



this Court in 1995 and, according to the carriers, “voluntarily dismissed.” Related Case Designation, Attachment at 1. Plaintiff Committees object to that designation for the cases currently before this Court do *not* involve the *same* subject matter that was involved in the cases that were assigned to Judge Hogan in 1995—cases that were dismissed because they were *moot*. Plaintiff Committees respectfully request that the current cases—*i.e.*, *BNSF v. UTU* and the one that the plaintiff Committees have filed—along with the motion to consolidate that plaintiff Committees have filed, be referred to the Calendar Committee of this Court for random reassignment. Plaintiff Committees state as follows in support of this objection.

#### **FACTUAL BACKGROUND**

This current round of litigation, as well as the litigation that occurred over this same legal issue during the two prior “rounds” of bargaining that occurred in the railroad industry since 1988, present the legal issue of whether either party to collective bargaining under the Railway Labor Act, 45 U.S.C. § 151, *et seq.*, may compel the other to participate in multi-employer bargaining. This latest controversy began in late 1999 when the parties were no longer restrained by agreements they had entered into in 1996 from using the major dispute procedures of the Railway Labor Act to ask that existing collective bargaining agreements be changed. Prior to the date that either side could serve notices of such agreement changes, plaintiff Committees informed the BNSF that they would not consent to bargain on a multi-employer basis. The BNSF, on the other hand, considered that notification to be meaningless, asserting that it may compel the Committees to bargain with it and with the other railroads with which it wants to bargain. On November 24, 1999, the BNSF and its bargaining companions filed a suit in this Court against the Committees’ international union and another union to obtain an order from this Court compelling the Committees to bargain on a multi-

employer basis. Even though the railroads' legal position is without merit, plaintiff Committees recognize that the carriers have a right to bring this issue before a court. But what the railroads do not have a right to do, plaintiffs submit, is to place this case before a particular judge with whom they have had favorable experiences. Unfortunately, that is exactly what they are trying to accomplish here, and that is why this objection has been filed.

To accomplish their impermissible goal of *judge shopping*, the railroads have designated their latest case as being related to cases that presented the same legal issue during the last round of bargaining—*i.e.*, the bargaining that began in 1994 and was concluded by agreements in 1996. During that round of bargaining, the carriers initiated and won a race to the courthouse, placing this issue before the only circuit in this Country that has any case authority arguably supporting their position that they can compel multi-employer bargaining: *Brotherhood of Railroad Trainmen v. Atlantic Coast Line R.R.*, 383 F.2d 225 (D.C. Cir. 1967), *cert. denied*, 389 U.S. 1047 (1968). Two other circuits<sup>1/</sup> have addressed this issue since *Atlantic Coast Line*, one of which, the Sixth Circuit, is the home circuit for the three rail unions that refused to bargain on a multi-employer basis in 1994. It is also the circuit in which those cases should have been brought at that time if the implicit intent of 28 U.S.C. § 1392(b) using the residency of the defendants as the proper forum for the litigation of federal questions had been followed.

The carriers, however, did not bring their suit where the unions were headquartered because the Sixth Circuit had ruled during the 1988 round of bargaining that the Railway Labor Act

---

<sup>1/</sup> Those cases are: *UTU v. Grand Trunk Western R.R.*, 901 F.2d 489, 490 (6<sup>th</sup> Cir.), *cert. denied*, 498 U.S. 815 (1990); *ARASA v. Soo Line R.R.*, 891 F.2d 675, 677 (8<sup>th</sup> Cir. 1989), *cert. denied*, 498 U.S. 809 (1990).

