

File
ELH

October 17, 1972

Mr. B. Picciano, General Chairman
Brotherhood of Railway Carmen
of the United States and Canada
455 9th Street
Fairview, New Jersey - 07022

Dear Sir:

This is in reference to your letter of October 1, 1972 alleging that the Cleveland Union Terminal transferred and abandoned the Mail Hall on September 1, 1972; and, as a result, Carmen G. Janke, E. Korchenderfer and P. Sowinski were adversely affected and entitled to the protective benefits of Article I of the September 25, 1964 Agreement.

The U. S. Post Office Department, as a result of changes in their mail handling methods, elected to discontinue the use of the Mail Hall facilities; and, as a result, the Claimants' positions were abolished.

From the above, it is clear that these positions were not abolished because of a transfer of work or abandoned by the Cleveland Union Terminal, but rather because of a decline in that carrier's business, as covered by Article I, Section 3, of the September 25, 1964 Agreement.

In view of the foregoing, we are of the opinion the September 25, 1964 Agreement was not violated and the Claimants are not entitled to the protective benefits of Article I.

In any event, however, each of the Claimants were offered Carmen positions at Rockport (approximately eight (8) miles from their former work location) as covered by Rule 29(b) of the current shop crafts agreement. Claimants G. Janke and P. Sowinski rejected the job offer but E. Kerchenderfer accepted and is presently employed as such.

Mr. B. Picciano

- 2 -

October 17, 1972

Correspondence has been received on this matter from Local Chairman, P. Scuba, and accordingly a copy of this letter is being furnished him.

Very truly yours,

/s/ N. P. Patterson *N.P.*

N. P. Patterson
Director-Labor Relations

cc: Mr. P. Scuba, Local Chairman
Brotherhood of Railway Carmen
of the United States and Canada
4600 West 11th Street
Cleveland, Ohio 44109

bc: S. D. Dutrow
G. C. Eiert

DAW/msm

MAW
HS

P/S

November 15, 1972

Mr. B. Picciano, General Chairman
Brotherhood of Railway Carmen of
the United States & Canada
453 9th Street
Fairview, N.J. 07022

Dear Sir:

This refers to our discussion of October 12, regarding your claim of September 30, 1972 that Cleveland Union Terminal Carmen J. Jarabek, S. Novotny, L. Smolik and J. Pentz were adversely affected and entitled to the protective benefits of Article I of the September 25, 1964 Agreement, when trains 63, 64, 15, 16, 315, 316, 98, 51 and 28 were discontinued on May 1, 1971.

The trains referred to above were discontinued on May 1, 1971, in accordance with the Rail Passenger Service Act of 1970, Public Law 91-518; which, incidentally, did not result in the elimination of all train service. Consequently, we fail to understand how any provision of the September 25, 1964 Agreement could be applicable.

In any event, however, our records indicate that Mr. Pentz retired effective April 30, 1971, and Claimants Smolik and Jarabek continued in service at C.U.T. until retirement on June 17, 1971 and November 1, 1971, respectively. Mr. Novotny was offered a carman position at Rockport (approximately 8 miles from C.U.T.) and rejected the offer but elected to fill vacancies at C.U.T. until he retired on August 1, 1971.

Under these circumstances, even if the September 25, 1964 Agreement was somehow applicable, the Claimants clearly were not deprived of employment. The claims are accordingly denied.

We have received correspondence on this matter from Local Chairman, P. Scuba, and a copy of this letter is being furnished him.

Very truly yours,
/s/ N. P. Patterson

P/S

N. P. Patterson
Director-Labor Relations

cc: P. Scuba, Local Chairman
Lodge 1055
GFB/hl/mam

cc: S. D. Butrow
G. C. Elliott

DAW

Cleveland, Ohio
November 30, 1972

Mr. G. Bent:

Enclosed herewith is a copy of letter written by E. W. Kochenderfer, CUT Carman, to the Cleveland Press Action Line.

The Cleveland Press, contacted this office by letter, requesting we notify them of what action has been taken to resolve Kochenderfer's complaint.

The subject of Kochenderfer's letter may or may not be one which has been handled by B. Picciano with your office.

As a matter of information, Amtrak began its operation at the CUT on May 1, 1971 and the Carman positions at that location were abolished. The senior Carman bid on the three positions advertised at the Mail Hall, a location covered by CUT Carman. Kochenderfer, being a junior man, could not obtain a Mail Hall position and was offered comparable employment at Rockport. He refused the offer, on the basis he could not carry his CUT seniority to Rockport and would have the status of a new employee. It is at this time, in our opinion, that Kochenderfer forfeited the protection of the Amtrak Agreement.

Consequently, when Kochenderfer was called to fill a vacancy at the Mail Hall, due to an employee retiring, he was not allowed the guaranteed wage enjoyed by his fellow workers who complied with the requirements of the Amtrak Agreement.

Therefore, reason for Kochenderfer's letter appealing to the Cleveland Press.

S. D. Dutrow
S. D. Dutrow


Cleveland, Ohio
March 12, 1973 

Mr. N. P. Patterson

This is in reference to your letter dated February 27, 1973 to Mr. Paul Scuba with copy to this office concerning the employment status of former Cleveland Union Terminal Carmen, G. Janke, E. Kochenderfer and P. Sowinski.

The following is a chronological chain of events concerning each man referred to above:

G. Janke

Janke's position at the GUT was abolished on April 30, 1971 with the advent of Amtrak.

Effective May 1, 1972, Janke was awarded position MH-2 at the Mail Hall and was immediately paid a displacement allowance commencing with the month of May 1971 and continued until September 1972.

With the close of business on September 1, 1972, Janke's position MH-2 was abolished as a result of a decline in business when the Mail Hall closed.

On August 28, 1972, Janke was offered a permanent position at Rockport (a location which did not require a change in place of residence) and could have worked immediately following his job abolishment at the Mail Hall.

On August 29, 1972, Janke acknowledged the written offer of comparable employment and refused to accept the position at Rockport.

Janke has not worked since September 2, 1972 and has been denied a Displacement Allowance subsequent to August 1972.

On November 16, 1972, Mr. Ellert wrote to Janke and advised him to accept employment if and when available and if he chose to accept, such employment would not interfere with any previous claim concerning his protection.

In December 1972, Janke was offered employment and upon acceptance was sent to take a return to work physical examination. Unfortunately, Janke did not pass and was physically disqualified. He does not have FC seniority and is currently disqualified.

P. Sowinski

Sowinski was working at the Mail Hall up to March 12, 1972 and was subsequently furloughed when trains #55 and #56 were discontinued.

March 12, 1973

P. Sowinski (Cont.)

On April 18, 1972, Sowinski was employed at Whiskey Island and worked until April 28, 1972 when he was recalled to the Mail Hall.

On August 22, 1972, Sowinski was notified by bulletin that his position at the Mail Hall would be abolished effective with close of business September 1, 1972.

On August 28, 1972, Sowinski was offered a permanent position at Rockport (a location which did not require a change in place of residence) and could have worked immediately following his job abolishment at the Mail Hall.

On August 29, 1972, Sowinski acknowledged the written offer of comparable employment and refused on the basis he could not take his CUT seniority with him.

On November 16, 1972, Mr. Ellert advised Sowinski to accept employment if and when available and if he chose to accept, such acceptance would not interfere with any previous claim concerning his protection.

Sowinski accepted employment at Motor Yard and acquired FC seniority on December 2, 1972.

On January 10, 1973, Sowinski was furloughed and is presently on a furloughed status.

E. Kochenderfer

Kochenderfer's position at the CUT was abolished on April 30, 1971 with the advent of Amtrak. His seniority did not permit him to a position at the Mail Hall, therefore, he was offered comparable employment at Rockport.

On May 6, 1971, Kochenderfer acknowledged the offer of employment at Rockport, but refused to accept and advised he would seek the benefits of Appendix C-1 (Dismissal Allowance).

On June 3, 1971, Kochenderfer was advised by letter that his claim for a Dismissal Allowance was denied on the basis that he had refused comparable employment.

Subsequently, Kochenderfer was called to fill a vacancy at the Mail Hall, account retirement of senior employee. Kochenderfer worked at the Mail Hall until all Carmen positions were abolished at the close of business on September 1, 1972.

On August 28, 1972, Kochenderfer was offered employment at Rockport, but refused such offer on the basis he could not carry his CUT seniority and would therefore be in a worse position.

N. P. Patterson

(3)

March 12, 1973

E. Kochenderfer (Cont.)

Kochenderfer was personally contacted by this office and was advised to accept employment if and when a job became available with the understanding that such acceptance would not interfere with any claim that may be pending.

On October 9, 1972, Kochenderfer acquired PC seniority when he accepted a job at Rockport.

Kochenderfer was furloughed on January 20, 1973 and is currently in a furloughed status.

It is likely that Kochenderfer and Sowinski will be recalled from furlough within 45 days when the Ore season opens.

G. C. Ellert
G. C. Ellert

East End Rockport Yard
4860 W. 150 th Street
Cleveland, Ohio 44135

April 24, 1973

Railroad Retirement Board
844 Rush Street
Chicago, Illinois 60611

Re: Employee: Gustav Jenke
C.U.T. Employee No.: 320064
Penn Central Employee No.: 658835
Social Security No.: 713-12-0854
Last Occupation: Carman-Gang Leader
Cleveland Union Terminal
Cleveland, Ohio

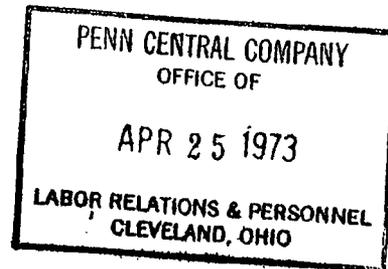
Dear Sir:

Referring to above, your records indicate that Mr. Jenke is presently on disability annuity and this is to advise you he will be receiving vacation allowances for five (5) weeks, beginning May 2 to June 5, 1973 inclusive, in the amount of \$1100.00.

M. Zakarian
General Car Foreman

cc:
 A. Krug

Mr. G. Jenke
12350 Southwest
188 Terrace
Miami, Fla. 33157



This is vacation in 1973 earned in 1972

BEFORE THE ARBITRATION COMMITTEE

In the Matter of:
ROBERT WATJEN, et al.,
Plaintiffs,
vs. Case No. 69-675
PENN CENTRAL,
Defendant.

MICHAEL J. KNAPIK, et al.,
Plaintiffs,
vs. Case No. 69-722
PENN CENTRAL,
Defendant.

DAVID C. BUNDY, et al.
Plaintiffs,
vs. Case No. 69-947
PENN CENTRAL,
Defendant.

G.V. SOPHNER, et al.
Plaintiffs,
vs. Case No. 74-914
PENN CENTRAL,
Defendant.

Deposition of
JOHN GALLAGHER

September 26, 2007
1:30 p.m.

Taken at:
Tricarichi, Carnes & Clements
614 Superior Avenue, NW
Cleveland, Ohio

Kristin L. Wegryn, R.P.R.



RENNILLO

33

1 too. But it's different rates of pay for
 2 different positions as far as the car was
 3 concerned. Passenger were paid more than
 4 freight work is how they rated it.
 5 Q. What type of trains did you work on 14:53:51
 6 at Rockport?
 7 A. Inspecting cars, repairing cars,
 8 loads, know the loading rules, air brake, the
 9 whole thing.
 10 Q. Was it similar to your work at the 14:54:07
 11 CUT?
 12 A. Definitely not.
 13 Q. How so?
 14 A. Well, CUT, you had steam to contend
 15 with; the signal hose to contend with; you had 14:54:21
 16 the interior of the cars, the coaches and the
 17 club cars, et cetera. You know what I mean?
 18 You had to contend with that, repair it. It
 19 was all different, different work altogether.
 20 Q. When did you become the local 14:54:40
 21 representative for the Brotherhood of Railway
 22 Carmen?
 23 A. Vaguely, maybe '47 maybe. I don't
 24 know. Around there.
 25 Q. How long of a period of time did 14:55:14

34

1 you hold the position as local representative
 2 for the Brotherhood of Railway Carmen?
 3 A. Until I got furloughed at Rockport,
 4 that was a representative for -- I mean until I
 5 got furloughed -- beg your pardon -- at CUT, I 14:55:34
 6 was a represent -- a representative of the CUT.
 7 Then when I went out to Rockport, I become a
 8 BRC representative for the carmen of Rockport.
 9 Q. And you don't know when that was?
 10 A. Well, it was from the time I was -- 14:55:53
 11 went out to Rockport. I was a representative
 12 of the BRC of A.
 13 Q. Now, was your -- did your seniority
 14 date hinge on when you were hired at the CUT?
 15 Were they correlated? 14:56:16
 16 A. Kind of hard to answer because your
 17 seniority date initially -- yes, it's from the
 18 day you started.
 19 Q. Okay. And about how many years
 20 seniority at the CUT did you have when you were 14:56:41
 21 furloughed?
 22 A. Twelve. Approximately twelve.
 23 That must be -- might be misleading here
 24 because you had a car cleaner roster, which I
 25 initially was on, and then when they asked me 14:57:08

35

1 to become a carman, okay, I went on the
 2 nonfour-year carman's roster, but I also
 3 retained a seniority as a car cleaner until
 4 such time I become a regular carman. That
 5 was -- 14:57:25
 6 Q. Okay. I see what you mean.
 7 During your employment at the CUT,
 8 was there a decline in passenger service?
 9 A. I would say yes.
 10 Q. Do you -- I'm sorry. Go ahead. 14:58:03
 11 A. It was a decline in passenger
 12 service because the railroad had a lot of Army
 13 traffic, prisoner of war traffic, okay, come
 14 through there. And, naturally, as the conflict
 15 wore on, they didn't have that, but they still 14:58:19
 16 had trains. And it did decline somewhat, yes.
 17 Q. Did that decline begin in the
 18 1950s?
 19 A. I would say so, yeah.
 20 Q. Did that decline continue into the 14:58:34
 21 1960s?
 22 A. Yeah, I would say so. That's when
 23 they have a decline in business, you have
 24 furloughs.
 25 Q. Okay. So the decline in passenger 14:58:54

36

1 business resulted in less and less passenger
 2 cars coming through the CUT?
 3 A. Yes.
 4 Q. Was that decline in passenger cars
 5 that came through the CUT, did that lead to a 14:59:12
 6 lack of work for which one could bid off?
 7 MS. TRICARICHI: Objection. If you
 8 know.
 9 A. I don't know. I couldn't really
 10 say. Yeah. See, there's seasons where I would 14:59:23
 11 work, you know? Like around the holiday, you
 12 had more work because you had more -- don't
 13 forget you're not only moving passengers,
 14 you're moving railroad express and mail, okay?
 15 So if there's an increase in them two products, 14:59:49
 16 there's an increase in work. So it fluctuates.
 17 Q. Okay. You stated previously that
 18 you applied for unemployment.
 19 A. I said that.
 20 Q. Was that more than once? 15:00:08
 21 A. Oh, yeah.
 22 Q. Do you know approximately how many
 23 times you did that?
 24 A. No, I really don't. I don't
 25 recall. 15:00:14

Court Reporting, Records & Media

BEFORE THE ARBITRATION COMMITTEE

In the Matter of:
ROBERT WATJEN, et al.,
Plaintiffs,
vs. Case No. 69-675
PENN CENTRAL,
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MICHAEL J. KNAPIK, et al.,
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PENN CENTRAL,
Defendant.

G.V. SOPHNER, et al.
Plaintiffs,
vs. Case No. 74-914
PENN CENTRAL,
Defendant.

Deposition of
ROBERT MCNEELEY

September 26, 2007
10:30 a.m.

Taken at:
Tricarichi, Carnes & Clements
614 Superior Avenue, NW
Cleveland, Ohio

Kristin L. Wegryn, R.P.R.



RENNILLO

Robert McNeeley

<p>13</p> <p>1 Q. And what -- how long did you remain 2 as a car inspector? 3 A. Most of my career. 4 Q. And during the course of your -- 5 and strike that. 10:58:27 6 You said during the rest of your 7 career. Have you ever had work other than for 8 the railroad? 9 A. Never. 10 Q. And during the course of your 10:58:36 11 railroad career, were you ever a member of a 12 union? 13 A. Yeah. 14 Q. Was it the entire time? 15 A. Yeah. 10:58:52 16 Q. You were always a member of a 17 union? 18 A. Yeah. 19 Q. Was it the same union your entire 20 career? 10:58:58 21 A. Let's see, now I'm confused. TW 22 was -- I don't know. TW-201, I think it's -- 23 Q. Were you -- when you went to work 24 for the railroad before the war, were you a 25 member, a member of the union at that time, in 10:59:20</p>	<p>15</p> <p>1 A. Well, your paper, TW, to every one 2 of the employees. 3 Q. And did you work your entire career 4 at the Cleveland Union Terminal? 5 A. No. Folded up in '67, the end of 11:01:41 6 passenger trains. 7 Q. And at that point, when you ceased 8 working for the Cleveland Union Terminal, did 9 you obtain employment elsewhere? 10 A. Repeat that now. 11:02:16 11 Q. Yes. After you ceased working for 12 the Cleveland -- at the Cleveland Union 13 Terminal, did you get a job at another place? 14 A. I went to Rockport. 15 Q. And when was that? 11:02:27 16 A. '60 -- a few months later, 17 something. 18 Q. A few months after you left? 19 A. A couple months. I don't remember 20 exactly. 11:02:41 21 Q. And when you say later, do you mean 22 after you left the Cleveland Union Terminal? 23 A. After, yeah, after the Union 24 Terminal. 25 Q. And what job did you perform at 11:02:51</p>
<p>14</p> <p>1 those months? 2 A. I don't remember, but I believe I 3 was. 4 Q. And during the course of your 5 career, did you attend union meetings? 10:59:35 6 A. Oh, yeah. 7 Q. Did you attend them regularly? 8 A. No. If I was available. 9 Q. I'm sorry? 10 A. If I was available, it was 10:59:48 11 something I tried to make them. 12 Q. And did you ever file a grievance 13 during the course of your railroad career? 14 A. No. Grievance? Against -- no, no. 15 Q. And did you ever correspond with 11:00:29 16 the union, write a letter to the union about 17 anything during the course of your career? 18 A. No. 19 Q. Did you receive a letter from the 20 union? 11:00:46 21 A. I got it, your monthly issue of 22 your -- that's if that's what you mean. No 23 direct correspondence to me. 24 Q. When you say your monthly issue, 25 what are you referring to? 11:01:09</p>	<p>16</p> <p>1 Rockport? 2 A. Car inspector. 3 Q. And what type of car, cars would 4 you inspect? 5 A. Freight cars. 11:03:16 6 Q. For whom did you work at Rockport? 7 A. Conrail. No, I don't remember when 8 they changed. 9 MS. TRICARICHI: That's okay. If 10 you remember who you were working for then, 11:03:40 11 it's fine. If you don't remember, I'm sure 12 Mr. Stewart -- 13 A. Conrail, I retired from that. 14 MS. TRICARICHI: That's okay. 15 A. I can't remember if it was -- I 11:03:52 16 don't know. 17 Q. Do you recall -- strike that. 18 Did you ever work for Penn Central? 19 A. Yeah, Penn Central at the CUT. 20 Q. Your recollection is that you 11:04:22 21 worked for Penn Central at the Cleveland Union 22 Terminal? 23 A. Yeah, I think. You got me 24 confused. 25 Q. Do you want to take a break? 11:04:34</p>

4 (Pages 13 to 16)

Robert McNeeley

<p>21</p> <p>1 A. 1987.</p> <p>2 Q. And, at that point, were you a car</p> <p>3 inspector?</p> <p>4 A. Yes.</p> <p>5 Q. When you ceased working at the 11:13:02</p> <p>6 Cleveland Union Terminal, how did you find out</p> <p>7 that that was happening?</p> <p>8 A. Well, you knew about actually</p> <p>9 rumors of this and that six months ahead, a</p> <p>10 year ahead, stuff. 11:14:24</p> <p>11 Q. And when you say you knew, other</p> <p>12 than the rumors you're talking about, how did</p> <p>13 you know that that was going to happen?</p> <p>14 A. Same way probably anybody, papers</p> <p>15 and everything talking about it and that. 11:14:43</p> <p>16 Q. Just so I'm clear, when you say</p> <p>17 papers --</p> <p>18 A. We knew it was going to be. Little</p> <p>19 by little, as things started to slow up, less,</p> <p>20 you knew it. 11:15:00</p> <p>21 Q. And in that period of time prior to</p> <p>22 when you actually ceased working there, were</p> <p>23 there less cars for you to inspect than in</p> <p>24 previous years?</p> <p>25 A. Yes, because there are less trains 11:15:16</p>	<p>23</p> <p>1 working at the Cleveland Union Terminal?</p> <p>2 A. Yeah.</p> <p>3 Q. Maybe I can eliminate it this way.</p> <p>4 Were you ever physically injured while you were</p> <p>5 working at Rockport? 11:18:44</p> <p>6 A. Once.</p> <p>7 Q. And when was that? Well, strike</p> <p>8 that.</p> <p>9 What happened?</p> <p>10 A. Well, that was at the Chevy plant 11:18:56</p> <p>11 inspecting a car. Just really, it didn't turn</p> <p>12 out to be nothing. It was -- went to see if my</p> <p>13 hand was broke, but it wasn't. Nothing come of</p> <p>14 it.</p> <p>15 Q. All right. And you -- I'm sorry. 11:19:12</p> <p>16 You also said that you were</p> <p>17 physically injured when you were working at the</p> <p>18 Terminal?</p> <p>19 A. Terminal.</p> <p>20 Q. What happened that time or times? 11:19:24</p> <p>21 A. Well, I was on the wheel pin at the</p> <p>22 time they called it, chain and springs on that</p> <p>23 car and just slipped, slipped, lost balance and</p> <p>24 injured my back.</p> <p>25 Q. Were you off work as a result of 11:19:47</p>
<p>22</p> <p>1 coming in and that.</p> <p>2 Q. And had that been for some period</p> <p>3 of time or was there a precipitous drop at some</p> <p>4 point?</p> <p>5 A. Like I say, it was over a matter of 11:15:39</p> <p>6 months. You always believed it will last</p> <p>7 longer.</p> <p>8 Q. Sir, were you ever physically</p> <p>9 injured while you were working for the</p> <p>10 railroad? 11:17:52</p> <p>11 A. Yeah.</p> <p>12 Q. More than once?</p> <p>13 A. Maybe a couple times. Well, like a</p> <p>14 broken finger.</p> <p>15 Q. When did that happen? 11:18:05</p> <p>16 MS. TRICARICHI: If you remember,</p> <p>17 Mr. McNeeley.</p> <p>18 THE WITNESS: Pardon?</p> <p>19 MS. TRICARICHI: If you can</p> <p>20 remember. Don't -- I don't think Mr. Stewart 11:18:18</p> <p>21 wants you to guess.</p> <p>22 A. I'll tell you in the '50s.</p> <p>23 Q. Let me ask you this way.</p> <p>24 A. '60s. Go ahead.</p> <p>25 Q. Did it happen while you were 11:18:33</p>	<p>24</p> <p>1 that injury?</p> <p>2 A. Yeah. Let's see, trying to think</p> <p>3 of what year. 19 -- had to be in the '50s.</p> <p>4 '56, '57. I'm not sure.</p> <p>5 Q. All right. And any other times 11:20:32</p> <p>6 that you were injured working at the Terminal?</p> <p>7 A. No. Like I said, the one time when</p> <p>8 I broke my finger.</p> <p>9 Q. I want to be clear. You said</p> <p>10 earlier that was at Rockport. 11:20:47</p> <p>11 A. No. That was a different finger on</p> <p>12 my hand. Here's the finger.</p> <p>13 MS. TRICARICHI: There were three</p> <p>14 times: One is a broken finger, it was at the</p> <p>15 CUT; one is a broken finger; one was the back 11:20:58</p> <p>16 he testified in the '50s; and the other was the</p> <p>17 hand that didn't turn out to be anything.</p> <p>18 A. Yeah. The wheel spun out of</p> <p>19 control and hit. That would have been the</p> <p>20 Chevy plant. 11:21:21</p> <p>21 MR. STEWART: Sir, I believe I'm</p> <p>22 going to take a break and then see if I can't</p> <p>23 wrap up when we get back. So why don't we take</p> <p>24 a break for about five or ten minutes.</p> <p>25 THE WITNESS: Okay. 11:21:57</p>

6 (Pages 21 to 24)



Court Reporting, Records & Media

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In the Matter of:
ROBERT WATJEN, et al.,
Plaintiffs,
vs. Case No. 69-675
PENN CENTRAL,
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Plaintiffs,
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Defendant.

G.V. SOPHNER, et al.
Plaintiffs,
vs. Case No. 74-914
PENN CENTRAL,
Defendant.

Deposition of
JAMES KNAPIK

October 3, 2007
11:11 a.m.

Taken at:
Tricarichi, Carnes & Clements
614 Superior Avenue, N.W.
Cleveland, Ohio

Kristin L. Wegryn, R.P.R.



RENNILLO

17

1 Penn Central in this litigation?

2 A. I -- he told me he had a guaranteed

3 job.

4 Q. And how did that give rise to his

5 claim? 11:32:41

6 A. That I don't -- that -- do you mean

7 how it ended?

8 MS. TRICARICHI: Do you understand

9 the question? How --

10 THE WITNESS: No, I don't. 11:32:53

11 MS. TRICARICHI: How it gave rise

12 to his claim?

13 Q. I asked you -- well, let me say --

14 you said he had a guaranteed job?

15 A. That's what he told me. 11:33:01

16 Q. Okay. What did you understand that

17 to mean?

18 A. That he had a lifetime job. That

19 was a general understanding on the railroad.

20 Q. And your father told you that? 11:33:16

21 A. My father told me that he. . .

22 Q. Other than hearing it from your

23 father, did you have any independent knowledge

24 of that, that he had a -- or that he or anyone

25 else had a lifetime job? 11:33:48

18

1 A. I was told I had a lifetime job and

2 everyone I talked to told me they said they

3 thought they had a lifetime job.

4 Q. Who told you that you had a

5 lifetime job? 11:34:09

6 A. The superintendent of

7 Transportation, when the merger occurred.

8 Q. Who was that?

9 A. Mr. Al Cravens.

10 Q. And when you said the merger 11:34:29

11 occurred, what do you mean by the merger?

12 A. When the -- it became a fact that

13 the merger -- it was just the talk of the

14 merger. And then the date that it did merge is

15 when I'm talking about. He came and told me 11:34:56

16 that you have a job for life now, Jim.

17 Q. And by the merger, do you mean the

18 merger of the Pennsylvania Railroad and the New

19 York Central?

20 A. Yes. Yes. 11:35:13

21 Q. And, in fact, then you subsequently

22 worked for Penn Central?

23 A. Yes.

24 Q. Did you -- and what was the

25 railroad you subsequently worked for? 11:35:28

19

1 A. Conrail.

2 Q. That was the successor to Penn

3 Central?

4 A. Yes.

5 Q. Were you working for Conrail when 11:35:38

6 you retired?

7 A. Yes.

8 Q. Other than Mr. Cravens saying that

9 you had a lifetime job, did anyone else in

10 railroad management ever tell you that? 11:36:06

11 A. No, not directly. No.

12 Q. Did anyone in your union ever tell

13 you that?

14 A. No. I had no dealings with my

15 union when I was in management. 11:36:26

16 Q. Did Mr. Cravens say why you would

17 have lifetime employment?

18 A. His statement was -- it wasn't like

19 an official way. He was saying -- he said,

20 Jim, you now have a lifetime job. He meant it 11:36:45

21 more as a him to me. It wasn't an official

22 statement that he was telling me. He was

23 telling me as a friend.

24 Q. And did you have any break of

25 employment between the New York Central and 11:37:09

20

1 Penn Central?

2 A. No.

3 Q. Did you have any break in

4 employment between Penn Central and Conrail?

5 A. No. 11:37:18

6 Q. Do you know -- or what year did the

7 merger between the Pennsylvania and the New

8 York Central take effect?

9 A. I -- it doesn't come to my mind

10 right now. I don't -- I can't tell you the 11:37:58

11 date. I think it was '68.

12 Q. When did you first learn that there

13 was going to be -- that there was a merger

14 proposed between the two railroads, that New

15 York Central and the Pennsylvania? 11:38:37

16 A. I really had -- I only heard rumors

17 of it, the talks of it, but I had no official

18 knowledge of it. Didn't hear from anyone.

19 Q. Do you know the names of any other

20 brakemen who brought claims in this litigation? 11:39:53

21 A. I knew some of them.

22 Q. Let me make sure that you -- I want

23 to make sure the record's clear on the

24 question.

25 A. All right. 11:40:10

33

1 A. Yes.

2 Q. What year was that?

3 A. I don't know really.

4 Q. Are you able to approximate?

5 A. Yes. Oh, 1971. 12:25:32

6 MS. TRICARICHI: That's your

7 approximation?

8 THE WITNESS: Yes.

9 Q. Do you know whether he retired

10 after the merger? 12:25:59

11 A. Yes.

12 Q. Do you know if he was working for

13 Penn Central when he retired?

14 A. Yes.

15 Q. Do you know when Penn Central 12:26:13

16 became Conrail?

17 A. Not exactly, no.

18 Q. Did your father have any breaks in

19 employment during his railroad career?

