the employee would be more than thirty (30) normal highway miles, via the most direct route, from the employee's point of employment at the time affected, and the normal reporting point if farther from the employee's residence than his former point of employment.

16. Q. A job is advertised and the potential earnings are not posted. Jones is the successful bidder and earns $1,550 during the month. Could the earnings of any assignment with either higher or lower earnings be charged against Jones?

A. No, since the potential earnings of the job were not posted, Jones would be entitled to $1,550 plus $50, or $1,600, the amount of his monthly earnings guarantee, provided he met all other requirements. When the potential earnings of the job are posted, Jones would then be expected to place himself on a higher paying position, in accordance with normal bidding or displacement rules at his first opportunity, subject to principles outlined in Q. and A. No. 1.

17. Q. How soon after the end of the month in which an employee is entitled to a protection allowance must he file a claim for such allowance?

A. Within 60 days following end of such month. However, the employee need not file a claim until after being advised by the Carrier of his "average monthly compensation."

18. Q. When does an employee have to make the election of benefits, under Section 10 of Article XIII?

A. Within 10 days of the date the employee receives notification from the Carrier that as a "Displaced Employee or a Dismissed Employee", he has been placed in a worse position with respect to his compensation as a result of the implementation. It is understood such employee will be provided his "Test Period Average before an election must be made.