

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

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Mr. J. Herzig
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: Reciprocal Switching for Inadequate Service
STB Docket Ex Parte 711 (Sub-docket No. 2)

COMMENTS OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

On behalf of the Brotherhood of Locomotive Engineers and Trainmen (“BLET”), a Division of the Rail Conference of the International Brotherhood of Teamsters, please consider the following comments concerning the Surface Transportation Board’s (“STB”) notice of proposed rulemaking regarding reciprocal switching for inadequate rail service. The BLET is the duly designated and recognized collective bargaining representative for over 31,000 active locomotive engineers and trainmen. Consequently, we have a vested interest in the safety and efficient operation of the nation’s entire rail network on which our members operate.

In 2016, the STB proposed reciprocal switching regulations, and BLET joined rail labor in opposing that proposal. Now, STB has published new proposed regulations that would provide for the prescription of a reciprocal switching agreement when service to a terminal-area shipper or receiver fails to meet certain objective performance standards. The Board proposes that—when an incumbent rail carrier’s service fails to meet the previously identified performance standards, the incumbent carrier lacks an affirmative defense, and the prescription of a reciprocal switching agreement would be practicable—it is in the public interest to allow access to an alternate rail carrier through prescription of a reciprocal switching agreement.

Our position on reciprocal switching has not changed since the last proposed rule. We reiterate our previous statements that:

No additional rights gained via regulation or legislation can surmount the physical limitations that exist where two or more railroads exchange rail cars at an interchange. An equally important factor is that a given type of switching such as “reciprocal switching” cannot change who the controlling railroad is and how that controlling railroad chooses to manage their railroad traffic and switching movements. That means that the owning railroad

will still control the movements of trains of another railroad engaged in a “reciprocal switch,” so there is no guarantee that the “guest” railroad’s train will be afforded priority or even equal treatment in authorization for movement.

* * *

The convoluted strategy of reciprocal switching can be avoided by holding railroads accountable for proper interchange schedules. Railroads also create delays due to running very long trains that can tie up to four miles of railroad per train. This results in two things at once. It helps fulfill a railroad’s cost cutting business model (e.g., Precision Scheduled Railroading or “PSR”) by reducing the number of train crews utilized, but it also intensifies rail congestion. Railroad infrastructure was not designed to accommodate trains of such length and weight. Before PSR and before railroads began running very long trains to cut on crew starts, the railroad industry enjoyed higher train velocity. Railroad customers received better and more frequent service. In the 90’s and early 2000’s freight railroads ran more than double the trains that they run today.¹

While we appreciate the Board’s withdrawal of the 2016 proposed rule, we maintain that reciprocal switching does not solve the service issues created by rail carriers.

Further, reciprocal switching would create numerous adverse impacts upon the scope and seniority provisions within collective bargaining agreements. It would impair the safe operations of crews on both the host and guest railroads. Current longstanding rules and precedent should not be departed from due to a perceived solution that is non-existent and not provided for by a practice labeled “reciprocal switching.” The performance of work by railroad workers, especially operating employees, is governed by different contracts with the railroads which establish their collectively bargained rights over certain railroads’ lines, including which employees have the right to perform such work. Allowing other railroads to use their own employees to perform work on the lines of a railroad covered by a different contract would infringe on these current rights and could cause or allow the railroads to provide service based upon who pays the lowest wages to their workers, rather than on who provides the best or most expedited service. This could have the unintended and undesired effect of cherry-picking the cheapest rate (or least expensive collective bargaining agreement), *and* not getting the desired high-quality service standards the Board seeks.

Indeed, unions should be involved from the beginning of any process concerning switching. Our national agreements include provisions that facilitate adjusting operational work rules to address problems with specific shipper locations. However, if the railroad is looking to simply chase away business that isn’t profitable enough, it will never approach us for assistance in addressing legitimate shipper concerns. And, if a “guest” railroad can traverse the tracks of a host railroad based on STB rule, then our national agreements that govern such operations will be negated by STB order. No matter who has trackage rights in a given location, the infrastructure of that location cannot change and will not change as the result of any newly conferred “reciprocal switching” rights.

¹ BLET Comments, STB Docket EP 711-1 Sub. No. 1, February 22, 2023


In addition, allowing other railroads to be able to switch on other railroad properties will likely add to the delays and possibly increase the probability of poor communication and confusion over prevailing operating rules. For example, if Railroad A crosses onto Railroad B to provide switching service for a customer, then the time the RR-A train crew spends occupying the mainline to switch this customer then clear up, causes all RR-B trains that use this mainline to sit around and wait for the RR-A crew to clear. This is time that the RR-B crew could have used to switch other customers or through freight trains to travel across this line to get to their destination. Required reciprocal switching may also result in communication problems due to differing radio frequencies. Crews from different carriers need to use multiple radio frequencies for coordinating movements with multiple dispatchers in different territories controlled by different railroads. Sowing confusion cannot be allowed to be a prominent feature of a new switching rule.

Lastly, the BLET strongly believes that if the Board does adopt new reciprocal switching regulations, it must clearly state that Class II and Class III railroads may not participate in a forced switch over the tracks of a Class I railroad, or in any way be allowed by Board order to operate over the tracks of a Class I railroad. If Class II and III railroads were permitted by STB order to operate over the track of Class I carriers, the issues discussed above concerning the infringement of collectively bargained rights and cherry picking of the least expensive collective bargaining agreement, or possibly no collective bargaining agreement on the Class II or III carrier, will only be exacerbated. Further, to the extent a regulation would permit a switch involving an affiliated company of a Class I, the Board should limit the meaning of "affiliated company" to subsidiaries or affiliates that are themselves Class I railroads (or are covered by a Class I railroad CBA), because some rail carrier subsidiaries or affiliates are not parties to the same levels of CBAs as are the Class I railroads.

We appreciate that the Board sees past the flimsy defense of "insufficient workforce" that the carriers have offered, and we agree that lack of workforce or power should not be an acceptable response to a shipper's complaints of poor service. However, we believe that reciprocal switching will not solve poor service complaints. Instead, we urge the STB to enforce common carrier obligations and holistically address service problems instead of creating new problems and additional safety concerns by imposing reciprocal switching.

BLET understands the difficulties the STB faces in trying to ensure that objective performance standards exist, that those standards are feasible, and a predictable level of service can be maintained by railroads for shippers and their customers. BLET does not intend to say what those standards need to be in the instant docket, however, our organization and the members we represent stand ready to be part of the solution in providing high quality service on our nation's railroads.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized initial 'G' followed by a long, sweeping horizontal line that tapers to the right.

National President