20 A. During the Depression, yes. 12:27:06

21 Q. Any other time?

22 A. Not to my knowledge.

23 Q. Sir, do you have an understanding

24 as to the nature of the trainmen's claims in

25 this litigation? 12:27:53

34

1 MS. TRICARICHI: Let me just

2 clarify. We've talked about brakemen,

3 trainmen, switchmen, carmen, car inspectors.

4 Which are you using?

5 MR. STEWART: Let me ask first 12:28:04

6 brakemen.

7 A. Do I have a knowledge of --

8 Q. The nature of the claims by the

9 brakemen.

10 A. They're claiming the Merger 12:28:13

11 Protection Agreement.

12 Q. What is the Merger Protection

13 Agreement?

14 A. I don't know the details. I was

15 told it was a lifetime job. 12:28:23

16 Q. And was that the -- when you say

17 you were told, was that the conversation that

18 you testified earlier about with the

19 superintendent of Transportation?

20 A. Yes, that was. 12:28:56

21 Q. And that gentleman's name was

22 Mr. Cravens; is that right?

23 A. Yes.

24 Q. Did Mr. Cravens mention the Merger

25 Protection Agreement when you spoke with him? 12:29:36

35

1 A. We were talking not in an official

2 way. He was just saying now, Jim, you have a

3 lifetime job. It wasn't anything that -- just

4 that I had a lifetime job.

5 Q. When is the first time that you 12:30:00

6 heard of the Merger Protection Agreement?

7 A. I heard people talking of it,

8 various people, various employees talking of

9 it.

10 Q. Was that before the merger? By 12:30:40

11 that I mean where you heard employees talking

12 about it.

13 A. It was right at merger time.

14 Q. Did you ever discuss the Merger

15 Protection Agreement with anyone while you were 12:31:07

16 employed at the railroad?

17 A. Yes.

18 Q. With whom did you discuss it?

19 A. Fellow employees. No one in

20 general. 12:31:24

21 Q. Do you remember any of the

22 employees?

23 A. No. No.

24 Q. And when you had those discussions,

25 was the term "Merger Protective Agreement" -- 12:32:00

36

1 excuse me. "Merger Protection Agreement," was

2 that term actually used?

3 A. Yes.

4 Q. Do you know the nature of the

5 claims that are -- that have been asserted in 12:33:03

6 this litigation by former carmen and car

7 inspectors?

8 A. The Merger Protection Agreement;

9 the job and wage guarantee.

10 Q. And when you say job and wage 12:33:33

11 guarantee, what do you mean by that?

12 A. The job you held at merger date,

13 you were guaranteed that wage and that type of

14 work, job for the rest of your employment time.

15 Q. And how did you learn of the job 12:34:12

16 and wage guarantee?

17 A. Just general talk with fellow

18 employees. No, nothing official.

19 Q. Did you ever discuss the Merger

20 Protection Agreement with any of the claimants 12:34:55

21 in this case?

22 MS. TRICARICHI: Time frame?

23 Q. Let me ask you, did you ever

24 discuss the Merger Protection Agreement with

25 any of the employments, or excuse me, with any 12:35:05

NEW YORK CENTRAL SYSTEM

Cleveland, Ohio, February 21, 1968

Closure

G. C. Foyle
5460 E. Lake Rd.
Lorain, Ohio

G. P. Chelarin
12403 Farrington A.
Cleveland, Ohio

W. W. Hahn
14717 Harley Ave.
Cleveland, Ohio

W. E. Bridell
19505 Purnell Ave.
Rocky River, Ohio

K. B. Day
8620 Franklin Ave.
Cleveland, Ohio

K. V. Millard
3074 W. 112 St.
Cleveland, Ohio

G. R. Norris
17891 Smurser Rd.
Strongsville, Ohio

H. Anderson
10900 Peery Ave.
Cleveland, Ohio

F. C. Uher
1148 Manitoulin
Brunswick, Ohio

M. Gratson
4356 E. 122 St.
Cleveland, Ohio

S. Tannonbaum
780 E. 266 St.
Cleveland, Ohio

G. G. Tomczak
1119 Stanfield
Parma, Ohio

W. P. Grady
12885 Bass Lake
Chardon, Ohio

G. A. Gentile
2718 Snow Rd.
Parma, Ohio

M. J. McLaughlin
2621 W. 52 St.
Cleveland, Ohio

J. F. Acres
97096 Sugar Ridge
W. Ridgeville, O.

E. J. Benko
13415 Harlan Ave.
Lakewood, Ohio

M. J. Knapik
4312 Bucyrus Ave.
Cleveland, Ohio

W. J. Potosky
5965 Edgehill Dr
Parma Hts., Ohio

Wm. Leisher
7100 Columbia Rd.
Crested Falls, Ohio

J. D. Gastony
3205 W. 73 St.
Cleveland, Ohio

H. E. Doran
270 Detroit Ave.
Cleveland, Ohio

A. Augustus
17624 Detroit Ave
Lakewood, Ohio

G. S. Sims
7236 Hoertz Rd.
Parma, Ohio

Wm. Prochaska
1421 Grace Ave.
Lakewood, Ohio

R. Beedlow
1822 E. 89 St.
Cleveland, Ohio

C. Steinle, Jr.
12224 Lorain Ave.
Cleveland, Ohio

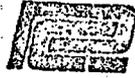
J. J. Boroc
215 Forestview Av
Rocky River, Ohio

A. G. Bogden
3119 W. 61 St.
Cleveland, Ohio

Effective at 12:01 A.M., February 25, 1968 the extra list of Yardmen at Cleveland Union Terminals Company is being reduced and you are furloughed effective at that time. You have rights in the Cleveland Freight Yard territory by virtue of agreement effective February 16, 1965 and may stand for employment in the Freight Yard territory. You should immediately contact General Yardmaster D. J. Weisbarth.

A. B. Crevens,
Transportation Superintendent

EXHIBIT 2



PENN CENTRAL

Detroit, Michigan 48216

January 10, 1969

The following positions will be abolished effective at the close of tours of duty on Friday, January 24, 1969.

<u>Incumbent</u>	<u>Occupation</u>	<u>Position No.</u>	<u>Rate</u>	<u>Location</u>
(Vacancy)	Hd. Rate Clerk	1165	\$681.23	Cleveland, Ohio
R. B. Watjen	Clerk	1174	659.03	" "
J. F. Feldscher	"	1179	647.55	" "
P. J. Franz	"	1187	630.30	" "
J. R. Fensom	"	1188	630.30	" "
(Vacancy)	"	1200	618.82	" "
(Vacancy)	"	1184	641.79	Toledo, Ohio
V. A. Thompson	"	1201	618.82	" "

Under the provisions of existing agreements each of the incumbents has ten (10) calendar days in which to obtain a regularly assigned position available to him in the exercise of his seniority. If he fails to obtain a regularly assigned position within ten (10) calendar days he will become a utility employe subject to use by the Company in accordance with the terms of the Marger Implementing Agreement.

E. T. Scheper
E. T. Scheper

PF Manager-Freight Accounting

January 14, 1969

E. T. Scheper
Manager-Freight Accounting
Penn Central
Detroit, Michigan 48216

Dear Mr. Scheper:

In response to your letter dated January 10th, 1969 regarding the abolishment of my position, I would like to advise you of my intent of obtaining a position available to me by the exercise of my seniority.

Please furnish me a complete list of jobs available to me by the exercise of my seniority rights.

Yours truly,



Robert B. Watjen

RBW/jh

cc: C. Russo, Local Chairman
Collinwood, Ohio

January 16, 1969

E. T. Schepfer
Manager-Freight Accounting
Penn Central
Detroit, Michigan 48216

From Mr. Schepfer

In response to your letter dated January 10th, 1969 regarding the abolishment of my position and the transfer of my work to the Regional Comptroller's OFFICE at Chicago.

In line with the third paragraph of your letter I wish to advise that I do not want to follow my work to the S.R.A. at Chicago, Ill. I choose to take my separation allowance in accordance with the terms of the Mergor Agreement.

Yours truly,

Robert B. Watjen

cc: C. Russo, Local Chairman
Lodge 725, Cleveland

725

RECEIVED

JAN 28 1969

NYC-W. SYS BRD

Mr E.F. Schoyer
Manager Freight Accounts
Penn Central RR
Michigan Central Building
Detroit Michigan

January 26, 1969

Sir;
Since the Penn Central Railroad has not granted my request to transfer with my work or exercise my seniority rights, I am requesting that I be given my separation allowance in accordance with the merger agreement.

Sincerely

James Feldscher
James Feldscher
9754 Westview Apt 6
Parma Ohio

c.c. Mr. Charles Russo , Local Chairman
Mr R.E.Clark General Chairman, Cleveland Ohio
General

January 16, 1969

E.T. Schepor
Manager-Freight Accounting
Penn Central
Detroit, Michigan 48216

Dear Mr. Schepor

In response to your letter dated January 10th, 1969 regarding the abolishment of my position and the transfer of my work to the Regional Comptroller's OFFICE at Chicago.

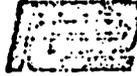
In line with the third paragraph of your letter I wish to advise that I do not want to follow my work to the S.B.A. at Chicago, Ill. I choose to take my separation allowance in accordance with the terms of the Merger Agreement.

Yours truly,

Phillip J. Franz

Phillip J. Franz

cc: A. Doyle, Local Chairman
Lodge 1192, Detroit



PENIN CENTRAL

Detroit, Michigan 48216

January 10, 1969

T. D. O'Neil
10 Court Street
Syracuse, New York 13208

This is to advise you that your position will be abolished effective the close of your tour of duty on Wednesday, January 22, 1969.

Your position is being abolished as the work you are now performing is being transferred to the Regional Comptroller's Office at Ann Arbor, Mich.

Under the provisions of existing agreements you have ten (10) calendar days in which to obtain a regularly assigned position available to you in the exercise of your seniority. If you fail to obtain a regularly assigned position within ten (10) calendar days you will become a utility employe subject to use by the Company in accordance with the terms of the Merger Implementing Agreement.


E. J. Schepers
Manager-Freight Accounting

Dewitt, New York
January 28, 1969

E.T. Scheper
Manager Freight Accounting
Detroit Michigan

Sir,

With the transfer of my work to the Regional Comptroller's Office at Detroit under the S.R.A. concept and the subsequent abolishment of my position effective January 29th, and in the absence of the Merged Company to offer me an election to follow my work or to resign in lieu of making the requested transfer, I am formally requesting the lump sum separation allowance which shall be computed in accordance with the schedule set forth in the Agreement entered into by and between The Pennsylvania New York Central Transportation Company and Clerical Employees represented by Brotherhood of Railway, Airline and Steamship Clerks effective February 1, 1968.

Sincerely,

Thomas D'Neil
Revision #11

Selkirk, New York

Mr. E. T. Schyman MFR
Penn Central Co
Detroit, Michigan 48216

Dear Sir,

In reference to your letter of 1-31-68 my position
as head clerk, Job # 1219, at Selkirk, N.Y. should be
abolished at the closest business on Feb. 7, 1968

Due to the Penn Central Co converting the former Albany
Central billing to the Regional SPA billing performed by the
former Penn RR and in this connection the work
performed by me in the FAC Center in the Albany Area being
transferred to the office of the Regional Comptroller of
at New York, N.Y. and under the present operating
agreements and the terms of the major Supplemental
Agreement and as there is no position available to me,
within the 30 mile radius, I wish to exercise my option
at the time of the coordination and receipt in a lump sum
a separation allowance according to Section 9 of the
Washington Agreement

Respectfully

Philip C. Bundy

Job # 619074

Box 354 RD # 1

Selkirk, N.Y. 12158

cc: Mr. E. Schyman MFR

27 South Main Ave

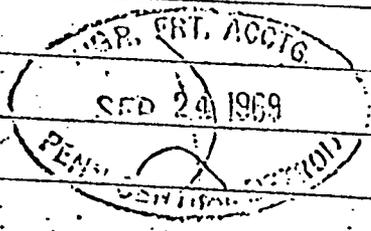
Albany, N.Y. 12208

New York 2/2/68

389

232. Henderson Ave.
Catskill, New York 124
September 22, 1969

Mr. E. T. Schipps MFR
Penn. Central RR
Detroit Michigan 48216



To Whom it may concern;

With reference to your letter of January 31, 1969, my position as food clerk (Job #1219) at Catonsville, Md. was abolished at the close of business on Feb. 7, 1969. Also in accordance to my letter of February 14, 1969, regarding availability of positions under the 30-mile radius, and at that time requesting separation allowance in accordance with Section 9 of the Washington Agreement.

At this time seven months later I still have no position available, and have had to apply to my letter requesting separation allowance, and also the failure of the Penn Central Company to offer a retraining program to retain for the large amount of positions that are available within this area.

* I therefore have no alternative but to submit my resignation as of this date (9-22-69), and again ask for separation allowance according to Section 9 of the Washington Agreement.

Attn: Mr. E. T. Schipps MFR
Penn. Central RR
Detroit Michigan 48216

Respectfully
Walter C. Bundy



PENN CENTRAL

Detroit, Michigan 48216

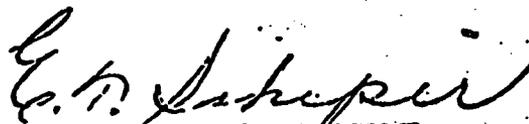
January 10, 1969

Mr. A. M. Wilger
10 Beechmont Ave. - Apt. 4-B
Cincinnati, Ohio 45230

This is to advise you that your position will be abolished effective at the close of your tour of duty on Friday, January 17, 1969.

Your position is being abolished as the work you are now performing is being transferred to the Regional Comptroller's Office at Indianapolis, Ind.

Under the provisions of existing agreements you have ten (10) calendar days in which to obtain a regularly assigned position available to you in the exercise of your seniority. If you fail to obtain a regularly assigned position within ten (10) calendar days you will become a utility employe subject to use by the Company in accordance with the terms of the Merger Implementing Agreement.


E. D. J. Superior
Manager-Freight Accounting

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL J. KNOPIK, et al.,)	No. C 89-722
Plaintiffs)	
v.)	
PENN CENTRAL COMPANY,)	
Defendant)	
ROBERT B. WATJEN, et al.,)	No. C 89-875
Plaintiffs)	
v.)	
PENN CENTRAL COMPANY, et al.,)	
Defendants)	
DAVID C. BUNDY, et al.,)	No. C 89-847
Plaintiffs)	
v.)	
PENN CENTRAL COMPANY,)	
Defendant)	
G.V. SOPHNER, et al.,)	No. C 74-914
Plaintiffs)	
v.)	
PENN CENTRAL COMPANY, et al.,)	
Defendants)	

MEMORANDUM OPINION AND ORDER

LAMBROS, DISTRICT JUDGE

These actions will ultimately, if anything, be mere footnotes to the tortured history of the national nightmare known collectively as the "Northeast railroads." This litigation had its genesis in the heady days of optimism preceding the merger of the Pennsylvania and New York Central Railroads,, reached its nadir during the collapse and bankruptcy of the resulting Penn Central Railroad, and is now nearing its denouement under the aegis of Conrail,

the federally chartered successor corporation to Penn Central's railroad operations. The Court and the litigants in their respective cases have been involved with and have labored through many motions, hearings, a trial, an appeal and other proceedings. The cases have been sifted and distilled until there now appears to be one paramount issue which is capable of resolution in a relatively quick and efficient manner. That is, at least in No. C 63-722, defendant has moved to compel arbitration on the remaining contract issues as provided in the Merger Protection Agreement of 1964.

L

Prior proceedings in No. C 63-722 have established that there is one general dispute left unresolved in that case:

whether or not there was a breach of that contract [the 1964 Agreement] by the railroad, and/or a compliance by the plaintiffs with the terms of that agreement so as to entitle them to the benefits.

Transcript, July 14, 1976, at 24 (Lambros, J.). The Court reached that conclusion after granting a motion for directed verdict at the close of plaintiffs' case during the first stage of a bifurcated trial, finding that a cause of action for unfair representation on the part of the United Transportation Union (plaintiffs' bargaining representative) had not been made out. More specifically, the Court stated that "the only issue remaining...is the issue of the entitlement of the plaintiffs to job guarantee benefits following [plaintiffs'] February 23, 1968 furlough." Transcript, supra, at 22. The Court had also found earlier that

plaintiffs are employees of the New York Central Railroad as that term is defined in the merger protection agreement, and as that term applies to the job protection agreement and their job guarantee entitlement under the merger agreement.

Transcript, supra, at 14. Finally, the Court in its oral ruling set forth its conception of the relative positions of the parties, which the Court believes are still their respective viewpoints on this remaining issue:

[T]he railroad's position is that these people, after they were furloughed from the C.U.T. roster, because of the unavailability of work, were then able to exercise the benefits which they had acquired, and their exclusive bidding rights that they had acquired.... The railroad's position is that there was work available and that they did not avail themselves of that work, and thus the railroad's position is that pursuant to the job protection agreement, that they lost and waived and rendered themselves ineligible for job guarantee benefits in view of the fact that they did not accept work that was available to them.

[H] owever, ...the plaintiff's position is that because of the representations made by the railroad, and because the status of the parties with respect to their entitlement of job guarantees was not clarified, that to the extent that they did not report for work or take that work, that that should not deprive them of the benefits of job guarantees, for if they had taken that work, that they could have consensively prejudiced themselves and their conduct was not in breach of the merger protection by not reporting to work or marking up.

Transcript, supra, at 23-24.

The scope of the proposed arbitration proceedings is thus clearly demarcated, and there is no real quarrel on that point. What is contested is the Court's power to refer the remaining aspects of this litigation to arbitration. It is clear, however, that final, binding arbitration is provided for in section (k) of the 1964 Merger Protection Agreement. See, e.g., Chesapeake & Ohio Ry. Co. v. Ford, 390 F.2d 857 (4th Cir. 1970); Batts v. Louisville & Nashville Railroad Co., 318 F.2d 22 (6th Cir. 1963). But plaintiffs argue that they do not come within the specific language of section (k), since it applies only to a "labor organization signatory to this Agreement," and they are individual former employees who in fact have grave reservations about the quality of representation provided by their labor organization. The Court is of the view that such a reading is overly technical and eventually proves too much, especially in light of the overwhelming federal policy favoring arbitration in complex labor relation cases. The relationship between union members and their elected bargaining representatives — i.e., the "labor organization" itself — is certainly strong enough to support a finding that the organization can also bind, as their agent, the employees themselves to the terms of applicable negotiated agreements. Moreover, if plaintiffs had been successful in urging their union to prosecute their grievance to the fullest extent possible, such arbitration under section (k) would have been exactly what they would have achieved; to deny arbitration for the reason suggested by plaintiffs would be to exalt form over substance.

Plaintiffs also argue that reference to arbitration at this stage of the litigation would be inequitable because the very union which they earlier sued would control the arbitration, and because at this time arbitration would mean further delay. As for the first point, it is clear from recent pretrial proceedings that the union harbors no grudge against the plaintiffs, and is

perfectly willing to allow them to prosecute their own arbitration, as well as name their own panel member, and will be happy to assist plaintiffs in whatever way becomes necessary. As for the second contention, it is indeed unfortunate that this option has come of age only recently, but that is attributable in part to a change of defense counsel with a resulting change in the way the issues have been viewed. However, it is abundantly apparent to this Court, in light of past proceedings, that an arbitration panel can evaluate and resolve this controversy much more rapidly than can this Court. Seasoned railroad labor arbitrators will have the expertise and the inherent authority to fashion all relief warranted, including individual damages if liability is found, after fair but relatively streamlined proceedings. This Court, on the other hand, would have to conduct extensive evidentiary hearings not only on the general question of liability, but also on each individual plaintiff's right to relief and his appropriate damages. Also, in order to speed up final resolution of this case, the Court will reject defendant's suggestion that it retain jurisdiction of this action to permit review of the arbitration panel's decision. Thus, if so desired, plaintiffs may take an immediate appeal not only on the issue of reference to arbitration, but also from the earlier ruling on the motion for directed verdict concerning the unfair representation claim. After all, section (e) providing for arbitration expressly makes such arbitration final and binding on the participants, without recourse or appeal. Further, as in any labor case there is always the option of filing a new action to contest the arbitration decision as being arbitrary, capricious or outside the scope of the arbitrators' authority.

In summary, then, with respect to No. C 69-722, that action will be terminated and the remaining controversy referred to arbitration pursuant to section (e) of the 1964 Merger Protection Agreement.

II.

In No. C 74-814, another group of Cleveland Union Terminal employees who were also adversely affected by the Penn Central's actions have sued their former employer and their union. Although it is suggested that there is an additional subsidiary agreement in No. C 69-722 which is not present here, the only practical difference appears to be that these employees did somewhat different work and were represented by a different union. However, the Merger

Protection Agreement of 1964 is still the controlling source of any rights which these plaintiffs may have. An additional difference is that in this case there have been no proceedings on the merits of the claim against the union for unfair representation. However, it is generally accepted by the parties that any claim against the union rises or falls in the first instance on the merits of the claim against Penn Central, since the union would have had no duty to prosecute a meretricious grievance. Thus efficient case management would dictate that the breach of contract issue be resolved first. But that is precisely what, with minor variations, is to be resolved before the arbitration panel in No. C 69-722. Accordingly, despite the fact that here there is no pending motion to compel arbitration, the Court views the most equitable course to include reference of the contract issues to arbitration in No. C 74-914 as well, with the unfair representation issues dismissed now subject to later refiling if necessary (again, to facilitate immediate appeal if necessary). The parties should be competent to frame with the needed precision the exact issues to be submitted to the arbitrators in No. C 74-814.

III.

In Nos. C 69-875 and C 69-947, the disputes also grow out of application and/or interpretation of the 1964 Merger Protection Agreement. However, these two cases do not present the added complication of the Cleveland Union Terminal issue, as these plaintiffs were always considered employees of the former New York Central Railroad until their clerical jobs (rate revision) were transferred elsewhere. Moreover, these cases appear to be fairly straightforward, as the Sixth Circuit Court of Appeals has previously affirmed this Court's dismissal of all claims except those involving defendant's compliance with the 1964 Agreement. (Watjen's individual claim of unfair representation by his union was earlier severed and, not being subject to appeal, is still technically pending, although the Court will dismiss it subject to later refiling if necessary.) Thus the only remaining issue in these two cases appears to be whether the employment options given these plaintiffs by the 1969 implementing agreement violated the 1964 Merger Protection Agreement. The Court of Appeals has previously stated the parties' respective positions, and the issues left for resolution can be adequately framed by reference thereto:

Penn Central contends that the implementing agreement which was authorized by the 1964 agreement did not take away any rights which the employees otherwise had, but gave them an option for added rights, namely, guaranteed employment for life in the absence of dismissal for cause, and further contends that they voluntarily exercised their option to become utility employees instead of bidding for jobs on the Detroit roster, on which they had seniority rights.

On the other hand, the employees contend that the implementing agreement is unlawful because it provides for a classification of "utility employee" which they describe as a "garbage can" for the disposition of employees. They further contend that their rights given under the implementing agreement were illusory and that in some instances the railroad frustrated the exercise of them; and that they were placed in a worse position with respect to their employment by the implementing agreement, in violation of the statute and the ICC order.

Bundy v. Penn Central Co., 455 F.2d 277, 280 (6th Cir. 1972).

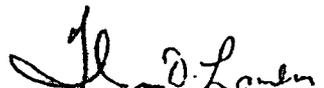
It is true that the Court of Appeals officially remanded these two cases "for trial on the issues pertaining to the alleged violation of Section 5(2)(f) [of the Interstate Commerce Act, 49 U.S.C. 95(2)(f)] and the order of the ICC." Id. However, the ICC order spoken of was the Commission's analysis and adoption of the 1964 Merger Protection Agreement as a condition to approving the merger in general, so it is clear that it is the 1964 Agreement from which all of plaintiffs' rights, if any, ultimately flow. Further, section 5(2)(f) merely mandates the ICC to consider such job protection agreements, and it is common knowledge that the ICC rarely objects to or revises an agreement between a carrier and the bargaining representative. Thus the arbitration provision in that agreement, section 1(e), supra, is compelling here as well, despite the absence of a formal application to refer these cases to arbitration. Accordingly, the Court will also dismiss these actions in order to submit the underlying disputes to binding arbitration.

IV.

In conclusion, the Court wishes to stress that it has reached today's decision primarily for the sake of expediency: that of the litigants', especially the former employees, and not its own. However, the Court also emphasizes that in its considered view, the authority for arbitration is compelling, both in the applicable documents and the controlling precedent. Reference to arbitration of these disputes will result in resolution of all the paramount claims much more quickly than in any proceedings which the Court could devise. The Court has wrestled mightily with the parties here, but it has not

gained even a split decision which might have been conclusive. For example, a bona fide settlement offer in No. C 69-722 was tentatively accepted, but after much delay ultimately rejected by the litigants. The plaintiffs in all four actions will not be put at a disadvantage — they are represented by the same counsel in each case, and the railroad and its representatives are also the same. Plaintiffs will be given the opportunity to prosecute their own arbitration with whatever assistance is necessary from their respective unions. Accordingly, the Court envisions an efficient, well-informed and competent arbitration panel, which is knowledgeable of and conversant with not only railroad labor law in general but the 1964 Agreement in particular, being able to sift through the surplusage of each case and reach a fair and reasonable resolution of the controlling issues, awarding whatever relief appears warranted. And, although the Court does not wish to intrude on the parties' right to structure their own arbitration proceedings, it appears to the Court that the most efficient and equitable approach would be to have the same panel hear each case in order of complexity and the extent to which the issues have been previously defined and are related: No. C 69-722 first, then No. C 74-914, and finally Nos. C 69-875 and C 69-947. However, the appeal of arbitration is ultimately that it is a forum where agreement and conciliation is the foundation, and it is the Court's hope that that spirit will infect the parties and help them solve any procedural difficulties so that the substance of these long-suffered disputes can be reached and resolved.

IT IS SO ORDERED.


Thomas D. Lambros
United States District Judge

DATED: 11/29/79

UNITED TRANSPORTATION UNION ()
GENERAL COMMITTEE OF ADJUSTMENT
PENN CENTRAL - WESTERN DISTRICT

Cleveland, Ohio
May 9, 1969
File - Gen. 121.04

TO ALL CONCERNED:

This has reference to the letter dated May 2, 1969, which was addressed to you by the Penn Central Company over the signature of Mr. D. J. Weisbarth, General Yardmaster, recalling you to service under terms of Article 6 of the Agreement, effective February 16, 1965, which provided for the consolidation of NYC Cleveland Freight Yard Seniority and C. U. T. Yard Seniority.

Article 6 of the referred to agreement reads as follows:

"6. All furloughed employees on the present separate seniority rosters will be recalled to service before new men are employed. Cleveland Union Terminals Co. yardmen recalled from furlough for assignments, including the extra list, in NYC Cleveland Freight Yard territory must report for service within fifteen days of the date notified by U. S. Mail at their last known address or forfeit all seniority in both territories."

As you know, the Carrier has served notice, as contemplated by Section 4 of the Washington Job Protection Agreement of May 1936, of its intent to co-ordinate the present separate yard operations of the Cleveland Union Terminals Company with those of the Penn Central in the Cleveland Terminal. You are also aware that this office has for some time been negotiating with the Carrier for job protection for the Prior Right CUT yardmen.

You should make every effort to protect your seniority by reporting to General Yardmaster Weisbarth within the time specified in the notice you received; as I am confident that we will obtain protection for you which will be comparable to the merger protection now afforded former PRR and NYC employees, including a guaranteed monthly wage and prior right equity in all available work.

Trusting this will meet with your approval, I remain

Fraternally yours,

J. A. Lyons
J. A. Lyons

General Chairman

cc: H. Anderson, L. C. #875
J. Curley, Sec. #875
O. Williams, L. C. #875



EXHIBIT 11

MAY 21 1969

May 19, 1969

Copy
Signed By ALL

Mr. D. J. Weisbarth
General Yardmaster
Penncentral Transportation Company
Collinwood Yards
Cleveland, Ohio

re: Recall notice dated May 2, 1969

Dear Mr. Weisbarth:

Your letter of May 2, 1969, stated in part as follows:
"Your seniority in the former NYC Cleveland Terminal District (Freight Yard) is such that you now stand for work in that territory. You are hereby recalled to active service in said freight yard territory and you have fifteen (15) days or until May 20, 1969, to report for service. Failing to do so you will forfeit all seniority on the Cleveland Union Terminal's Company as well as on the Penn Central With a full reservation of all my employment and seniority rights, and without waiving any of them, I am reporting for service as you have commanded, in order that I may not unnecessarily jeopardize my employment and seniority rights.

In this connection you have been provided with a copy of Mr. C. L. Stalder's letter of May 16, 1969, to which I take a number of exceptions, some of which are stated herein. Mr. Stalder's letter says that my marking up for service "will not affect any rights presently held by you, if any, to any 'protective benefits' under the terms of the Merger Agreement" I wish at the outset to make it absolutely clear that my reporting for service as you command is not to be construed in any way as a relinquishment of my rights under the Merger Agreement or as an indication of a feeling on my part that I may not have rights under the Merger Agreement, or as a result of the Co-ordination Notice given by Penn Central on April 28, 1969.

