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## **UTU prevails in federal lawsuit on crew consist, FELA bargaining**

The UTU has no obligation to bargain nationally over crew consist and no obligation at all to bargain over the railroads' desire to scrap the Federal Employers' Liability Act (FELA), a federal court has ruled.

The UTU sued most of the nation's major railroads in March 2005 after those carriers demanded the UTU negotiate, at the national level, the carriers' demand that train-crew size be reduced, and that the UTU bargain with the carriers over a joint legislative proposal to amend or eliminate FELA.

The carriers sought to eliminate conductor and brakeman positions on all through-freight trains.

The UTU contended that existing agreements relating to minimum train-crew size were negotiated on a railroad-by-railroad basis through UTU general committees of adjustment, and that any attempt by the carriers to change those agreements must be handled at the general committee level and not in so-called national handling where the major railroads coordinate their bargaining through the National Carriers' Conference Committee (NCCC). The court agreed.

The court also told the railroads that the UTU has no obligation, at the current time, to bargain over a carrier demand for significantly reduced wages and benefits as an alternative to reduced crew size. That issue could become ripe for judicial review if the carriers seek changes in crew consist at the general committee level.

However, the court said it would not, at this time, rule on whether the UTU must negotiate crew consist

even at the general committee level, or if a resulting dispute would be "major" or "minor" under the Railway Labor Act. "Minor" disputes must be settled through binding arbitration; "major" disputes can lead to a work stoppage or court injunction.

The carriers affected include BNSF, CSX, Kansas City Southern, Norfolk Southern and Union Pacific. Those carriers and the UTU have been in negotiations since Jan. 1, 2005, over rates of pay and working conditions.

The crew-consist agreements provide that a minimum of one conductor (and, in some cases, one brakeman, also) be assigned to all through-freight trains.

Judge Patrick Murphy of the U.S. District Court for the Southern District of Illinois wrote in his March 10 decision:

"Based upon the facts presented, the long history of local negotiating of crew consist issues, and case law, UTU has no obligation to bargain with defendant carriers in national handling regarding the crew consist issues raised [in the carriers' Section 6 notices]."

With regard to the carriers' FELA demand, Judge Murphy wrote:

"Because Congress is not a party to the agreement [being negotiated], UTU, and defendant carriers for that matter, lack the authority to agree to the proposal's enactment. Therefore, UTU has no duty to bargain on this provision, as it is non-bargainable under the Railway Labor Act."

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