

U.S.C. § 2201, that these labor disputes are “minor disputes” within the meaning of the RLA, and are therefore subject to mandatory and binding arbitration.

Jurisdiction, Parties and Venue

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337. This case presents an actual controversy arising under 45 U.S.C. § 151 *et seq.* within the jurisdiction of the Court pursuant to 28 U.S.C. § 2201(a).

3. Plaintiff BNSF is a common carrier by rail under the Interstate Commerce Act and a carrier as defined in Section 1 First of the RLA, 45 U.S.C. § 151 First. BNSF maintains its principal office at 2500 Lou Menk Drive, Fort Worth, Texas

4. Plaintiff KCS is a common carrier by rail under the Interstate Commerce Act and a carrier as defined in Section 1 First of the RLA, 45 U.S.C. § 151 First. KCS maintains its principal office at 427 West 12th Street, Kansas City, Missouri 64105.

5. Plaintiff CSXT is a common carrier by rail under the Interstate Commerce Act and a carrier as defined in Section 1 First of the RLA, 45 U.S.C. § 151 First. CSXT maintains its principal office at 500 Water Street, Jacksonville, Florida 32202-4465.

6. Plaintiff NS is a common carrier by rail under the Interstate Commerce Act and a carrier as defined in Section 1 First of the RLA, 45 U.S.C. § 151 First. NS maintains its principal office at Three Commercial Place, Norfolk, Virginia 23510-2191.

7. Plaintiff UP is a common carrier by rail under the Interstate Commerce Act and a carrier as defined in Section 1 First of the RLA, 45 U.S.C. § 151 First. UP maintains its principal office at 1400 Douglas Street, STOP 0710, Omaha, NE 68179.

8. Defendant UTU is an unincorporated association and a labor organization as defined in the RLA. The UTU is the collective bargaining representative of the crafts or classes

of conductors, trainmen, and yardmen employed by the plaintiffs, and also represents those employees in grievance and arbitration procedures under the RLA. Members of the UTU have performed and continue to perform work in this judicial district. UTU maintains its principal office at 14600 Detroit Avenue, Cleveland, Ohio 44107.

9. Defendant BLET is an unincorporated association and a labor organization as defined in the RLA. The BLET is the collective bargaining representative of the craft or class of locomotive engineers employed by the plaintiffs, and also represents those employees in grievance and arbitration procedures under the RLA. Members of the BLET have performed and continue to perform work in this judicial district. BLET maintains its principal office at 1370 Ontario Street, Cleveland Ohio 44113-1740.

10. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the defendants are residents of, are found in or have agents within, or transact their affairs in this judicial district, and the activities of the defendants giving rise to this action occurred or have effects in this district.

The Parties' Collective Bargaining Agreements

11. Plaintiffs and defendants are parties to a variety of collective bargaining agreements, including both national agreements, which apply to multiple railroads, and local agreements, which apply to a single railroad (or portion of a railroad). These agreements include both express written agreements and implied agreements based on past practice. To the extent that a subject is not covered by agreement, the railroads retain managerial prerogative to operate as they deem prudent.

12. The parties' collective bargaining agreements are designed to accommodate the fact that regular attendance of operating employees is crucial to the carriers' ability to run trains.

Accordingly, operating employees are generally required to be available for work on a regular, full-time basis. However, all operating employees are subject to the Hours of Service Act, 49 U.S.C. § 21101 *et seq.*, which limits the number of hours a train crew may remain on duty and requires a certain number of off-duty hours between returning to duty. In addition, operating employees may ask to “lay off,” or temporarily absent themselves from active status. Under the agreements, employee lay offs are subject to carrier approval, and requests to lay off may be denied for, *inter alia*, the needs of carrier service.

13. The parties’ agreements contain a variety of provisions that address specific work assignments and related procedures governing utilization of crews who operate various types of train service, including through-freight, locals, traveling switch engines and yard assignments. In general, the agreements provide that trains will be operated by crew members who may be “regularly assigned” (“assigned service”), or are part of a “pool” of employees (“pool service”) or are on an “extra board” that is used to fill vacancies. All such assignments are normally filled through seniority-based bidding.

