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January 15, 2004

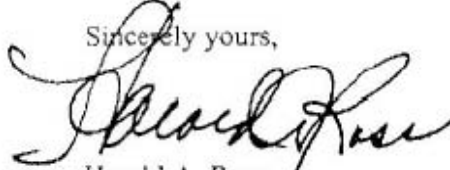
Mr. Don M. Hahs, President
Brotherhood of Locomotive Engineers and Trainmen,
Division of Rail Conference, International Brotherhood of Teamsters
Mezzanine - Standard Building
1370 Ontario Street
Cleveland, Ohio 44 113-1702
Re: BLE&T, et al. v. BN&SFe/CSXT/UPRR
USDC N.D. Ill., Case No. 04 C 0163

Dear Mr. Hahs:

On January 9, 2004, the BLE&T with five other organizations filed the enclosed complaint against BNSF, CSXT and UP seeking declaratory and injunctive relief for alleged violations of FMLA and the RLA.

As you know, CSXT filed an action involving similar issues in Jacksonville in November 2003 against the BMWWE, but did not serve the complaint- The complaint was amended in January to include all the representatives on CSXT and service was made. The same situation occurred on BNSF and UP, which railroads joined in filing a complaint against all the unions in November, which was recently served.

For your information, BMWWE filed an action in Chicago, which appears to suggest the railroads' FMLA Policies should be enjoined pending negotiation or arbitration. The Shopcrafts and ATDA intend to file a complaint or intervention in the BMWWE suit. BRS initially appeared to be a part of the BMWWE suit but now seems to have decided to merely defend in the Jacksonville and Dallas cases-

Sincerely yours,

Harold A. Ross

HAR: sam enclosure

cc: E. W. Rodzwicz, FVP-BLE w/enclosure
W. C. Walpert, GST-BLE
All BNSF General Chairmen
All CSXT General Chairmen
All UP chairmen
J. P. Tolman. Asst- to Pres.-BLE

JUDGE RONALD GUZMAN
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Civil Cover Sheet

RELATED CASE; Judge Anderson/Magistrate Brown
Docket Number 03C9419

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

**Plaintiff(s): Brotherhood of Locomotive
Engineers & Trainmen, et al.**

County of Residence: Cuyahoga
Plaintiff's Atty: Elizabeth LaRose
6140 Joliet Rd., Countryside, IL, 60525
708/579-6663

II. Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

III. Citizenship of Principal

Parties (Diversity Cases Only)

Plaintiff: - N/A

Defendant: - N/A

IV. Origin 1. Original Proceeding

V. Nature of Suit: 740 Railway Labor Act

VI. Cause of Action: 45 U.S.C. § 151 et seq.; 29 U.S.C. § 2601 et seq. Seeking declaratory judgment, monetary relief and injunctive relief re rights and obligations under the Railway Labor Act and the Family and Medical Leave Act.

VII. Requested in Complaint

Class Action: Yes

Dollar Demand:

Jury Demand: Yes

VIII. This case IS NOT a refiling of a previously dismissed case.

Signature

Date;

Defendant(s): Burlington Northern and Santa Fe Railway Company, et al.

County of Residence:

Defendant's Atty:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN,
A DIVISION OF RAILWAY CONFERENCE,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
1370 Ontario Street, Cleveland, OH 44113,
INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS,
9000 Machinists Place, Upper Marlboro, MD 20772,
TRANSPORT WORKERS UNION,
1700 Broadway, New York, NY 10019,
TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION,
3 Research Place, Rockville, MD 20850,
UNITED SUPERVISORS COUNCIL OF AMERICA,
3 Research Place, Rockville, MD 20850,
UNITED TRANSPORTATION UNION,
14600 Detroit Avenue, Cleveland, OH 44107,
REGINALD BAKER,
16936 University Court South, Holland, IL 60473,
MICHAEL S. CHEEKS,
13 South Arbor Trails, Park Forest, IL 60466,

C.R. LOSGREN,
14550 Birch, Orland Park, IL 60462,

TYRONE MINOR,
7931 South Saginaw Street, Chicago, IL 60617,

THOMAS RICHARD,
1724 North Linder Avenue, Chicago, IL 60639,

ROBERT F. SULLIVAN,
672 Franklin Street, Frankfort, IL 60423,
Plaintiffs,

v.

