

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

GENERAL COMMITTEE OF ADJUSTMENT GO-386,)	
GENERAL COMMITTEE OF ADJUSTMENT GO-245,)	
<i>and</i>)	
GENERAL COMMITTEE OF ADJUSTMENT GO-291,)	
<i>Plaintiffs,</i>)	
)	
v.)	Civil Action No.
)	
BURLINGTON NORTHERN AND SANTA FE)	
RAILWAY COMPANY,)	
<i>and</i>)	
ROBERT F. ALLEN,)	
<i>in his capacity as Chairman of the</i>)	
NATIONAL CARRIERS' CONFERENCE)	
COMMITTEE,)	
<i>Defendants.</i>)	
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MOTION BY PLAINTIFFS TO CONSOLIDATE

By this motion pursuant to Rule 42(a), Fed. R. Civ. P., plaintiffs, which are three General Committees of Adjustment of the United Transportation Union, respectfully request that this case be consolidated with a suit that was filed in this Court by defendant Burlington Northern and Santa Fe Railway Company (BNSF) and other carriers bargaining through the National Carriers' Conference Committee (NCCC), captioned *Burlington Northern and Santa Fe Railway Company, et al. v. United Transportation Union, et al.*, D.D.C. No. 99-CV-03117.^{1/} Plaintiffs state as follows in support of this motion:

^{1/} As noted in more detail in note 1 of the Memorandum which is being filed with this motion, plaintiff Committees object to the designation of *BNSF v. UTU* as being related to cases that were pending before United States District Judge Thomas F. Hogan in 1995 and are requesting that *BNSF v. UTU*, and *a fortiori* this case, be sent to the Calendar Committee for reassignment.

1. The United Transportation Union (UTU) has been selected and duly designated as the representative for collective bargaining purposes under the Railway Labor Act, 45 U.S.C. § 151, *et seq.*, of several crafts of classes of BNSF employees. *BNSF v. UTU*, Complaint at ¶ 4.

2. Plaintiff General Committees are divisions of the UTU and their General Chairmen have been designated and authorized by the UTU as the bargaining agents to treat with the BNSF concerning certain agreements governing rates of pay, rules, and working conditions of BNSF employees who have selected the UTU as their representative. *General Committee v. BNSF*, Complaint at ¶¶ 1-3.

3. On or about November 1, 1999, the BNSF, along with other carriers which, like the BNSF, had authorized the NCCC to be their bargaining agent, caused the NCCC to serve what the carriers claim was a notice under Section 6 of the Railway Labor Act, 45 U.S.C. § 156, to change agreements affecting rates of pay, rules, and working conditions, including certain agreements for which the General Chairmen of plaintiff Committees have been designated to administer. The BNSF and the other carriers acting through the NCCC served that notice on the International President of the UTU and insisted that the notice be bargained on a multi-employer basis, which in the rail industry is called "national handling." *BNSF v. UTU*, Complaint at ¶¶ 11, 18; *General Committee v. BNSF*, Complaint at ¶ 18.

4. Prior to November 1, 1999, the plaintiff Committees had informed the BNSF that they did not intend to participate in national handling and would not authorize the UTU national bargaining committee to bargain on their behalf. Plaintiffs further informed the BNSF that they stand ready, willing and able to bargain directly with whatever bargaining agent the BNSF may designate

to serve and handle that carrier's notice to change agreements administered by the Committees.

General Committee v. BNSF, Complaint at ¶ 16.

5. On November 24, 1999, defendant BNSF and other carriers bargaining through the NCCC filed a multi-count complaint with this Court seeking declaratory and injunctive relief. As relevant here, the carriers asked this Court to declare that the UTU, and its "respective departments, divisions, lodges, local, officers, agents, employees, members, and all persons acting in concert or participation with" the UTU, are "obligated to bargain on a national handling basis with [the carriers'] . . . duly authorized national representative with respect to the current round of bargaining." *BNSF v. UTU*, Complaint at 10. The carriers also asked that the Court declare that the UTU and its divisions "are obligated to bargain with each plaintiff railroad on a craft-wide basis with respect to the wage, health and welfare, and rules issues in the current round of bargaining." *Id.* at 11.

6. Plaintiff Committees maintain that they have an absolute right under Section 2 Third of the Railway Labor Act, 45 U.S.C. § 152 Third, to decline to participate in multi-employer bargaining and they have responded to the BNSF's complaint by filing their own complaint in this Court seeking a declaratory judgment and injunctive relief to prohibit the BNSF and its bargaining agent, the NCCC, from interfering with the UTU's designation of the General Chairmen as the authorized bargaining agents for BNSF employees within their jurisdiction. *General Committee v. BNSF*, Complaint at 12-14.

7. Both cases, insofar as they concern the BNSF, involve common questions of fact and issues of law.

8. Plaintiffs submit that it is in the interests of the parties and judicial economy to consolidate both cases for all purposes.

9. Consolidating both cases for all purposes will not prejudice any party and will avoid prejudice to plaintiff General Committees if the *BNSF v. UTU* case proceeds without their participation since in that case the BNSF seeks an order of this Court that will expressly bind the plaintiff Committees.

WHEREFORE, plaintiff General Committees respectfully request that this Court consolidate plaintiffs' suit with the suit that the BNSF and the other carriers filed on November 24, 1999.