I note that Mr. Stalder's reply failed to answer several of my inquiries, including my questions concern-

Exhibit J-3

Beulah
EX-3

May 19, 1969

Page 2.

ing the enforcement of all agreements as required by Articles 8 and 9 of the February 16, 1965 Agreement. I also take exception to Mr. Stalder's statement in item (4) of his letter that my status is well defined "by the February, 1965 Agreement since there has never been reciprocal consolidation of the NYC Freight Yard and the NYC-CUT Yardmen's seniority rosters."

* May I reiterate that I am not relinquishing any rights which I now have by virtue of the decisions of several federal agencies, which previously have determined my status as a NYC employee, and by virtue of my entitlement to protective benefits under the NYC-PRR Merger Agreement and/or the April 28 Notice of Co-ordination.

Yours truly,

Walter J. Ostashek
Antonio Augustus
Sam Tamenbaum
George A. Bentley
Michael J. McLaughlin
Edward Benko
C. C. Jonesak
W. E. Gady
C. J. Steinfeld Jr.
Jack F. Acree
W. E. Moran
A. Budlow

cc: O. Williams, Local Chairman,
Local 875, UTU

I. A. Lyons, General Chairman,
Lines West, UTU

12345

PENNSYLVANIA CENTRAL COMPANY

1324 West 3rd Street
Cleveland, Ohio 44113
May 16, 1969 s-2

REGISTERED MAIL - RETURN RECEIPT

Mr. M. J. McLaughlin
1821 West 52nd Street
Cleveland, Ohio



Dear Sir:

Referring to your letter of May 7th in reply to Carrier's Recall Notice dated May 2, 1969, this is to advise that:

- (1) Your marking up for service in the Freight Yard will not affect your "working seniority" date on the Cleveland Terminal Yard Service Employees' Roster;
- (2) Your marking up for service in the Freight Yard, with a seniority date of September 10, 1964, will not affect any rights presently held by you, if any, to any "protective benefits" under the terms of the Merger Agreement between the New York Central - Penn Central, as provided for in the Washington Job Protected Agreement;
- (3) Your marking up in the Freight Yard will continue to protect your seniority on the Cleveland Terminal Yard Service Employees' Roster, your prior right roster;
- (4) Memorandum of Agreement, dated February 1, 1965, provides for the "top and bottom of the N.Y.C.-Cleveland Terminal District freight roster and the C.U.T. yard service employees' roster"; although only one roster is published, your status is well defined by this Agreement.
- (5) There are no changes in the provisions of Article 9 of the February 16, 1965 Agreement.

Very truly yours,

C. L. Stalder

C. L. Stalder
Superintendent - Labor Relations & Personnel

cc: Messrs. J. A. Lyons
J. M. Taylor
D. J. Weisbarth

2 of 15 DOCUMENTS

**ANTONIO AUGUSTUS; RAYMOND BEEDLOW; WILLIAM GRADY;
MICHAEL KNAPIK; KATHLEEN KOCK, as personal representative on behalf of
Mike McLaughlin; MICHAEL POTOSKY, as personal representative on behalf of
Walter Potosky; PEARL TANNENBAUM, as personal representative on behalf of
Sam Tannenbaum, Petitioners, v. SURFACE TRANSPORTATION BOARD;
UNITED STATES OF AMERICA, Respondents; PENN CENTRAL
CORPORATION, Intervenor.**

No. 99-3014

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

2000 U.S. App. LEXIS 33966

December 22, 2000, Filed

NOTICE: [*1] NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 28(g) LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 28(g) BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

SUBSEQUENT HISTORY: Reported in Table Case Format at: 2000 U.S. App. LEXIS 35992. Certiorari Denied June 29, 2001, Reported at: 2001 U.S. LEXIS 4977.

PRIOR HISTORY: ON APPEAL FROM THE SURFACE TRANSPORTATION BOARD. 21989(sect-no 3). 12-2-98.

DISPOSITION: AFFIRMED.

LexisNexis(R) Headnotes

Mergers & Acquisitions Law > Antitrust > Regulated Industry Mergers

[HN1] Railroads must obtain regulatory approval from the Surface Transportation Board before consolidating or merging their properties. 49 U.S.C.S. § § 11323-11326. As a condition for approval, the board is required to protect the interests of affected railroad employees.

Specifically, the board is required to impose conditions on any merger transaction such that employees are not placed in a worse position with respect to their employment for at least four years following the merger. To give effect to such protective conditions, applicant rail carriers must negotiate an implementing agreement with their employees' unions before making any changes in operations that might affect the carriers' employees. If the carriers and the union cannot reach an agreement voluntarily, the matter is submitted to arbitration, and the arbitrator will resolve the matter and set specific terms for implementation. An arbitral decision regarding labor protective conditions imposed by the board may be appealed to the board for review. 49 C.F.R. § 1115.8 (1999).

Labor & Employment Law > Collective Bargaining & Labor Relations > Judicial Review

[HN2] The Surface Transportation Board must employ a deferential standard when reviewing the decision of an arbitration panel. The applicable (so-called "Lace Curtain") standard limits the board's review of arbitration decisions to recurring or otherwise significant issues of general importance regarding the interpretation of the board's labor protective conditions. The board does not review issues of causation, the calculation of benefits, or the resolution of other factual questions in the absence of "egregious error." "Egregious error" means "irrational," "wholly baseless and completely without reason," or "actually and indisputably without foundation in reason and fact."

Labor & Employment Law > Collective Bargaining & Labor Relations > Judicial Review

[HN3] The Lacey standard of review is that, once having accepted a case for review, a reviewing body may only overturn an arbitral award when it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or exceeds the authority reposed in arbitrators by those conditions. Thus, the Surface Transportation Board's review of an arbitration decision is limited to determining whether the award was procedurally fair and impartial. Only when the arbitrator has committed "egregious error" may the board vacate the arbitration award for substantive mistake.

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Review

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence Review

[HN4] Under the Administrative Procedure Act, courts may not set aside a decision of the Surface Transportation Board unless it is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, or unsupported by substantial evidence. 5 U.S.C.S. § 706(2)(A), (E). In determining whether the board's decision was arbitrary or capricious, the court must consider whether the decision was based on a consideration of the relevant factors and whether there was a rational connection between the facts found and the choice made. In determining whether the board's findings are supported by substantial evidence, the court must ask whether the board considered such relevant evidence as a reasonable mind might accept as adequate to support the conclusion reached. Substantial evidence is thus more than a mere scintilla of evidence, but less than a preponderance of the evidence.

Administrative Law > Judicial Review > Standards of Review > Standards Generally

[HN5] The Administrative Procedure Act does not require an agency to furnish detailed reasons for its decisions so long as its conclusions and underlying reasons may be discerned with confidence.

Labor & Employment Law > Collective Bargaining & Labor Relations > Judicial Review

[HN6] Under the deferential Lacey standard of Surface Transportation Board review, also set out in 49 C.F.R. § 1115.8, the board may reverse an arbitration panel's decision only if: (1) the ruling failed to conform to the labor protective conditions imposed by the board; (2) the ruling exceeded the panel's authority; or (3) the panel committed egregious error.

Administrative Law > Judicial Review > Standards of Review > Standards Generally

[HN7] When there is no showing that an agency's determination was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, or unsupported by substantial evidence, a court of appeals is not empowered to substitute its judgment for that of the agency.

COUNSEL: For ANTONIO AUGUSTUS, RAYMOND BEEDLOW, KATHLEEN KOCK, MICHAEL POTOSKY, PEARL TANNENBAUM, Petitioners: Carla M. Tricarichi, Tricarichi & Carnes, Cleveland, OH.

For ANTONIO AUGUSTUS, RAYMOND BEEDLOW, WILLIAM GRADY, MICHAEL KNAPIK, Petitioners: Bernard S. Goldfarb, Cleveland, OH.

For WILLIAM GRADY, MICHAEL KNAPIK, Petitioners: Carla M. Tricarichi, David Fleshler, Tricarichi & Carnes, Cleveland, OH.

For SURFACE TRANSPORTATION BOARD, Respondent: Louis Mackall, Marilyn R. Levitt, Surface Transportation Board, Washington, DC.

For UNITED STATES OF AMERICA, Respondent: John J. Powers, III, Robert J. Wiggers, U.S. Department of Justice, Washington, DC.

For PENN CENTRAL CORPORATION, Intervenor: William F. Kershner, Pepper, Hamilton & Scheetz, Berwyn, [*2] PA.

JUDGES: BEFORE: MARTIN, Chief Judge; GUY and COLE, Circuit Judges.

OPINIONBY: R. GUY COLE, JR.

OPINION:

R. GUY COLE, JR. Petitioners appeal a decision of the Surface Transportation Board affirming an arbitration panel's ruling denying benefits to Petitioners pursuant to a 1964 railroad merger labor protection agreement. For the following reasons, we **AFFIRM** the decision of the Board.

I. BACKGROUND

This regrettably protracted dispute has been before this Court for only a fraction of its extended life. In 1962, the Pennsylvania Railroad Company and the New York Central Railroad Company ("N.Y. Central") agreed to a merger that resulted in the formation of the Penn Central Transportation Company ("Penn Central" or "Carrier").

On May 20, 1964, the Brotherhood of Railway Trainmen ("BRT") and the two merging carriers entered into an agreement for the protection of employees affected by the proposed merger. Only the two merging carriers signed this Merger Protection Agreement ("MPA"), which made no reference to employees of any subsidiary companies owned by the two carriers. Under the MPA, affected employees were entitled to significantly greater benefits than required under then-prevailing [*3] railroad labor law.

Prior to the merger, the N.Y. Central owned 93% of the Cleveland Union Terminals Company ("CUT"), a passenger rail carrier subsidiary. Petitioners in this appeal were employed as yard workers at the CUT. On February 16, 1965, the N.Y. Central and the BRT negotiated an agreement in anticipation of the N.Y. Central's merger into the Penn Central. This so-called "Top and Bottom Agreement" granted CUT employees the right to work at a nearby N.Y. Central freight yard after the merger took effect. The agreement provided for the merger of the CUT employees' seniority roster into the existing N.Y. Central seniority roster. The CUT employees were to be placed at the bottom of the merged roster in the order of their seniority on the CUT, with a common seniority date of September 10, 1964, while the N.Y. Central employees retained their place on the roster in order of their dates of employment on the N.Y. Central. Inasmuch as all of the N.Y. Central employees were employed prior to September 10, 1964, all of the N.Y. Central employees ranked above the CUT employees on the merged seniority roster.

The two carriers finalized their merger on February 1, 1968. On February 21, 1968, Petitioners [*4] and other CUT employees were furloughed from their CUT jobs as part of a reduction in force on the CUT, effective February 25, 1968. The furlough notice told the CUT employees to "immediately contact" the N.Y. Central yardmaster for work in the freight yard, pursuant to the Top and Bottom Agreement. Petitioners never reported for work at the N.Y. Central freight yard and were discharged without compensation after failing to respond to a final notice to report dated December 15, 1969.

At the time Petitioners were furloughed, the BRT and the Carrier were in a dispute as to whether the MPA applied to employees of subsidiary railroads, like the CUT. The Carrier's position was that the agreement applied only to employees of the two merging carriers, whereas the BRT argued that employees of subsidiaries were also covered under the agreement. The furloughed employees were fully aware of this dispute. The parties settled this dispute as to the CUT (but not as to other subsidiaries) by an agreement reached on July 11, 1969, under which the parties agreed that the MPA covered CUT employees.

The instant proceeding involves efforts by Petitioners to obtain labor protection benefits pursuant [*5] to the MPA. On September 15, 1969, seventeen claimants, all of whom were among the CUT employees furloughed in February 1968, brought suit in the United States District Court for the Northern District of Ohio alleging that the Carrier failed to provide benefits owing under the MPA. Ten of these claimants had reported to work at the N.Y. Central freight yard, whereas seven had not. By oral ruling issued on July 14, 1976, and a written decision issued on November 29, 1979, the district court ruled that all seventeen claimants were employees of the N.Y. Central and thus were covered by the labor protection provisions of the MPA. The district court further ordered the parties to submit to arbitration the question of whether the claimants had sufficiently complied with the MPA's requirements so as to warrant an award of benefits.

In 1992, an arbitration panel entered a decision finding all seventeen claimants ineligible for compensation under the MPA. The arbitration panel found that those claimants who *had* reported for work at the N.Y. Central freight yard failed to process grievance claims adequately, admitted their ineligibility for benefits, or lost work due to causes that were [*6] deemed by the panel not to trigger benefit payments. The arbitration panel further found that those claimants who *had not* reported to work at the freight yard did not have a reasonable basis for not reporting, and thereby failed to comply with the MPA's requirement that employees exercise their seniority rights to obtain available work.

All seventeen claimants appealed the decision of the arbitration panel to the Surface Transportation Board (the "Board"). In a decision issued December 2, 1998, the Board reversed the arbitration panel's decision with respect to the ten claimants who had reported to work following the February 1968 furlough; however, the Board summarily affirmed the panel's decision as to the seven claimants who had failed to report to work at the freight yard. Those seven claimants who did not report to work now petition this Court to reverse the decision of the Board. n1

n1 Penn Central filed a petition for judicial review of the Board's decision as it related to the ten claimants who had reported to work. The Board moved to dismiss Penn Central's petition on the ground that the Board's decision was not a final order, and, therefore, not ripe for review. Penn Central then filed a petition to voluntarily dismiss the case, which this Court granted. Consequently, only that portion of the Board's

hence, work is pending

decision addressing the seven claimants who refused to report to work is at issue in this appeal.

[*7]

II. DISCUSSION

A. Regulatory Framework

[HN1] Railroads must obtain regulatory approval from the Board before consolidating or merging their properties. *See* 49 U.S.C. § 5(2) (1973), revised and recodified at 49 U.S.C.A. §§ 11323-11326 (West Supp. 2000). As a condition for approval, the Board (previously, the Interstate Commerce Commission ("ICC"))ⁿ² is required to protect the interests of affected railroad employees. *See id.* Specifically, the Board is required to impose conditions on any merger transaction such that employees are not placed in a worse position with respect to their employment for at least four years following the merger. *See id.*

ⁿ² Pursuant to the ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803 (1995), the Surface Transportation Board is the successor agency to the ICC with respect to the issues presented in this case. Consequently, we use the terms "ICC" and "Board" interchangeably.

To give effect to such protective conditions, [*8] applicant rail carriers must negotiate an implementing agreement with their employees' unions before making any changes in operations that might affect the carriers' employees. *See id.* If the carriers and the union cannot reach an agreement voluntarily, the matter is submitted to arbitration, and the arbitrator will resolve the matter and set specific terms for implementation. *See id.* An arbitral decision regarding labor protective conditions imposed by the Board may be appealed to the Board for review. *See* 49 C.F.R. § 1115.8 (1999).

B. Standards of Review

1. The Board's standard of review

[HN2] The Board must employ a deferential standard when reviewing the decision of an arbitration panel. The applicable standard, which was adopted by the ICC in the so-called "*Lace Curtain*" decision and subsequently codified in federal regulations governing the Board's review powers, limits the Board's review of arbitration decisions to "recurring or otherwise significant issues of general importance regarding the interpretation of [the Board's] labor protective conditions." *Chicago & Northwestern Transp. Co.—Abandonment—Near Dubuque & Oelwein, IA*, 3 I.C.C. 2d 729, 735-36 (1987) [*9] ("*Lace Curtain*"), *aff'd sub*

nom. Int'l Bhd. Elec. Workers v. I.C.C., 274 U.S. App. D.C. 103, 862 F.2d 330 (D.C. Cir. 1988). *See* 49 C.F.R. § 1115.8. The Board does not review "issues of causation, the calculation of benefits, or the resolution of other factual questions" in the absence of "egregious error." *Lace Curtain*, 3 I.C.C. 2d at 735-36. "Egregious error" means "irrational," "wholly baseless and completely without reason," or "actually and indisputably without foundation in reason and fact." *See Am. Train Dispatchers Ass'n v. CSX Transp., Inc.*, 9 I.C.C. 2d 1127, 1130-31 (1993) ("*ATDA*") (quoting *Loveless v. Eastern Airlines, Inc.*, 681 F.2d 1272, 1275-76 (11th Cir. 1982)).

The ICC has elaborated on [HN3] the *Lace Curtain* standard of review as follows:

Once having accepted a case for review, we may only overturn an arbitral award when it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or exceeds the authority reposed in arbitrators by those conditions.

Delaware & Hudson Ry. Co.—Lease and Trackage Rights Exemption—Springfield Terminal Ry. [*10] *Co.*, Finance Docket No. 30965 (Sub-No. 1) *et al.* (ICC served Oct. 4, 1990) at 16-17, *remanded on other grounds in Ry. Labor Executives' Ass'n v. United States*, 300 U.S. App. D.C. 142, 987 F.2d 806 (D.C. Cir. 1993). Thus, the Board's review of an arbitration decision is limited to determining whether the award was procedurally fair and impartial. *See Atlantic Richfield & Co.—Control—Butte, Anaconda & Pacific R.R. & Tooele Valley R.R.*, Finance Docket No. 28490 (Sub-No. 1) (ICC served March 2, 1988). Only when the arbitrator has committed "egregious error" may the Board vacate the arbitration award for substantive mistake. *Id.*

2. The Court's standard of review

This Court reviews decisions of the Board pursuant to a similarly deferential standard. [HN4] Under the Administrative Procedure Act (the "APA"), courts may not set aside a decision of the Board unless it is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, or unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A), (E); *Film Transit, Inc. v. I.C.C.*, 699 F.2d 298, 300 (6th Cir. 1983). In determining whether [*11] the Board's decision was arbitrary or capricious, the court must consider whether the decision was based on a consideration of the relevant factors and whether there was a "rational connection between the facts found and the choice made." *Film Transit*, 699 F.2d at 300. In determining whether the Board's findings are supported by substantial evidence,

we must ask whether the Board considered "such relevant evidence as a reasonable mind might accept as adequate to support the conclusion reached." *R.P. Carbonè Constr. Co. v. Occupational Safety & Health Review Comm'n*, 166 F.3d 815, 818 (6th Cir. 1998). Substantial evidence is thus more than a mere scintilla of evidence, but less than a preponderance of the evidence. *See id.*

C. The Board Was Permitted To Affirm the Arbitration Panel's Decision Summarily

As a threshold matter, Petitioners argue that, because the Board summarily affirmed the arbitration ruling against Petitioners without supplying an independent explanation for its decision, the Board's ruling necessarily is arbitrary and capricious and must be reversed. Petitioners cite case precedent requiring the Board to provide a reasoned [*12] explanation for its decisions, such that a reviewing court has a basis for understanding the Board's action. *See, e.g., Burlington Truck Lines v. United States*, 371 U.S. 156, 168, 9 L. Ed. 2d 207, 83 S. Ct. 239 (1962) (agency "must disclose the basis for its order" and "give a clear indication that it has exercised the discretion with which Congress has empowered it"); *Mr. Sprout, Inc. v. United States*, 8 F.3d 118, 129 (2d Cir. 1993) (a "reviewing court must be able to understand the basis of the agency's action so that it may judge the consistency of that action with the agency's mandate").

It is true that the Board's decision did not independently address Petitioners' arguments but rather adopted by reference the reasoning of the arbitration panel. The Board was permitted, however, to affirm summarily the arbitrator's decision. *See City of Bethany v. F.E.R.C.*, 234 U.S. App. D.C. 32, 727 F.2d 1131, 1144 (D.C. Cir. 1984) (holding that agency's summary affirmance of an administrative law judge's detailed and thorough decision was proper and provided an opportunity for intelligent review by the court). [HN5] The APA "does not require an agency to furnish detailed [*13] reasons for its decisions so long as its conclusions and underlying reasons may be discerned with confidence." *Nat'l Treasury Employees Union v. Fed. Labor Relations Auth.*, 802 F.2d 843, 845 (6th Cir. 1986) (citations and internal quotation marks omitted).

It is apparent that the Board was well aware of Petitioners' arguments when it affirmed the arbitration panel's decision. Indeed, the Board summarized the two principal arguments posed by Petitioners before affirming the panel's decision as it pertained to Petitioners. Inasmuch as the arbitration panel's decision fully addressed Petitioners' claims, we reject Petitioners' contention that the Board's failure to articulate an

independent opinion for affirming the panel's decision constitutes reversible error under the APA.

D. The Board Properly Affirmed the Arbitration Panel's Ruling

[HN6] Under the deferential standard of Board review set out in *Lace Curtain* and 49 C.F.R. § 1115.8, the Board may reverse an arbitration panel's decision only if: (1) the ruling failed to conform to the labor protective conditions imposed by the Board; (2) the ruling exceeded the panel's authority; or (3) the panel committed egregious [*14] error. Petitioners have failed to establish any of these criteria for overturning the arbitration panel's decision.

First, the arbitration panel's decision conformed with the labor protective conditions imposed by the Board. The applicable labor protective conditions imposed by the ICC in this case required the Carrier to abide by the terms of the MPA. The arbitration panel's ruling -- that Petitioners' failure to report to work precluded their recovery under the MPA -- was based upon the express terms of the MPA. As the arbitration panel observed, section 1(b) of the MPA expressly required covered employees to accept available work in order to qualify for benefits. As there was no exception to this requirement under the MPA, there was no basis for finding that the arbitration decision failed to "draw its essence" from the applicable labor agreements, as Petitioners suggest. *See Delaware & Hudson Ry. Co.*, Sub-No. 1 at 16-17.

Petitioners argue that the arbitration decision was inconsistent with the law of the case as established by the district court's 1976 oral ruling. The district court's order, however, resolved only the question of the general entitlement of employees of subsidiary [*15] railroads to benefits under the MPA. The district court specifically reserved for arbitration the question of "whether or not there was . . . compliance by [Petitioners] with the terms of that agreement so as to entitle them to benefits." Thus, Petitioners' law-of-the-case argument fails.

Petitioners' argument that the arbitration panel exceeded its authority is also without merit. The panel's decision with respect to Petitioners fell squarely within the decision-making authority granted to it by the ICC and the MPA. *See 49 U.S.C. § 5(2) (1973), revised and recodified at 49 U.S.C.A. § 11323-11326 (West Supp. 2000).* The fact that the arbitration panel may have unnecessarily prolonged the arbitration process by requiring Petitioners to prove their status as employees covered by the MPA, as Petitioners argue, is not evidence that the panel exceeded its authority in rendering its decision. Indeed, the panel decided the precise issue expressly reserved for arbitration under the district court's 1976 and 1979 orders.

Finally, the panel did not commit egregious error in deciding the merits of Petitioners' claims. As the Board points [*16] out, there was ample factual basis for rejecting Petitioners' argument that they risked waiving their rights under the MPA if they reported to work at the N.Y. Central freight yard. Moreover, the panel properly rejected Petitioners' argument that the carrier anticipatorily breached its contractual obligations under the MPA. The panel reasonably found that Petitioners' refusal to report to work was at their own peril, particularly in light of the numerous notices sent to Petitioners to report to work and the numerous warnings to Petitioners that they would forfeit their benefits if they failed to report. Furthermore, the panel was justified by ample record evidence in rejecting Petitioners' argument that the work at the N.Y. Central freight yard was not comparable to their previous work at the CUT.

[HN7] There being no showing that the Board's determination was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, or unsupported by substantial evidence, *see 5 U.S.C. § 706(2)(A), (E)*, this Court "is not empowered to substitute its judgment for that of the agency." *Simms v. National Highway Traffic Safety Admin., 45 F.3d 999 at 1003.* Under the deferential *Lace* [*17] *Curtain* standard, we therefore find that the Board properly affirmed the arbitration panel's decision with respect to Petitioners.

III. CONCLUSION

Accordingly, we **AFFIRM** the Board's decision.

29475
EB

SERVICE DATE - DECEMBER 8, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 21989 (Sub-No. 3)

PENNSYLVANIA RAILROAD COMPANY
— MERGER—
NEW YORK CENTRAL RAILROAD COMPANY

(ARBITRATION REVIEW)

Decided: December 2, 1998

We are partially granting the appeal brought by 17 former employees of the Cleveland Union Terminals Company of the decision of an arbitration panel (Fred Blackwell, Chairman and neutral member) (hereafter, the Decision) denying these employees' claim for benefits under an agreement entered into on January 1, 1964, for the protection of railroad employees who would be affected by the 1968 merger of the Pennsylvania Railroad Company and the New York Central Railroad Company to form the Penn Central Transportation Company.

BACKGROUND

In 1962, the Pennsylvania Railroad Company and the New York Central Railroad Company (N.Y. Central) agreed to a merger that resulted in the formation of the Penn Central Transportation Company (Penn Central). In the 1970s, the Penn Central went bankrupt, and the great bulk of its assets were transferred in 1976 to a new carrier, Consolidated Rail Corporation (Conrail). The estate of the Penn Central continued to survive in possession of real estate holdings and lines that were not transferred to Conrail. When the appeal in this docket was filed, the surviving company of the estate of the Penn Central was called the "Penn Central Corporation," the respondent in this proceeding. We refer to the respondent Penn Central Corporation as "the carrier" because its predecessor was a rail carrier subject to our jurisdiction when this controversy first arose.

On May 20, 1964, the Brotherhood of Railway Trainmen (BRT) and the two merging carriers entered into an agreement for the protection of employees (the 1964 merger protection agreement).¹ The 1964 merger protection agreement provided considerably more than the standard

¹ This agreement was modified on November 16, 1964, on December 21, 1966, and on November 16, 1967.

levels of protection that applied under our New York Dock and pre-New York Dock formulas.² This agreement was signed by the two carriers alone and did not directly refer to any subsidiary carriers.

Before the merger, the N.Y. Central owned 93% of a passenger carrier subsidiary, the Cleveland Union Terminals Company (CUT). The 17 claimant petitioners in this proceeding (claimants) were all yard workers on the CUT. On February 16, 1965, the N.Y. Central and the BRT negotiated an agreement to allow CUT employees an opportunity to work at a nearby N.Y. Central freight yard by merging the CUT seniority roster with the pre-merger seniority roster for N.Y. Central employees who worked at the freight yard. The rosters were merged by placing the former CUT employees at the bottom of the merged roster in the order of their seniority on the CUT, with a common seniority date of September 10, 1964. The N.Y. Central employees who were already working at the freight yard were placed on the roster in order of their dates of employment on the N.Y. Central. All of those dates predated September 10, 1964.

The merger was finalized on February 1, 1968. On February 21, 1968, the claimants and other CUT employees, except for some CUT employees who were retained in the CUT workforce, were furloughed from their CUT jobs effective on February 25, 1968. The furlough notice told the furloughed CUT employees to "immediately contact" the freight yardmaster to "stand for" work in the freight yard under the February 16, 1965 agreement merging the rosters.³ As explained below, we must distinguish between those of the 17 petitioning claimants who accepted the carrier's invitation to stand for work in the freight yard⁴ and those who did not.⁵

When the claimants were furloughed, the BRT and the merging carriers were disputing whether the 1964 merger protection agreement applied to employees of subsidiary railroads like the

² To meet its obligation to provide employee protection under former 49 U.S.C. 11347, which has been recodified as current 49 U.S.C. 11326, our predecessor agency, the Interstate Commerce Commission (ICC) adopted the benefit formula and procedure set forth in New York Dock--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

³ The CUT was not merged into the Penn Central until July 11, 1969, but the prior furlough and reporting notices show that workforce coordination began before the CUT was formally folded into the Penn Central.

⁴ The 10 former CUT employees who reported to the freight yard were Messrs. Acree, Benko, Day, Doran, Gastony, Gentile, Norris, Steimle, Tomczak, and Uher.

⁵ The 7 former CUT employees who did not report to the freight yard were Messrs. Augustus, Beedlow, Grady, Knopik, McLaughlin, Potosky, and Tannenbaum. These persons were discharged without compensation after failing to respond to a final notice to report dated December 15, 1969.

CUT. The carrier's position was that the agreement applied only to employees of the N.Y. Central and the Pennsylvania Railroad Company. The furloughed employees were fully aware of this dispute. The parties settled this dispute as to the CUT (but not as to other subsidiaries) by an agreement reached on July 11, 1969, under which the parties agreed to apply the 1964 merger protection agreement to CUT employees.⁶

This proceeding involves the efforts of claimants to obtain labor protection benefits pursuant to the 1964 merger protection agreement. While the carrier now agrees that the 1964 merger protection agreement applies to former CUT employees, the carrier has consistently denied that claimants have individually satisfied the conditions established in that agreement for claiming and receiving benefits. On September 15, 1969, the claimants filed suit in a U.S. District Court, alleging two causes of action: (1) failure by the carrier to provide benefits claimed under the 1964 merger protection agreement; and (2) failure by the BRT to provide adequate representation of their interests. By oral ruling issued on July 14, 1976, and a written decision issued on November 29, 1979, the court dismissed the complaint as to inadequate representation and ordered that the remaining issue of claimants' entitlement to benefits under the merger protection agreement be resolved by arbitration.

In compliance with the court's arbitration order, the parties entered into an arbitration agreement on June 18, 1980. An initial arbitration panel met in 1983 but was subsequently disbanded. The current arbitration panel was convened in 1988. The panel held a 3-day oral evidentiary hearing in May 1990.