BURLINGTON NORTHERN & SANTA:
FE RAILWAY COMPANY,
2500 Lou Menk Drive, Fort Worth, TX 76131,
CSX TRANSPORTATION, INC.,
500 Water Street, Jacksonville, FL 32202,

UNION PACIFIC RAILROAD
COMPANY,
1416 Dodge Street, Omaha, NE 68179,

Defendants.

COMPLAINT

1. This complaint seeks declaratory and injunctive relief for violations of the Family Medical Leave Act ("FMLA"), 29 U.S.C. §§ 2601-2654, and the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151-188. Defendants have violated the FMLA by promulgating policies relating to FMLA leave that by design and intent interfere with, restrain, and deny the exercise of rights provided under the FMLA. By promulgating their FMLA leave policies, defendants have also abrogated collective bargaining agreements between defendants and plaintiff unions, and unilaterally altered the working conditions of employees represented by plaintiff unions in violation of the RLA.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337. This Court may grant declaratory judgment with respect to the rights of the parties pursuant to 28 U.S.C. §§ 1651 and 2201.

3. Venue is proper in this district under 23 U.S.C. S. 1391 because defendants are subject to personal service in this judicial district and/or operate their businesses in this district.

PARTIES

4. Plaintiff Brotherhood of Locomotive Engineers & Trainmen, a Division of Railway Conference, International Brotherhood of Teamsters ("BLE") is an unincorporated railway labor organization and the exclusive collective bargaining representative under the RLA for certain crafts or classes of employees employed by defendants. BLE is headquartered in Cleveland, Ohio.

5. Plaintiff International Association of Machinists and Aerospace Workers ("IAM") is an unincorporated labor organization and the exclusive collective bargaining representative under the RLA for certain crafts or classes of employees employed by defendants. IAM is headquartered in Upper Marlboro, Maryland.

6. Plaintiff Transport Workers Union ("TWU") is an unincorporated railway labor organization authorized to enforce collective bargaining agreements under the RLA for certain crafts or classes of employees employed by defendant CSX Transportation, Inc. TWU is headquartered in New York, New York.

7. Plaintiff Transportation Communications international Union ("TCU") is an unincorporated railway labor organization and the exclusive collective bargaining representative under the RLA for certain crafts or classes of employees employed by defendants. TCU is headquartered in Rockville, Maryland.

8. Plaintiff United Supervisors Council of America ("USCA") is an unincorporated labor organization and the exclusive collective bargaining representative under the RLA for yardmasters employed by defendant Union Pacific Railroad Company.

9. Plaintiff United Transportation Union ("UTU") is an unincorporated railway labor organization and the exclusive collective bargaining representative under the -RLA for certain crafts or classes of employees employed by defendants. UTU is headquartered in Cleveland, Ohio.

10. Plaintiff Reginald Baker is an employee of defendant Burlington Northern & Santa Fe Railway Company and is represented by UTU for collective bargaining purposes. Plaintiff resides and is employed in this judicial district. Plaintiff is an "eligible employee" under section 2611(2) of the FMLA, 29 U.S.C. § 2611(2), and raises this complaint on behalf of himself and others similarly situated.

11. Plaintiff Michael S. Cheeks is an employee of defendant Union Pacific Railroad Company and is represented by UTU for collective bargaining purposes. Plaintiff resides and is employed in this judicial district. Plaintiff is an "eligible employee" under Section 2611(2) of the FMLA, 29 U.S.C. § 2611(2), and raises this complaint on behalf of himself and others similarly situated.

12. Plaintiff C.R. Losgren is an employee of defendant Union Pacific Railroad Company and is represented by BLE for collective bargaining purposes. Plaintiff resides and is employed in this judicial district. Plaintiff is an "eligible employee" under Section 2611(2) of the FMLA, 29 U.S.C. § 2611(2), and raises this complaint on behalf of himself and others similarly situated.

13. Plaintiff Tyrone Minor is an employee of defendant Burlington Northern & Santa Fe Railway Company and is represented by TCU for collective bargaining purposes. Plaintiff resides and is employed in this judicial district. Plaintiff is an "eligible employee" under Section 2611(2) of the FMLA, 29 U.S.C. § 2611(2), and raises this complaint on behalf of himself and others similarly situated.

14. Plaintiff Thomas Richard is an employee of defendant Union Pacific Railroad Company and is represented by TCU for collective bargaining purposes. Plaintiff resides and is employed in this judicial district. Plaintiff is an "eligible employee" under Section 2611(2) of the FMLA, 29 U.S.C. § 2611(2) and raises this complaint on behalf of himself and others similarly situated.

