

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GENERAL COMMITTEE OF ADJUSTMENT GO-386)
United Transportation Union)
400 East Evergreen Blvd., Suite 217)
Vancouver, Washington 98660)

GENERAL COMMITTEE OF ADJUSTMENT GO-245)
United Transportation Union)
8250 W. 80th Avenue)
The Meadows Center, #7 & 8)
Arvada, Colorado 80005)

and)

GENERAL COMMITTEE OF ADJUSTMENT GO-291)
United Transportation Union)
709 W. Little Blvd., Suite 30)
Littleton, Colorado 80120,)
Plaintiffs,)

No.

v.)

BURLINGTON NORTHERN AND SANTA FE)
RAILWAY COMPANY)
2600 Lou Menk Drive)
Fort Worth, Texas 76131-2830)

and)

ROBERT F. ALLEN,)
in his capacity as Chairman of the)
NATIONAL CARRIERS' CONFERENCE)
COMMITTEE)
1901 L Street, N.W.)
Washington, D.C. 20036,)
Defendants.)

COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

This is an action by three General Committees of Adjustment of the United Transportation Union for declaratory judgment and injunctive relief to enforce the commands of the Railway Labor Act, 45 U.S.C. § 151, *et seq.*, that defendant Burlington Northern and Santa Fe Railway Company (BNSF) and its bargaining agent, the National Carriers' Conference Committee (NCCC), are violating by interfering with the designation by the United Transportation Union (UTU) of the General Chairmen of plaintiff Committees as the bargaining representatives for BNSF employees who are covered by collective bargaining agreements administered by plaintiffs.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff GENERAL COMMITTEE OF ADJUSTMENT GO-386 has been designated by the UTU to represent brakemen, conductors, and yardmen employed by the BNSF who are covered by collective bargaining agreements administered by that General Committee. General Committee of Adjustment GO-386 is a "representative" of "employees" as those terms are used in Sections 1 Fifth and 1 Sixth of the Railway Labor Act, 45 U.S.C. §§ 151 Fifth, 151 Sixth.

2. Plaintiff GENERAL COMMITTEE OF ADJUSTMENT GO-245 has been designated by the UTU to represent brakemen, conductors, engineers, foremen, and yardmen employed by the BNSF who are covered by collective bargaining agreements administered by that General Committee. General Committee of Adjustment GO-245 is a "representative" of "employees" as those terms are used in Sections 1 Fifth and 1 Sixth of the Railway Labor Act, 45 U.S.C. §§ 151 Fifth, 151 Sixth.

3. Plaintiff GENERAL COMMITTEE OF ADJUSTMENT GO-291 has been designated by the UTU to represent brakemen, conductors, yardmen and yardmasters employed by the BNSF who are covered by collective bargaining agreements administered by that General Committee.

General Committee of Adjustment GO-291 is a "representative" of "employees" as those terms are used in Sections 1 Fifth and 1 Sixth of the Railway Labor Act, 45 U.S.C. §§ 151 Fifth, 151 Sixth.

4. Defendant BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, which has been formed through a series of mergers, is a common carrier by rail subject to the jurisdiction of the Surface Transportation Board (STB) under Chapter 105 of the Interstate Commerce Act, 49 U.S.C. § 10501, and it is a carrier subject to the Railway Labor Act. Defendant BNSF operates rail lines in the Western half of this country and employs rail workers who have designated the UTU as their representative and for whom plaintiffs are the duly authorized bargaining agents. Defendant BNSF is present in this judicial district since defendant BNSF has designated defendant NCCC, which is located in this judicial district, as its bargaining representative, and is violating the Railway Labor Act through and in conjunction with the NCCC.