14. In assigned service, employees ordinarily work a pre-set number of days per week. Most assigned service jobs are assigned for five days a week, but a minority of jobs are established and advertised as six day or seven day assignments, with a specified period of time off between each assignment. Employees who bid to such jobs are expected to work the number of days per week in the assignment selected.

15. Pool service is a mechanism for staffing trains on an as-needed basis. Employees in pool service operate on a “first-in, first-out” basis. They are assigned to a “board” that rotates from top to bottom. As trains prepare to depart from a terminal, employees are called in order off this board to operate the train. The specific time that a pool crew will be called for service

varies because these trains are not scheduled in advance. Rather, train departures vary based on a number of ever-changing factors, such as customer requirements, weather, and traffic volume. As a result, many pool freight employees work highly variable schedules, including weekends and holidays.

16. Extra boards provide for a group of employees who cover all vacancies in a designated class of service and territory. As in pool service, extra board employees are assigned to a board that rotates from top to bottom as employees are called for duty. Moreover, as in pool service, work opportunities for extra board employees do not occur at predictable times. As a result, extra board employees also work highly variable schedules, including weekends and holidays.

17. The parties' collective bargaining agreements also address compensation for operating employees. For some operating employees, the major component of compensation is based on the mileage worked. However, extra board employees (as well as some pool service employees) are also subject to "guarantees," which are minimum periodic amounts of compensation due each employee regardless of the total number of work opportunities. Guarantee provisions in the parties' agreements generally provide that the amount of the guarantee may be reduced or prorated when an employee lays off or is otherwise unavailable for service, and thereby are designed to ensure minimum levels of availability.

The Rail Safety Improvement Act

18. The RSIA was passed in 2008. Among other provisions, the RSIA amends the Hours of Service Act, 49 U.S.C. § 21101 *et seq.* In particular, Section 108(b) of the RSIA provides that "a railroad carrier and its officers and agents may not require or allow a train employee to:"

(1) remain on duty, go on duty, wait for deadhead transportation, be in deadhead transportation from a duty assignment to the place of final release, or be in any other mandatory service for the carrier in any calendar month where the employee has spent *a total of 276 hours--*

(A) on duty;

(B) waiting for deadhead transportation, or in deadhead transportation from a duty assignment to the place of final release; or

(C) in any other mandatory service for the carrier;

(2) remain or go on duty for a period in excess of *12 consecutive hours*;

(3) remain or go on duty unless that employee has had at least *10 consecutive hours off duty* during the prior 24 hours; or

(4) remain or go on duty after that employee has initiated an on-duty period each day for--

(A) *6 consecutive days*, unless that employee has had at least 48 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier except that--

(i) an employee may work a seventh consecutive day if that employee completed his or her final period of on-duty time on his or her sixth consecutive day at a terminal other than his or her home terminal; and

(ii) any employee who works a seventh consecutive day pursuant to subparagraph (i) shall have at least 72 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier; or

(B) except as provided in subparagraph (A), 7 consecutive days, unless that employee has had at least 72 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier, if--

(i) for a period of 18 months following the date of enactment of the Rail Safety Improvement Act of 2008, an existing collective bargaining agreement expressly provides for such a schedule or, following the expiration of 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, collective bargaining agreements entered into during such period expressly provide for such a schedule;

(ii) such a schedule is provided for by a pilot program authorized by a collective bargaining agreement; or

(iii) such a schedule is provided for by a pilot program under section 21108

of this chapter related to employees' work and rest cycles.

The Secretary may waive paragraph (4), consistent with the procedural requirements of section 20103, if a collective bargaining agreement provides a different arrangement and such an arrangement is in the public interest and consistent with railroad safety.

P.L. 110-432, Div. A, Title I, § 108(a), 122 Stat. 4860 (emphasis added). The changes imposed under Section 108(b) take effect on July 16, 2009.

Pending Disputes Over RSIA Implementation

19. The railroads and the unions are currently engaged in various disputes over the interpretation and application of their collective bargaining agreements in light of the RSIA's changes to Hours of Service requirements. While the array of disputes varies from carrier to carrier and from union to union, all of these disputes fall into one of the four separate categories detailed below.