15. Plaintiff Robert F. Sullivan is an employee of defendant CSX Transportation, Inc. and is represented by UTU for collective bargaining purposes. Plaintiff resides and is employed in this judicial district. Plaintiff is an "eligible employee" under Section 2611(2) of the FMLA, 29 U.S.C. § 2611(2) and raises this complaint on behalf of himself and others similarly situated.

16. Defendant Burlington Northern & Santa Fe Railway Company ("BNSF") operates an interstate rail network and is a "carrier" within the meaning of Section 1, First of the RLA, 45 U.S.C. § 151, First. BNSF is a Delaware corporation with its headquarters in Fort Worth, Texas.

17. Defendant CSX Transportation, Inc. ("CSXT") operates an interstate rail network and is a "carrier" within the meaning of Section 1, First of the RLA, 45 U.S.C. § 151, First. CSXT is a Virginia corporation with its headquarters in Jacksonville, Florida.

18. Defendant Union Pacific Railroad Company ("UP") operates an interstate rail network and is a "carrier" within the meaning of Section 1, First of the RLA, 45 U.S.C. § 151, First. UP is a Delaware corporation with its headquarters in Omaha, Nebraska.

FACTUAL BACKGROUND

19. For at least six decades, plaintiff unions and their predecessor organizations have collectively bargained with defendants and their predecessors to obtain valuable rights regarding leave, including medical and sick leave, personal leave, and vacation leave. These valuable rights are set forth in various collective bargaining agreements between the parties. These

valuable rights include not only the entitlement to take such leave, often with pay, but also the right of employees represented by plaintiff unions to determine when and how to use the various forms of leave to which they are entitled.

20. Vacation leave rights are set forth, for the most part, in agreements known as the National Vacation Agreements ("NVAs"). The NVAs are the result of national bargaining between a group of rail employers, including defendants, and groups of rail unions, including plaintiff unions. These NVAs provide that paid vacations are scheduled based upon seniority and employee preference. The NVAs further provide that once scheduled the carrier cannot alter the scheduling of vacations, unless justified by essential service requirements or demands.

21. Under the NVA covering operating employees, such as those represented by BLE and UTU, employees are entitled to split their allowed vacation time into two blocks of time each year. In addition, an employee may elect to take up to one week of allowed vacation in single day increments.

22. Under the NVA covering non-operating employees, such as those represented by IAM, TCW and TWU, employees are entitled to select their allowed vacation by weeks. Under certain non-operating agreements, employees can also elect to take vacation days in single day increments.

23. Other national and local agreements between the parties provide for other types of leave such as medical and sick leave, personal leave, and unpaid leaves of absence. These national and local agreements set forth the terms and conditions for exercise of these leave rights. For example, under applicable agreements, some employees represented by plaintiff unions are entitled paid personal leave, which employees may choose to use for any purpose. Some employees are also entitled under applicable collective bargaining agreements to take unpaid leaves of absence for purposes including their own sickness, the sickness of a family member, or the birth/adoption of a child.

24. In November 2003, all three defendants announced that effective January 1, 2004 they would implement new FMLA leave policies requiring employees represented by plaintiff unions to use the paid leave to which they are entitled under applicable collective bargaining agreements concurrently with qualifying FMLA leave in certain circumstances.

25. Defendants stated that they were implementing these FMLA policies in response to perceived "abuses" of FMLA leave. Defendants also asserted that the FMLA, 29 U.S.C. § 2612(d)(2)(A) and (B) granted them the statutory right to require such concurrent use of paid leave and FMLA leave.

26. The FMLA policy implemented by BNSF on January 1, 2004, provides that all approved medical leave will now automatically be deemed to constitute FMLA leave. The policy requires employees to substitute paid leave for any portion of unpaid FMLA leave. Specifically, an employee eligible for sick leave benefits must substitute paid sick leave for the employee's own unpaid medical leaves. An employee who is eligible for sick leave benefits but is not eligible for other paid disability leave must substitute up to four weeks of sick leave for their own unpaid family leave. If paid sick leave is exhausted or otherwise unavailable, an employee must substitute other paid leave in the following order: paid personal leave, annual leave, comp days, or vacation leave for any unpaid FMLA leave. This substitution requirement applies to all FMLA leaves without regard to whether the employee is eligible for paid sick leave. Defendant BNSF's FMLA policy also dictates the manner in which the right to blocks of vacation time, as provided for under applicable collective bargaining agreements, must be exhausted.