5. Defendant ROBERT F. ALLEN is the Chairman of the NATIONAL CARRIERS' CONFERENCE COMMITTEE, which is a voluntary association of labor-relations officials of certain railroads, including defendant BNSF, and is located at the offices of the National Railway Labor Conference in this judicial district. The NCCC has been designated by defendant BNSF as its bargaining representative in connection with certain changes in collective bargaining agreements that those railroads affiliated with the NCCC, including defendant BNSF, are proposing, and as such is an agent of defendant BNSF subject to the commands of Sections 2 First, 2 Second, 2 Third and 2 Seventh of the Railway Labor Act, 45 U.S.C. §§ 152 First, 152 Second, 152 Third and 152 Seventh, that are at issue in this case.

6. This Court has jurisdiction over this suit by virtue of 28 U.S.C. §§ 1331 and 1337(a) since it is one arising under, and to enforce, an Act of Congress regulating interstate commerce,

namely, the Railway Labor Act. This Court has jurisdiction under 28 U.S.C. §§ 2201 and 2202 to grant the relief requested herein.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b) since both defendants are present in this judicial district and a substantial part of the events and omissions giving rise to this case or controversy have occurred in this judicial district.

FACTS

8. Various crafts or classes of employees of defendant BNSF have designated the UTU as their representative for purposes of the Railway Labor Act. In accordance with the Constitution of the UTU, the UTU has informed defendant BNSF that the General Chairmen of the various General Committees of Adjustment have been designated and authorized by the UTU as the exclusive agents of the UTU to represent those BNSF employees within the jurisdiction of their General Committees.

9. Defendant BNSF, having been formed through several mergers, is a party to various agreements that were initially between predecessors of defendant BNSF and either the UTU or predecessors of that union. Each such agreement, all of which have been amended from time to time, deals with the rates of pay, rules, or working conditions of employees who work on a portion of defendant BNSF's merged system that formerly comprised one of the BNSF's predecessors. The administration of those agreements has been assigned by the UTU to its various General Committees of Adjustment on the BNSF, of which there are nine such Committees. The jurisdiction of those Committees is generally divided along the lines of the agreements they have been charged to administer.

10. Pursuant to the longstanding notice from the UTU to defendant BNSF and its predecessors, defendant BNSF has been informed, and knows, that the General Chairmen of the UTU General Committees of Adjustment are the individuals who have been delegated the authority to confer within the meaning of Section 2 Second of the Railway Labor Act on behalf of UTU represented employees within the jurisdiction of their Committees. Defendant BNSF has also been informed that the General Chairmen are the individuals upon whom the BNSF must serve any notice pursuant to Section 6 of the Railway Labor Act to change agreements concerning rates of pay, rules and working conditions, and that any negotiations concerning such changes in agreements must be conducted with those General Chairmen or their designated representative or representatives, and no one else.

11. Pursuant to the longstanding notice from the UTU to defendant BNSF and its predecessors, defendant BNSF has been informed and knows that the General Chairmen of the UTU General Committees of Adjustment with jurisdiction over BNSF employees represented by the UTU have been designated as the individuals who have the authority to serve notice upon the BNSF pursuant to Section 6 of the Railway Labor Act to change agreements concerning rates of pay, rules, or working conditions and that any negotiations concerning such intended changes must be conducted with those General Chairmen or their designated representative or representatives, and no one else.

12. In the railroad industry, notices under Section 6 of the Railway Labor Act [hereinafter, "Section 6 notice"] have been handled either by conferences between the General Chairman of the Committee that served or was served with the notice and the highest officer of the carrier designated to handle such notices, or through multi-employer bargaining between the

bargaining representative for a group of carriers and either a bargaining committee of the union representing the interested employees on those carriers, or a bargaining committee comprised of representatives of several unions interested in the bargaining. The first form of bargaining is commonly called "local bargaining" or "local handling," whereas the multi-employer form of bargaining, either with a single union or with several unions, is called "national bargaining" or "national handling."