20. First, the parties disagree about whether employee "unavailability" as a result of Section 108(b) of RSIA may be factored into the calculation of compensation guarantees under the parties' agreements. The railroads contend that when an employee is "unavailable for any service" as a result of reaching 6 or 7 consecutive days of service or the 276 hour monthly cap, the guarantee owed to the employee may be reduced to reflect the employee's unavailability. On information and belief, the defendants deny that the railroads are entitled, under the agreements, to reduce guarantee payments to reflect absences resulting from the requirements of Section 108(b) of the RSIA.

21. Second, the parties disagree about whether or under what circumstances a carrier may hold an employee out of service when the employee is approaching the 276 hours monthly cap. The carriers contend that they may hold an employee out of service if, by taking an additional trip, the employee would be at risk of exceeding the 276 hour limit. On information

and belief, the defendants deny that the carriers are entitled, under the agreements, to hold an employee out of service in such circumstances.

22. Third, the parties disagree about how to manage 6 or 7 day assignments under the RSIA's provisions. The carriers maintain that, to the extent that they retain 6 or 7 day assignments and either do not seek or do not receive a waiver from the Secretary of Transportation, the carriers will either (a) schedule RSIA-mandated unavailable days for any employees working 6 or 7 day assignments, or (b) allow employees to work up to the maximum consecutive days with a start permitted under the RSIA while retaining management authority to fill blank jobs from an extra board. On information and belief, the defendants maintain that in such circumstances, the agreements require the carriers to allow employees to self-schedule their RSIA-mandated unavailable days.

23. Fourth, the parties disagree about the extent to which employees are entitled to continue receiving, after the implementation of the RSIA-mandated Hours of Service rules, levels of pay that reflect the amount of work performed by employees prior to implementation of such rules. The parties agree that at least some employees will, in the aggregate, have fewer work opportunities as a result of the RSIA changes. The carriers contend that they are under no obligation, under the agreements, to increase pay to ensure that such employees continue to receive the same total compensation despite working less than prior to the implementation of the RSIA changes. On information and belief, the defendants contend that employees' pay must be adjusted to compensate for the reduction in work opportunities resulting from the new law.

24. The carriers are required by law to implement all of the changes required by the RSIA, and they intend to do so on or prior to July 16, 2009. The carriers maintain that they have

the right consistent with existing agreements to take all steps necessary to effectuate the RSIA-mandated changes in Hours of Service rules.

25. On information and belief, the defendants contend that the actions taken by the carriers to effectuate the RSIA-mandated changes in Hours of Service rules would override the parties' agreements, in violation of the RLA's restrictions on unilateral changes in agreements. *See* 45 U.S.C. § 152 Seventh.

26. Representatives of the railroads have asked the defendant unions to arbitrate any RSIA-related disputes that remain unresolved by the date of implementation. The unions have refused to agree to arbitration.

**Count One
(Minor Dispute)**

27. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations of paragraphs 1-26, above.

28. A "minor dispute" under the RLA is any dispute arising out of a grievance or over the interpretation or application of the parties' collective bargaining agreements concerning rates of pay, rules, or working conditions. Such disputes are subject to conference between representatives and mandatory arbitration by specialized boards of adjustment. 45 U.S.C. §§ 152 Sixth, 153.

29. Each dispute between the parties referred to in the preceding paragraphs is a dispute over the interpretation or application of agreements, and therefore is a minor dispute subject to the mandatory and exclusive procedures of Section 3 First of the RLA, 45 U.S.C. § 153 First.

30. Because the unions deny that the disputes alleged herein are minor disputes or otherwise contend that the railroads will violate § 2 Seventh of the RLA, 45 U.S.C. § 152

Seventh if they implement the new RSIA Hours of Service rules, the plaintiff railroads are entitled to a declaration under 28 U.S.C. § 2201(a) that the RSIA-related disputes alleged herein are minor and subject to arbitration under Section 3 First of the RLA, 45 U.S.C. § 153 First.

**Count Two
(Obligation to Settle Disputes)**

31. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations of paragraphs 1-30, above.

32. Under Section 2 First of the RLA, railroad employees and the unions that represent them have a duty to “exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle *all* disputes, whether rising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.” 45 U.S.C. § 152 First (emphasis added).