On June 22, 1992, the panel entered its Decision, which was followed by issuance of a supplemental Decision on July 16, 1994, and a dissenting opinion on August 25, 1994. The panel denied all of the claims for benefits, finding that: (1) those claimants who refused to report for work at the freight yard did not have a reasonable basis for their refusal and thereby failed to comply with requirements in the 1964 agreement that employees exercise their seniority rights to obtain available work; and (2) the claimants who reported for work failed to process grievance claims adequately, admitted their ineligibility for benefits, or lost work due to causes that were deemed by the panel not to trigger benefit payments, such as declining business, physical incapacity, or voluntarily quitting work.

⁶ The ICC subsequently held that the benefits of the 1965 merger protection agreement applied ab initio to employees of all subsidiary railroads. Pennsylvania R. Co.--Merger--New York Central R. Co., 347 I.C.C. 536, 548 (1974). Moreover, in a July 14, 1976 oral ruling (reproduced in Exh. 54), a court found that both parties had agreed that the former CUT employees were N.Y. Central employees for the purpose of determining their eligibility for protective benefits under the 1964 merger protective agreement. (Note: The exhibit numbers used in this decision refer to the numbers assigned to the exhibits submitted by the claimants in this arbitration appeal.)

On November 16, 1994, claimants filed an appeal of the panel's Decision with the ICC,⁷ which docketed the appeal as Finance Docket No. 21989 (Sub-No. 2). By decision served on August 1, 1996, in the (Sub-No. 2) proceeding, the Board denied the appeal, finding that claimants' cursory appeal failed to define any issues for, or provide any evidence in support of, review. An appeal of this decision to the Court of Appeals for the 6th Circuit was dismissed by the court based on a stipulation that the Board would re-docket the appeal if claimants filed documents in support of it.

On April 17, 1997, claimants re-filed their appeal with supporting documentation, and the appeal was re-docketed as the instant (Sub-No. 3) proceeding.⁸

The carrier filed a reply in opposition to the appeal on June 24, 1997.

DISCUSSION AND CONCLUSIONS

Under 49 CFR 1115.8, the standard for review of labor arbitration appeals is provided in Chicago & North Western Transp. Co. — Abandonment, 3 I.C.C.2d 729 (1987), aff'd sub nom. International Brotherhood of Electrical Workers v. I.C.C., 862 F.2d 330 (D.C. Cir. 1988), popularly known as the "Lace Curtain" case. Under the Lace Curtain standard, the Board does not review "issues of causation, the calculation of benefits, or the resolution of other factual questions" in the absence of "egregious error." Id. at 735-36. In Delaware and Hudson Railway Company — Lease and Trackage Rights Exemption — Springfield Terminal Railway Company, Finance Docket No. 30965 (Sub-No. 1) et al. (ICC served Oct. 4, 1990) at 16-17, remanded on other grounds in Railway Labor Executives' Ass'n v. United States, 987 F.2d 806 (D.C. Cir. 1993), the Interstate Commerce Commission (ICC) elaborated on the Lace Curtain standard, as follows:

Once having accepted a case for review, we may only overturn an arbitral award when it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it exceeds the authority reposed in arbitrators by those conditions. [Citations omitted.]

We will partially grant the appeal under our Lace Curtain standard. We find that the panel erred egregiously and failed to observe the imposed labor protection conditions in summarily denying benefits to the claimants who reported for work at the freight yard. We uphold the panel's

⁷ The court previously refused to hear the appeal, finding that jurisdiction lay with the ICC. The court's order is attached as Exhibit D to the carrier's reply.

⁸ In their appeal filed on April 17, 1997, claimants request oral argument. We will deny the request for oral argument. We are capable of resolving the legal issues without oral argument as no issues have been presented that cannot be decided based on the written record.

denial of benefits to the claimants who did not report for work. We will remand the panel's Decision to the parties for action in conformity with this decision.

I. Claimants Who Reported For Work

The parties agreed on a bifurcation of the arbitration process, whereby claimants' basic eligibility for compensation would be explored in Phase I, and thereafter, if they were found eligible, the precise amount of compensation would be determined in a subsequent Phase II. Tr. 134-135. The panel denied all benefits for the 10 former CUT employees who reported for work at the freight yard, refusing to proceed to Phase II on the grounds that the claimants failed to establish their basic eligibility for compensation. The panel found that the claimants who reported for work did not process and establish their grievance claims adequately, in that they failed to pursue arbitration when benefits were not awarded, failed to turn in wage guarantee forms, and failed to show that their wages in their new positions were less than the amounts guaranteed under the protective benefits. The panel also held that employees were required to show that their losses were "as a result of the merger" (hereafter, the "causation requirement") and that this condition was not met, at least for a key witness, Christ Steimle, who "mentioned" loss of jobs due to declining business and a physical incapacity.⁹ The panel also found that at least the key witness Christ Steimle "held the belief at the time that he was not entitled to wage guarantee payments and that the belief had a sound fact basis."¹⁰ As explained below, these findings reflect egregious error and failure to observe the imposed labor protection conditions.

A. Failure to Pursue Arbitration

A review of the history of this proceeding shows that the panel erred egregiously in finding that the claimants who reported for work should be denied all relief because they did not pursue arbitration in a timely manner. As noted, the claimants, instead of proceeding immediately to arbitration of their claims for benefits, brought suit in a federal district court for the benefits and joined an additional claim alleging failure by the BRT to provide adequate representation of their interests. We cannot fault claimants for going to court before they agreed to arbitration, because, as indicated in the court's decision directing arbitration of the claim for benefits, it was not clear at the time that individual employees, as distinguished from their unions, could invoke arbitration.¹¹

⁹ Decision, at 14. The panel was unclear as to whether benefits were being denied only for Mr. Steimle due to his failure to fulfill the alleged causation requirement, or whether failure to fulfill the alleged requirement was grounds for denying benefits for all of the claimants who reported for work.

¹⁰ Decision, at 15. The panel was unclear as to whether it was finding that (a) only Mr. Steimle had this belief or (b) this belief was held by all of the claimants who reported for work.

¹¹ Indeed, the order of the United States District Court for the Northern District of Ohio,
(continued...)

In any event, the arbitration that was actually before the panel was the only arbitration that claimants needed to pursue in this matter. The court ordered that the issue of claimants' eligibility for benefits be submitted to arbitration. The parties responded by entering into an arbitration agreement. Because the court's order was never appealed and remains in effect today, it is the law of the case, and it may not be collaterally attacked with the argument that claimants' request for benefits must be denied because claimants did not seek arbitration first but rather began their quest for benefits in court. The panel erred in citing failure to arbitrate as a reason for dismissal when the required arbitration was actually before the panel.

B. Wage Guarantee (Claim) Forms

In denying the claims, the panel relied on the fact that lead witness Steimle, who testified that he was the only living claimant who reported for work (Tr. 471), ceased to file claim forms. The panel used this to support its finding that he and the other claimants who reported believed at the time that they were not entitled to benefits.

We disagree with the panel's approach. The fact that witness Steimle and other claimants ceased to file claim forms does not by itself show that they believed at the time that they were not entitled to benefits. Mr. Steimle testified that he and his "fellow employees" sent claim forms to the payroll department and "received no response whatsoever." Tr. 521. A lack of response by the carrier would not be surprising, because claimants were in litigation with the carrier over the provision of benefits. Witness Steimle further testified that his supervisor "thought it was a joke" that he would even bother to apply for protective benefits because he was not going to get benefits anyway. Tr. 522-523. The panel ignored evidence that claimants ceased to file claim forms because of lack of response from the carrier and because of negative feedback from supervisors, rather than because they believed that they were not entitled to benefits.

The panel might have been able to infer that the claimants doubted their eligibility for benefits if they had totally neglected to file claims forms, but the record reveals no such neglect. As discussed above, witness Steimle testified that claimants filed the claims forms and ceased doing so only after receiving no response. Former Assistant Supervisor of Labor Relations George Ellert, the only witness called by the carrier, admitted on cross examination that he did not know whether any of the claimants filed forms (Tr. 647) and in any event would have been aware only of any appeals that may have been filed (Tr. 563-564).

¹¹(...continued)

Eastern Division, dated November 24, 1979, reproduced at Exhibit 55 submitted to the arbitration panel, noted at page 3 that section 1(e) of the 1964 merger protection provided only that arbitration was to be invoked by a "labor organization signatory to this Agreement." Thus, the plain language of the agreement arguably seemed to preclude individual employees from seeking recourse to arbitration. Without citing precedent, the court criticized this restriction as "overly technical" and held that the arbitration provision applied to individual workers as well as to their union.

We can draw no inference from the panel's observation (Decision at 14) that claimants (specifically referring to witness Steimle) did not retain copies of their claims forms. The carrier arguably was the proper repository of the forms because only the carrier could take the information on them and compare it with the base ("test period") earnings information in its possession so as to compute any compensation that may have been owed.¹² Because the carrier was litigating the issue of compensation, it was on notice to keep records of what forms were or were not submitted. Claimants had no duty to administer the compensation scheme and to act as record keepers for that purpose. Moreover, the wage and hour information on the claims forms was relevant only to the subsequent, damages (Phase II) hearing that was never held because the prior, liability (Phase I) hearing resulted in a finding that the employees were not eligible for benefits.

C. The Issue of Causation

The panel found that the claimants who reported to the yard failed to show that their losses were as a result of the merger. This finding will be vacated. The record shows that the claimants who reported for work suffered losses as a result of the merger and provides no reason to find that claimants' losses were due to other causes that would excuse the carrier from paying benefits. Before the merger and furloughs took place, claimants were fully employed at the CUT passenger yard with many years of seniority.¹³ Immediately after the merger, claimants were asked to "stand for" work at a nearby freight yard where no work was available for them for many years because they were placed at the bottom of a new seniority list that was created as a result of the merger.¹⁴

¹² On cross examination, carrier witness George Ellert stated that test period pay data were kept by the carrier. Tr. 627.

¹³ If the claimants had been on furlough from their prior job at the CUT passenger terminal, the carrier might have been able to argue that their lack of work was pre-existing and thus not due to the furlough, but this was not the case. Moreover, we will not speculate as to whether claimants would have kept their jobs at the CUT passenger yard if the merger had never taken place, as no evidence was introduced on this topic. Moreover, we note that Amtrak was not created until the early 1970s.

¹⁴ The pre-merger CUT seniority roster had 63 men on it. Exh. 2. About 50 of those men transferred to the new, merged seniority roster. Exh. 66. Because there were 509 persons on the merged seniority roster, including the former CUT employees (Exh. 3), work had to be found for many former N.Y. Central employees before it could be offered to the former CUT employees. While the July 11, 1969 agreement allocated 2.46% of the total yard force to former CUT employees, this guaranteed work for only about 9 former CUT employees, none of whom included claimants. See the testimony of witness Beedlow at Tr. 243, whose testimony in this respect was not disputed by the carrier. Claimant Christ Steimle stated that he did not have enough new list seniority to obtain a job until 1984 (Exh. 66) or 1985 (Tr. 512). As Mr. Steimle was the senior man of the CUT claimants (Tr. 643-644), it is clear that if he lacked enough seniority to obtain work, the

(continued...)

The jobs for which the claimants were expected to "stand" were not actual jobs.¹⁵ The claimants experienced a drop in income immediately after they reported for work at the freight yard and their drop in income was not due to sickness, discipline, or failure to exercise seniority rights.¹⁶ The panel failed even to mention the voluminous evidence submitted by complainants to show injury. It is not clear what else claimants could have submitted to satisfy the panel that they suffered losses as a result of the merger.

The panel's Decision is especially questionable because the carrier produced no evidence at all that any of the conditions specified for refusing benefits in the 1964 merger protection agreement were satisfied for the 10 claimants who reported to the freight yard. The carrier (reply at 13) defends the panel's Decision on the grounds that the "testimony presented at the hearing" shows that the claimants "had lost work due to declining business." Our examination of the hearing record, however, shows that the carrier made no effort whatsoever to identify specific periods of general business decline, emergency conditions, or other supervening events that would justify nonpayment of benefits under section 1(b) of the agreement. The fact that claimants' losses began to be

¹⁴(...continued)
other claimants did also.

¹⁵ George Ellert, a former superintendent at the freight yard, initially testified that jobs were available for those who reported for work (Tr. 149), but on cross examination he admitted that claimants were not called back to regular, full-time positions but were instead assigned to an "extra board" or an "extra list," whose members were not guaranteed a specific number of hours of work (Tr. 154-157). At Tr. 258, witness Beedlow testified that claimants were called back to "nonexistent jobs." The carrier did not respond with evidence to the contrary, such as, for example, a list of the claimants who readily found work at the freight terminal.

¹⁶ Concerning the 10 men who reported for work at the yard, witness Beedlow testified generally as to the inability of all claimants to find work after they reported. Tr. 256. More specific evidence as to drop in income was submitted for the following 7 of the 10 claimants who reported to the yard:

Acree. Affidavit from wife. Exh. 62.

Benko. Testimony based on comparison of W-2 forms before and after the furlough. Tr. 170-172. Corroborated by witness Beedlow at Tr. 254.

Day. Testimony based on comparison of W-2 forms before and after the furlough. Tr. 162-170. Corroborated by witness Beedlow at Tr. 252.

Norris. In a letter dated February 18, 1972 (Exh. 51), he wrote that he was "only working several days a month."

Steimle. Testified that he never had regular employment after he reported to the freight yard. Corroborating affidavit from wife. Exh. 66.

Tomczak. Testimony based on comparison of W-2 forms before and after the furlough. Tr. 176-178. Affidavit from widow. Exh. 67.

Uher. Affidavit from widow. Exh. 68.

experienced shortly after the merger and furlough makes it unlikely that supervening causes could explain claimants' losses. Nor did the carrier come forward with evidence showing that any claimants were disabled or disciplined in accordance with that provision.

Under the circumstances presented on the record before us, we find that the panel committed egregious error by finding that none of the claimants who reported for work were entitled to any compensation. Unless an arbitral panel can point to evidence supporting total denial that we have overlooked and that is considerably more compelling than the evidence cited in its 1992 Decision, summary denial of all benefits is completely unjustified. Some of the reasons cited by the panel here for totally denying compensation, such as the fact that claimants may have found work elsewhere or suffered illness, will be relevant to any determination of the amount of compensation for individual claimants, but these reasons do not justify the denial of all compensation for all of the claimants.

II. Claimants Who Did Not Report For Work

The panel denied the claims of the 7 claimants who never reported for work at the freight yard. The panel ruled that those claimants contravened the 1964 merger protection agreement by failing to exercise their seniority rights to work at the freight yard. The panel rejected two defenses raised by those claimants for their failure to report, i.e., that: (1) the work offered at the freight yard was not comparable work; and (2) a doctrine of "anticipatory breach" excused them from reporting to work on the theory that the carrier was simultaneously breaching its duty to provide protective benefits. We affirm the panel's Decision as it pertains to the 7 claimants who do not report for work at the freight yard.

III. Conduct Of Future Proceedings

For the reasons explained above, we are vacating the panel's denial of damages for the 10 claimants who reported to work at the freight yard after the furlough. In accordance with standard practice, we will not affirmatively find that claimants are entitled to compensation but will remand the issue of the entitlement to compensation to the parties, who may attempt to resolve the issue among themselves or seek additional arbitration on this issue consistent with this decision.

The current record is not, and was not intended to be,¹⁷ adequate for the computation of the compensation to be received by each individual claimant. For each individual claimant, the parties, or an arbitration panel if the parties cannot agree, will have to gather facts that are relevant to determining the amount of compensation under the 1964 merger protection agreement, in areas such as the following: (1) test period earnings and benefits with the carrier; (2) actual earnings with the carrier; (2) replacement income earned with other employers; (3) periods of disability; (4) dismissal for cause; and (5) whether there was a general or seasonal business decline that could excuse compensation under section 1(b) of the 1964 merger protection agreement.

¹⁷ As discussed above, the parties agreed on a bifurcated arbitration procedure.

We recognize that the task may be a difficult one for the parties as the issues were pending for about 28 years before our jurisdiction was properly invoked in 1997. Because so much time has passed, we would prefer to be in a position to have rendered a decision that provided final resolution or greater certainty for the parties. Having found that the panel's Decision summarily denying all claims was fundamentally unfair to the claimants who reported for work at the freight yard, however, we find it necessary to remand the matter for the unfairness to be corrected. Despite the difficulties they will face, the parties are in the best position to accomplish that. We urge them to work together to reach a just and speedy resolution of all remaining issues.

This decision will not affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Claimants' request for oral argument is denied.
2. The Decision of the panel is vacated as it pertains to the 10 claimants who reported for work, and the proceeding is remanded to the parties for further action consistent with our findings.
3. This decision is effective on its date of service.
4. A copy of this decision will be served on the neutral member of the panel, at the following address:

Fred Blackwell, Esq.
19129 Roman Way
Gaithersburg, MD 20879

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

AGREEMENT FOR ARBITRATION

THIS AGREEMENT, made this 18 day of June, 1980, at Cleveland, Ohio, by and between those persons whose names are set forth and contained on Exhibit "A" attached hereto and made a part hereof by reference (all of whom are hereinafter collectively called the "Employees"), and PENN CENTRAL CORPORATION, successor to Penn Central Transportation Company and its Trustees, a Pennsylvania corporation (hereinafter called the "Employer"),

WITNESSETH:

WHEREAS, disputes or controversies exist between Employees and Employer with respect to the interpretation, application, or enforcement of the provisions of certain Merger Protective Agreements of May 20, 1964, or of January 1, 1964, which disputes are the subjects of various actions pending in the United States District Court for the Northern District of Ohio, Eastern Division, at Nos. C69-722, C69-675, C69-947, and C74-914;

WHEREAS, the parties hereto desire to follow as nearly as possible the provisions of Section 1(e) of said Merger Protective Agreement for the purpose of settling, concluding and resolving the said dispute or controversy, all according to the terms, conditions and provisions of this Agreement,

NOW, THEREFORE, the parties hereto agree as follows:

(1) There shall be established an arbitration committee (hereinafter called the "Committee").

(2) The Committee shall consist of one member designated by the Employees, one member designated by the

EXHIBIT B

Employer and one neutral person. The members designated by the Employees and the Employer shall by mutual agreement, and within thirty (30) days after their respective designations, select a neutral person, which said neutral person shall upon selection become a member and chairman of the Committee for all the purposes contemplated by this Agreement. If the designated members of the Employees and the Employer are unable to mutually agree upon the selection of the neutral member, the partisan members jointly, or either of them, shall request the National Mediation Board to appoint such neutral member. The person appointed by said Board shall become a member of the Committee for all the purposes contemplated by this Agreement. Any two members of the Committee shall be competent to render an award. Each member of the Committee shall be compensated by the party he is to represent. The compensation and expenses of the neutral person so selected or appointed shall be paid equally by the Employees and the Employer. The members of the Committee so designated, selected or appointed shall determine all matters not previously agreed upon by the Employees and the Employer with respect to the establishment of the Committee.

(3) The Committee shall be empowered and shall have jurisdiction to decide and determine all issues presented to it, which said issues shall be confined and limited to the four issues set forth and contained on Exhibit "A" attached hereto and made a part hereof by reference. The Committee shall make appropriate findings of fact and render an award or awards on the issues presented to it within sixty (60) days after the close of the hearings contemplated by

paragraph (5) hereof. Such findings and any award shall be in writing and signed by all or by a majority of the members of the Committee. Copies thereof shall be delivered or mailed simultaneously to each of the parties hereto or to their respective counsel. Such awards shall be final and binding upon the parties hereto. If in favor of the Employees, the award shall direct the Employer to comply therewith on or before a day named. In case any dispute arises involving interpretation or application of any award, the Board, upon request of either party hereto, shall interpret such award in light of the said dispute or controversy.

(4) The Committee shall meet at Cleveland, Ohio, as soon as practicable after the neutral member of the Committee is selected or appointed, as aforesaid, and shall meet at stated times thereafter until all the issues presented to it under this Agreement are decided and determined.

(5) The Committee shall hold hearings in respect to all the issues presented to it. A separate hearing will be held on each of the issues, Nos. 1-4 (Exhibit A) in numerical order. Hearings on such issues numbered 2-4 will be deferred until the preceding issue has been decided. The parties may present witnesses and may submit statements of position and factual material in writing, and exhibits may be introduced during the hearing. Either party may be represented by counsel. When all pertinent and material evidence has been submitted on an issue, the Committee shall close the hearings and proceed to make its award. The Committee, or the majority thereof, shall determine all

procedural matters not specifically set forth in this Agreement.

(6) Any time limitations set forth in this Agreement may be extended by subsequent agreement of the parties hereto.

(7) The Committee shall continue in existence until it has decided and determined all the issues presented to it under this Agreement, after which it shall cease to exist, except for the purpose of interpreting any award as provided in paragraph (3) hereof.

(8) The Employees and Employer agree that the designated and authorized representative of the Employees under the Railway Labor Act shall be given notice and an opportunity to participate in the proceedings before the Board.

IN WITNESS WHEREOF, the parties hereto, through their duly acting and authorized agents and attorneys, have made this Agreement for Arbitration on the day and year first-above written.

FOR THE EMPLOYEES:

FOR THE EMPLOYER:

By Michael R. Kube

PENN CENTRAL CORPORATION

Michael R. Kube
Employee Member of
Committee

By N. M. Berner

N. M. Berner
Carrier Member of Committee

EXHIBIT "A"

Issue No. 1:

Are the claimants entitled to the benefits of the Merger Protective Agreement of 1964?

Claimants: *Tannenbaum*

Michael J. Knopik, Clarence C. Tomczak, William E. Grady, George R. Norris, Sam Tannenbaum, Michael J. McLaughlin, Frank C. Uher, Kenneth B. Day, Antonio Augustus, Harvey E. Doran, Walter V. Potosky, George A. Gentile, Raymond Beedlow, Jack F. Scree, Edward Benko, Christ Steimle, Jr., Joseph D. Gastony.

Issue No. 2:

Are the claimants entitled to the benefits of the Merger Protective Agreement of 1964?

Claimants: *Carroll*

G. V. Sophner, ^{*Cannon*} P. O. Sowinski, L. S. Pentz, J. Crtalic, R. McNeely, John F. Gallagher, Joseph M. Jarabeck, E. W. Kochenderfer, ^{*Cannon*} Gus Janke, ^{*Cannon*} P. E. McLaughlin, William Bilinsky, Paul D. Foeking, A. C. Novotny, M. Opalk, R. N. Schreiner, Paul Scuba.

Issue No. 3:

Are the claimants entitled to the benefits of the Merger Protective Agreement of 1964?

EXHIBIT 8

all p. 14 c
Claimants:

Robert W. Watjen, Philip F. Franz, Anna Mae Wilger,
Thomas D. O'Neil.

Issue No. 4:

Are the claimants entitled to the benefits of the Merger
Protective Agreement of 1964?

all BRR ✓
Claimants:

David C. Bundy, James E. Feldscher.

Should any disagreement exist with respect to the framing
of the issues above-listed, the parties agree that the opinion
of the U.S. District Judge Thomas Lambros dated November 29,
1979 shall control.

For the Employees

By: *Michael R. Kube*
MICHAEL R. KUBE
Employee Member of Committee

For the Employer
Penn Central Corporation

By: *N.M. Berner*
N.M. BERNER
Carrier Member of
Committee

AGREEMENT MADE THIS 14th DAY OF MARCH, 1967, BY AND BETWEEN THE PENNSYLVANIA RAILROAD AND NEW YORK CENTRAL RAILROAD COMPANIES AND THEIR EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF RAILROAD TRAINMEN, PROVIDING FOR THE TRANSFER AND USE OF EMPLOYEES RELATIVE TO THE UNIFICATION, COORDINATION AND CONSOLIDATION, IN THE EVENT OF MERGER, OF THE SEPARATE FACILITIES OF THE CARRIERS AT CLEVELAND, OHIO.

IT IS AGREED:

I. NOTICE TO BE GIVEN

The interested General Chairmen of the organization signatory hereto will be given not less than thirty (30) days' notice in writing of the Carrier(s) intent to consolidate the separate facilities of the Pennsylvania and New York Central Railroads at Cleveland, Ohio.

Such notice will contain a list of the yard crew assignments to be initially assigned on the effective date of the consolidation, indicating the crew symbols, reporting and relieving points, and reporting times. The notice will set forth any revisions in the yard crew assignments furnished in accordance with Section II-A hereof.

II. ALLOCATION OF CREWS IN THE TERMINAL

A. For the purpose of determining the equities of employes of the seniority districts affected by the consolidation of facilities at the location set forth in Section I hereof, the Carriers have furnished the General Chairmen signatory hereto the number of cars dispatched and yard engine hours operated for the period December 1, 1964 to November 30, 1965, inclusive, and a list of the proposed yard crew assignments indicating the crew symbols, reporting and relieving points and reporting times.

EXHIBIT G

schmidt



- B. The interested General Chairmen will promptly decide upon a "determined ratio" for the seniority districts involved. The interested General Chairmen will also jointly allocate the yard crew assignments to the seniority districts involved in the "determined ratio" and so notify the designated officer of the Carrier(s) within fifteen (15) days following the date of the notice given under Section I hereof. The "determined ratio" and allocation of yard crew assignments shall, upon completion, be attached as Appendix "A".
- C. In the event the General Chairmen have not furnished the Carrier(s) with the "determined ratio" and allocation of yard crew assignments within the time limit set forth in paragraph B of this Section II, the Carrier(s) may establish a temporary "determined ratio" and allocation of yard crew assignments pending final determination by the interested General Chairmen.
- D. All positions on yard crew assignments will be advertised on separate bulletins for each seniority district for a period of not less than eight (8) nor more than ten (10) days prior to the date the terminal is consolidated. Such bulletin will contain a closing date for receipt of bids. Assignments will be made effective on the date the terminal is consolidated.

During the initial advertising period referred to in this paragraph D no material changes in existing yard assignments in the terminal to be consolidated will be made which would result in such assignments being subject to re-advertisement under the Schedule Agreement applicable to the assignment involved. Subsequent new assignments and permanent vacancies will be

bulletined separately for each seniority district and assigned under the rules of the Schedule Agreement of the seniority district involved.

III. EXTRA LISTS

- A. Conductor vacancies will be filled in accordance with existing rules or practices on the seniority district involved.
- B. Arrangements in effect on the effective date of this Agreement on each seniority district for filling brakemen vacancies will remain except that when, in accordance with such arrangements, a trainman from a seniority district to which the assignment is allocated is not available, an employe of any other seniority district having an equity in the consolidated terminal in which the vacancy occurs may be used. Such employe will not be considered as missing a call when not available except that, if contacted, he must protect the assignment for which called and will be treated in the application of existing agreements, the same as though he had been used to fill a vacancy on an assignment on which he holds seniority.
- C. Extra lists on each seniority district will continue to be adjusted in accordance with agreements and interpretations thereto in effect prior to the consolidation of the terminal.
- D. Extra assignments will be filled from the extra lists of the seniority districts protecting an equity at the consolidated terminal so as to maintain the determined ratio for that location.

IV. USE OF EMPLOYEES

- A. In effecting the consolidations provided in Section I of this Agreement, the consolidated facilities of the two former Carriers will be considered a single terminal of the Merged Company, with switching limits as defined in Appendix "B".

B. Road and yard employes of either former Carrier may be required to perform services throughout the consolidated terminal in accordance with their respective Schedule Agreements in the same manner as though such consolidated terminal was a terminal of their former Carrier.

C. Road and yard employes may be required to report and be relieved at designated points in the consolidated terminal, so long as such designated points meet the requirements of the Schedule Agreements, interpretations and practices on the property.

V. TRANSPORTATION

Where, as a result of this Agreement, a transportation problem is found to exist for road or yard employes, the parties will meet, within thirty (30) days, for the purpose of alleviating such problem.

VI. READJUSTMENT OF EQUITIES

A. For the purpose of computing and readjusting equities due any seniority district in the yard assignments allocated under the provisions of Section II, the Carrier will furnish the interested Local Chairmen a record of:

1. Extra yard crews worked in excess of the determined ratio.
2. Regular yard crews worked in excess of the determined ratio.

B. In computing and readjusting equities under the provisions of Paragraph A of this Section VI employes of each seniority district will be given credit for:

1. Their percentage of the extra yard crews worked in excess of the determined ratio.
2. Their percentage of regular yard crews worked in excess of the determined ratio.

and given a debit for:

3. Extra yard crews worked in excess of the determined ratio.
 4. Regular yard crews worked in excess of the determined ratio.
- C. If a material imbalance in the determined ratio develops at any location before January 1 of each year due to a substantial increase or decrease in the number of yard assignments, an interim readjustment of equities will be made upon joint request of the interested Local Chairmen.
- D. If on January 1 of each year any seniority district is entitled to recover thirty (30) or more shifts, a sufficient number of regular assignments occupied by a debtor seniority district will be made available to them until they have worked the number of shifts credited to them.

VII. LEARNING NEW TERRITORY

When yardmen are required to learn new territory as a result of terminal or yard consolidations covered by this Agreement, and no member of the train crew is qualified, they will be furnished a yard pilot.

VIII. EFFECT OF THIS AGREEMENT

This Implementing Agreement is made pursuant to Merger Protective Agreement of November 16, 1964, as modified by the Agreement of December 21, 1966, the provisions of which shall remain in full force and effect except as expressly modified herein.

This Agreement shall be effective upon consummation of the merger, except that any notices under Section I of this Agreement may be given in advance thereof.