13. Even under national handling, the parties, as required by Section 6 of the Railway Labor Act, serve their respective notice of intended change on the other party's designated representative, which is the highest officer designated either by the carrier or by the union to handle such notices. Again as required by Sections 2 Second and 6 of the Act, the designated representatives either hold the "initial conference" on the "property," which conference Section 6 requires be held within 30 days of the date that the notice is served, or the parties may waive that initial conference. In either case, if the parties have agreed to handle the dispute raised by the notice nationally, they will "refer the matter for national handling," which means that both parties will designate a national representative to bargain for them over that notice.

14. During the past few decades, some, but not all, carriers and UTU General Committees of Adjustment have engaged in national handling of various wage and rules disputes. Those UTU General Committees which have bargained nationally have done so through a national bargaining committee [hereinafter referred to as "UTU National Negotiating Committee"] which was authorized by the individual Committees to act as their bargaining representative. Those railroads which have engaged in multi-employer bargaining since at least the 1970's have bargained through the NCCC by authorizing the NCCC to act as their bargaining agent.

15. Plaintiff General Committees and the BNSF are parties to various agreements which contain clauses, commonly called "moratorium clauses," which provide that neither party would serve a Section 6 notice on the other concerning certain subjects until November 1, 1999.

16. Prior to November 1, 1999, plaintiff General Committees informed the BNSF that they did not intend to participate in national handling. That notice was consistent with the position that these General Committees took during the prior round of bargaining when plaintiffs declined to participate in multi-employer bargaining and insisted that defendant's predecessor, the Burlington Northern Railroad (BN), bargain locally. Moreover, General Committee GO-386 has bargained locally at least since 1988.

17. Plaintiffs informed the BNSF that they would not participate in national handling because they have concluded that the interests of the employees they represent will be best served by bargaining individually with the BNSF. Plaintiffs have concluded that the interests of their members are best served where all issues raised by both the BNSF and the individual Committees are considered together and where the unique interests of their members may be accommodated with the interests of the BNSF without having to take into consideration, and to accommodate, the interests of other carriers or other employees that are different from, and in some cases antagonistic to, the interests of BNSF employees represented by plaintiffs. Local bargaining, plaintiffs have concluded, will enable them to obtain agreements that are specific to their members by being tailored to their parochial concerns.

18. On or about November 1, 1999, defendant Allen, acting as the Chairman of the NCCC, caused a letter to be sent to Charles L. Little, the International President of the UTU, informing the UTU that the carriers represented by the NCCC, including defendant BNSF, were

proposing under Section 6 of the Railway Labor Act changes to agreements affecting rates of pay, rules, and working conditions applicable to employees represented by the UTU, including BNSF employees for whom the General Chairmen of plaintiff Committees have been designated and authorized to bargain. Defendant Allen informed Mr. Little that the carriers "intend to bargain on a concerted national basis" and that the Section 6 notice was "served upon you as the national representative of your organization and [that] the carriers propose that it be handled nationally and concurrently with any Section 6 proposals that may be served by your organization."

19. On or about November 1, 1999, UTU International President Little responded to the NCCC, informing it that he was "not the proper party upon whom such Section 6 Notice(s) is/are to be served . . ." President Little further advised the NCCC that: "Such Section 6 Notice(s) must be served on the UTU General Chairperson(s) with jurisdiction, after which you and the carrier officer(s) will be notified by such General Chairperson(s) at the appropriate time of the method of handling from UTU's side."

20. On or about November 1, 1999, defendant BNSF informed the General Chairmen of plaintiff Committees that it had "joined with other railroads in authorizing the National Carriers' Conference Committee . . . to represent them with respect to the 2000 wages, rules and benefits round of collective bargaining on a concerted national basis with respect to employees represented by your organization."

21. Following receipt of the BNSF's notification that it was proposing to change the agreements that are administered by plaintiff Committees and that it intended to bargain over those changes with the representative of the interested employees that ~~it~~ the BNSF had selected, plaintiffs informed the BNSF and defendant Allen as Chairman of the NCCC, that they had not authorized the

UTU National Negotiating Committee to bargain on their behalf and that they did not intend to bargain nationally, but rather, insisted on bargaining directly and exclusively with defendant BNSF through whomever the BNSF might designate and authorize as its bargaining representative, including the NCCC.