33. By refusing to arbitrate disputes arising under existing agreements from implementation of the RSIA, defendants have failed to exert every reasonable effort to make and maintain agreements as required by § 2 First of the RLA.

34. The plaintiff carriers are entitled to a declaration under 28 U.S.C. § 2201(a) that defendants are obligated to exert every reasonable effort to make and maintain agreements with respect to the disputes alleged herein arising from or relating to the implementation of the new Hours of Service requirements under the RSIA, including arbitration of any such disputes that remain unresolved as of July 16, 2009.

WHEREFORE, Plaintiffs pray that this Court:

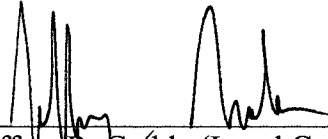
A. Issue a declaratory judgment that the disputes alleged herein arising from or relating to the implementation of the new Hours of Service requirements under the RSIA are

minor disputes subject to arbitration under the exclusive and mandatory procedures of Section 3 of the Railway Labor Act, 45 U.S.C. § 153.

B. Issue a declaratory judgment the defendants are obligated under Section 2 First of the Railway Labor Act, 45 U.S.C. § 2 First, to exert every reasonable effort to make and maintain agreements with respect to the disputes alleged herein arising from or relating to the implementation of the new Hours of Service requirements under the RSIA, including arbitration of any such disputes that remain unresolved as of July 16, 2009.

C. Enter such other relief as the Court finds reasonable and proper including, without limitation, reasonable costs and expenses, and attorney's fees incurred in this proceeding.

Respectfully submitted,



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**ATTORNEYS OF RECORD FOR
PLAINTIFFS**

CIVIL COVER SHEET

RECEIVED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
COLUMBUS DIVISION

JS 44 (Rev. 10/01)

The JS 44 Civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

ORIGINAL

I. PLAINTIFFS
 BNSF Railway Company, et al.
 (b) County of Residence of First Listed Plaintiff Tarrant, TX
 (EXCEPT IN U.S. PLAINTIFF CASES)
 (c) Attorney's (Firm Name, Address, and Telephone Number)
 See Attachment

DEFENDANTS
 United Transportation Union, et al.
 2009 JUN 29 PM 3:30
 CLERK OF COURT
 County of Residence of First Listed Defendant Cuyahoga, OH
 (IN U.S. PLAINTIFF CASES ONLY)
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
 Attorneys (If Known)
4-09 CV-376-Y

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
 1 U.S. Government Plaintiff
 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
 (For Diversity Cases Only)

Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

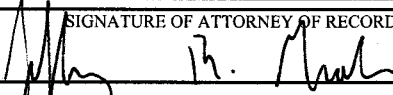
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Acts <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input checked="" type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
 Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Railway Labor Act, 45 U.S.C. sections 151, et seq.
 Brief description of cause:
Declaratory judgment to enforce collective bargaining agreements

VII. REQUESTED IN COMPLAINT:
 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ _____
 CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
 JUDGE _____ DOCKET NUMBER _____

DATE 06/29/2009
 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY
 RECEIPT # FW0892 AMOUNT 350 APPLYING IFP _____ JUDGE Y MAG. JUDGE _____

ATTACHMENT TO CIVIL COVER SHEET

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(Pending Admission Pro Hac Vice)

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

Civil Filing Notice - Fort Worth Division

CIVIL ACTION NO: <u> 4 - 09 CV - 376 - Y </u>
This case has been assigned to District Judge: _____
(Complete if applicable) TRANSFERRED FROM: _____ DATE FILED: _____

Civil cases are assigned to a judge by random draw. A docket clerk for each judge maintains the recording of documents filed with the Clerk. A complete list of phone numbers for both the judges' chambers and the docket clerks is provided.

Judge	Court Settings	Pleadings Filed
(A) Judge John H. McBRYDE Even Cases: 850-6652 Odd Cases: 850-6653	(817)850-6650	(817)850-6611
(Y) Judge Terry R. MEANS	(817)850-6673	(817)850-6612
(BE) Magistrate Judge Charles BLEIL	(817)850-6690	(817)850-6697

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