“expressly preserves each party’s right to choose its own bargaining representative” and that the only exception to that rule applicable to the national versus local bargaining issue is the rule established as part of our national labor policy which prohibits withdrawal from multi-employer bargaining *after* negotiations have begun. *Grand Trunk*, 901 F.2d at 490. Rather, the railroads brought their case in this Court to take advantage of *Atlantic Coast Line*, which the Sixth and Eighth Circuits had rejected as not being consistent with our national labor policy as expressed in *Charles D. Bonanno Line Service, Inc. v. NLRB*, 454 U.S. 404, 412 (1982), where the Supreme Court emphasized the *voluntary* nature of multi-employer bargaining. Significantly, the railroads found a judge in this district who ruled that *Atlantic Coats Line* was still good law in this Circuit,<sup>2/</sup> and to assure that they obtained the same good fortune this time, they have filed a statement asserting that the case they have just filed—again not in the home district of the unions—is related under Rule 405(a)(4) of the Local Rules of this Court to the cases that were before that judge in 1995 involving the UTU, including the plaintiff Committees, and the BLE. *I.e.*, D.D.C. No. 95-220, *BLE v. Consolidated Rail Corp.*, dismissed as moot; D.D.C. No. 95-387, *Atchison, Topeka & Santa Fe Ry. v. BLE*, dismissed as moot; D.D.C. No. 95-1602, *General Committee of Adjustment GO-386 v. Burlington Northern R.R.*, dismissed as moot.

The problem with the carriers’ tactic, however, is that this latest round of bargaining—and the dispute over whether plaintiffs can refuse to participate in multi-employer bargaining—does not involve the *same subject matter* as the controversy that was before this Court in 1995. That controversy became moot in 1996 and ceased to present a case or controversy over which this Court

---

<sup>2/</sup> *Alton & Southern Ry. v. BMW*, 928 F.Supp. 7 (D.D.C. 1996).

could exercise its Article III jurisdiction. *Brotherhood of Locomotive Engineers v. Consolidated Rail Corp.*, D.D.C. Nos. 95-220 & 95-387, decided October 24, 1996, *aff'd* D.C. Cir. Nos. 96-7248 & 96-7249 (D.C. Cir. March 31, 1997).<sup>3/</sup> That controversy has not suddenly come back to life. Rather, the cases which are now before this Court, albeit presenting the same *issue of law*, arise out of an entirely different “nucleus of operative facts”—*i.e.*, the carriers’ insistence that plaintiff Committees bargain with them on a multi-employer basis over the notices that the carriers served on *November 1, 1999* to change the existing agreements. What occurred in 1995 and 1996 over the carriers’ 1994 Section 6 notices is of historical relevance to this case only, for it does not form a part of the carriers’ or the Committees’ causes of action that are currently before this Court.

#### ARGUMENT

Rule 405(a)(4) of the Local Rules of this Court provides that cases “shall be deemed related where a case is dismissed, with prejudice or without, and a second case is filed involving the same parties and relating to the same subject matter.” The relationship required before a *dismissed* case will be deemed to be related to a newly filed case—thus exempting the case from the random assignment protection given to litigation—is made clear by the official form implementing Local Rule 405, which provides in Section 2 that: “A new case is deemed related to a case dismissed, with or without prejudice, in this or any other U.S. Court, if the new case involves the same parties and the same subject matter.” (Emphasis in original.) In this litigation, the new cases involve the same parties that were involved in the 1995 litigation between the carriers and the UTU, its Committees, and the BLE, but the new cases do not involve the same subject matter as the 1995 litigation.

---

<sup>3/</sup> A copy of each order is attached hereto as Attachment A and Attachment B. Plaintiffs have also attached as Attachment C a copy of the order dismissing their 1995 litigation as moot.