This Agreement, which shall be construed as a separate Agreement between the Pennsylvania Railroad Company and the New York Central Railroad Company and the signatory Organization, shall supersede the provisions of any

agreements with which it conflicts, and shall continue in effect subject to the usual thirty (30) days' notice by either party to the other, in accordance with the manner prescribed by the Railway Labor Act, as amended.

Signed at Cleveland, Ohio, this 14th day of March, 1967.

THE PENNSYLVANIA RAILROAD COMPANY

s/ Guy W. Knight

Vice President, Labor Relations
and Personnel

NEW YORK CENTRAL RAILROAD COMPANY

s/ L. B. Fee

Vice President, Employee Relations

BROTHERHOOD OF RAILROAD TRAINMEN
BY:

s/ E. F. McNeel

General Chairman (PRR - West)

s/ J. A. Lyons

General Chairman (NYC -
Western District)

APPROVED:

s/ J. J. Kelly

Vice President

MEMORANDUM OF AGREEMENT BETWEEN THE NEW YORK CENTRAL RAILROAD - WESTERN DISTRICT, THE CLEVELAND UNION TERMINALS COMPANY AND THE YARD SERVICE EMPLOYEES OF BOTH CARRIERS REPRESENTED BY THE SIGNATORY COMMITTEES OF THE BROTHERHOOD OF RAILROAD TRAINMEN TO PROVIDE FOR THE TOP AND BOTTOM SENIORITY ROSTER CONSOLIDATION OF NYC CLEVELAND TERMINAL DISTRICT (FREIGHT YARD) YARD SERVICE EMPLOYEES AND C.U.T. YARD SERVICE EMPLOYEES.

EXHIBIT A

IT IS AGREED:

1. Effective February 16, 1965 the present separate seniority rosters for yard service employees of the New York Central Railroad Cleveland Terminal District (Freight Yard) and Cleveland Union Terminals Company will be consolidated subject to the following terms and conditions of this agreement.
2. Yard service employees of the Cleveland Union Terminals Company will be placed on the New York Central Railroad, Cleveland Terminal District seniority roster identified as "NYC & Big Four Joint Yard Brakemen Seniority Roster" following the junior employee currently on that roster in the same relative order as they now appear on the Cleveland Union Terminals Company Yardmen's seniority roster, with a common NYC Freight Yard seniority date of September 10, 1964. This date and relative seniority roster order will be the only seniority date that can be exercised by C.U.T. employees to NYC Freight Yard assignments. These employees will be identified on the NYC Seniority Roster by the initials "CUT" next to their names on the Roster.
3. Subsequent to the effective date of this agreement no names will be added to the present Cleveland Union Terminals Co. Yardmen's seniority roster.
4. Any assignments, including the extra list, in the present Cleveland Union Terminals Co. territory not bid in by Cleveland Union Terminals Co. yardmen will, effective February 16, 1965, be open for bid to all NYC Freight Yard yardmen with a seniority date prior to January 2, 1964, in the order of their seniority on the NYC Freight Yard rosters prior to that date.
5. Any assignments, including the extra lists, in present NYC Freight Yard territory not bid in by yard service employees with a NYC Freight Yard seniority date prior to January 2, 1964 will be open to bid by Cleveland Union Terminals Co. yardmen in seniority order.
6. All furloughed employees on the present separate seniority rosters will be recalled to service before new men are employed. Cleveland Union Terminals Co. yardmen recalled from furlough for assignments, including the extra list, in NYC Cleveland Freight Yard territory must report for service within fifteen days of the date notified by U. S. Mail at their last known address or forfeit all seniority in both territories.
7. New employees hired after the effective date of this agreement will have only one seniority date that may be exercised, subject to the terms of this agreement and the applicable agreements in the respective territories involved, in either the CUT territory or the NYC Freight Yard territory. Said new employees will be added to the "NYC & Big Four Joint Yard Brakeman Seniority Roster" following the junior man thereon.

E. 4.6.7 D



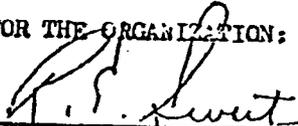
8. All yard service employees subject to this agreement will be governed by the rules and agreements of the territory (NYC or CUT) to which assigned; that is, all employees working NYC Cleveland Terminal District (Freight Yard) assignments will be subject to the rules and agreements applicable in that territory and all employees working Cleveland Union Terminals Co. assignments will be subject to the rules and agreements applicable in that territory.

9. This agreement is for the sole and specific purpose of combining the present separate seniority rosters and will not change the application of any joint or separate agreements now in effect between any or all of the parties and will not be construed to change the respective seniority districts or territories in any way.

10. Revised Seniority Rosters to conform to the terms of this agreement, as of the effective date hereof, will be appended to this agreement.

11. This agreement will be considered to be in effect as of February 16, 1965 and continue in effect unless changed in the manner prescribed by the Railway Labor Act, as amended.

FOR THE ORGANIZATION:


General Chairman, B.R.T.
NYC/RR - Western District


General Chairman, B.R.T.
Cleveland Union Terminals Company

FOR THE CARRIER:


General Manager
NYC RR - Western District
and
Terminal Manager
Cleveland Union Terminals Co.

Dated at
Cleveland, Ohio
February 16, 1965.

AGREEMENT MADE THIS 21st DAY OF DECEMBER, 1966, BY AND BETWEEN THE PENNSYLVANIA RAILROAD AND NEW YORK CENTRAL RAILROAD COMPANIES AND THEIR EMPLOYEES REPRESENTED BY THE ORDER OF RAILWAY CONDUCTORS & BRAKEMEN AND THE BROTHERHOOD OF RAILROAD TRAINMEN, RELATIVE TO THE UNIFICATION, COORDINATION AND CONSOLIDATION, IN THE EVENT OF MERGER, OF THE SEPARATE FACILITIES OF THE PENNSYLVANIA AND NEW YORK CENTRAL RAILROAD COMPANIES.

Whereas, the parties signatory to this Agreement entered into Agreements for the Protection of Employees in the Event of Merger of the Pennsylvania and New York Central Railroads on May 20, 1964 and November 16, 1964 (hereinafter to be referred to as the "Merger Protective Agreements"); and,

Whereas, the Merged Company is to be known as the Pennsylvania-New York Central Transportation Company (hereinafter to be referred to as the "Merged Company"); and,

Whereas, it is the intent and purpose of this Agreement:

- A. To more clearly define how the provisions of the Merger Protective Agreements will apply to train service employees of the Merged Company.**
- B. To expedite changes in services, facilities and operations of the Merged Company through negotiation of implementing agreements which are to be entered into governing:
 - 1. The rearrangement and extension of train service seniority districts as defined in Article VII hereof.****

EXHIBIT C

2. The consolidation of terminals, terminal facilities and switching limits (including the rearrangement thereof) at common terminals, as defined in Article VII hereof.

3. The consolidation of road services between common terminals.

C. To provide for the procedure by which existing agreements between the parties shall be modified to conform with the changes in services, facilities and operations involved in the Merged Company.

NOW, THEREFORE, IT IS AGREED:

I. SECTION 1 (c) OF MERGER PROTECTIVE AGREEMENTS

Section 1 (c) of the Merger Protective Agreements will not be applicable to employees represented by the labor organizations signatory hereto.

II. TRANSFER OF EMPLOYEES

Except where the parties are otherwise in mutual agreement, the Merged Company will not seek implementing agreements to transfer employees entitled to preservation of employment beyond the confines of the consolidated seniority districts established by Article VII of this Agreement.

III. APPENDIX E OF MERGER PROTECTIVE AGREEMENTS

A. That portion of the third paragraph of Appendix E reading, ". . . the employee shall be treated as occupying the

position producing the highest rate of pay and compensation to which his seniority entitles him under the Working Agreement and which does not require a change in residence.", shall be construed to mean that the employee shall be treated as occupying the position producing the highest rate of pay and compensation to which his seniority entitles him under the Working Agreement in the same grade, class, and terminal in which he is employed or in which he was employed during his "base period", without regard to residence of such employee. However, the earnings of junior employees occupying such higher paid jobs shall be accounted against the senior employees on a one-for-one basis.

EXAMPLE: In the application of this Section A it is understood that the following examples apply to both yard and road service:

1. An employee who received his entire base period earnings as a Yard Brakeman in Terminal "A", is found working as such after consummation of the merger can be treated only as occupying a position in that same grade, class and terminal (i. e., as a Yard Brakeman in Terminal "A") when such other position produces a higher rate of pay and compensation and is available to him in the exercise of seniority.
2. An employee who received a part of his base period earnings as a Conductor in Local Freight Service out of

Terminal "A" and the remainder of his base period earnings as a Brakeman in Through Freight Service out of Terminal "B", and who after consummation of the merger is found working as a Brakeman in Passenger Service out of Terminal "C" can be treated only as occupying a position as

Conductor in Local Freight Service out of Terminal "A",

or

Brakeman in Through Freight Service out of Terminal "B",

or

Brakeman in Passenger Service out of Terminal "C"

during the time he continues to work as such out of Terminal "C"

when such other position produces a higher rate of pay and compensation and is available to him in the exercise of seniority. In the event he subsequently ceases to work as a Brakeman in Passenger Service out of Terminal "C" he can no longer be treated as occupying a position as a Brakeman in Passenger Service out of Terminal "C".

3. An employee who is unable in the exercise of seniority to obtain a position in the grade, class and terminal in which he received his base period earnings may select any position available to him in the exercise of seniority. Having made his selection, such employee can be treated only as occupying a position in the selected grade, class and terminal when such other position produces a higher rate of pay and compensation and is available to him in the exercise of seniority.

NOTE: An employee who was used in an emergency in other than a grade in which he was assigned during his "base period" will not be treated as occupying a position in the other grade.

- B.** When applying that portion of Appendix E, third paragraph, reading, "... the position producing the highest rate of pay and compensation...", to positions on the pools and extra lists such positions shall be construed to produce a rate of pay and compensation equivalent to the adjustment factor of such pool or extra list.
- C.** When applying that portion of Appendix E, third paragraph, reading, "... the position producing the highest rate of pay and compensation ...", except as provided in Section B hereof, such positions shall be construed to produce a rate of pay and compensation equivalent to their rate of pay and compensation during the first preceding month for which a list of said rates of pay and compensation is posted on employee bulletin boards.

A change in the listed rate of pay and compensation is not a "permanent" or "material" change under the applicable schedule agreements.

- D.** Should an employee exercise seniority to a position in other than a grade, class, and terminal in which he was employed during his "base period" and such position produces a rate of pay and compensation equivalent to or

greater than his average base period compensation he shall not be treated as occupying the position producing the highest rate of pay and compensation to which his seniority entitles him under the Working Agreement in the same grade, class and terminal in which he was employed during his "base period".

IV. PROTECTION AFFORDED EMPLOYEE REPRESENTATIVES

- A. 1.** The "average base period compensation" and "average time paid for during the base period" as defined in the third paragraph of Appendix E of the Merger Protective Agreements for employees afforded protection under the provisions of Appendix H of the Merger Protective Agreements will be, respectively, the individual's average monthly compensation for the last twelve months in which he performed service in train service, increased by the percentage equivalent of general wage increases applicable to the last class of service performed before he left on union business and made effective while he was on such leave-of-absence, and his average monthly time paid for the same period.
- 2.** The provisions of Section A (1) of this Article IV shall also be applied to officials, supervisory or fully accepted personnel subject to the provisions of Appendix H of the Merger Protective Agreements.

B.. 1. Present employees, other than those referred to in Section A of this Article IV, shall have their "total compensation and total time paid for during the base period" as defined in the third paragraph of Appendix E increased, respectively, by 1.2 basic day's pay (in the class of service in which employed at the time they laid off) and nine hours for each day they lost time to participate in union business during the base period.

2. Employees who lost time to participate in union business shall submit to a designated officer of the carrier such dates and applicable class of service, certified by the individual and a proper officer of the organization.

V. SCHEDULE AGREEMENT

- A. Upon thirty (30) days' notice by either party, representatives of each of the organizations signatory hereto and the Merged Company shall meet to negotiate on applying one or more of the existing schedule agreements covering employees represented by the organizations signatory hereto on the Pennsylvania or New York Central as the schedule agreement or agreements for the merged Company.**
- B. Negotiation of such agreed-upon schedule agreement or agreements shall be confined to existing contracts, schedules and**

agreements between Pennsylvania, Central and the labor organizations signatory hereto. Any other changes will be made pursuant to Section 6 of the Railway Labor Act.

- C. The provisions of Sections A and B of this Article V are not subject to the provisions of Article IX of this Agreement.

VI. APPLICATION OF APPENDIX F OF MERGER PROTECTIVE AGREEMENTS

- A. An employee entitled to preservation of employment who, pursuant to the terms of an implementing agreement covering the rearrangement of seniority districts, is requested by the Merged Company to transfer to a new point of employment outside the prior right seniority district in which employed, but within such rearranged seniority district, shall be subject to the provisions of Appendix F of the Merger Protective Agreements provided that the new point of employment is 35 or more highway miles from the geographic center of his point of employment and 35 or more highway miles from his residence.

- B. The term "home" as used in Section 11 of the Washington Job Protection Agreement means the primary place of abode of an employee which is a structure consisting of not more than two (2) dwelling units (duplex) utilized for residential purposes only and on a building site of not more than one (1) acre or the minimum site required by zoning regulations in the community.

VII. REARRANGEMENT OF SENIORITY DISTRICTS

- A.** On the date the merger of the Pennsylvania and New York Central Railroads is consummated, or as soon thereafter as practicable, all pre-existing seniority districts specified in existing schedule agreements between the parties signatory hereto and all pre-existing seniority rosters made under such agreements will be rearranged on an equitable basis pursuant to the terms of an Implementing Agreement and the territory of the newly established seniority districts will be as defined in Attachment A hereof.
- B.** Except as may be modified by implementing agreements, employees in the newly established seniority districts shall retain prior rights to employment on their pre-existing seniority district or districts, including rights to promotion and demotion.
- C.** The right of trainmen to seniority dates on rosters of other grades in their seniority district shall not be adversely affected by the formation of the newly established seniority district.
- D.** A present employee lacking sufficient seniority to work in his prior right seniority district will not be required to accept available employment in other prior right seniority districts within the newly established seniority

district unless his failure to do so would require the use of an employee hired subsequent to the date of the consummation of the merger in such other prior right seniority districts.

- E. Employees hired subsequent to the date of the consummation of the merger will acquire seniority on the newly established seniority district on which hired. Employees hired subsequent to the date of the consummation of the merger but prior to the formation of the newly established seniority districts defined in Attachment A hereof will be placed on the seniority roster on which hired but will not acquire prior rights on such seniority roster. Such employees will be placed on the newly established seniority roster, when formed, in the same relative standing as the date hired in such newly established seniority district.
- F. The provisions of Appendix I of the Merger Protective Agreement of November 16, 1964, will not be applicable to the employees represented by the labor organization signatory hereto.
- G. Employees represented by the labor organizations signatory hereto who are hired on or after January 1, 1967, and up to and including the date the merger is consummated, will only be entitled to the protective benefits contained

in Section 1 (a) of the Merger Protective Agreements, and will not be entitled to the protective benefits contained in Section 1 (b) of said Agreements.

VIII. CONSOLIDATION OF TERMINALS

A. Implementing agreements shall be entered into providing for the consolidation of present terminals and terminal facilities, including switching limits and rearrangements thereof, as set forth in Attachment B hereof, at the following locations:

Chicago, Illinois	Dayton, Ohio
South Bend, Indiana	Anderson, Indiana
Fort Wayne, Indiana	Cleveland, Ohio
Grand Rapids, Michigan	Detroit, Michigan
Kalamazoo, Michigan	Toledo, Ohio
Marion, Indiana	Ashtabula, Ohio
East St. Louis, Illinois	Erie, Pennsylvania
Terre Haute, Indiana	Youngstown, Ohio
Indianapolis, Indiana	Crestline-Galion, Ohio
Louisville, Kentucky	Buffalo, New York
Middletown, Ohio	Rochester, New York
Cincinnati, Ohio	Williamsport, Pennsylvania
Columbus, Ohio	Weehawken-Jersey City Area

B. Implementing agreements shall be entered into providing for Pennsylvania switching limits to be rearranged to include local freight service presently performed by NYC road crews in the following locations:

Zanesville, Ohio
Alliance, Ohio

C. Implementing agreements shall be entered into providing for New York Central switching limits to be rearranged to include local freight service presently performed by PRR road crews in the following locations:

Paris, Illinois

Muncie, Indiana

Springfield, Ohio

Clearfield, Pennsylvania

Cherry Tree, Pennsylvania

D. Work at the locations referred to in this Article VIII will be allocated on an equitable prior right basis. For the purpose of determining the equities of employees of the seniority districts affected by the consolidations of facilities at the locations set forth in Sections A, B, and C of this Article VIII, the Carriers will furnish the interested General Chairmen the number of cars dispatched and engine hours operated for the period December 1, 1964 to November 30, 1965, inclusive.

IX. DISPUTES

The second paragraph of Section 1 (e) of the Merger Protective Agreements shall be deleted and the following inserted in lieu thereof:

In the event any dispute or controversy arises between the Pennsylvania, Central or the Merged Company and the labor organizations signatory hereto with respect to the interpretation or application of any provision of the Merger

Protective Agreement, the Washington Job Protection Agreement (except as defined in Section 11 thereof), this Agreement (except as defined in Article V hereof), or any implementing agreement entered into between the Merged Company and the representatives of the organizations signatory hereto pertaining to the said merger or related transactions which cannot be settled by the Pennsylvania, Central or the Merged Company and the representatives of the organizations signatory hereto within thirty days after the dispute is brought to the attention of the interested parties signatory to the agreement, such dispute may be referred by either party to an arbitration committee for consideration and determination. Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to an arbitration committee, each party shall, within ten (10) days, select a member of the arbitration committee and the members thus chosen shall endeavor to select a neutral member who shall serve as chairman, in which event the compensation and expenses of the chairman shall be borne equally by the parties to the proceeding. All other expenses shall be borne by the party incurring them. Should the members designated by the parties be unable to agree upon the appointment of the

neutral member within ten (10) days, either party may request the National Mediation Board to appoint the neutral member, whose compensation and expenses shall be paid in accordance with existing law. If any party fails to select its member of the arbitration committee within the prescribed time limit, such party signatory to this Agreement or his designated representative shall be deemed to be the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. The Committee shall meet within fifteen (15) days of the selection or appointment of the neutral member and shall render its decision within thirty (30) days after the close of the hearing. The decision of the majority of the arbitration committee shall be final and binding, except that in any case in which there is an unequal number of carrier and organization members on the arbitration committee, the decision of the neutral member shall be final and binding.

X. ADDITIONAL IMPLEMENTING AGREEMENTS

In consideration of the employee benefits provided herein and in the Merger Protective Agreements, representatives of the organizations signatory hereto will upon notice by the Merged Company enter into other implementing agreements as contemplated by Section 4 of the Washington Job Protection Agreement

(except the 90 day notice and posting of bulletins required therein are hereby waived) in addition to those referred to in this Agreement providing for the use of employees, the allocation and rearrangement of forces, rearrangements and changes in seniority districts, terminals, terminal points, points of automatic release, switching limits and any other impediments to an integrated operation, any or all of which may be made necessary by changes for which protection is provided.

XI. EFFECT OF THIS AGREEMENT

This Agreement is made pursuant to the Merger Protective Agreements of May 20, 1964 and November 16, 1964, and Memoranda of Understandings appertaining thereto, and "Letter of Intent" attached thereto, the provisions of which shall remain in full force and effect except as expressly modified herein.

This Agreement shall be effective upon consummation of the Merger, provided, however, that the parties have entered into the implementing agreements referred to in this Agreement.

This Agreement, which shall be construed as a separate Agreement between The Pennsylvania Railroad Company and the New York Central Railroad Company and each of the signatory labor organizations, shall supersede the

provisions of any agreements with which it conflicts,
and shall continue in effect subject to the usual thirty
(30) days' notice by either party to the other, in accordance
with the manner prescribed by the Railway Labor Act, as
amended.

Signed this 21st Day of December, 1966.

NEW YORK CENTRAL RAILROAD CO.

L. B. Fee
Vice President, Employee
Relations

THE PENNSYLVANIA RAILROAD CO.

Sam W. Knight
Vice President, Labor Relations
and Personnel

ORDER OF RAILWAY CONDUCTORS
& BRAKEMEN

BY: J. A. Burke
General Chairman-(NYCRR)
(Excluding B&A Division)

D. Johnson
General Chairman- (NYC
Boston & Albany Division)

APPROVED: B. D. Smallwood
Vice President

BROTHERHOOD OF RAILROAD
TRAINMEN

BY: C. E. Uible
General Chairman-PRR-East

J. F. McNeil
General Chairman-PRR-West

D. J. Kenefick
General Chairman-NYC
(New York & Eastern
Districts including Boston
and Albany Division)

BROTHERHOOD OF RAILROAD
TRAINMEN

BY:

[Signature]
General Chairman, NYC-
(Boston & Albany Division)

[Signature]
General Chairman, NYC-
(Western District)

[Signature]
General Chairman, NYC-
(Northern District)

[Signature]
General Chairman, NYC-
(Southern District- ex-
cluding Ohio Central Divis-
ion)

[Signature]
General Chairman, NYC-
(Ohio Central Division)

APPROVED:

[Signature]
Vice President

AGREEMENT BETWEEN PENN CENTRAL, CLEVELAND UNION TERMINALS COMPANY AND THE EMPLOYEES OF BOTH CARRIERS REPRESENTED BY UNITED TRANSPORTATION UNION (FORMER BROTHERHOOD OF RAILROAD TRAINMEN) TO PROVIDE FOR THE CO-ORDINATION OF THE YARD OPERATIONS OF CLEVELAND UNION TERMINALS COMPANY WITH THOSE OF PENN CENTRAL IN THE CLEVELAND, OHIO TERMINAL.

WHEREAS, the Carriers served Notice on the Organization on April 28, 1969 of intent to co-ordinate the present separate yard operations of the Cleveland Union Terminals Company with the Cleveland Yard operations of Penn Central under the terms and conditions of the Agreement of May, 1936, Washington, D. C., and

WHEREAS, the parties hereto have determined that the total yard work in the merged Penn Central - Cleveland Union Terminals Company, Cleveland, Ohio yard territory should be divided on a pre-determined ratio of 65.1% for former New York Central Railroad yardmen, 32.4% for former Pennsylvania Railroad Yardmen and 2.5% for former Cleveland Union Terminals Company yardmen; NOW THEREFORE:

IT IS AGREED:

1. The yard operations of the Cleveland Union Terminals Company will be co-ordinated with and merged into Penn Central's Cleveland, Ohio yard operations effective August 1, 1969.

2. Yard service employees having a seniority date prior to February 16, 1965 on the Cleveland Union Terminals Company property will have preferential bidding rights, in the order of their relative standing on the Cleveland Union Terminals Company seniority roster in effect prior to February 16, 1965, for all assignments allocated to the Cleveland Union Terminals Company in the application of the herein agreed to pre-determined ratio. They will also have secondary prior rights to assignments allocated to former New York Central Yardmen in the merged Cleveland Terminal based on their September 10, 1964 seniority in the former New York Central Freight Yard territory as established by agreement between the former New York Central and Cleveland Union Terminals Company with the yard service employees of those Carriers represented by the former Brotherhood of Railroad Trainmen effective February 16, 1965. Such former employees of the Cleveland Union Terminals Company will likewise stand for service in the Penn Central seniority district identified as Ohio No. 4 on the basis of their September 10, 1964 seniority date presently carried on the roster of train service employees in that seniority district.

3. It is understood that the assignments allocated to former Cleveland Union Terminals Company in the application of the herein referred to "pre-determined ratio" will be those assignments handling the work in the passenger station (CUT), Mail Hall and Express Shed. If, at any time, there is an insufficient number of such assignments to give the former Cleveland Union Terminals Company yardmen their pre-determined ratio of total assignments the parties hereto will select the assignment(s) in the merged terminal on which these employees will have preferential rights to maintain their equity.

EXHIBIT F

4. On the effective date of this Agreement all prior agreements in effect between the Cleveland Union Terminals Company and its yard service employees represented by the former Brotherhood of Railroad Trainmen will be abrogated and all agreements presently and hereafter in effect for Penn Central employees in former New York Central Cleveland Yard territory will govern, subject to the terms and conditions of the agreement implementing the merger of the former New York Central and Pennsylvania Railroad Cleveland Yard territories effective March 18, 1968.

5. It is understood that the pre-determined ratio of 2.5% for former employees of the Cleveland Union Terminals Company as herein established is subject to change concurrently with any agreed to change in the pre-determined ratio as established effective March 18, 1968 for former New York Central and former Pennsylvania Railroad Yard service employees in the merged Cleveland Terminal.

6. It is further understood that the pre-determined ratio for former employees of the Cleveland Union Terminals Company will be adjusted downward at anytime there are insufficient prior right Cleveland Union Terminals Company employees to fill all assignments to which they would otherwise be entitled and such ratio will be cancelled completely when there are no longer any employees having a seniority date prior to February 16, 1965 on the Cleveland Union Terminals Company property. When that occurs the pre-determined ratio for former New York Central and former Pennsylvania Railroad yardmen in the merged Cleveland, Ohio terminal will revert to that in effect prior to the effective date of this agreement, which is 66.8% for former New York Central and 33.2% for former Pennsylvania Railroad, subject to the right of the signatory General Chairmen to change said 66.8% - 33.2% ratio.

7. In consideration of the factual situation present in this case and without prejudice to the position of any of the parties in any other case of a like or similar nature it is understood and agreed that Cleveland Union Terminals Company yard service employees affected by this merger of the Cleveland Terminal will, effective on the date this agreement is consummated, become subject to all the terms and conditions of the Merger Protective Agreement between the former New York Central, the former Pennsylvania and the former Brotherhood of Railroad Trainmen. It is further understood that the Cleveland Union Terminals Company and former New York Central Railroad earnings during the test period established by Appendix E of the Merger Protective Agreement will be combined for the purpose of computing the earnings guarantees for Cleveland Union Terminal employees who are entitled to such guarantees under the provisions of this agreement subject to the qualifying conditions of the November 16, 1964 Merger Protective Agreement and appendices thereto.

8. This Agreement shall become effective August 1, 1969 and as of that date will cancel and supersede the Agreement made March 31, 1952 to become effective April 1, 1952 by and between the former New York Central Railroad, Cleveland Union Terminals Company and the employees of both Carriers represented by the then Brotherhood of Railroad Trainmen and all other agreements purporting to allocate work between former New York Central and Cleveland Union Terminals Company yard service employees.

FOR THE UNITED TRANSPORTATION UNION (T):

J. M. Keel
General Chairman
(Former Pennsylvania Railroad)

J. A. Lewis
General Chairman
(Former New York Central Railroad - West
and Cleveland Union Terminals Company)

FOR THE CARRIERS:

(Penn Central and Cleveland Union
Terminals Company)

H. F. Daniels

R. E. Swert
Directors Labor Relations Planning

Dated at:
Cleveland, Ohio
July 11, 1969

Summary

- merged operations of CUT & PCL's yard operations eff. 8/1/69
- gave CUT ee's preferential bidding rts. on all assignments allocated to CUT in app. of a predetermined ratio (65.1% NYC, -32.4% AOR, -2.5% WY (assignments allocated were CUT Passenger Station, Mail Hall, and EXPRESS Shed))
- made CUT yard service ee's subject to MPA eff. 8/1/69
- expressly provided that Comb. CUT & NYC earnings during 5/1/63-5/15/64 base period would be applied for purp. of determining guarantees
- expressly cancelled and superseded all prior agreements purporting to allocate work b/t former CUT & NYC ee's

**AGREEMENT
FOR PROTECTION OF EMPLOYEES
IN EVENT OF MERGER OF
PENNSYLVANIA AND NEW YORK CENTRAL RAILROADS**

WHEREAS, The Pennsylvania Railroad Company and the New York Central Railroad Company (hereinafter sometimes referred to individually as Pennsylvania and Central or collectively as the Carriers) have filed a joint application with the Interstate Commerce Commission (hereinafter called the Commission) for authority under Section 5 (2) of the Interstate Commerce Act to merge the properties and franchises of Central into Pennsylvania for ownership, management, and operation of the properties now separately owned and operated, and for certain other authority incidental thereto, as more fully described in Finance Dockets Nos. 21989 and 21990;

AND WHEREAS, the Joint Agreement of Merger dated January 12, 1962, provides that the corporation to survive the merger will be a corporation of the Commonwealth of Pennsylvania with its name changed to "Pennsylvania-New York Central Transportation Company" (hereinafter referred to as the merged company) which will assume and be bound by the collectively bargained labor agreements of both Pennsylvania and Central;

AND WHEREAS, it is the intent and purpose of Pennsylvania and Central, in the event of approval of their joint application, to effectuate the merger through the unification, coordination and consolidation of their separate facilities, all of which will or may have adverse effect upon employes represented by the labor organization parties hereto;

AND WHEREAS, the labor organization signatory hereto is the authorized and recognized representative of certain of the employes of Pennsylvania and Central and has intervened on behalf of said employes through the Railway Labor Executives' Association in opposition to the said merger and related transactions in proceedings before the Commission, which opposition is not waived by this Agreement;

AND WHEREAS, Section 5 (2) (f) of the Interstate Commerce Act provides:

"As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employes affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employes of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employe pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employe was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employes may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employes."