27. Under the FMLA policy implemented by CSXT on January 1, 2004, defendant CSXT now designates medical leaves of absence taken pursuant to applicable collective bargaining agreements as FMLA leave. Having so designated a leave of absence, an employee must substitute paid sick leave and personal leave for FMLA leave taken due to an employee's own serious health condition. In addition, an employee must substitute paid vacation for FMLA leave taken on an intermittent or reduced schedule basis due to an employee's own serious health condition. An employee must substitute paid personal leave or vacation for FMLA leave taken due to the birth/adoption of a child or the serious health condition of a family member.

28. Under the FMLA policy implemented by UP on January 1, 2004, defendant UP now designates medical leaves of absence taken pursuant to applicable collective bargaining agreements as FMLA leave. Having so designated a leave of absence, an employee must substitute paid sick leave first for FMLA leave taken due to an employee's own serious health condition. When paid sick leave is exhausted or an employee is not eligible for sick leave, an employee must substitute paid personal leave and vacation for FMLA leave due to an employee's own serious health condition, An employee must substitute paid personal leave or vacation for FMLA leave taken due to the birth/adoption of a child or the serious health condition of a family member.

29. Defendants' policies operate to deprive employees represented by plaintiff unions of long-standing collectively bargained rights, such as the right to Lock-in vacation scheduling, the right to take vacations of a certain length for continuous or intermittent periods in accordance with the terms of applicable agreements, the right to determine when and for what reasons paid personal leave should be used, and the right to take contractually provided unpaid leaves of absence.

30. Further, upon information and belief, as a direct result of defendants' unilateral promulgation of their FMLA policies, employees represented by plaintiff unions are being inhibited and restrained from taking qualified FMLA leave in order to avoid forfeiting their collectively bargained rights regarding the use of leave.

31. Defendants did not seek to collectively bargain with plaintiff unions regarding their FMLA leave policies before implementation. Plaintiff unions have not agreed or acquiesced to defendants' implementation of their FMLA leave policies.

COUNT I

VIOLATIONS OF FMLA

32. Paragraphs 1 through 31 are incorporated by reference as if restated herein.

33. The purpose of the FMLA is to entitle all eligible employees to a minimum level of leave in the event of the birth/adoption of a child, an employee's own serious health condition, or the serious health condition of a family member. In setting a minimum level, Congress stated that it did not intend to curtail more generous collectively bargained leave policies. 29 U.S.C. § 2653. Thus, the FMLA specifically provides that:

Nothing in this Act or any amendment made by this Act shall be construed to diminish the obligation of an employer to comply with any collective

bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established under this Act or any amendment made by this Act. 29 U.S.C. § 2652(a)

34. With the purpose of curbing perceived "abuses" of FMLA leave, defendants have implemented FMLA leave policies that unlawfully interfere with, restrain, and deny the exercise of FMLA rights by conditioning the exercise of such rights on the abandonment of rights secured under applicable collective bargaining agreements, such as the right to lock-in vacation scheduling, the right to take vacations of a certain length for continuous or intermittent periods in accordance with the terms of applicable agreements, the right to determine when and for what reasons paid personal leave should be used, and the right to take contractually provided unpaid leaves of absence. Thus, defendants' FMLA policies by design and intent work to inhibit employees represented by plaintiff unions from taking qualifying FMLA leave. Accordingly, defendants have violated Section 2615(a) (1) of the FMLA and/or Section 2652(a). 29 U.S.C. §§ 2615(a) (1) and 2652(a).

35. Section 2612(d)(2) of the FMLA, 29 U.S.C. § 2612(d)(2), does not provide an exception for defendants' unlawful conduct. Section 2612(d)(2) allows employers to require that employees substitute paid leave for FMLA leave in certain circumstances. The statutory permission to require such use of- paid leave, however, is contingent upon the absence of other limiting factors such as the provisions of applicable collective bargaining agreements, See 29 U.S.C. § 2652(a); 50 Fed. Reg. 2180, Summary of Major Comments on § 825.207 (January 6, 1985).

36. To the extent that defendants' FMLA policies purport to require employees to substitute various types of paid leave in an order determined solely by defendants, defendants unlawfully interfere with, restrain, and deny the exercise of the right of employees under the FMLA to determine in the first instance the manner in which unpaid leave is to be substituted for FMLA leave. Accordingly, defendants have violated Section 2615(a)(1) of the FMLA. 29 U.S.C. 2615(a)(1); see also 29 C.F.R. § 825.207.