Whether the disputed issue of law that divides the parties is viewed as raising the *factual* determination that this Court in 1996 ruled *Atlantic Coast Line* required be addressed under Section 2 First of the Railway Labor Act, 45 U.S.C. § 152 First—*i.e.*, the historical practice and whether multi-employer bargaining is practical and appropriate for the specific dispute at issue, *Alton & Southern Ry.*, 928 F.Supp. at 17—or an interpretation of the protection given by Section 2 Third of the Railway Labor Act, 45 U.S.C. § 152 Third, when one party declines to name a bargaining agent to participate in multi-employer bargaining, it is clear that the operative facts raised by the current cases—and, thus, the subject matter that makes the cases justiciable—are those involving the parties’ actions during the round of bargaining that began on November 1, 1999. There was a similar controversy in 1995, but that litigation ceased to present a live case or controversy when the parties resolved the proposed agreement changes that gave birth to the controversy. As this Court explained in concluding over the BLE’s objections that the 1995 litigation was moot (*BLE v. Consolidated Rail Corp.*, October 24, 1996 Decision at 3-4):

The complaints and counterclaims in these two cases [involving the BLE] are moot because there no longer exists a “live controversy” between IBLE and the carriers. Therefore, the complaints and counterclaims must be dismissed. The parties’ dispute arose over a disagreement over whether national or local handling was required with regard to underlying labor conflicts about Section 6 notices which proposed changes in wages, health and welfare benefits, and work rules. However, without reaching the issue of whether national or local negotiations are appropriate, the parties have managed to settle the underlying labor conflicts. If the Court were to now render a decision on the parties’ claims and counterclaims, it would be doing nothing more than issuing an advisory opinion about whether IBLE and the carriers must negotiate on a national or local level with regard to Section 6 notice disputes in the future.

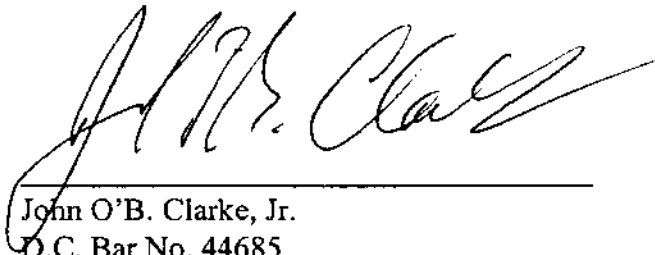
As that ruling shows, the subject matter of the 1995 litigation between the carriers and the UTU and BLE arose from proposals that the parties made in 1994 and 1995 under Section 6 of the Railway Labor Act, 45 U.S.C. § 156, to change their agreements. The 1994 Section 6 notices have been resolved and are *not* in dispute in the current litigation. The only similarity between the two sets of litigation is that they both involve the same legal controversy over the proper interpretation of the Railway Labor Act, but as this Court held in 1996, that “dispute” in and of itself is not justiciable; it requires a nucleus of operative facts in which that question of law arises to present a live case or controversy. Such a controversy was presented in 1995, and then ceased to exist in 1996 when the underlying disputes over agreement changes were resolved. That same legal dispute has arisen again, but in an entirely new set of facts, and, thus, does not involve the same subject matter as the dispute that gave rise to the 1995 litigation.

### CONCLUSION

Plaintiff Committees respectfully submit that it is a gross misuse of the policies behind the related case concept to use litigation that was dismissed in 1996 as being moot as the basis on which to assign the present litigation automatically to the same judge who had been assigned the 1995 litigation. There is clearly no policy reason present here that supports an exception to the rule that this Court has adopted that cases be randomly assigned. That rule that judges be selected randomly protects the integrity of the litigation process and it is a blatant misuse of the policies behind that exception to permit a party to litigation to use the related case concept as a means to hold on to a favorable judge, especially where the party who is rushing to that judge successfully argued that the underlying legal controversy should not be resolved when it was previously before the court because it no longer presented a live case or controversy. Randomly assigning the new litigation does not

erase what occurred in the past litigation, for the decisions in the companion case involving the third union that is not involved here (which is the only case that resulted in a judgment on the merits) are available to whichever judge may be assigned these cases on a random basis for whatever weight the court may wish to give to those decisions. But again, plaintiffs stress, the integrity of the judicial process mandates that the carriers should not be given the power to control which judge should be assigned this case by impermissibly trying to resurrect litigation that they successfully argued in the past no longer presented a live case or controversy, and using that long-mooted litigation as an essential aspect of their judge shopping. Thus, plaintiff Committees respectfully submit, this Court should send the *BNSF v. UTU* case and the one that plaintiff Committees have filed, along with the motion to consolidate, to the Calendar Committee for reassignment randomly.