22. To date, neither defendant BNSF nor the NCCC has served a Section 6 notice on plaintiffs proposing the agreement changes that the NCCC has proposed on behalf of defendant BNSF, nor has either defendant BNSF or the NCCC agreed to confer with plaintiffs over the Section 6 notice that they incorrectly served on the UTU's International President. Instead, defendant BNSF, and defendant Allen on behalf of the NCCC, are insisting that the UTU designate and authorize its National Negotiating Committee to bargain on behalf of the BNSF employees for whom the General Chairmen of plaintiffs have been designated and authorize to bargain.

23. On or about November 24, 1999, defendant BNSF and other carriers who had authorized the NCCC to bargain on their behalf during this round of bargaining, filed suit in this Court against the UTU and another organization. That suit sought, among other forms of relief, both a declaratory judgment that the UTU and its divisions, such as plaintiffs, must "bargain on a national handling basis with [the NCCC] . . . with respect to the current round of bargaining" and an injunction which in essence would compel plaintiffs to designate the UTU's National Negotiating Committee as their bargaining representative. D.D.C. No. 1:99CV03117, *BNSF v. UTU*, Complaint at 10.

24. Upon information and belief, plaintiffs state that defendant BNSF, through the NCCC and defendant Allen, as Chairman of the NCCC, conferred with the UTU National Negotiating Committee over the agreement changes that the carriers, including the BNSF, have proposed in their

November 1, 1999, Section 6 notice, and have scheduled a subsequent conference to confer about the issues raised by that notice.

COUNT I (VIOLATION OF § 2 THIRD)

25. Plaintiffs reassert and incorporate herein the allegations set forth in paragraphs 1 through and including paragraph 24 of this complaint.

26. Section 2 Third of the Railway Labor Act, 45 U.S.C. § 152 Third, provides in pertinent part that (emphasis added): “Representatives, for purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and *neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives.*”

27. Plaintiffs have an absolute right under Section 2 Third of the Railway Labor Act to decline to bargain “nationally.”

28. By serving the UTU’s International President with the BNSF’s Section 6 notice notwithstanding prior notification from the UTU that the General Chairmen of plaintiffs’ Committees were the proper bargaining agents to deal with such proposed agreement changes; by refusing to serve plaintiffs with the Section 6 notice proposing changes to agreements for which plaintiffs’ General Chairmen have been designated and authorized to confer; and by insisting that plaintiffs bargain “nationally” over the agreement changes the BNSF has proposed, despite notice that plaintiffs did not consent to national handling, defendants are attempting to coerce plaintiffs to designate the UTU National Negotiating Committee as their bargaining representative and are interfering with the designation of plaintiffs’ General Chairmen as the authorized bargaining representative, in violation of Section 2 Third of the Act.

COUNT II (VIOLATION OF §§ 2 FIRST, 2 SECOND, AND 2 THIRD)

29. Plaintiffs reassert and incorporate herein the allegations set forth in paragraphs 1 through and including paragraph 24, and in paragraph 26 of this complaint.

30. Section 2 First of the Railway Labor Act, 45 U.S.C. § 152 First, provides in pertinent part that:

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise

31. Section 2 Second of the Railway Labor Act, 45 U.S.C. § 152 Second, provides that (emphasis added):

All disputes between a carrier or carriers and its or their employees *shall be considered*, and, if possible, decided with all expedition, *in conference between representatives designated and authorized so to confer*, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

32. Section 6 of the Railway Labor Act, 45 U.S.C. § 156, provides in pertinent part that:

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after receipt of said notice, and said time shall be within the thirty days provided in the notice.