Respectfully Submitted,



John O'B. Clarke, Jr.
D.C. Bar No. 44685
HIGHS AW, MAHONEY & CLARKE, P.C.
1050 17th Street, N.W., Suite 590
Washington, D.C. 20036
(202) 296-8500
(Fax No.) (202) 296-7143

DATE: January 7, 2000

Attorneys for Plaintiffs General Committees

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COMMITTEE,)	
<i>Defendants.</i>)	
)	

**MEMORANDUM IN SUPPORT OF MOTION
BY PLAINTIFFS TO CONSOLIDATE**

Plaintiffs General Committees of Adjustment of the United Transportation Union have filed a motion with this Court to consolidate the suit that they have filed against the Burlington Northern and Santa Fe Railway Company (BNSF) and the Chairman of the National Carriers' Conference Committee (NCCC) with the suit that the BNSF and other railroads bargaining with the BNSF through the NCCC have filed against the United Transportation Union (UTU) and the Brotherhood of Locomotive Engineers (BLE), captioned *Burlington Northern and Santa Fe Railway Company, et al. v. United Transportation Union, et al.*, D.D.C. No. 99-CV-03117.^{1/}

^{1/} When the railroads filed their complaint in *BNSF v. UTU*, they included a statement pursuant to Rule 405(b) of the Local Rules of this Court that the case they were bringing was related to several cases that were before this Court in 1995, which, they claimed, were dismissed voluntarily. As a result of that representation, the new case was not randomly assigned but was assigned to the judge who handled the 1995 cases, United States District Judge Thomas F. Hogan. Plaintiff
(continued...)

As shown by the attached motion, the suit that the plaintiff Committees have filed arises from the same case or controversy that forms the basis for the BNSF's suit in No. 99-CV-03117. Indeed, the two suits, insofar as they concern the BNSF, present the same controversy and legal issues, although the *BNSF* suit presents another legal issue concerning the BNSF's claim that the scope of bargaining must be "system-wide"—a claim that the plaintiff Committees dispute. This identity may be seen from the fact that in its suit the BNSF seeks declarations and injunctions that bind *plaintiffs*, as divisions of the UTU, to take actions that plaintiffs in their suit ask this Court to declare that they do not have to take. *Compare BNSF v. UTU*, Complaint at 10-11, with *General Committees v. BNSF*, Complaint at 12-14. Consolidating both cases at this time for all purposes will conserve judicial resources and avoid the possibility of inconsistent judgments that might occur if the two cases are handled separately.

Consolidating both cases is consistent with Rule 42(a), Fed. R. Civ. P., which provides that: "When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

^{1/}(...continued)

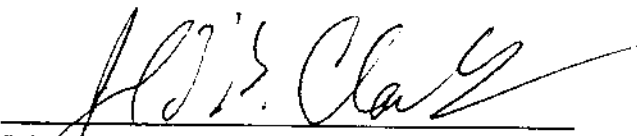
Committees respectfully submit that *BNSF v. UTU* is not related to the 1995 cases within the meaning of Local Rule 405(a)(4), since the latest case does not involve the same subject matter as the 1995 cases—cases that were dismissed because they were moot. Plaintiff Committees are filing with their motion to consolidate an objection to the related case designation, and note that by asking that their case be consolidated with *BNSF v. UTU* they are not in any way waiving their threshold objection to the manner in which *BNSF v. UTU* was assigned.

Moreover, consolidating both cases for all purposes will not delay a prompt resolution of the issues raised by the parties in both cases, nor will it prejudice any party. To the contrary, consolidating both cases will avoid prejudice to the plaintiff Committees that might occur if they are not given a voice in the *BNSF* case. This is so since the *BNSF* in that case is asking this Court to declare the rights of the plaintiff Committees as divisions of the UTU and to direct the plaintiff Committees to designate a national bargaining agent, which is exactly what the plaintiff Committees maintain the Railway Labor Act provides they may not be compelled to do.

CONCLUSION

Plaintiffs respectfully submit that this Court should consolidate this case with the *BNSF v. UTU* case for all purposes.

Respectfully Submitted,



John O'B. Clarke, Jr.
D.C. Bar No. 44685
HIGHSAW, MAHONEY & CLARKE, P.C.
1050 17th Street, N.W., Suite 590
Washington, D.C. 20036
(202) 296-8500
(Fax No.) (202) 296-7143

DATE: January 7, 2000

Attorneys for Plaintiffs General Committees

CERTIFICATE OF SERVICE

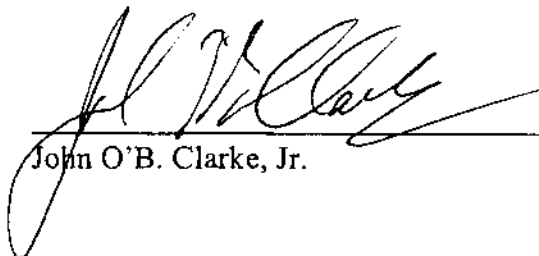
I hereby certify that I have this 7th day of January, 2000, caused a copy of the foregoing Memorandum In Support Of Motion To Consolidate to be served upon counsel for defendants and all parties in No. 99-CV-03117 by first class mail, postage pre-paid and properly addressed to the offices of:

Ralph J. Moore, Jr.
SHEA & GARDNER
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036

David P. Lee
NATIONAL RAILWAY LABOR CONFERENCE
1901 L Street, N.W.
Washington, D.C. 20036

Clinton J. Miller, III
General Counsel
UNITED TRANSPORTATION UNION
14600 Detroit Avenue
Cleveland, Ohio 44107-4250

Harold A. Ross
General Counsel
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
1548 Standard Building
1370 Ontario Street
Cleveland, Ohio 44113



John O'B. Clarke, Jr.