Respectfully Submitted,



---

John O'B. Clarke, Jr.  
D.C. Bar No. 44685  
HIGSAW, MAHONEY & CLARKE, P.C.  
1050 17<sup>th</sup> 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**

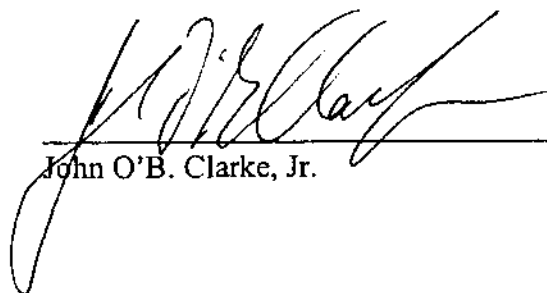
I hereby certify that I have this 7<sup>th</sup> day of January, 2000, caused a copy of the foregoing Objection To Related Case Designation to be served upon counsel for defendants and all parties in No. 99-CV-03117 by first class mail, postage pre-paid and properly addressed to the offices of:

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.

# ATTACHMENT A

FILED

OCT 25 1996

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NANCY MAYER-WHITTINGTON, CLERK  
U.S. DISTRICT COURT

INTERNATIONAL BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS, et al.,

Plaintiffs,

v.

CONSOLIDATED RAIL  
CORPORATION, et al.,

Defendants.

Civ. No. 95-00220 (TFH) - 45

ATCHISON, TOPEKA & SANTA FE  
RAILWAY, ET AL.,

Plaintiffs,

v.

INTERNATIONAL BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS,

Defendants.

Civ. No. 95-00387 (TFH) - 25

MEMORANDUM OPINION

Pending before the Court is the motion of Defendant/Counterclaimant/Plaintiff/Counterdefendant Rail Carriers to dismiss the above-referenced actions as moot. For the reasons discussed herein, the motion will be granted.

BACKGROUND

This case arose out of a disagreement between the parties as to whether collective bargaining regarding Section 6 notices proposing changes in wages, health and welfare benefits, and work rules should be conducted on a national or local basis. Before any collective bargaining

(N)

started, the carriers designated the National Carriers' Conference Committee to act as their joint multi-employer bargaining representative in negotiations with the railway labor unions, including the International Brotherhood of Locomotive Engineers ("IBLE"). The IBLE, however, refused to bargain on a national basis, seeking instead to bargain locally with the individual carriers.

The IBLE filed the complaint in 95-220 for declaratory and injunctive relief seeking, first, a declaration that the carriers were violating the Railway Labor Act ("RLA"), 45 U.S.C. § 151 et seq., by insisting on national handling and, second, an injunction requiring the carriers to bargain on a local basis. The carriers then filed the complaint in 95-387 for declaratory and injunctive relief seeking a contrary determination of the same issue. Each side subsequently filed a counterclaim on the other side's action, presenting generally the same arguments. The actions were then consolidated. After the close of discovery, the parties filed cross-motions for summary judgment.

In late 1995, during the briefing of the summary judgment motions, the parties entered into what both have referred to as "two track" or "dual track" negotiations to settle the underlying disputes regarding wages, health and welfare benefits, and work rules which arose from their Section 6 notices. "Two track" or "dual track" negotiating means that some parts of the negotiations occurred nationally while some aspects were conducted locally. As a result of those negotiations, a tentative agreement for settlement of the disputes arising from the notices was entered into nationally, after which the IBLE committees on some of the railroads engaged in further local negotiations with the railroads over issues regarded as local. Both sides agreed that their use of the "two track" negotiations would in no way prejudice their legal argument over whether the RLA requires local or national bargaining.

