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Mr. Gene Shire
General Director Labor Relations
The BNSF Railway Company
Post Office Box 961030
Fort Worth, Texas 76161-0030

August 3, 2009
File: RSIA

Dear Mr. Shire:

This is in reference to your paper titled "The Rail Safety Improvement Act of 2008 and Six and Seven Day Assignments". After thoroughly reviewing your paper we find ourselves compelled to reply.

To begin with, you must recognize that the company recently negotiated with us to change our collective bargaining agreements to reduce all 6 and 7 day local, helper and work train assignments across all former roads to 5 day assignments. In return for us agreeing to relax our work rules, the company agreed to provide a six day guarantee to these assignments, which were then reduced to five days. It is self evident that you needed an agreement to reduce these assignments to five days. Otherwise, there would have been no negotiations. The company would have simply exercised a unilateral change to the assignments. However, the company did not do this.

It is disingenuous of you to now contend that the law gives you the right to reduce these assignments. If nothing else, the BLET should be left out of this battle, because we have resolved the matter through an agreement.

We disagree with your assertion that the law allows the company to reduce six and seven day assignments to five day assignments. The law has no bearing on your contractual requirement to maintain six and/or seven day assignments. The law applies to the man, not the assignment. If an employee is not rested under the law, the job must simply be held until the employee's rest or in some cases filled by someone off the extra board. Our agreements are not superseded just because the changes in the law require more rest than in the past.

You state that "...The RSIA will not allow a train service employee to: ...remain or go on duty after that employee has initiated an on-duty period each day for 6 consecutive days..." What you fail to understand is that the law is not saying that the RSIA will not allow an assignment to: ...remain or go on duty after that assignment has initiated an on-duty period each day for 6 consecutive days... However, you act as if this were the case.

Again, the law is about the man, not the assignment. Our CBA requires the company to provide certain amounts of work on a predictable and regular basis. This affords a regular engineer of a certain quality of life and improved working conditions over unassigned service. These assignments also improve the quality of life and working conditions for extra board employees who protect these assignments whenever the regular employee is taking a day off, because of the predictable nature of the assignment's call window.

It will not be unlawful for BNSF to continue to bulletin 6 and 7-day assignments. It will simply be unlawful to work a man more than six straight days without first providing 48 or 72 hours of rest. For example, on a six day assignment the regular engineer can work the job for the entire first week and he will then be required to rest for 48 hours. This will cause him to miss work on his Monday during week two, but he will be available for work on Tuesday through Saturday. He will then be available for the entire 6 day work week on week three and the process repeats itself. The assignment is held until the regular man's rest or under some circumstances is filled by the extra board two days per month because the regular engineer is not rested to work on Mondays during weeks two and four.

This is not our first rodeo regarding changes to the hours of service. We have witnessed the maximum on-duty period be reduced from 16 hours to 14 hours and then to 12 hours. However, we have never before seen the company attempt to restructure our assignments as a result. Use of the extra board is a routine practice that we have followed for years whenever a regular engineer is not rested for his assignment. We have never contemplated restructuring assignments because a regular engineer was unable to work as a result of hours of service restrictions.


You cited numerous awards, but your analysis missed the most important point in the awards. Most of these awards dealt with claims where a regular engineer was not used due to hours of service restrictions and there was a claim for make whole. The point that you overlooked is that these jobs were filled by an extra board employees whenever the hours of service prohibited the regular engineer from working. This goes to the heart of what we are arguing. The law applies to the man, not the assignment.

There are a myriad of events which could cause an engineer to miss a day of work and reset his 6-day threshold. Layoffs (e.g. PLD, single day vacations, illness, etc.) will always cause the 6-day work cycle to be reset. As a consequence, the regular engineer in the example noted above would not require mandatory rest whenever these events reset his cycle. Further, it could be the Carrier that annuls the assignment during the workweek which it does from time to time and the employee's calendar day start cycle will be broken due to no action of his own. Providing the Carrier does not violate the collective bargaining agreement by reducing assignments to five days, there would remain the opportunity for the regular engineer to work additional days without being subjected to mandatory rest.

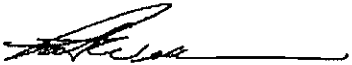
This is not a matter of engineers self regulating. It's simply a matter of honoring the contract by maintaining 6 and 7 day assignments which provide the greatest work opportunity to regular engineers whenever they are available to work under the hours of service.

While you suggest that the company can bulletin an assignment to work only five days and provide a "RSIA Unavailable Day" on the 6th day and then a rest day on the seventh day. What you fail to recognize is that the regular engineer is not restricted from working on the 6th day under the hours of service. Because he has only had 5 starts come the 6th day and he has every right to work the 6th day. To assign a "RSIA Unavailable Day" is arbitrary and a violation of the CBA.

Respectfully,



BLET General Chairman



BLET General Chairman



BLET General Chairman



BLET General Chairman

- Cc: Milton Siegele, BNSF AVP
- Steve Speagle, BLET VP
- Ed Rodzwick, BLET Pres.
- All LC's, BLET