

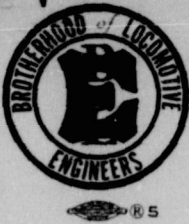
STB

FD-32670 (SUB38)

3-22-00

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Brotherhood of Locomotive Engineers

General Committee of Adjustment, Union Pacific Railroad - Eastern District

1620 Central Ave. • Room 203 • Cheyenne, WY 82001 • (307) 635-6736 • FAX (307) 634-1108

RANDY SCHNEIDER
Vice General Chairman

MICHAEL YOUNG
General Chairman

DON LeSAGE
Secretary-Treasurer

197879

March 21, 2000

Mr. Vernon A. Williams
Secretary - Surface Transportation Board (STB)
1925 K Street, NW
Washington, D.C. 20423

VIA OVERNIGHT MAIL

Dear Mr. Williams:

This is in regards to the arbitration review petition filed by former SSW-BLE General Chairman D. E. Thompson on March 7, 2000, regarding a decision in the New York Dock Arbitration Board No. 331. I believe that such petition is identified as Finance Docket No. 32760-Sub. No. 38.

It is evident that it is the petitioner's request for the STB to review and overturn the decision of Arbitrator Muessig as regards to Case No. 1 of NYD Arbitration Board No. 331.

This is to advise the STB that this BLE General Committee does **NOT** concur with the SSW petitioner. Further, this Committee believes the STB should deny the petition to review NYD Board 331 and sustain the decision of Arbitrator Muessig.

To that extent, I have attached a copy of this General Committee's position regarding this matter for your ready reference and review.

This is to request that the STB consider our position as a part of the record in this case.

Yours truly,

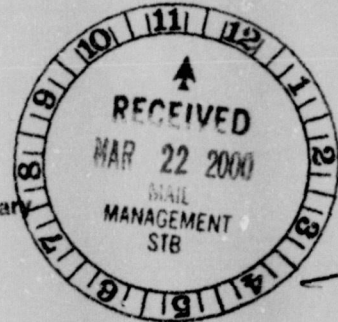
Michael Young
General Chairman-BLE
UP/Eastern District

cc: Mr. W. S. Hinckley, General Director-Labor Relations, UPRR
Mr. Don Hahs, VP BLE

ENTERED
Office of the Secretary

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March 21, 2000

Mr. Eckhard Muessig, Arbitrator
Mr. Ed. Dubroski, President-BLE
Mr. Harold Ross, General Counsel Attorney-BLE
Mr. Charles Rightnowar, General Chairman-BLE
Mr. D. E. Thompson, General Chairman BLE - former SSW



BEFORE
THE SURFACE TRANSPORTATION BOARD
FINANCE DOCKET 32760-Sub. No. 38

**ARBITRATION REVIEW OF
NEW YORK DOCK
ARBITRATION BOARD NO. 331**

POSITION OF
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
GENERAL COMMITTEE OF ADJUSTMENT
UNION PACIFIC/EASTERN DISTRICT

STATEMENT OF FACT:

The BLE Union Pacific Eastern District (UPED) General Committee is the duly designated and authorized collective bargaining representative for the Brotherhood of Locomotive Engineers for the craft of Locomotive Engineers working in the Expanded Salina Hub Agreement.

Therefore, any appeals for an opinion from parties other than this General Committee should be disregarded as it assumes an interpretation of the of the Collective Bargaining Agreement (CBA) applicable to the Expanded Salina Hub Agreement.

D. E. Thompson is not a BLE General Chairman with a CBA to administer in the Expanded Salina Hub. I am the BLE General Chairman and the correct bargaining representative for the employees working under the BLE CBA in the Expanded Salina Hub.

BACKGROUND OF DISPUTE:

The Carrier properly served a Section 4 Notice of New York Dock on the affected parties on June 4, 1999, which included the territory for the Engineers working in the Expanded Salina Hub – Zone 2.

Notwithstanding those appropriate procedures, suffice it to say that were several negotiation sessions with BLE and Carrier representatives for this merger territory. Those negotiations culminated in agreed upon terms and conditions of the new hub, including seniority and allocation of forces for Engineers.