At this time, the national agreement, as supplemented or modified through local negotiations, has been ratified and put into effect with respect to all the railroads in this case with the exception of Conrail and Portland Terminal. Negotiations on those railroads are, through mutual agreement, currently being handled on a local basis, through negotiations between the union's local representatives and the two individual carriers.

The settlements in effect on all the other railroads provides for a moratorium on all future Section 6 notices until November 1, 1999. The carriers now seek to dismiss as moot the complaints and counterclaims due to the agreements resolving the underlying contract disputes between the carriers and the IBLE.

## DISCUSSION

### *A. The Action is Moot*

The "case or controversy" requirement of Article III of the Constitution prohibits federal courts from issuing advisory opinions based upon a hypothetical factual situation. Gulf Oil Corp. v. Brock, 778 F.2d 834, 838 (D.C. Cir. 1985). Instead, a "live controversy" must confront the Court before it may exercise jurisdiction. Maryland People's Counsel v. FERC, 761 F.2d 768, 773 (D.C. Cir. 1985). A case becomes moot when "the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. 486, 496 (1969). Thus, when "events have so transpired that the decision will neither presently effect the parties' rights nor has a more-than-speculative chance of effecting them in the future," the action must be dismissed as moot. Transwestern Pipeline Co. v. FERC, 897 F.2d 570, 575 (D.C. Cir. 1990).

The complaints and counterclaims in these two cases are moot because there no longer

exists a "live controversy" between IBLE and the carriers. Therefore, the complaints and counterclaims must be dismissed. The parties' dispute arose over a disagreement over whether national or local handling was required with regard to underlying labor conflicts about Section 6 notices which proposed changes in wages, health and welfare benefits, and work rules. However, without reaching the issue of whether national or local negotiations are appropriate, the parties have managed to settle the underlying labor conflicts. If the Court were to now render a decision on the parties' claims and counterclaims, it would be doing nothing more than issuing an advisory opinion about whether IBLE and the carriers must negotiate on a national or local level with regard to Section 6 notice disputes in the future.

Nor does the fact that two railroads, Conrail and Portland Terminal, have not yet reached a final agreement settling the underlying contract disputes with the union effect the mootness analysis under the circumstances of these two cases. The fact is that negotiations on those railroads are, through mutual agreement, now being handled on a local basis through negotiation between the union's local representatives and the two individual carriers. Thus, while there may still be disputes regarding various contract provisions, there is no longer any dispute as to how negotiations regarding those disputes shall be conducted, and it is the form of any negotiations, whether national or local, which is at issue in the complaints and counterclaims currently before the Court.

The union claims that a decision on the merits of these two cases could still have a practical legal effect on the contract dispute for Conrail and Portland Terminal, because, at present, Conrail and Portland Terminal are limited to supplementing or modifying a document that was negotiated nationally. What IBLE seems to be arguing is that the controversy is still "live"

and could still have an effect on Conrail and Portland Terminal because, if the Court reached a decision on the merits of the summary judgment motions, Conrail and Portland Terminal might be able to negotiate a different agreement. This would necessarily require that Conrail and Portland Terminal repudiate their current agreements to negotiate in the "two track" format. Only then could a decision on the merits by the Court have any effect on the parties. That the two railroads in question would, in fact, back out of their present agreements is mere speculation, and a mere speculative chance of affecting a party's rights in the future is not enough to overcome mootness. Transwestern Pipeline Co., 897 F.2d at 575.

In addition, as the carriers argue, the document in question is a national core agreement which the union itself made voluntarily. Thus, any constraints on bargaining are imposed by the union's own agreement. In addition, it is clear that this core agreement may be supplemented and modified on the local level. In fact, this is the process that is still ongoing.