AND WHEREAS, pursuant to the provisions of the Railway Labor Act, as amended, and in accordance with the last sentence of Section 5 (2) (f) of the Interstate Commerce Act above quoted, the parties signatory hereto have reached agreement respecting the protection to be afforded employes of the railway carriers involved or who may become involved in the aforesaid application and transactions;

NOW, THEREFORE, it is mutually agreed as follows:

Section 1.

(a) If, notwithstanding the opposition of the said labor organization, the Commission should approve the said merger, then upon consummation thereof the provisions of the Washington Job Protection Agreement of 1936 (a copy of which is attached hereto as Appendix A) shall be applied for the protection of all employes of

Pennsylvania and Central as of the effective date of this Agreement or subsequent thereto up to and including the date the merger is consummated who may be adversely affected with respect to their compensation, rules, working conditions, fringe benefits or rights and privileges pertaining thereto incident to approval and effectuation of said merger; provided, however, that in addition to benefits set forth in the said Washington Job Protection Agreement, it is further agreed as follows:

(b) On the date the said merger of Central into Pennsylvania is consummated the merged company will take into its employment all employees of Pennsylvania and Central as of the effective date of this Agreement or subsequent thereto up to and including the date the merger is consummated who are willing to accept such employment, and none of the present employees of either of the said Carriers shall be deprived of employment or placed in a worse position with respect to compensation, rules, working conditions, fringe benefits or rights and privileges pertaining thereto at any time during such employment.

For the purposes of this Agreement the term "present employees" is defined to mean all employees of Pennsylvania or Central who render any compensated service between the effective date of this Agreement and the date the merger is consummated (both dates inclusive) provided, however, that in the event two or more employees, including those on leave-of-absence, have employment rights to the same job, said employees will be protected hereunder and their employment preserved only to the extent of their individual equities in said job; provided, further, that the merged company shall also take over, assume and continue the employment relationship of all employees on furlough or leave-of-absence and preserve their rights and equities as they may exist as of the effective date of this Agreement or subsequent thereto up to and including the date the merger is consummated subject, however, to the transfer of work and employees as hereinafter set forth.

Pennsylvania and Central agree to furnish rosters (which shall be attached as Appendix B to this Agreement) of all employees entitled to preservation of employment, compensation, and fringe benefits as of the effective date of this Agreement, and also separate rosters (which shall be attached as Appendix C) of all employees on furlough or leave-of-absence, each of which rosters shall also set forth the Carrier by which the employees are employed and the labor organization party to this Agreement representing such employees. The Carrier will furnish, upon request, information specified in Appendix E to this Agreement. Pennsylvania and Central further agree that the said rosters are subject to revision as necessary to include any employees to be added or deleted from said rosters between the effective date of this Agreement and the date the merger is consummated.

An employee shall not be regarded as deprived of employment or placed in a worse position with respect to his compensation, rules, working condition, fringe benefits, or rights and privileges pertaining thereto in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to work due to disability or discipline, or failure to obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or reductions in forces due to seasonal requirements (including lay-offs during the Miners' Holiday and the Christmas season), provided, however, that employees furloughed due to seasonal requirements shall not be furloughed in any twelve-month period for a greater period than they were furloughed during the twelve months preceding the date the merger is consummated; provided, further, however, that in the event of a decline in the merged company's business in excess of 5% in the average percentage of both gross operating revenue and net revenue ton miles in any 30-day period compared with the average of the same period for the years 1962 and 1963, a reduction in forces in the craft represented by the organization signatory hereto may be made at any time during the said 30-day period below the number of employees entitled to preservation of employment under this Agreement to the extent of one percent for each one percent the said decline exceeds 5%. The average percentage of decline shall be the total of the percent of decline in gross operating revenue and percent of decline in net revenue ton miles divided by two. Advance notice of any such force reduction shall be given as required by the current schedule Agreements of the organization signatory hereto and such reduction shall be made in accordance with existing

Agreements. Upon restoration of the merged company's business following any such force reduction employees entitled to preservation of employment must be recalled in accordance with the same formula within 15 calendar days.

Notwithstanding other provisions of this Agreement, the merged company shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, provided that operations are suspended in whole or in part and provided further that because of such emergencies the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed. When forces have been so reduced and thereafter operations are restored employees entitled to preservation of employment must be recalled upon the termination of the emergency. In the event the merged company is required to make force reductions because of the aforesaid emergency conditions, it is agreed that any decline in gross operating revenue and net revenue ton miles resulting therefrom shall not be included in any computation of a decline in the merged company's business pursuant to the provisions of the preceding paragraph.

In consideration of the foregoing employee benefits the merged company shall be entitled to transfer the work of the employees protected hereunder throughout the merged or consolidated system and the labor organization will, subject to provisions contained in the Memorandum of Understanding attached hereto as Appendix F, enter into implementing agreements providing for the transfer and use of employees and allocation or rearrangement of forces made necessary by changes for which protection is herein provided and the employees, their organization and the Carriers will cooperate to that end. The implementing agreements to be negotiated with respect to the transfer and use of employees and allocation or rearrangement of forces shall enable the merged company to transfer such employees and rearrange forces without liability to furloughed employees who may be affected by such transfer.

None of the provisions of this Agreement are applicable to employees temporarily hired for work on non-recurring projects between the effective date hereof and the date of the consummation of the merger.

(c) Without limiting the provisions of subsection (b) hereof, the merged company further agrees to maintain work forces represented by the organization signatory hereto in such manner that force reduction below the established base as defined herein shall not exceed five percent (5%) per annum. The established base shall mean the total number of employees in the craft represented by the organization signatory hereto entitled to preservation of employment as of the date of consummation of the merger.

(d) The merged company will take over and assume all contracts, schedules and agreements between Pennsylvania, Central, and the labor organization signatory hereto concerning rates of pay, rules, working conditions and fringe benefits in effect at the time of consummation of the said merger and will be bound by the terms and provisions thereof, subject to changes in accordance with the provisions of the Railway Labor Act, as amended, in the same manner and to the same extent as if the merged company had been a party thereto.

(e) For purposes of this Agreement, Section 13 of the Washington Job Protection Agreement is deleted and the following provision inserted in lieu thereof:

In the event any dispute or controversy arises between Pennsylvania, Central, or the merged company and the labor organization signatory to this Agreement with respect to the interpretation or application of any provision of this Agreement or of the Washington Job Protection Agreement (except as defined in Section II thereof) or of any implementing agreement entered into between the merged company and the labor organization party hereto pertaining to the said merger or related transactions, which cannot be settled by said Carriers and the labor organization involved within thirty days after the dispute arises, such dispute may be referred by either party to an arbitration committee for consideration and determination. Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to an arbitration committee, each party shall, within ten days, select a member of the arbitration committee and the members thus chosen shall endeavor

to select a neutral member who shall serve as Chairman, in which event the compensation and expenses of the Chairman shall be borne equally by the parties to the proceeding. All other expenses shall be borne by the party incurring them. Should the members designated by the parties be unable to agree upon the appointment of the neutral member within ten days, either party may request the National Mediation Board to appoint the neutral member, whose compensation and expenses shall then be paid in accordance with existing law. If any party fails to select its member of the arbitration committee within the prescribed time limit, the representative of such party signatory to this Agreement or his designated representative shall be deemed to be the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. The decision of the majority of the arbitration committee shall be final and binding, except that in any case in which there is an unequal number of carrier and organization members on the arbitration committee, the decision of the neutral member shall be final and binding.

Section 2.

In the event merger or control of other carriers not now involved in the aforesaid merger proceedings should be ordered by the Commission as a condition of its approval of the pending transaction, this Agreement shall be subject to amendment by the parties so as to provide the employe benefits set forth in Section 1 hereof to the employes of any such carrier controlled by or merged into the merged company.

Section 3.

The foregoing represents an agreed settlement of protection of the interest of the employes of Pennsylvania and Central in the said merger. Said agreed settlement of protective benefits is made on behalf of said employes by their authorized and recognized bargaining representative signatory hereto pursuant to Section 5 (2) (f) of the Interstate Commerce Act and applicable provisions of the Railway Labor Act, as amended, and shall become applicable only in the event of approval by the Commission of the proposed merger and consummation thereof. It shall be considered and construed as a separate agreement between Pennsylvania, Central and the labor organization signatory hereto.

Section 4.

It is understood and agreed that the provisions of this Agreement shall be for the benefit only of the employes represented by the labor organization party hereto.

Section 5.

The effective date of this Agreement shall be January 1, 1964.

IN WITNESS WHEREOF the parties to this Agreement have hereunto executed the same by and through their duly authorized representative this 16th day of November, 1964.

**THE PENNSYLVANIA
RAILROAD COMPANY**
By Guy W. Knight

**NEW YORK CENTRAL
RAILROAD COMPANY**
By L. B. Fee

**BROTHERHOOD OF
RAILROAD TRAINMEN**
By C. E. Wible
General Chairman—PRR—Lines East

J. F. McNeel
General Chairman—PRR—Lines West

J. J. Kenefick
General Chairman—NYC—New York District and Eastern District (excluding Boston and Albany Division)

J. W. Leonto
General Chairman—NYC—Boston and Albany Division

R. E. Swert
General Chairman—NYC—Western
District

Raymond Fieberkorn
General Chairman—NYC—Northern
District

R. M. Crago
General Chairman—NYC—Southern
District

W. E. Atkinson
General Chairman—NYC—Ohio Central
Division

AGREEMENT OF MAY, 1936, WASHINGTON, D. C.

This agreement is entered into between the carriers listed and defined in Appendices "A", "B" and "C" attached hereto and made a part hereof, represented by the duly authorized Joint Conference Committee signatory hereto, as party of the first part, and the employes of said carriers, represented by the organizations signatory hereto by their respective duly authorized executives, as party of the second part, and, so far as necessary to carry out the provisions hereof, is also to be construed as a separate agreement by and between and in behalf of each of said carriers and its employes who are now or may hereafter be represented by any of said organizations which now has (or may hereafter have during the life of this agreement) an agreement with such carrier concerning rates of pay, rules or working conditions.

The signatories hereto, having been respectively duly authorized as aforesaid to negotiate to a conclusion certain pending issues concerning the treatment of employes who may be affected by coordination as hereinafter defined, hereby agree:

Section 1. That the fundamental scope and purpose of this agreement is to provide for allowances to defined employes affected by coordination as hereinafter defined, and it is the intent that the provisions of this agreement are to be restricted to those changes in employment in the Railroad Industry solely due to and resulting from such coordination. Therefore, the parties hereto understand and agree that fluctuations, rises and falls and changes in volume or character of employment brought about solely by other causes are not within the contemplation of the parties hereto, or covered by or intended to be covered by this agreement.

Section 2 (a). The term "coordination" as used herein means joint action by two or more carriers whereby they unify, consolidate, merge or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities.

(b) The term "carrier" as used herein when it refers to other than parties to this agreement means any carrier subject to the provisions of Part I of the Interstate Commerce Act; when it refers to a party to this agreement it means any company or system listed and described in Appendices "A", "B" or "C" as a single carrier party to this agreement.

(c) The term "time of coordination" as used herein includes the period following the effective date of a coordination during which changes consequent upon coordination are being made effective; as applying to a particular employee it means the date in said period when that employee is first adversely affected as a result of said coordination.

Section 3 (a). The provisions of this agreement shall be effective and shall be applied whenever two or more carriers parties hereto undertake a coordination; and it is understood that if a carrier or carriers parties hereto undertake a coordination with a carrier or carriers not parties hereto, such coordination will be made only upon the basis of an agreement approved by all of the carriers parties thereto and all of the organizations of employes involved (parties hereto) of all of the carriers concerned. No coordination involving classes of employees not represented by any of the organizations parties hereto shall be undertaken by the carriers parties hereto except in accord with the provisions of this agreement or agreements arising hereunder.

(b) Each carrier listed and established as a separate carrier for the purposes of this agreement, as provided in Appendices "A", "B" and "C", shall be regarded as a separate carrier for the purposes hereof during the life of this agreement; provided, however, that in the case of any coordination involving two or more railroad carriers which also involves the Railway Express Agency, Inc., the latter company shall be treated as a separate carrier with respect to its operations on each of the railroads involved.

(c) It is definitely understood that the action of the parties hereto in listing and establishing as a single carrier any system which comprises more than one operating company is taken solely for the purposes of this agreement and shall not

be construed or used by either party hereto to limit or affect the rights of the other with respect to matters not falling within the scope and terms of this agreement.

Section 4. Each carrier contemplating a coordination shall give at least ninety (90) days written notice of such intended coordination by posting a notice on bulletin boards convenient to the interested employes of each such carrier and by sending registered mail notice to the representatives of such interested employes. Such notice shall contain a full and adequate statement of the proposed changes to be effected by such coordination, including an estimate of the number of employes of each class affected by the intended changes. The date and place of a conference between representatives of all the parties interested in such intended changes for the purpose of reaching agreements with respect to the application thereto of the terms and conditions of this agreement, shall be agreed upon within ten (10) days after the receipt of said notice, and conference shall commence within thirty (30) days from the date of such notice.

Section 5. Each plan of coordination which results in the displacement of employes or rearrangement of forces shall provide for the selection of forces from the employes of all the carriers involved on bases accepted as appropriate for application in the particular case; and any assignment of employes made necessary by a coordination shall be made on the basis of an agreement between the carriers and the organizations of the employes affected, parties hereto. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13.

Section 6 (a). No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

(b) The protection afforded by the foregoing paragraph shall be made effective whenever appropriate through what is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.

(c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee, and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period.

Section 7 (a). Any employee of any of the carriers participating in a particular coordination who is deprived of employment as a result of said coordination shall be accorded an allowance (hereinafter termed a coordination allowance), based on length of service, which (except in the case of an employee with less than one year of service) shall be a monthly allowance equivalent in each instance to sixty per cent (60%) of the average monthly compensation of the employee in question during the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the coordination. This coordination allowance will be made to each eligible employee while unemployed by his home road or in the coordinated operation during a period beginning at the date he is first deprived of employment as a result of the coordination and extending in each instance for a length of time determined and limited by the following schedule:

<i>Length of Service</i>	<i>Period of Payment</i>
1 yr. and less than 2 yrs.	6 months
2 yrs. " " " 3 "	12 "
3 yrs. " " " 5 "	18 "
5 yrs. " " " 10 "	36 "
10 yrs. " " " 15 "	48 "
15 yrs. and over	60 "

In the case of an employee with less than one year of service, the total coordination allowance shall be a lump sum payment in an amount equivalent to sixty (60) days pay at the straight time daily rate of the last position held by him at the time he is deprived of employment as a result of the coordination.

(b) For the purposes of this agreement the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(c) An employee shall be regarded as deprived of his employment and entitled to a coordination allowance in the following cases:

1. When the position which he holds on his home road is abolished as result of coordination and he is unable to obtain by the exercise of his seniority rights another position on his home road or a position in the coordinated operation, or
2. When the position he holds on his home road is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of said coordination, or by other employees, brought about as a proximate consequence of the coordination, and if he is unable by the exercise of his seniority rights to secure another position on his home road or a position in the coordinated operation.

(d) An employee shall not be regarded as deprived of employment in case of his resignation, death, retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the rules, or furloughed because of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of a particular coordination who is not deprived of his employment within three years from the effective date of said coordination.

(e) Each employee receiving a coordination allowance shall keep the employer informed of his address and the name and address of any other person by whom he may be regularly employed.

Appendix A
(continued)

(f) The coordination allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished while he is absent from service, he will be entitled to the coordination allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a coordination allowance on the basis of said position until the regular employee is available for service and thereafter shall revert to his previous status and will be given a coordination allowance accordingly if any is due.

(g) An employee receiving a coordination allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

(h) If an employee who is receiving a coordination allowance returns to service the coordination allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a coordination allowance. During the time of such reemployment however he shall be entitled to protection in accordance with the provisions of Section 6.

(i) If an employee who is receiving a coordination allowance obtains railroad employment (other than with his home road or in the coordinated operation) his coordination allowance shall be reduced to the extent that the sum total of his earnings in such employment and his allowance exceeds the amount upon which his coordination allowance is based; provided that this shall not apply to employees with less than one year's service.

(j) A coordination allowance shall cease prior to the expiration of its prescribed period in the event of:

1. Failure without good cause to return to service in accordance with working agreement after being notified of position for which he is eligible and as provided in paragraphs (g) and (h).
2. Resignation.
3. Death.
4. Retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally.
5. Dismissal for justifiable cause.

Section 8. An employee affected by a particular coordination shall not be deprived of benefits attaching to his previous employment, such as free transportation, pensions, hospitalization, relief, etc., under the same conditions and so long as such benefits continue to be accorded to other employees on his home road, in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

Section 9. Any employee eligible to receive a coordination allowance under section 7 hereof may, at his option at the time of coordination, resign and (in lieu of all other benefits and protection provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the following schedule:

<i>Length of Service</i>	<i>Separation Allowance</i>
1 yr. and less than 2 yrs.	3 months' pay
2 yrs. " " " 3 "	6 " "
3 yrs. " " " 5 "	9 " "
5 yrs. " " " 10 "	12 " "
10 yrs. " " " 15 "	12 " "
15 years and over	12. " "

In the case of employees with less than one year's service, five days' pay, at the

rate of the position last occupied, for each month in which they performed service will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7.

(b) One month's pay shall be computed by multiplying by 30 the daily rate of pay received by the employee in the position last occupied prior to time of coordination.

Section 10 (a) Any employee who is retained in the service of any carrier involved in a particular coordination (or who is later restored to service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as result of such coordination and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter, (not to exceed two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier responsible and the organization of the employee affected. No claim for expenses under this Section shall be allowed unless they are incurred within three years from the date of coordination and the claim must be submitted within ninety (90) days after the expenses are incurred.

(b) If any such employee is furloughed within three years after changing his point of employment as a result of coordination and elects to move his place of residence back to his original point of employment, the carrier shall assume the expense of moving his household and other personal effects under the conditions imposed in paragraph (a) of this section.

(c) Except to the extent provided in paragraph (b), changes in place of residence subsequent to the initial changes caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

Section 11 (a). The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of any of the carriers involved in a particular coordination (or who is later restored to such service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as a result of such coordination and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the coordination to be unaffected thereby. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.
2. If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.
3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this Section.

(c) No claim for loss shall be paid under the provisions of this section which is not presented within three years after the effective date of the coordination.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing

Appendix A
(continued)

termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier on whose line the controversy arises and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and the carrier, respectively; these two shall endeavor by agreement within ten days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser, and in the event of failure to agree then the Chairman of the Interstate Commerce Commission shall be requested to appoint the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party.

Section 12. If any carrier shall rearrange or adjust its forces in anticipation of a coordination, with the purpose or effect of depriving an employee of benefits to which he should be entitled under this agreement as an employee immediately affected by a coordination, this agreement shall apply to such an employee as of the date when he is so affected.

Section 13. In the event that any dispute or controversy arises (except as defined in Section 11) in connection with a particular coordination, including an interpretation, application or enforcement of any of the provisions of this agreement (or of the agreement entered into between the carriers and the representatives of the employees relating to said coordination as contemplated by this agreement) which is not composed by the parties thereto within thirty days after same arises, it may be referred by either party for consideration and determination to a Committee which is hereby established, composed in the first instance of the signatories to this agreement. Each party to this agreement may name such persons from time to time as each party desires to serve on such Committee as its representatives in substitution for such original members. Should the Committee be unable to agree, it shall select a neutral referee and in the event it is unable to agree within 10 days upon the selection of said referee, then the members on either side may request the National Mediation Board to appoint a referee. The case shall again be considered by the Committee and the referee and the decision of the referee shall be final and conclusive. The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

Section 14. Any carrier not initially a party to this agreement may become a party by serving notice of its desire to do so by mail upon the members of the Committee established by Section 13 hereof. It shall become a party as of the date of the service of such notice or upon such later date as may be specified therein.

Section 15. This agreement shall be effective June 18, 1936, and be in full force and effect for a period of five years from that date and continue in effect thereafter with the privilege that any carrier or organization party hereto may then withdraw from the agreement after one year from having served notice of its intention so to withdraw; provided, however, that any rights of the parties hereto or of individuals established and fixed during the term of this agreement shall continue in full force and effect, notwithstanding the expiration of the agreement or the exercise by a carrier or an organization of the right to withdraw therefrom.

This agreement shall be subject to revision by mutual agreement of the parties hereto at any time, but only after the serving of a sixty (60) days notice by either party upon the other.

Signed at Washington, D. C.
May 21, 1936.

**MEMORANDUM OF UNDERSTANDING
RE
EMPLOYMENT INFORMATION TO BE FURNISHED
UPON REQUEST AND COMPUTATIONS RESPECTING
COMPENSATION DUE OPERATING EMPLOYEES
UNDER AGREEMENT**

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employees in Event of Merger of Pennsylvania and New York Central Railroads, effective January 1, 1964.

Upon request the merged company will furnish the operating signatory organization, for any employe appearing on the rosters in Appendices B and C, information respecting his current rate of pay, compensation paid and hours worked during a base period comprised of the last twelve (12) months in which he performed compensated service immediately preceding May 16, 1964. All elements of compensation received from the merged company (including vacation pay, arbitrations, pay for time lost and so forth), but excluding payments made on account of personal injuries when such payments are for reasons other than time lost, will be included in determining compensation referred to below.

For purposes of determining whether, or to what extent, such an employe has been placed in a worse position with respect to his compensation, his total compensation and total time paid for during the base period will be separately divided by twelve. If his compensation in his current position is less in any month (commencing with the first month following the date of consummation of the merger) than his average base period compensation (adjusted to include subsequent general wage increases, he shall be paid the difference less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average time paid for during the base period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the time paid for during the base period; provided, however, that in determining compensation in his current position the employe shall be treated as occupying the position producing the highest rate of pay and compensation to which his seniority en-

Appendix E
(continued)

titles him under the working agreement and which does not require a change in residence.

Employees not entitled to preservation of employment but entitled to the benefits of the Washington Job Protection Agreement pursuant to the provisions of Section 1(a) of the Protective Agreement shall be entitled to compensation computed in accordance with the provisions of said Washington Job Protection Agreement.

MEMORANDUM OF UNDERSTANDING

RE

**MOVING EXPENSES AND LUMP SUM
SEPARATION ALLOWANCES**

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employees in Event of Merger of Pennsylvania and New York Central Railroads, effective January 1, 1964.

In the case of any transfers or rearrangement of forces for which an implementing agreement has been made, any employe entitled to protection under the aforesaid Protective Agreement who is requested by the merged company pursuant to said implementing agreement to transfer to a new point of employment requiring him to move his residence shall be given an election, which must be exercised within seven calendar days from the date of request, to make such transfer or to resign and accept a lump sum separation allowance in accordance with the following provisions:

If the employe elects to transfer to the new point of employment requiring a change of residence, such transfer and change of residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Agreement notwithstanding anything to the contrary contained in said provisions and in addition to such benefits shall receive a transfer allowance of five hundred dollars (\$500) and six working days instead of the "two working days" provided by Section 10(a) of said Agreement.

If the employe elects to resign in lieu of making the requested transfer as aforesaid, he shall do so as of the date the transfer would have been made and shall be given (in lieu of all other benefits and protections to which he may have been entitled under the Protective Agreement and Washington Agreement) a lump sum separation allowance which shall be computed in accordance with the schedule set forth in Section 9 of the Washington Agreement; provided, however, that force reductions permitted to be made under the Protective Agreement shall be in addition to the number of employes who resign to accept the separation allowance herein provided.

This Memorandum of Understanding is applicable to the employes represented by the organization signatory to the said Agreement of which it is a part and supersedes all existing agreements which may be in conflict herewith.

MEMORANDUM OF UNDERSTANDING

RE

ELECTION TO TAKE FURLOUGH

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employees in Event of Merger of Pennsylvania and New York Central Railroads, effective January 1, 1964.

An employe entitled to protection who is displaced as a result of any change for which protection is herein provided may elect to go on furlough in accordance with existing rules or practices but shall not, while so furloughed, be entitled to any money or other allowance or protection provided under the Agreement of which this Appendix is a part.

Appendix H

MEMORANDUM OF UNDERSTANDING

RE

SUPERVISORY AND EXCEPTED PERSONNEL

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employees in Event of Merger of Pennsylvania and New York Central Railroads, effective January 1, 1964.

If, subsequent to the effective date of the Protective Agreement, i.e., January 1, 1964, officials, supervisory or fully excepted personnel exercise seniority rights in a craft or class of employes protected under said Agreement, then, during the period such seniority is exercised, such officials, supervisory or fully excepted personnel shall be entitled to the same protection afforded by the said Agreement to employes in the craft or class in which such seniority is exercised, and no employe subject to said Agreement shall be deprived of employment or adversely affected with respect to compensation, rules, working conditions, fringe benefits, or rights and privileges pertaining thereto, by the return of the official, supervisory, or fully excepted employe to work under the schedule Agreement.

Employes who cannot qualify as "present employes" by reason of being on leave-of-absence for full-time union business, shall have the protection set forth above for official, supervisory or excepted personnel.

Appendix I

**MEMORANDUM OF UNDERSTANDING
INVOLVING EMPLOYEES WITH EXCLUSIVE
ROAD AND YARD SENIORITY**

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employees in Event of Merger of Pennsylvania and New York Central Railroads, effective January 1, 1964.

It is understood that an employe having exclusive seniority in yard service will not, unless otherwise agreed to, be required to transfer to a new point of employment in road service and an employe having exclusive seniority in road service will not, unless otherwise agreed to, be required to transfer to a new point of employment in yard service.

MEMORANDUM OF UNDERSTANDING
INVOLVING EMPLOYEES WITH EXCLUSIVE ROAD AND YARD SENIORITY

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employees in Event of Merger of Pennsylvania and New York Central Railroads, effective January 1, 1964.

It is understood that an employe having exclusive seniority in yard service will not, unless otherwise agreed to, be required to transfer to a new point of employment in road service and an employe having exclusive seniority in road service will not, unless otherwise agreed to, be required to transfer to a new point of employment in yard service.

LETTER OF INTENT

In construing that said Agreement for Protection of Employes in Event of Merger of Pennsylvania and New York Central Railroads, effective January 1, 1964, made by and between The Pennsylvania Railroad Company, the New York Central Railroad Company and the labor organization signatory thereto, it is understood and agreed that in the event of any application of Section 1 (a) of said Agreement, any dispute with respect to the interpretation or application of any provision of said Agreement or of the Washington Job Protection Agreement includes the provision set forth in Section 1 (b) of said Agreement whereby the labor organization signatory hereto agrees to "enter into implementing agreements providing for the transfer and use of employes and allocation or rearrangement of forces."

Dated this 16th day of November, 1964.

THE PENNSYLVANIA RAILROAD COMPANY

By: *Jay Mc Knight*

BROTHERHOOD OF RAILROAD TRAINMEN

By: *C. E. White*
General Chairman - PRR - Lines East

NEW YORK CENTRAL RAILROAD COMPANY

By: *L. B. Lee*

J. F. McNeil
General Chairman - PRR - Lines West

J. J. Kennedy
General Chairman - NYC - New York District and Eastern District (excluding Boston and Albany Division)

J. W. Locantore
General Chairman - NYC - Boston and Albany Division

(Signatures continued on next page)

APPENDIX J
(continued)

P. S. Switt

General Chairman - NYC - Western
District

Raymond J. Schickel

General Chairman - NYC - Northern
District

H. S. Seay

General Chairman - NYC - Southern
District

W. E. Atkinson

General Chairman - NYC - Ohio Central
Division



PENN CENTRAL

AGREEMENT

ENTERED INTO BY AND BETWEEN
THE PENNSYLVANIA—NEW YORK CENTRAL
TRANSPORTATION COMPANY

AND

CLERICAL, OTHER OFFICE, STATION AND
STOREHOUSE EMPLOYEES OF
THE PENNSYLVANIA—NEW YORK CENTRAL
TRANSPORTATION COMPANY

DESIGNATED HEREIN

REPRESENTED BY

BROTHERHOOD OF RAILWAY, AIRLINE AND
STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYEES

EFFECTIVE FEBRUARY 1, 1968



THIS AGREEMENT MADE THIS 18th DAY OF OCTOBER, 1966, BY AND BETWEEN THE PENNSYLVANIA RAILROAD AND NEW YORK CENTRAL RAILROAD COMPANIES AND THEIR EMPLOYEES REPRESENTED BY BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, WITNESSETH:

IT IS AGREED:

I. (a) Each division of the Merged Company as described in Attachment III will constitute a separate seniority district by groups as such groups are defined in the applicable rules and working conditions agreement except:

1. All groups of employes, other than System General Office employes, in the New York Metropolitan area (specifically defined in Appendix A hereto) will constitute a separate seniority district by groups as such groups are defined in the applicable rules and working conditions agreement; and,

2. All groups of employes, other than System General Office employes, in the Philadelphia Metropolitan area (specifically defined in Appendix A hereto) will constitute a separate seniority district by groups as such groups are defined in the applicable rules and working conditions agreement.

(b) Changes in present System General Office seniority districts will be a matter for further negotiation.

(c) The seniority dates in the respective groups of employes in accordance with paragraph (a) hereof will be the earliest date they held on the date of consummation of the merger in that group or groups on any roster in the territory included in such seniority district. Employes holding seniority in Group 3 will have their accumulated seniority dovetailed on the appropriate merged Group 2 seniority roster.