37. To the extent that defendants' policies purport to require employees to substitute paid sick leave for FMLA leave taken due to the birth/adoption of a child or the serious health condition of a family member, defendants unlawfully interfere with, restrain, and deny the exercise the FMLA rights in violation of Sections 2615(a)(1) and 2612(d)(2), 29 U.S.C §§ 2615(a) (1) and 2612(d)(2).

COUNT II

VIOLATIONS OF THE MAJOR DISPUTE

PROVISIONS OF THE RLA (RLA Section 2, seventh and Section 6)

38. Paragraphs 1 through 37 are incorporated by reference as if restated herein.

39. Section 2, Seventh of the RLA, 45 U.S.C. § 152, Seventh, prohibits a carrier from changing "the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in Section 156 of this title."

40. Section 6 of the RLA, 45 U.S.C. § 156, sets forth the procedure which must be followed prior to any changes in "agreements affecting rates of pay, rules, or working conditions." The carrier or the employee's representative must provide thirty days written notice of a proposed change to an agreement, a conference on the proposed amendment shall be held; and either party may request the mediation services of the National Mediation Board. A carrier cannot alter the rates of pay, rules, or working conditions while it and an employee's representative are involved in this procedure for amending agreements.

41. Defendants' unilateral promulgation of their FMLA leave policies constitutes an unlawful attempt to circumvent, defeat and avoid existing collective bargaining agreements between plaintiff unions and defendants, which establish the sole terms and conditions for employees' contractual rights to various types of leave, including medical or sick leaves of absence for themselves or to care for family members, personal leave, and vacation leave.

42. Defendants' actions also constitute a unilateral alteration of the long-standing working conditions of employees represented by plaintiff unions, embodied in collectively bargained agreements, as well as long-standing custom and practice. Such working conditions include the right to lock-in vacation scheduling, the right to take vacations of a certain length for continuous or segmented periods of time at the employee's discretion, the right to determine when and for what reasons paid personal leave should be used, and the right to take contractually provided leaves of absence on an unpaid basis. Defendants' unilateral alteration of working conditions is unlawful because they have failed to exhaust the major dispute notice, mediation and bargaining processes of the RLA, in violation of Section 2, Seventh and Section 6 of the RLA.

43. Defendants' actions constitute an unlawful resort to self-help without first exhausting the major dispute processes of the RLA.

COUNT III

FAILURE TO MAINTAIN AGREEMENTS (Section 2, First)

44. Paragraphs 1 through 43 are incorporated by reference as if restated herein.

45. Section 2, First of the RLA, 45 U.S.C. § 152, First, requires carriers "to exert every reasonable effort to make and maintain agreements concerning the rates of pay, rules, and working conditions" of employees of a carrier and "to settle all disputes in order to avoid any interruption to commerce or the operation of any carrier growing, out of any dispute between the carrier and the employees thereof."

46. Defendants' actions violate their obligations under Section 2, First of the RLA, 45 U.S.C. § 152, First.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that this Court grant the following relief:

- A. Enter a judgment declaring that defendants' policies relating to FMLA leave interfere with, restrain, and deny the exercise of rights provided under the FMLA
- B. Enter a judgment declaring that defendants have violated their statutory duty under Section 2, Seventh and Section 6 of the RLA, 45 U.S.C. §§ 152, Seventh and 156, to maintain the status quo as set forth in collective bargaining agreements between defendants and plaintiff unions;
- C. Enter a judgment declaring that defendants have violated their statutory duty under Section 2, First of the RLA, 45 U.S.C. § 152, First, to maintain their agreements with plaintiff unions;
- D. Enter an order granting plaintiffs injunctive relief compelling defendants to cease from interfering with, restraining, and denying the exercise of rights provided under the FMLA;
- E. Enter an order granting plaintiff unions injunctive relief compelling defendants to comply with their statutory duty under Section 2, Seventh and Section 6 of the RLA, 45 U.S.C. §§ 152, Seventh and 156, and refrain from any further unilateral actions in abrogation of existing collective bargaining agreements with plaintiff unions until they have followed and exhausted the procedures for amending agreements as set forth in the RLA;
- F. Enter an order requiring defendants to make whole all employees represented by plaintiff unions for any losses they have suffered as a result of defendants' unlawful actions;
- G. Enter an order awarding plaintiffs their attorneys, fees and other costs associated with this action;
- H. Enter an order granting further relief as the Court may deem proper.

Plaintiffs hereby demand a trial by jury on all issues triable to a jury.

Respectfully submitted,

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Dated: January 9, 2004 Counsel for Plaintiffs