The union also argues that its complaint and counterclaim raise continuing issues involving the carriers' past conduct, specifically, whether the carriers violated Section 2 First of the RLA, 45 U.S.C. § 152, by refusing to confer with the general chairman or chairmen on that railroad, and demanding to meet and bargain with only IBLE or its officers. The union also claims that its pleadings raise continuing issues as to the designated representative of the employees on each of the plaintiff carriers. While the union clearly inserted these additional claims with the hope of eliminating a possible mootness problem, its own argument in support of the continuing viability of these claims indicates that they are nothing more than an attempt to get a ruling on the central

issue of local versus national handling.<sup>1</sup>

For example, the union's argument that the carriers failed to bargain in good faith and, thus, violated the RLA when they refused to meet with the individual GCA/BLE on each of the railroads is simply another way of arguing that the union should have engaged in local bargaining rather than insisting on national handling. The same can be said of the union's argument that the carriers' advocacy of national handling was tantamount to insistence that IBLE's national representatives rather than IBLE's local General Committees conduct the negotiations on the union side. The Court recognizes these claims as part of the basic controversy over whether negotiations regarding the Section 6 notices should be conducted on a national basis or on a local one despite the union's effort to make them appear different. Therefore, these additional claims have no effect on the Court's determination that the actions are moot.

***B. The Exception for Controversies "Capable of Repetition Yet Evading Review" Does Not Apply in This Case***

IBLE also argues that even if this case falls within the mootness doctrine, the exception for cases "that are capable of repetition yet evade review" should be applied here. There are two prerequisites for meeting this exception: (1) there must be a reasonable expectation that the same complaining party will be subjected to the same action again, and (2) the challenged action must

---

1. In its opposition, the union admits that these additional claims are meant to eliminate once and for all their Hobson's Choice in every round of bargaining. This choice, the union argues, is between (1) whether to delay bargaining until the local versus national handling issue is resolved, while the union's members continue to work under conditions that collective bargaining is designed to change, or (2) accept the carriers' refusal to bargain locally by negotiating around the local versus national handling question and ultimately either reach agreements which moot the issue or resort to a strike which could trigger a Congressional response which could also moot the argument. See Union's Opp. at 9-10.

have been too short in duration to be fully litigated prior to its cessation. Weinstein v. Bradford, 423 U.S. 147, 149 (1975). Neither requirement is satisfied under the facts of this case.

### I. "Capable of Repetition"

In order to demonstrate a reasonable expectation that a dispute will recur, a showing of more than a mere "theoretical possibility" of recurrence is required. Maryland People's Counsel v. FERC, 761 F.2d 768, 773 (D.C. Cir. 1985). Instead, there must be a "reasonable likelihood" that the situation will repeat itself. Honig v. Doe, 484 U.S. 305, 319-20 & n. 6 (1988); Burlington N. R.R. Co. v. Bhd. of Maintenance of Way Employees, 481 U.S. 429, 436 n.4 (1987). While there is a theoretical possibility of recurrence in this case, it does not rise to the level of a reasonable likelihood. Therefore, the first requirement for the exception is not met.

The facts which support this conclusion are as follows. First, the parties' settlements on the underlying labor disputes include a moratorium on new Section 6 notices until November 1, 1999. Thus, no dispute over whether national or local handling is required can possibly arise before that date. Once the moratorium expires, new Section 6 notices would need to be served before the dispute could recur. Before that stage, however, it is possible that the carriers and the union could negotiate further changes in their collective bargaining agreements voluntarily without resorting to Section 6 notices. If new Section 6 notices were served, the dispute could only recur if the carriers once again insisted on national handling while the union demanded local handling. That such would occur is far from certain. Up until the current controversy, IBLE had previously engaged in national handling on numerous occasions. See Carriers' Statement of Material Facts para. 16-71 and sources cited therein. Finally, the fact that the carriers and the union have been able to resolve their underlying labor disputes on this occasion through use of the

“two track” or dual track” negotiations makes it likely that they could continue this practice in the future, making recurrence of the current controversy, though theoretically possible, certainly less than reasonably likely.