(d) When a portion of a seniority district as constituted prior to the merger becomes a part of one seniority district and the

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remainder becomes a part of another seniority district pursuant to paragraph (a) hereof, affected employees will establish seniority in the newly formed seniority district in which last found employed prior to the merger date.

(e) An employe whose seniority date is transferred and dovetailed under this Section I will not, as a result thereof, be deprived of other seniority he holds on another roster not involved in such dovetailing.

II. (a) A "present employe's" home zone is the metropolitan area in which he works as described in Appendix A hereto. Outside of these areas the home zone is the city, town or general area of the railroad location at which he works.

(b) A "present employe" will not be considered as having changed or moved his place of residence unless he obtains a position and moves his residence to a location which is outside of his home zone and which is in excess of 30 normal travel miles from his residence but which is not closer to his residence than his former work location.

(c) A "utility employe" is a present employe entitled to compensation under Appendix D to the Merger Protective Agreement who does not hold a regularly assigned position.

III. The term "exercise of seniority" as used herein shall mean the exercise of seniority by either bid or displacement.

IV. (a) 1. "Present employes" will not be required to obtain a position available to them in order to retain their status as "present employes," except as provided in VI hereof and except that utility employes may be required by the Company, in reverse seniority order, to take any position for which they are qualified in their seniority district held by a junior non-present employe, which does not require a change in residence, and if there is no such position, then take any position held by a junior non-present employe in the seniority district.

2. A utility employe who refuses to take a position for which he is qualified held by a junior non-present employe in his seniority district which does not require a change in his resi-

dence, as provided above, will forfeit seniority and lose all protection under the Merger Protective Agreement.

3. A utility employe who is requested to take a position for which he is qualified in his seniority district held by a junior non-present employe, and which requires a change in his place of residence in accordance with II(b) hereof, shall be given an election, which must be exercised within seven calendar days from the date of request, to make such transfer with the benefits contained in XII and XIII hereof, or to resign and accept a lump sum separation allowance which shall be computed in accordance with the schedule set forth in Section 9 of the Washington Agreement; provided, however, that force reductions permitted to be made under the Merger Protective Agreement shall be in addition to the number of employes who resign to accept the separation allowance herein provided.

(b) In determining the amount of compensation due under Appendix D to the Merger Protective Agreement, as amended by the Agreement of March 16, 1965, a "present employe's" compensation in his current employment shall be treated as being that of the regularly assigned position for which he is qualified producing the highest rate of pay and compensation to which his seniority entitles him under the working agreement and which does not require a change in his place of residence as defined in II(b) hereof, except that the failure of a utility employe to bid for an advertised position will not change the then current basis used in determining the amount of compensation to which he is entitled under the Implementing Agreement and Appendix D to the Merger Protective Agreement, as amended by the Agreement of March 16, 1965.

(c) 1. When a "present employe" indicates an intention to exercise his seniority to a position requiring a change in his place of residence, the Company may request him not to do so. If an employe is so requested by the Company not to exercise his seniority to a position requiring a change in his place of residence, he may nevertheless elect to exercise such seniority except to the extent that positions may be filled in accordance

with Section VI hereof, but the Company will not be put to any expense as a result of such election, except as provided in the so-called Box Car rule.

2. If the Company does not request such "present employe" to refrain from exercising his seniority to a position requiring a change in his place of residence and he exercises his seniority to a regularly assigned position which requires him to change his place of residence in accordance with II(b) hereof, he shall be entitled to the provisions of XII and XIII hereof.

(d) Once an employe is requested by the Company to refrain from exercising his seniority to a position requiring a change in his place of residence, he will not subsequently be required to change his place of residence, as described in II(b) hereof, so long as he can hold a regularly assigned position which does not require a change in his place of residence.

V. Regardless of any agreement to the contrary, a utility employe may be used to perform service for which qualified either in his own or any other seniority district within his home zone, provided such use does not result in the abolishment of any other regularly assigned position, except that such utility employe may be used in his home zone on any position for which he is qualified on his own seniority district to replace any employe hired subsequent to April 1, 1965.

VI. (a) In the event that no bids for an advertised position are received from "present employes" in the zone in which the position is advertised, junior qualified utility employes in the seniority district, within the home zone, will be assigned thereto in reverse order of seniority. Each employe refusing to accept such assignment will forfeit his seniority and all protection under the Merger Protective Agreement.

(b) If an advertised position for which no bids are received from "present employes" in the zone in which the position is advertised is not filled in accordance with paragraph (a) hereof, junior qualified utility employes in another seniority district in the same zone in which the position is advertised will be assigned thereto in reverse order of seniority. Each employe refus-

ing to accept such assignment will forfeit his seniority and all protection under the Merger Protective Agreement.

(c) If an advertised position for which no bids are received from "present employees" in the zone in which the position is advertised is not filled as provided in paragraphs (a) and (b) hereof, qualified utility employees in the seniority district, employed outside the zone in which the position is advertised, in reverse seniority order, may be requested by the Company to accept the position. If the first employee requested to accept the position refuses to accept it, he will forfeit his seniority and all protection under the Merger Protective Agreement; but if he accepts and changes his place of residence in accordance with II(b), he shall be entitled to the transfer allowances provided in XII and XIII hereof. Other employees requested to accept a position under this paragraph, which require a change in place of residence in accordance with II (b) hereof, shall be given an election, which must be exercised within seven calendar days from the date of request, to make such transfer, with the benefits contained in XII and XIII hereof, or to resign and accept a lump sum separation allowance which shall be computed in accordance with the schedule set forth in Section 9 of the Washington Agreement; provided, however, that force reductions permitted to be made under the Merger Protective Agreement shall be in addition to the number of employees who resign to accept the separation allowance herein provided.

(d) If an advertised position for which no bids are received from "present employees" in the zone in which the position is advertised is not filled in accordance with paragraphs (a), (b) or (c) hereof, qualified utility employees in other seniority districts may, in reverse order of seniority, be requested by the Company to accept the position. Utility employees requested to accept a position under this paragraph, which requires a change in place of residence in accordance with II (b) hereof, shall be given an election, which must be exercised within seven calendar days from the date of request, to make such transfer, with the benefits contained in XII and XIII hereof, or to resign and

accept a lump sum separation allowance which shall be computed in accordance with the schedule set forth in Section 9 of the Washington Agreement; provided, however, that force reductions permitted to be made under the Merger Protective Agreement shall be in addition to the number of employes who resign to accept the separation allowance herein provided.

VII. (a) A "present employe," requested by the Company to transfer with his work from his home zone to another zone either within his seniority district or outside his seniority district, requiring a change of residence as defined in II (b) hereof, shall have the following options provided they are exercised within seven calendar days from date of request:

1. Follow his work to the new location, or
2. Exercise displacement rights in accordance with the rules and working conditions agreement. The exercise of such displacement rights will become effective as of the date the transfer is actually made, or

3. Resign in lieu of options 1 or 2 effective as of the date the transfer is actually made and receive (in lieu of all other benefits and protections to which he may be entitled under the Merger Protective agreement or any other agreement) a lump sum separation allowance which shall be computed in accordance with the schedule set forth in Section 9 of the Washington Agreement; provided, however, that force reductions permitted under the provisions of the Merger Protective Agreement shall be in addition to the number of employes who resign to accept the separation allowance herein provided.

(b) Each "present employe" displaced in the zone from which the work is transferred by the exercise of seniority rights as provided in VII (a) (2) above will have the same three options, except that he may not exercise option 1 if he does not have sufficient fitness and ability to perform the work transferred.

(c) The Company shall give at least 90 calendar days written notice (30 calendar days in cases not requiring a change in place of residence) to the organization (and the employes involved) of

any proposed transfer of employes under this section.

VIII. (a) "Present employes" transferring with their work to a new location where the rate is higher for relatively the same class of work will have their rates adjusted upward to reflect the rate of like positions at that location. Such employe transferring to a lower rated position at the new location shall not have his rate reduced unless he voluntarily vacates such position.

(b) An employe transferring with his work from one seniority district to another seniority district shall have his seniority date(s) dovetailed into the appropriate seniority roster(s) to which transferred and his name and seniority date(s) shall be removed from the seniority roster(s) from which transferred. An employe transferring without his work from one seniority district to another seniority district shall retain and continue to accumulate seniority on the seniority district from which transferred and establish a new seniority date on the roster to which transferred as of the date of transfer, unless the Company and Organization agree otherwise.

IX. A utility employe may, at the election of the Company, be accorded the option of resigning provided he elects to do so within seven calendar days of the date the option is extended and, if he so elects, will be paid a lump sum separation allowance which shall be computed in accordance with the schedule set forth in Section 9 of the Washington Agreement; provided, however, that force reduction permitted to be made under the Merger Protective Agreement shall be in addition to the number of employes who resign to accept the separation allowance herein provided. No employe is authorized to accept any separation allowance in an amount less than that provided in Section 9 of the Washington Job Protection Agreement.

X. Company will inform the involved General Chairman, or General Chairmen, in writing the names of employes who elect to take separation allowance and the amounts paid; also the names of the employes who are transferred from one seniority district to another and date transfer is made. Company will cooperate with the Organization in supplying further data or

information necessary for the purpose of applying this Agreement.

XI. Benefits provided for in IV (a) (3), IV (c) (1), IV (c) (2), VI (c), VI (d), VII (a), VII (b), XII and XIII of this Agreement are in lieu of benefits provided for "present employes" in Appendix F to the Merger Protective Agreement.

XII. The following provisions shall apply, to the extent they are applicable, in each instance to any "present employe" subject to this agreement who is required to change his place of residence as defined in II (b) hereof:

(a) The Company will transfer directly from home to home, without expense to the "present employe," all household and other personal effects, assume responsibility for cost of insurance covering loss and damage thereto during such transfer, and pay all necessary traveling expenses of the "present employe" and the members of his family, together with the necessary living expenses for such employe and his family at the new location subsequent to the time the loading of household and other personal effects at his former location is completed and until 48 hours after arrival and delivery of such household effects at the new location. "Present employes" who do not have families shall be given the same consideration as those who do have families. Contracts covering crating and drayage will be subject to approval by a representative of the Company before the work is performed.

(b) Living quarters for employes, while awaiting arrival and delivery of household effects, as provided for in XII (a) above, also will be subject to approval by a representative of the Company, but it is understood that such quarters shall be suited to the needs of the employe and his family.

(c) There shall be no deduction from wages for time lost by a "present employe" traveling to his new point of employment incident to the transfer of his household effects and, in addition, a reasonable amount of time off without deduction in pay, up to six days, will be allowed the "present employe" changing his

place of residence in order to secure living accommodations at the new location.

(d) Where the Company at its option does not transport the employe's automobile, which shall be without expense to the employe, and the employe elects to operate his or her personal automobile from the old location to the new location, the Company will allow the employe 8¢ per mile via the most direct highway route.

(e) In addition to the above, a "present employe" transferred from one location to another, who is subject to this paragraph XII, shall receive a transfer allowance of \$500.

(f) If an employe who moves with benefits of this Section XII dies within five years of such move, his household and other personal effects, upon request of a surviving member of his household, will be transferred back to his original location, provided such request is made within 60 calendar days of his death.

XIII. The following provisions shall apply, to the extent they are applicable, in each instance to any "present employe" subject to this agreement who is required to change his place of residence as defined in II (b) hereof:

(a) If the "present employe" owns his own home in the locality from which he is required to move, and elects to dispose of it, he shall within 10 calendar days of date of notification of transfer, list his home for sale on the open market (not exclusive listing). Any offers for the purchase of the home not accepted by the employe shall be communicated to the Company. The Company may elect to have the employe sell the home in accordance with such an offer, in which event the Company shall pay the difference between the sale price and the fair market value of the home to the employe together with the cost of sale, provided a good and marketable title free of encumbrance is delivered by the employe at the time of settlement. If the home is not sold within 60 calendar days from the date it has been listed for sale, the employe may, within the next 30 calendar days, advise the Company that he desires the Company to purchase his home at the fair market value. The fair market value

of the home in question shall be based and determined as of a date which shall be 30 calendar days prior to the date of transfer involved. After the employe so advises the Company to purchase his home, the Company, or its nominee, shall make arrangements within 30 calendar days from the date of such advice to purchase the home at the fair market value, provided the employe can deliver a good and marketable title free of encumbrance. The time limit specified in this paragraph may be extended by mutual agreement in extenuating circumstances. Where a controversy arises with respect to the fair market value of the home, the 30 calendar days which the Company has to purchase the home shall begin to run on the date the fair market value of the home is decided pursuant to paragraph (d) hereof.

(b) If the employe is under a contract to purchase his home, the Company shall protect him against loss to the extent of the fair value of any equity he may have in the home and, in addition, shall relieve him from any further obligations under the contract.

(c) If the employe holds an unexpired lease of a dwelling occupied by him as his home, the Company shall protect him from all loss and costs in securing the cancellation of his lease.

(d) Should a controversy arise in respect to the value of the home or the loss sustained in its sale, the loss under a contract to purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employe and the Company, and in the event they are unable to agree, the dispute may be referred either by the employe or the Company to a Board of three competent real estate appraisers selected in the following manner: one to be selected by the employe and the Company respectively; these two shall endeavor by agreement, within 10 calendar days after their appointment, to select the third appraiser, or to select some person to name the third appraiser, and in the event of failure to agree, then the Real Estate Board in the locality involved shall be requested to appoint the third appraiser. A decision of a majority of the

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appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the Appraisal Board, shall be borne equally by the employe and the Company to the proceedings. All other expenses shall be paid by the employe and Company incurring them, including the salary of the appraiser selected by employe or Company.

XIV. This Implementing Agreement is made pursuant to Merger Protective Agreement of May 20, 1964, Memoranda of Understandings appertaining thereto, and "Letter of Intent" attached thereto, the provisions of which shall remain in full force and effect except as expressly modified herein.

This Implementing Agreement shall be effective upon consummation of the merger, and will remain in full force and effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

Signed at Cincinnati, Ohio, this 18th day of October, 1966.

For the Brotherhood:

s/ S. V. W. LOEHR
General Chairman—PRR
East (Inc. B&A Div.)
Sys. Bd. of Adj.

s/ JOHN H. PAX
General Chairman—NYC Lines
Sys. Bd. of Adj.

s/ R. E. CLARK
General Chairman—NYC Western District
Incl. O.C. Lines, Sys. Bd. of Adj.

s/ T. C. BURCH
General Chairman—NYC Southern District
Sys. Bd. of Adj.

s/ LOUIS F. BATORY
General Chairman—NYC Northern District
Sys. Bd. of Adj.

s/ A. B. SEWARD
General Secretary Treasurer
PRR Sys. Bd. of Adj.

s/ RAYMOND REEVES
Senior Vice General Chairman
PRR Sys. Bd. of Adj.

For the Carriers:

s/ GUY W. KNIGHT
Vice President,
Labor Relations—PRR

s/ L. B. FEE
Vice President,
Employee Relations—NYC

- s/ A. H. COLE
Vice General Chairman
PRR Sys. Bd. of Adj.
 - s/ G. F. GEIGER
Vice General Chairman
PRR Sys. Bd. of Adj.
 - s/ CHAS. V. MAUTE
General Secretary-Treasurer
NYC Lines East (Inc. B&A Div.)
Sys. Bd. of Adj.
 - s/ E. J. CABRAL
Assistant General Chairman
NYC Lines East (Inc. B&A Div.)
Sys. Bd. of Adj.
 - s/ G. S. GILES
Assistant General Chairman
NYC Western Dist. Syst. Bd. of Adj. (Inc. O.C. Lines)
 - s/ A. S. BEARD
Vice General Chairman & Chairman Bd. of Trustees
NYC Western Dist. Syst. Bd. of Adj. (Inc. O.C. Lines)
 - s/ H. M. ZIMMERMAN
Member Bd. of Trustees,
NYC Western Dist. Syst. Bd. of Adj. (Inc. O.C. Lines)
 - s/ S. H. CRAIG
Member Bd. of Trustees,
NYC Western Dist. Syst. Bd. of Adj. (Inc. O.C. Lines)
 - s/ M. S. HAYNES
Senior Vice General Chairman
NYC Sou. Dist. Sys. Bd. of Adj.
 - s/ R. K. HOCHGEIGER
Vice General Chairman
NYC Sou. Dist. Sys. Bd. of Adj.
 - s/ B. T. MOORE
Vice General Chairman
NYC Sou. Dist. Sys. Bd. of Adj.
- APPROVED:
- s/ C. L. DENNIS
Grand President
 - s/ J. B. HAINES
Vice Grand President

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**APPENDIX A TO IMPLEMENTING AGREEMENT
OF OCTOBER 18, 1966**

The following zones will be established, encompassing all territory within the points described below:

New York Metropolitan Seniority District and Zone

New York City to Sunnyside Yard, Mount Vernon and Yonkers.

Philadelphia Metropolitan Seniority District and Zone

Philadelphia and Camden to Philadelphia city limits on the north, Norristown, Paoli, West Chester and Chester.

Newark Zone

Elizabeth to Harsimus Cove, Greenville Yard, National Junction (Jersey City) and Little Ferry.

Baltimore Zone

Baltimore to Mount Washington and Chesaco Park.

Harrisburg Zone

Harrisburg, including Enola Yard.

Boston Zone

Boston, including East Boston to Riverside.

Albany Zone

Rensselaer to Troy and Cohoes.
Rensselaer to Schenectady.
Selkirk Yard.

Syracuse Zone

Syracuse to Minoa.

Rochester Zone

Rochester to Wayneport.

Buffalo Zone

Buffalo to North Tonowanda, Depew, Bay View and East Aurora.

Niagara Falls Zone

Suspension Bridge to Lockport.

Cleveland Zone

Cleveland to Nottingham, Berea, Warner and Twinsburg (including Chrysler Yard).

Toledo Zone

Toledo to Alexis, East Toledo, Stanley, Rossford, Galena, and Nasby.

Detroit Zone

Detroit to Warren, Trenton and Willow Run.

Elkhart Zone

Elkhart to Goshen, South Bend and Niles.

Chicago Zone

Chicago to Whiting, Colehour and Dalton Yard.

Gary Zone

East of Whiting and Colehour, to Burns Harbor and Hobart. East of Dalton Yard to Hartsdale including Chicago Heights.

St. Louis Zone

St. Louis to East St. Louis and Alton.

Indianapolis Zone

Indianapolis to Hunt, Thorne, Brightwood, Beech Grove, Southport, Davis and Avon.

Cincinnati Zone

Cincinnati to Wade, Hazelwood, Clare, and Sharon and Vaughn Yards.

Columbus Zone

Columbus to East Columbus, Bannon, West Alton, and Worthington.

Pittsburgh Zone

Pittsburgh and South Pittsburgh to Scully, Pitcairn, Aspinwall and east of Sewickley.

Conway Zone

Sewickley to Beaver Falls including Conway.

Altoona Zone

Altoona to Bell and Hollidaysburg.

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May 30, 2007

Service and Compensation Report

275-20-8219 JF GALLAGHER
 SS Number EE Name

Full Age 60/30

09/27/1928

09/25/1990

1990

1988

RR Service Months 524

SMs Creditable From MS 22

JMS Overlapping Mos. 4

Net Creditable SM's 542

Annuity Type

Birthdate

Proposed ABD

Eligibility Year

Indexing Year

Military Service Start 11/07/1950 End 08/06/1952 Vol 1 Cred C

Year	Service Months	Service Mos Pattern	SS Qtrs	Tier 1 Comp	Tier 2 Comp	SS Wages	Misc Pay	Tier 1 Comp and Wages	Indexed Tier 1 Comp	Indexed Tier 1 Comp Wages
1950	65		0	15,097.48	15,097.48	252.53	0.00	15,678.03	0.00	0.00
1951	2		4	147.63	147.63	0.00	0.00	2,067.63	14,281.30	14,281.30
1952	4		3	1,026.63	1,026.63	0.00	0.00	2,306.63	14,998.88	14,998.88
1953	12		0	3,600.00	3,600.00	0.00	0.00	3,600.00	22,170.37	22,170.37
1954	12		0	3,600.00	3,600.00	0.00	0.00	3,600.00	22,056.55	22,056.55
1955	12		0	4,100.63	4,100.63	0.00	0.00	4,100.63	24,014.29	24,014.29
1956	12		0	4,170.63	4,170.63	0.00	0.00	4,170.63	22,827.55	22,827.55
1957	12		0	4,163.63	4,163.63	0.00	0.00	4,163.63	22,184.88	22,184.88
1958	12		0	4,173.71	4,173.71	0.00	0.00	4,173.71	21,944.91	21,944.91
1959	12		0	4,504.20	4,504.20	0.00	0.00	4,504.20	22,983.39	22,983.39
1960	12	7777	0	4,788.30	4,788.30	0.00	0.00	4,788.30	23,169.17	23,169.17
1961	12	7777	0	4,800.00	4,800.00	0.00	0.00	4,800.00	22,708.30	22,708.30
1962	12	7777	0	4,800.00	4,800.00	0.00	0.00	4,800.00	21,625.43	21,625.43
1963	12	7777	0	4,675.80	4,675.80	0.00	0.00	4,675.80	20,561.63	20,561.63
1964	12	7777	0	4,800.00	5,337.04	0.00	0.00	4,800.00	20,379.04	20,379.04
1965	12	7777	0	4,800.00	5,400.00	0.00	0.00	4,800.00	19,939.36	19,939.36
1966	12	7777	0	6,471.52	6,471.52	0.00	0.00	6,471.52	23,336.67	23,336.67
1967	12	7777	0	6,329.27	6,329.27	0.00	0.00	6,329.27	23,472.09	23,472.09
1968	12	7777	0	7,315.40	7,315.40	0.00	0.00	7,315.40	25,384.48	25,384.48
1969	12	7777	0	4,979.03	4,979.03	0.00	0.00	4,979.03	16,333.34	16,333.34
1970	12	7777	0	7,800.00	7,800.00	0.00	0.00	7,800.00	24,377.57	24,377.57
1971	12	7777	0	7,800.00	7,800.00	0.00	0.00	7,800.00	23,211.27	23,211.27
1972	12	7777	0	9,000.00	9,000.00	0.00	0.00	9,000.00	24,391.82	24,391.82
1973	12	7777	0	10,800.00	10,800.00	0.00	0.00	10,800.00	27,546.60	27,546.60
1974	12	7777	0	12,800.00	12,800.00	0.00	0.00	12,800.00	31,832.46	31,832.46
1975	12	7777	0	14,100.00	14,100.00	0.00	0.00	14,100.00	31,583.27	31,583.27
1976	12	7777	0	15,300.00	15,300.00	0.00	0.00	15,300.00	32,061.07	32,061.07
1977	12	7777	0	16,500.00	16,500.00	0.00	0.00	16,500.00	32,020.64	32,020.64
1978	12	7777	0	17,700.00	17,700.00	0.00	0.00	17,700.00	32,438.67	32,438.67
1979	12	7777	0	22,837.76	18,980.00	0.00	0.00	22,837.76	38,484.02	38,484.02
1980	12	7777	0	24,479.32	19,634.20	0.00	0.00	24,479.32	37,822.00	37,822.00
1981	12	7777	0	25,613.84	22,084.48	0.00	0.00	25,613.84	35,958.52	35,958.52
1982	12	7777	0	25,860.87	23,170.13	0.00	1,119.06	26,979.93	35,856.97	35,856.97
1983	12	7777	0	28,706.52	26,073.52	0.00	829.66	29,536.18	37,472.58	37,472.58
1984	12	7777	0	29,143.66	27,701.43	0.00	825.49	29,969.15	35,910.89	35,910.89
1985	12	7777	0	38,606.01	29,708.00	0.00	0.00	38,606.01	44,389.72	44,389.72
1986	12	7777	0	31,440.39	31,448.39	0.00	578.34	32,018.73	35,738.24	35,738.24
1987	12	7777	0	40,450.29	32,708.00	0.00	0.00	40,450.29	42,442.52	42,442.52
1988	12	7777	0	32,438.19	32,438.19	0.00	2,004.80	34,442.99	32,438.19	34,442.99
1989	12	7777	0	33,967.00	33,967.00	0.00	821.92	34,788.92	33,967.00	34,788.92
1990	9	7770	0	34,199.77	28,575.00	0.00	313.70	34,713.47	34,199.77	34,713.47
1991	0		0	0.00	0.00	0.00	2,000.00	2,000.00	0.00	2,000.00

EXHIBIT
 PGC
 102

Includes MS as Wages (or not MS)

High 60 Comp	166,545.60		
Tier2 AMC	2775		
Tier 2	848.22		
Amount	AMW	YOC	Spc Min
0.00	9999	2	0.00
7	224.30	322	23 117.00
8	228.50	329	24 126.00

Includes MS as Compensation

High 60 Comp	166,545.60		
Tier2 AMC	2775		
Tier 2	885.84		
Amount	AMW	YOC	Spc Min
4	0.00	9999	2 0.00
7	228.50	331	24 126.00
8	228.50	329	24 126.00

Before NCSP:	935.90	Indexed Earnings	992,465.30	
NCSP YOC:	54	Computation Years	34	
PFA Amount	AMW	YOC	Spc Min	Ellg Year
935.90	2432	54	705.20	1990

* Possible Duplicate Earnings
 # Tier 2 Allocation
 + Service Months Modified; NOT Certified

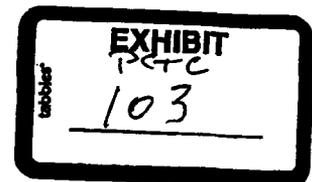
Ex. 102

Table 1: Schedule Showing the Earnings for the Years 1966-1990, and the Displacement Allowance for John Gallagher.

Year	Earnings (a)	Months Employed (a)	Weighted Wage Rate (b)	Forecasted Wages (c)	Displacement Allowance (d)
1966	\$ 6,471.52	12	\$ 2.97	\$ 6,170.94	-
1967	\$ 6,329.27	12	\$ 3.19	\$ 6,645.47	-
1968	\$ 7,315.40	12	\$ 3.38	\$ 7,026.16	-
1969	\$ 4,979.03	12	\$ 3.73	\$ 7,766.32	\$ 2,787.29
1970	\$ 7,800.00	12	\$ 4.17	\$ 8,663.46	-
1971	\$ 7,800.00	12	\$ 4.49	\$ 9,339.94	-
1972	\$ 9,000.00	12	\$ 4.94	\$ 10,281.75	-
1973	\$ 10,800.00	12	\$ 5.38	\$ 11,186.98	-
1974	\$ 12,889.92	12	\$ 5.66	\$ 11,772.80	-
1975	\$ 14,100.00	12	\$ 6.31	\$ 13,120.92	-
1976	\$ 15,300.00	12	\$ 6.87	\$ 14,291.37	-
1977	\$ 16,500.00	12	\$ 7.34	\$ 15,271.13	-
1978	\$ 17,700.00	12	\$ 8.10	\$ 16,845.83	-
1979	\$ 22,837.76	12	\$ 8.92	\$ 18,548.24	-
1980	\$ 24,479.32	12	\$ 9.86	\$ 20,515.13	-
1981	\$ 25,613.84	12	\$ 10.94	\$ 22,753.72	-
1982	\$ 25,860.87	12	\$ 12.00	\$ 24,964.62	-
1983	\$ 28,706.52	12	\$ 12.78	\$ 26,574.82	-
1984	\$ 29,143.66	12	\$ 13.20	\$ 27,456.00	-
1985	\$ 38,606.01	12	\$ 13.22	\$ 27,501.93	-
1986	\$ 31,440.39	12	\$ 13.49	\$ 28,049.80	-
1987	\$ 40,450.29	12	\$ 13.79	\$ 28,675.56	-
1988	\$ 32,438.19	12	\$ 14.07	\$ 29,265.60	-
1989	\$ 33,967.00	12	\$ 14.07	\$ 29,265.60	-
1990	\$ 34,199.77	9	\$ 14.07	\$ 29,265.60	-
1990 Annualized Wage for Displacement Allowance (f)	\$ 45,727.73			\$ 29,265.60	1990 Displacement Allowance -

* Boxed earnings in the earnings column indicate that Mr. Gallagher earned at or more than the maximum taxable earnings. Given this information, a loss cannot be determined for those years.

- (a) Source from "Employment Data Maintenance Creditable Service and Earnings Yearly Totals" sheet.
 (b) The weighted wage rates are from Tables 6 through 9.
 (c) The forecasted wages are calculated as the weighted wage rates multiplied by 2,080 hours per year.
 (d) The displacement allowance for each year is calculated as the forecasted wages minus the earnings from column (a).
 (e) The 1990 annualized wage is calculated as \$34,199.77 divided by (1 - 25.21%). 25.21% is the amount of the year remaining after the date of separation.