Such merger implementing agreement between the parties was very clear and concise. It eliminated the existing Engineer seniority for the three (3) separate BLE groups affected by the merger at Salina and created an entirely new seniority district comprising the new hub territory. Such revision in the employees working conditions is consistent with STB approved merger transactions. Further, the STB granted NYD labor protective conditions to all adversely affected employees in the UP/SP merger, including this territory of the UP.

The Expanded Salina hub merger implementing agreement was ratified by the affected BLE membership in this territory by overwhelming numbers.

After implementation of the hub agreement the BLE SSW committee asserted that employees who were **NOT** Engineers, or identified as Engineers in training, on the effective date of the agreement were entitled to prior rights in the hub territory. This Committee disagreed with that position. In accordance with Section 11 of NYD procedures the dispute was forwarded to NYD Board 331 for a final and binding decision, which was rendered on February 8, 2000.

POSITION OF UP COMMITTEE:

It is this General Committee's position that the issue of granting prior rights to Engineers in Zone 2 of the Expanded Salina Hub Agreement was properly addressed in the merger implementing Agreement. Such extended seniority rights were reached in Section 4 negotiation between all the affected parties.

The SSW appeal only seeks undue relief from the STB regarding Engineer seniority consolidations and specifically the granting of prior rights in the Expanded Salina Hub. It is the UPED's position that such compromise was completed at the bargaining table in collective bargaining between the parties. STB should not intrude in that sanctioned process.

This Committee believes that the SSW appeal has no merit. The petition should be denied on the basis that the SSW Committee has clearly failed to meet the standard of review necessary for STB to consider, revise or overturn a New York Dock Arbitration case.

The SSW Committee is attempting to have the STB interfere and overturn the Arbitrator's decision in NYD Board No. 331. Thereby, potentially wrongly granting prior rights to former employees who were not locomotive Engineers on the effective date of the merger implementing agreement, July 16, 1998.

It is our continued position that the clear language of the agreement cannot be mistaken regarding establishing prior right Engineer seniority in the hub territory. Article X of the controlling agreement clearly defined that date as follows:

"ARTICLE X - EFFECTIVE DATE

This Agreement implements the merger of the Union Pacific and SSW railroad operations in the area covered by Notice dated June 4, 1998.

Signed at Omaha, Nebraska, this 16th day of July, 1998."

Accordingly, the date for granting prior rights seniority in the hub was established for Engineers who had an Engineer's seniority date on or before July 16, 1998 or identified as Engineers in training on that date. It did **NOT** provide for prior rights to be granted to potential Engineers, promoted in the future, as the SSW would have some believe.

It is our position that Chairman Muessig, using the clear and concise language of the agreement, saw through the disputed issue. Using good faith, logic and reason the NYD panel correctly determined that an employee must have had an Engineer date on July 16th to be granted prior rights in the hub agreement.

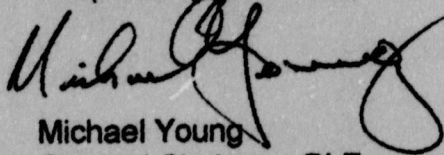
I believe that the New York Dock panel, with Arbitrator Muessig, took into account all the specific terms and conditions of the agreement, and the clear intent of the parties, determining his award, which we believe is a correct interpretation of the BLE merger Agreement.

It would appear to this writer that there is unanimity of position that the Arbitration panel used to determine their decision. It is obvious that the Board concluded that the contractual rights were reached between the parties and the employees agreed to those conditions. Consequently, the clear and precise language of the negotiated agreement directed the NYD panel to its opinion and award.

It is noted that the SSW's appeal conveniently eliminates any reference to the effective date provision, which was prerequisite to be considered as a prior right Engineer in the hub. Consequently, it is obvious that the former SSW is simply attempting to use this STB format to take 'a second bite of the apple' to get something that they failed to bargain for at the table.

For the reasons set forth above, the STB should not overturn the NYD Board No. 331 panel and continue to Sustain the decision of Arbitrator Muessig as regards this issue.

Respectfully submitted,



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