## 2. “Evading Review”

Even if there existed a reasonable likelihood that the union would be subject to the same action again, such an action would not be of such short duration that it would evade review. As this Court explained in Bhd. of Maintenance Way Employees v. Atchison, Topeka and Santa Fe Ry. Co., Civ. No. 95-2031, slip op. (D.D.C. Apr. 11, 1996), cases where courts have found a controversy capable of evading review invariably involve an action which by its own nature is short-lived or has a specific time constraint. See, e.g., United Ass’n of Journeymen and Apprentices v. Barr, 981 F.2d 1269, 1272-73 (D.C. Cir. 1992)(finding action regarding installation work on oil platform lasting one month capable of evading review); Christian Knights of the Ku Klux Klan v. District of Columbia, 972 F.2d 365, 369-70 (D.C. Cir. 1992)(determining that decision to deny parade permit made fifteen days before parade capable of evading review). In fact, the case which the union itself seeks to compare to the present situation and use as support for its argument that the present action is capable of evading review, Burlington Northern Railroad, 481 U.S. 429 (1987), was such a case.

Burlington Northern concerned the issue of whether secondary picketing was a permissible means of self-help under the RLA after the major dispute procedures of the Act have been exhausted. Id. In contrast, the present dispute concerns the nature of bargaining that is required, whether local or national, during the major dispute procedures of the RLA. The self-help employed in Burlington Northern included strikes, and Congress and the President were

quick to step in to prevent a national shutdown of essential transportation services. See id. at 435-36. The Court reasoned that "because such disputes typically are resolved quickly by executive or legislative action," the controversy was one that was capable of repetition yet evading review. Id. at n. 4. The case currently before this Court is not one involving executive or legislative action. Moreover, the carriers point out that the parties involved in the present action have always resolved disputes such as the present one without resorting to self-help. There was no time constraint imposed upon the parties in this case by Congress or otherwise. Instead, the parties have reached agreements regarding the underlying labor disputes on their own. Either side was free to continue with the judicial process rather than making the current agreements regarding the underlying labor disputes. Thus, any time constraint was self-imposed. For these reasons, the present controversy is not one which will necessarily evade review if, in fact, it arises again.<sup>2</sup>

After consideration of the above and keeping in mind the admonition that the "capable or repetition yet evading review" exception should only apply in "exceptional circumstances," City of Los Angeles v. Lyons, 461 U.S. 95, 109 (1983), the Court concludes that the exception does not apply in this case.

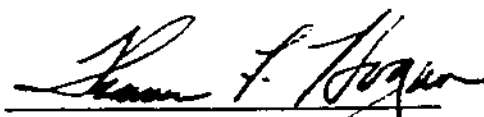
---

2. In fact, this Court has addressed the same issue in the preliminary injunction phase in Alton & Southern Railway v. Brotherhood of Maintenance of Way Employees, 883 F. Supp. 755 (D.D.C. 1995), and as the carriers point out, courts have succeeded in deciding issues like the issue in these cases on both the trial and appellate levels. See, e.g., Bhd. of R.R. Trainmen v. Atlantic Coastline R.R., 383 F.2d 225 (D.C. Cir. 1967)(regarding local versus national handling of crew consists disputes), cert. denied, 398 U.S. 1047 (1968); American Ry. & Airway Supervisors Ass'n v. Soo Line R.R., 891 F.2d 675 (8th Cir. 1989)(seeking injunctive relief to require national bargaining over proposed modifications of health and welfare benefits), cert. denied, 498 U.S. 809 (1990); United Transp. Union v. Grand Trunk W. R.R., 901 F.2d 489 (6th Cir.)(action seeking to compel railroad to continue to engage in national bargaining), cert. denied, 498 U.S. 815 (1990).

CONCLUSION

For the reasons discussed herein, the motion of Defendant/Counterclaimant/Plaintiff/  
Counterdefendant Rail Carriers to dismiss the actions as moot is GRANTED.