33. By proposing changes to agreements administered by plaintiffs without serving a notice of such intended change on plaintiffs' General Chairmen under Section 6 of the Act; by failing to schedule a conference with plaintiffs' General Chairmen concerning the changes that defendant BNSF has proposed be made in the agreements administered by plaintiffs; by conferring

with others concerning those agreement changes; and by designating a bargaining representative who refuses to confer with plaintiffs' General Chairmen concerning those agreement changes, defendant BNSF and its bargaining agent, the NCCC, have violated and are continuing to violate the commands in Sections 2 First and 2 Third, as amplified by Sections 2 Second and 6 of the Act, that defendant BNSF and its agents, including the NCCC, exert every reasonable effort to make and maintain its agreements with plaintiffs concerning rates of pay, rules, and working conditions, and to confer expeditiously with the other party's *authorized* representative over any proposal to change existing agreements.

REQUESTS FOR RELIEF

Plaintiffs respectfully request that this Court grant them the following relief:

1. Declare that plaintiffs have an absolute right under Section 2 Third of the Railway Labor Act to decline to participate in multi-employer bargaining—*i.e.*, national handling—over changes that defendant BNSF has proposed through the NCCC be made to the agreements concerning the rates of pay, rules, and working conditions governing the employment of BNSF employees represented by plaintiffs, and that defendant BNSF and its bargaining agent, the NCCC, may not interfere with, or in any way attempt to influence or coerce plaintiffs in their exercise of that absolute right.
2. Declare that by insisting that plaintiffs participate in “national handling” over the changes that defendant BNSF has proposed be made to the agreements concerning the rates of pay, rules, and working conditions governing the employment of BNSF employees represented by plaintiffs, defendant BNSF

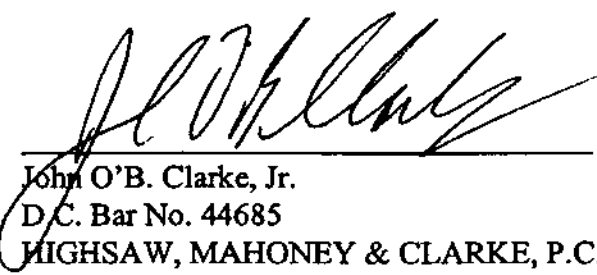
and the NCCC have violated Section 2 Third of the Railway Labor Act by interfering with the designation of plaintiffs' General Chairmen as the authorized bargaining agents, and have further violated Section 2 Third by attempting to influence and coerce plaintiffs to designate the UTU National Negotiating Committee, rather than plaintiffs' General Chairmen, as their authorized bargaining agent.

3. Declare that defendants, by failing to serve the BNSF's November 1, 1999 notice of proposed changes in agreements on plaintiffs' General Chairmen; by failing to confer with plaintiffs' General Chairmen expeditiously and within thirty days from the date that notice of intended changes in agreements was first served; by attempting to confer with others concerning the November 1, 1999 notice of intended changes in agreements administered by plaintiffs; and by designating a bargaining agent who will not confer with plaintiffs' General Chairmen on a local basis, defendant BNSF, and its agent NCCC, have violated and are continuing to violate Section 2 First and 2 Third of the Railway Labor Act.
4. Issue preliminary and then permanent injunctive relief requiring defendant BNSF, the NCCC, and all persons and entities acting in concert with defendant BNSF, to refrain from coercing plaintiffs to bargain nationally.
5. Issue preliminary and then permanent injunctive relief directing defendant BNSF, the NCCC, and all persons and entities acting in concert with defendant BNSF, to bargain directly with plaintiffs' General Chairmen

concerning the notice that defendant BNSF served through the NCCC on or about November 1, 1999 to change agreements administered by plaintiffs, and all matters related thereto, including counter-proposals that plaintiffs may make, and to exert every reasonable effort to resolve those disputes expeditiously.

6. Grant such other and further relief as this Court may deem to be just and equitable, including attorneys' fees and costs for enforcing the public rights inherent in the Railway Labor Act commands at issue.

Respectfully Submitted,



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DATE: January 7, 2000

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