October 24<sup>th</sup>, 1996



Thomas F. Hogan  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

INTERNATIONAL BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS, et al.,

Plaintiffs,

v.

CONSOLIDATED RAIL  
CORPORATION, et al.,

Defendants.

Civ. No. 95-00229 (TFH) - 46

FILED

OCT 25 1996

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

ATCHISON, TOPEKA & SANTA FE  
RAILWAY, ET AL.,

Plaintiffs,

v.

INTERNATIONAL BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS,

Defendants.

Civ. No. 95-00387 (TFH) - 26


ORDER

Pending before the Court is the motion of Defendant/Counterclaimant/Plaintiff/Counterdefendant Rail Carriers to dismiss the above-referenced actions as moot. For the reasons set forth in the accompanying memorandum opinion, it is hereby

ORDERED that the motion to dismiss is GRANTED; and it is further

ORDERED that the cases Civ No. 95-220 and Civ. No. 95-387 are DISMISSED.

October 24<sup>th</sup>, 1996



Thomas F. Hogan  
United States District Judge

(11)

**ATTACHMENT B**

**MANDATE**

**United States Court of Appeals** (the provisions of Fed. R. App. Pro. 41(a))  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-7248

5/12/97  
*E. Brown*  
September Term, 1996  
Order on Costs

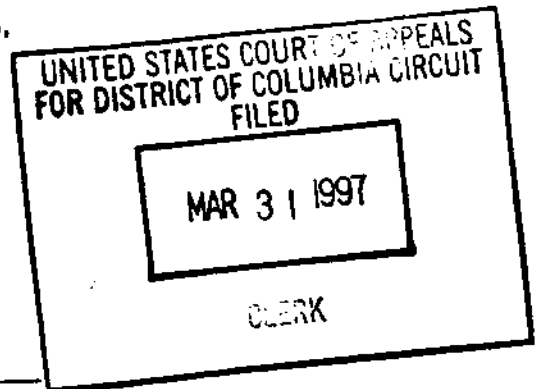
98cv00220  
95cv00387

International Brotherhood of Locomotive Engineers,  
et al.,

Appellants

v.

Consolidated Rail Corporation, et al.,  
Appellees



Consolidated with 96-7249

**BEFORE:** Edwards, Chief Judge; Wald and Williams, Circuit Judges

**ORDER**

Upon consideration of the motion for summary affirmance, the response thereto, and the reply, it is

**ORDERED** that the motion for summary affirmance be granted, substantially for the reasons stated by the district court in its order and memorandum opinion filed October 25, 1996. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), cert. denied, 449 U.S. 994 (1980).

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 41.

Per Curiam

*[Signature]*  
SFW

## ATTACHMENT C

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SEP 13 1996

SEP 6 5 33 PM '96

GENERAL COMMITTEE OF ADJUSTMENT GO-386, et al.,

Plaintiffs,

v.

BURLINGTON NORTHERN RAILROAD COMPANY, et al.,

Defendants.

UNITED STATES  
DISTRICT COURT  
DISTRICT OF COLUMBIA

Civil Action  
No. 95-1602 (TFH)

FILED

SEP 11 1996

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

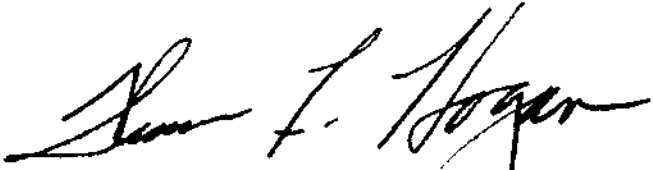
**ORDER**

Upon consideration of a suggestion of mootness filed by plaintiffs and defendants, and it appearing to this Court that this case no longer presents an actual case or controversy within this Court's jurisdiction under Article III of the Constitution of the United States, it is hereby

**ORDERED**, this the complaint and counterclaim are dismissed without prejudice as moot, with each side to bear their own costs.

DATE:

*Sept. 10, 1996*

  
United States District Judge

1)