M-000063

SPECIAL COURT REPORTER

SPECIAL COURT

FILED

MAR 25 1976

REGIONAL RAIL REORGANIZATION ACT OF 1973

JAMES F. DINEY, CLERK

In the Matter of
 Regional Rail Reorganization Proceedings

) Special Court
) Misc. No. 75-3
)
)
)

ORDER OF CONVEYANCE TO TRUSTEES OF
 RAILROADS IN REORGANIZATION IN THE REGION

Upon consideration that --

A. On March 12, 1976, the United States Railway Association ("Association"), pursuant to Section 209(c) of the Regional Rail Reorganization Act of 1973, as amended ("Rail Act"), certified to this Court which rail properties of railroads in reorganization in the region are to be transferred to Consolidated Rail Corporation ("Corporation") and which rail properties of such railroads are to be conveyed to certain profitable railroads as defined in the Rail Act ("Profitable Railroads"), and advised this Court which rail properties of such railroads are to be conveyed to States or responsible persons in accordance with Section 208(d) (2) of the Rail Act; and

EXHIBIT
 PCTC 104

SPECIAL COURT REPORTER

- 2 -

M-000064

B. on March 24, 1976, the Association filed with this Court a document supplementing and perfecting its March 12, 1976, certification of which rail properties of railroads in reorganization in the region are to be transferred to the Corporation and which rail properties of such railroads are to be conveyed to Profitable Railroads, States or responsible persons; and

C. on March 22, 1976, the Corporation and the Association, pursuant to Sections 303(a)(1) and 306(a), respectively, of the Rail Act, deposited with this Court all of the stock and other securities of the Corporation and all of the Certificates of Value of the Association designated in the Final System Plan that are to be exchanged for the rail properties being transferred to the Corporation; and

D. on March 22, 1976, each Profitable Railroad, State or responsible person, pursuant to Section 303(a)(2) of the Rail Act, deposited with this Court the compensation designated in the Final System Plan to be paid for the purchase of the rail properties being conveyed to such Profitable Railroad, State or responsible person; and

SPECIAL COURT REPORTER

- 3 -

M-000065

E. the unusually large and complex conveyancing that will occur pursuant to this Order can be expected to result in a need for corrections, amendments or supplements to the Conveyance Documents (as hereinafter defined) and to this Order in order to carry out the intent of the Final System Plan, such Conveyance Documents and this Order:

NOW THEREFORE, pursuant to Section 303(b)(1) of the Rail Act, it is hereby ordered:

Section 1. Definitions

As used in this Order:

A. "Certification" shall mean the Certification (including all Appendices and documents submitted therewith and made a part thereof) filed with this Court by the Association on March 12, 1976, and on file in the office of the Clerk of this Court at the United States Courthouse in Washington, D.C.

B. "Certification Supplement" shall mean the Certification Supplement (including all Appendices and documents submitted therewith and made a part thereof) filed with this Court on March 24, 1976, and on file in

SPECIAL COURT REPORTER

M- 000066

the office of the Clerk of this Court at the United States Courthouse in Washington, D.C.

C. "Conveyance Document Addendum" shall mean the collection of documents denominated "Conveyance Document Addendum," which was submitted to this Court by the Association with and as a part of the Certification and Certification Supplement and is on file in the office of the Clerk of this Court at the United States Courthouse in Washington, D.C.

D. "Conveyance Documents" shall mean the documents listed in the Conveyance Document Schedules (as hereinafter defined), except that the Conveyance Documents shall not include any document or part thereof filed with the Certification that has been superseded by any such document filed with the Certification Supplement. All maps referred to in the Conveyance Documents are contained in the Map Addendum (as hereinafter defined). All computer printouts of rolling stock and equipment inventory referred to in the Conveyance Documents are contained in the Rolling Stock and Equipment Addendum (as hereinafter defined).

SPECIAL COURT REPORTER

M-000067

- 5 -

E. "Conveyance Document Schedules" shall mean the Schedules contained in Appendices I-A, II-A and IV of the Certification and Certification Supplement, which Schedules identify the Conveyance Documents.

F. "Final System Plan" shall mean the Plan prepared by the Association which became effective on November 9, 1975, pursuant to Section 208(a) of the Rail Act (a certified copy of which was filed with this Court as Appendix O-A to the Certification), together with the Supplemental Report to the Plan dated September 18, 1975, described in Section 208(d)(1) of the Rail Act (a certified copy of which was filed with this Court as Appendix O-B to the Certification), the Official Errata Supplement to the Plan dated December 1, 1975, described in Section 208(d)(1) of the Rail Act (a certified copy of which was filed with this Court as Appendix O-C to the Certification), the Notice containing further designations to the Plan, dated February 25, 1976, described in Section 208(d)(3) of the Rail Act (a certified copy of which was filed with this Court as Appendix O-D to the Certification), and the document filed as Appendix O-E to the Certification, which document contains the further designations of rail properties described in Section 208(d)(2) of the Rail Act.

SPECIAL COURT REPORTER

- 6 -

M-000068

G. "Transferor" shall mean the person or persons identified as the Transferor, Grantor or Assignor in a Conveyance Document.

H. "Transferee" shall mean the person or persons identified as the Transferee, Grantee or Assignee in a Conveyance Document.

I. "Map Addendum" shall mean the collection of maps denominated "Map Addendum" which was submitted to this Court by the Association with and as a part of the Certification and Certification Supplement and is on file in the office of the Clerk of this Court at the United States Courthouse in Washington, D.C. Copies of maps from the Map Addendum which are referred to in the Conveyance Documents relating to a particular Transferor are also on file with the United States District Court having jurisdiction over such Transferor.

J. "Rolling Stock and Equipment Addendum" shall mean the collection of rolling stock and equipment inventory computer printouts denominated "Rolling Stock and Equipment Addendum" which was submitted on March 12, 1976, to this Court by the Association with and as a part of the Certification and is on file in the office of the

SPECIAL COURT REPORTER

M-000069

Clerk of this Court at the United States Courthouse in Washington, D.C. Copies of computer printouts from the Rolling Stock and Equipment Addendum which are referred to in the Conveyance Documents relating to a particular Transferor are also on file with the United States District Court having jurisdiction over such Transferor.

K. "Option" shall mean a Conveyance Document which grants to the Transferee identified therein the right to acquire designated rail properties from the Transferor identified therein in accordance with the terms and conditions set forth in such Document. For purposes of determining the period within which an Option may be exercised, the effective date of this Order shall be deemed to be 12:01 a.m. on April 1, 1976.

L. "Acknowledgment of Receipt and Acceptance of Conveyance Document(s)" shall mean the instruments, copies of which are attached to this Order as Addenda I and II, that are to be executed by the Transferees and delivered to the appropriate Transferors in accordance with the terms of this Order.

M. "Conveyance Date" shall mean 12:01 a.m. on April 1, 1976, except that, in the case of property acquired pursuant to the exercise of an Option,

SPECIAL COURT REPORTER

- 8 -

"Conveyance Date," for purposes of paragraphs A(1) and A(2) of Section 4 of this Order, shall mean the date on which such property is conveyed to the Transferee pursuant to the exercise of such Option.

Section 2. Execution and Delivery of Conveyance Documents

The trustee or trustees of each Transferor identified in each Conveyance Document shall execute (and, where indicated, shall acknowledge) and on or before the Conveyance Date shall deliver such Conveyance Document to the Transferee identified therein -- such delivery to be effective as of the Conveyance Date. Any such Conveyance Document (or any Conveyance Document delivered pursuant to the exercise of an Option) may be executed, acknowledged, and delivered on behalf of the trustee or trustees by any person or persons who has or have been authorized to perform such acts on behalf of the trustee or trustees by the United States District Court or other court having jurisdiction over the Transferor identified in such Conveyance Document. Execution, acknowledgment and delivery of any Conveyance Document in which The Connecting Railway Company is identified as Transferor shall be made by The Connecting Railway Company as Debtor in possession of its properties

SPECIAL COURT REPORTER

M-000071

("Connecting"). The execution and delivery of any Conveyance Document by or on behalf of a trustee or trustees or Connecting pursuant to this Order shall not constitute a waiver of any right that such trustee or trustees or Connecting may have to object to or challenge, in whole or in part, the conveyance of the property identified in such Conveyance Document or the terms and conditions of any such conveyance or Conveyance Document. The conveyance of all properties pursuant to this Section shall be subject to all applicable terms and conditions of the Conveyance Documents, the Rail Act and this Order, and each Transferor and Transferee shall faithfully and expeditiously comply with and fulfill all such terms and conditions.

Section 3. Acknowledgment of Receipt and Acceptance of Conveyance Document(s)

Concurrently with delivery from a Transferor of any Conveyance Document or Documents pursuant to this Order, the Transferee shall execute and deliver to such Transferor and forthwith file with the Clerk of this Court an Acknowledgment of Receipt and Acceptance of Conveyance Document(s) in the form attached hereto as Addendum I; except that when a Conveyance Document is delivered pursuant to the exercise of an Option, the

SPECIAL COURT REPORTER

- 10 -

M-000072

Acknowledgment of Receipt and Acceptance of Conveyance Document(s) shall be in the form attached hereto as Addendum II and shall specify the time at which such Conveyance Documents were actually delivered. In any case in which a Transferee receives more than one Conveyance Document from a particular Transferor, the Transferee may deliver and file a single Acknowledgment of Receipt and Acceptance of Conveyance Documents referring to all of the Conveyance Documents received from such Transferor. The execution of any Conveyance Document or the execution and delivery of any Acknowledgment of Receipt and Acceptance of Conveyance Document(s) by any Transferee pursuant to this Order, or the execution and delivery of any other document pursuant to the terms of such Acknowledgment of Receipt and Acceptance of Conveyance Document(s), shall not constitute a waiver of any right that such Transferee may have to object to or challenge, in whole or in part, the obligations and conditions imposed on such Transferee by the terms of any Conveyance Document or the terms and conditions of the conveyance of the property identified in such Conveyance Document.

- 11 -

M-000073

SPECIAL COURT REPORTERSection 4. Certain Terms and Conditions of Conveyance

Each conveyance of property pursuant to this Order shall, where applicable, be subject to the following terms and conditions:

A. Allocation of Taxes, Assessments, Rents, License Fees, User Fees and Other Charges

(1) Allocation Over Time. As between the Transferor and Transferee identified in any Conveyance Document with respect to rail property conveyed to a Transferee pursuant to this Order, the obligation, if any, for payment of

(a) any tax, assessment, license fee, or other charge imposed by a governmental authority on or with respect to any such property or any use thereof or thereon for any period of time or term within which the Conveyance Date falls, or

(b) any rent, license fee, user fee or other charge imposed under or by virtue of any lease, license,



SPECIAL COURT REPORTER

M-000074

easement, encumbrance or other agreement that continues to attach to such property after the Conveyance Date,

shall be adjusted on a pro rata basis to the Date of Conveyance so that

(i) the Transferor is obligated for any such payment as is attributable to that portion of such period or term preceding the Conveyance Date, and

(ii) the Transferee is obligated for any such payment as is attributable to the balance of such period or term.

(2) Allocation in the Case of Subdivided or Aggregated Property. In the case of any rail property referred to in the preceding subdivision (1) that:

(a) is part of a parcel of property or an aggregation of property that has been or is taxed, assessed or otherwise charged as a unit for

M-000075

SPECIAL COURT REPORTER

- 13 -

a period of time or term within
which the Conveyance Date falls,
or

- (b) is part of a parcel of property
or an aggregation of property that
is subject to one or more leases,
licenses, easements, encumbrances
or other agreements that continue
to attach to such parcel or
aggregation of property after the
Conveyance Date,

the obligation for payment of any tax, assessment, rent,
license fee, user fee or other charge that is or becomes
payable with respect to such parcel or aggregation of
property for that part of such period of time or term as
follows the Conveyance Date shall be allocated to such
Transferee in the proportion that the value of such
property conveyed to such Transferee bears to the total
value of such parcel or aggregation of property, determined
as of the Conveyance Date; provided that, if any such
tax, assessment, rent, license fee, user fee or other
charge is attributable to the parts constituting such
parcel or aggregation of property on a basis other than the

M-000076

SPECIAL COURT REPORTER

relative values of such parts, such allocation shall be made on such other basis. If the parties are unable to agree on the basis or method for allocating any such tax, assessment, rent, license fee, user fee or other charge, either or both of such parties may apply to this Court for an order determining the basis or method to be used for such allocation.

B. Pre-Recording Protection of Transferors and Transferees

In the case of real property conveyed, or reserved and excepted from conveyance, in any Conveyance Document, on and after the Conveyance Date and until such Conveyance Document shall have been filed for record with respect to such property in each local jurisdiction in which such property is situated, no Transferor or Transferee identified in such Conveyance Document shall transfer or convey such property, in whole or in part, or create any lien or encumbrance on or with respect to such property, unless the instrument effecting such transfer or conveyance or creating such lien or encumbrance provides that such property is subject to any easement, encumbrance, right or benefit that may have been created or recognized in or by such Conveyance Document.

M-000077

- 15 -

SPECIAL COURT REPORTERC. Resignations of Representatives of the Trustees

On and after Conveyance Date, the trustee or trustees of each Transferor and Connecting shall, upon the request of a Transferee, use his, their or its best efforts to cause any person who is serving at the request of such Transferor as a director or officer of another corporation, partnership, joint venture, or other enterprise, the stock ownership or other corporate interest in which is conveyed from such Transferor to such Transferee pursuant to this Order, to resign from, or otherwise act in accordance with the lawful directions of the Transferee with respect to, such person's position as such director or officer; provided, however, that nothing herein shall be deemed a restraint upon the ability of any such person otherwise to resign from such position as director or officer.

M-000078

SPECIAL COURT REPORTER

- 16 -

Section 5. Correction of ErrorsA. Correction of Errors by or on Application
of Transferors and Transferees

To the extent necessary to

(a) carry out the intent of a
Conveyance Document or to perfect
a designation contained in the
Final System Plan, or

(b) record or otherwise perfect any
Conveyance Document delivered
pursuant to this Order under any
applicable statute, ordinance,
rule or regulation,

each Transferor or Transferee shall perform, execute,
acknowledge, endorse and deliver any and all such further
acts, deeds, transfers, assignments, certificates and
other instruments as may be reasonably requested by any
Transferor or Transferee in order to convey, reconvey,
confirm, clarify, identify or more precisely describe the
properties designated to be conveyed in the Final System
Plan or the properties conveyed or reserved and excepted
from conveyance in any Conveyance Document (or intended

SPECIAL COURT REPORTER

- 17 -

M-000079

so to be). If such parties are unable to agree upon or effectuate such action as should be taken pursuant to this paragraph or the division of costs incident to such action, such party or parties may apply to this Court for such relief as may be appropriate; provided that no person shall apply to this Court for an order or other action under this paragraph A without concurrently serving the Association with notice of such application.

B. Retention of Jurisdiction

This Court retains jurisdiction under Section 209(e) of the Rail Act.

Section 6. Certification of Documents to Transferors and Transferees

Promptly after the entry of this Order, the Association shall deliver to each Transferor and Transferee a copy of the Conveyance Documents to which such Transferor or Transferee is a party together with each map and rolling stock and equipment inventory computer printout referred to in such Conveyance Documents and shall certify that such Conveyance Documents, maps, and printouts are true copies of the Conveyance Documents, maps, and printouts certified by

SPECIAL COURT REPORTER

- 18 -

M-000080

the Association to this Court and filed in the office of the Clerk of this Court.

Section 7. Issuance of Certified Copies

Upon request of any Transferor or Transferee or any interested person and upon payment of such reasonable fee as may from time to time be established by the rules of this Court, the Clerk of this Court shall issue a certified copy of this Order together with a certified copy of any Conveyance Document requested by such person and shall certify that such Conveyance Document was certified to this Court by the Association and is identified in the files of this Court by the Document Number appearing on such certified copy of such Conveyance Document.

Section 8. Compilation and Deposit of Sets of Conveyance Documents

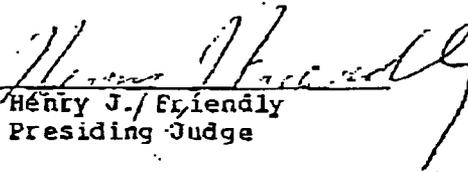
The Association shall cause to be compiled complete sets of the Conveyance Documents (and the maps referred to in such Conveyance Documents) in the sequence listed in the Conveyance Document Schedules and in the form prepared for execution and delivery of such Conveyance Documents, and shall deposit two complete sets thereof with the Clerk of this Court on or before 12:00

M-000081

SPECIAL COURT REPORTER

- 19 -

noon on March 29, 1976, and shall attest that each such set contains true copies of all such Conveyance Documents certified to this Court by the Association.


Henry J. Friendly
Presiding Judge


John Minor Wisdom
Judge


Roszel C. Thomsen
Judge

Date: March 15, 1976

SPECIAL COURT REPORTER

M-000082

Addendum I

Acknowledgment of Receipt and
Acceptance of Conveyance Document(s)

Pursuant to the provisions of Order No. _____
entered on March __, 1976, by the Special United States
District Court established pursuant to Section 209(b) of
the Regional Rail Reorganization Act of 1973 (Pub. L. 93-
236, 87 Stat. 985), as amended;

_____, the Transferee
(hereafter, "Transferee") specified in Conveyance
Document Schedule No. _____
("Schedule") of the Certification and/or Certification
Supplement submitted to the Special Court on March 12 and
March 24, 1976, respectively, by the United States
Railway Association, hereby acknowledges receipt and
acceptance from _____, the Transferor
(hereafter, "Transferor") specified in the Schedule, of
the following Conveyance Documents listed in the
Schedule, unexecuted copies of which were contained in
the Conveyance Document Addendum submitted with the
Certification and Certification Supplement.

M-000083

SPECIAL COURT REPORTER

<u>Conveyance Document No.</u>	<u>Location of Property or Description of Document</u>
--------------------------------	------------------------------------------------------------

The Transferee hereby acknowledges that it received delivery of the foregoing Conveyance Documents as of 12:01 a.m. on April 1, 1976.

The Transferee hereby agrees for itself and its successors and assigns to perform and observe each of the obligations and conditions imposed on the Grantee, Transferee or Assignee by the terms of the foregoing Conveyance Documents; provided that the Transferee does not assume any obligation or liability that arises after the date of delivery of the foregoing Conveyance Documents out of any event, act or failure to act that occurred prior thereto, and, where an obligation or liability is related to a period that is both before and after such date, the Transferee assumes only that portion of the obligation or liability which is reasonably allocable to the part of the period after such date.

Where reasonably requested by the Transferor, in order to remove any uncertainty as to the effectiveness of this document, the Transferee will execute and deliver

M-000084

SPECIAL COURT REPORTER

- 3 -

in recordable form a separate Acknowledgment of Receipt and Acceptance of Conveyance Document with respect to any Conveyance Document.

IN WITNESS WHEREOF, _____, has caused this Acknowledgment of Receipt and Acceptance of Conveyance Document(s) to be executed in its corporate name by _____, its _____ duly authorized so to do, attested by _____ its Assistant Secretary, and its corporate seal to be hereunto affixed as of this ____ day of _____, 1976, and does hereby constitute and appoint said _____ its true and lawful attorney in fact for it and in its name to acknowledge this Acknowledgment of Receipt and Acceptance of Conveyance Document(s) as its act and deed.

Signed, attested and acknowledged in the presence of the following witnesses:

[Insert Transferee's Name]

By: _____

Attest: _____
Assistant Secretary

[Corporate Seal]

District of Columbia, ss:

M-000085

SPECIAL COURT REPORTER

On this ___ day of _____, 1976, before me, a Notary Public authorized to take acknowledgments and proofs in the District of Columbia, personally appeared _____, personally known to me to be the person named in the foregoing Acknowledgment of Receipt and Acceptance of Conveyance Document(s), bearing the same date as this certificate of acknowledgment, as attorney in fact to acknowledge the same for and in the name of _____, and acknowledged himself to be such attorney in fact and that the foregoing Acknowledgment of Receipt and Acceptance of Conveyance Document(s) is the free act and deed of _____ for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

SPECIAL COURT REPORTER

M-00008E

Addendum II

Acknowledgment of Receipt and
Acceptance of Conveyance Document(s)

Pursuant to the provisions of Order No. _____
entered on March __, 1976, by the Special United States
District Court established pursuant to Section 209(b)
of the Regional Rail Reorganization Act of 1973 (Pub. L.
93-236, 87 Stat. 985), as amended;

_____, the Transferee
(hereafter, "Transferee") specified in Conveyance
Document Schedule No. _____
("Schedule") of the Certification and/or Certification
Supplement submitted to the Special Court on March 12 and
March 24, 1976, respectively, by the United States
Railway Association hereby acknowledges receipt and
acceptance from _____, the Transferor
(hereafter, "Transferor") specified in the Schedule, of
the following Conveyance Documents listed in the
Schedule, unexecuted copies of which were contained in
the Conveyance Document Addendum submitted with the
Certification and Certification Supplement.

M-000088

SPECIAL COURT REPORTER

in recordable form a separate Acknowledgment of Receipt and Acceptance of Conveyance Document with respect to any Conveyance Document.

IN WITNESS WHEREOF, _____, has caused this Acknowledgment of Receipt and Acceptance of Conveyance Document(s) to be executed in its corporate name by _____, its _____, duly authorized so to do, attested by _____, its Assistant Secretary, and its corporate seal to be hereunto affixed as of this ____ day of _____, 1976, and does hereby constitute and appoint said _____ its true and lawful attorney in fact for it and in its name to acknowledge this Acknowledgment of Receipt and Acceptance of Conveyance Document(s) as its act and deed.

Signed, attested and acknowledged in the presence of the following witnesses:

_____ [Insert Transferee's Name]

By: _____

Attest: _____ Assistant Secretary

[Corporate Seal]

District of Columbia, ss:

SPECIAL COURT REPORTER

- 4 -

M-000089

On this ___ day ____, 1976, before me, a Notary Public authorized to take acknowledgments and proofs in the District of Columbia, personally appeared _____, personally known to me to be the person named in the foregoing Acknowledgment of Receipt and Acceptance of Conveyance Document(s), bearing the same date as this certificate of acknowledgment, as attorney in fact to acknowledge the same for and in the name of _____, and acknowledged himself to be such attorney in fact and that the foregoing Acknowledgment of Receipt and Acceptance of Conveyance Document(s) is the free act and deed of _____ for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

DOCUMENT NO. PC-CRC-AA

BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT IS MADE

BY AND BETWEEN

ROBERT W. BLANCHETTE, RICHARD C. BOND AND JOHN H. MCARTHUR

AS TRUSTEES OF THE PROPERTY OF

PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

(Collectively "Grantor"), whose address is Six Penn Center Plaza,
Philadelphia, Pennsylvania 19104

AND

CONSOLIDATED RAIL CORPORATION

a corporation organized and existing under the laws of the State of
Delaware, ("Grantee"), whose address is 1818 Market Street, Phila-
delphia, Pennsylvania 19103.

WHEREAS, Debtor is a railroad in reorganization under
Section 77 of the Federal Bankruptcy Act, 11 U.S.C., Section 205,
and is a railroad in reorganization as that term is defined in the
Regional Rail Reorganization Act of 1973 (Public Law 93-236, 87
Stat. 935), as amended ("Act"); and

WHEREAS, by orders of the United States District Court
for the Eastern District of Pennsylvania,
entered in Docket No. 70-347, the above-named individuals
were duly appointed and are now serving as Trustees of the property
of Debtor; and

WHEREAS, the United States Railway Association ("USRA"),
pursuant to Section 209(c) of the Act, has certified to the Special
United States District Court established pursuant to Section 209(b)
of the Act ("Special Court"), that the rail properties of Debtor
hereinafter described (except those hereinafter reserved and ex-
cepted), are to be transferred by Grantor to Grantee; and

WHEREAS, pursuant to Section 303(b) of the Act, the
Special Court has ordered Grantor to convey to Grantee all of
Grantor's right, title and interest in, under and to such rail
properties free and clear of any liens or encumbrances as pro-
vided in Section 303(b) of the Act; and

EXHIBIT

tabbies

PCTC 105

WHEREAS, concurrently herewith certain real property, as more particularly identified in Schedule A attached hereto, is being conveyed to Grantee pursuant to order of the Special Court.

NOW, THEREFORE, pursuant to the Order of the Special Court, Grantor hereby transfers, assigns and conveys to Grantee, all of Grantor's right, title and interest in, under and to the following properties:

1. Leases of Real Property as defined and described in Schedule B;
2. Materials, Supplies and Equipment as defined and described in Schedule C;
3. Books, Files and Records as defined and described in Schedule D;
4. Executory Contracts and Agreements as defined and described in Schedule E;
5. Special Funds as defined and described in Schedule F;
6. Data Processing Systems and Supplies as defined and described in Schedule G;
7. Rights, Powers, Franchises, Privileges and Immunities as defined and described in Schedule H;
8. Corporate Interests as defined and described in Schedule I; and
9. Intellectual Property Rights as defined and described in Schedule J.

TO HAVE AND TO HOLD the aforesaid properties hereby conveyed to Grantee, to its proper use and benefit, forever, free and clear of any liens or encumbrances as provided in Section 303(b) of the Act.

Grantor hereby agrees that Grantor will perform, execute, acknowledge, endorse and deliver any and all such further acts, bills of sale, transfers, assignments, certificates and other instruments as may be reasonably requested by Grantee in order to convey, confirm, clarify, identify or more precisely describe the properties conveyed by this Bill of Sale and Assignment or intended so to be in order to carry out the intent of this Bill of Sale and Assignment in light of the designations contained in the Final System Plan which has been certified to the Special Court by USRA pursuant

PC-CRC-AA

to the Act, and to effect the recordation of, or otherwise perfect this Bill of Sale and Assignment and all such other bills of sale, assignments, certificates and instruments under any applicable statute, ordinance, rule or regulation.

Grantee hereby agrees that Grantee will perform, execute, acknowledge, endorse and deliver any and all such further acts, bills of sale, transfers, assignments, certificates and other instruments as may be reasonably requested by Grantor in order to confirm, clarify, identify or more precisely describe the properties reserved and excepted from this conveyance or intended so to be in order to carry out the intent of this Bill of Sale and Assignment in light of the designations contained in such Final System Plan, and to effect the recordation of, or otherwise perfect this Bill of Sale and Assignment and all such other bills of sale, assignments, certificates and instruments under any applicable statute, ordinance, rule or regulation.

Grantee takes the property as is and where is.

The words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this Bill of Sale and Assignment so requires and, whether singular or plural, such words shall be deemed to include in all cases the successors and assigns of the respective parties. The words "rail services to be assumed by Grantee" or any similar phrase used herein shall be construed to include intercity rail passenger services, and maintenance and operating control in the Northeast

Corridor, as that term is defined in Section 701(c) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub.L. 94-210, 90 Stat. 31).

This conveyance and the specific covenants of Grantor are made by Grantor as Trustees of the property of the Debtor, and not individually, and, except as specifically provided herein, this conveyance is made without covenants of title or any warranties express or implied.

IN WITNESS WHEREOF, the Grantor has caused this Bill of Sale and Assignment to be executed this 30th day of March, 1976 by Paul R. Duke, being duly authorized so to do by Order of the United States District Court for the Eastern District of Pennsylvania, entered in Docket No. 70-347.

Robert W. Blanchette
 Richard C. Bond
 John H. McArthur
 As Trustees for the Property of
 Penn Central Transportation Co.,
 Debtor

Signed and acknowledged
 in the presence of:

Daniel G. Waddlo
 Daniel G. Waddlo
Walter V. Peters
 Walter V. Peters

By: Paul R. Duke L.S.
Paul R. Duke OFFICER

DISTRICT OF COLUMBIA, ss:

On this 30th day of March 1976, before me, a Notary Public authorized to take acknowledgements and proofs in the District of Columbia, personally appeared Paul R. Duke, personally known to me to be the person whose name is subscribed to the foregoing Bill of Sale and Assignment, bearing the same date as this certificate of acknowledgement, and acknowledged himself to be an Officer of Robert W. Blanchette, Richard C. Bond, and John H. McArthur Trustees of the Property of Penn Central Transportation Company, Debtor, and that as such Officer and being authorized so to do, he executed the foregoing Bill of Sale and Assignment on behalf of and in the name of the Trustees as their free act and deed for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

JoAnn E. Deaney
 My Commission Expires January 1, 1987

IN WITNESS of the covenants of Grantee herein contained, Grantee has caused this Bill of Sale and Assignment to be executed in its corporate name this 31st day of March, 1976, by Miller Heath, its Assistant Vice President, duly authorized so to do, attested by Franklin B. Holland, its Assistant Secretary, and its corporate seal to be hereunto affixed, and does hereby constitute and appoint said Miller Heath its true and lawful attorney in fact for it and in its name to acknowledge this Bill of Sale and Assignment as its act and deed.

Signed, attested and acknowledged in the presence of:

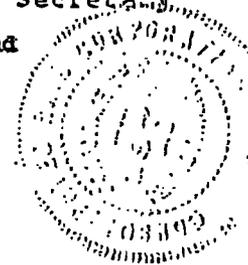
Alex S Reichertz
 Ester S. Reichertz
David Kleypis
 David Kleypis

CONSOLIDATED RAIL CORPORATION
 (Grantee)

By: Miller Heath L.S.
 Assistant Vice President
 Miller Heath

Attest: Franklin B. Holland
 Assistant Secretary
 Franklin B. Holland

(Corporate Seal)



DISTRICT OF COLUMBIA, ss:

On this 31st day of March, 1976, before me, a Notary Public authorized to take acknowledgements and proofs in the District of Columbia, personally appeared Miller Heath, personally known to me to be the person named in the foregoing Bill of Sale and Assignment, bearing the same date as this certificate of acknowledgement, as attorney in fact to acknowledge the same, and acknowledged himself to be such attorney in fact and that the foregoing Bill of Sale and Assignment is the free act and deed of CONSOLIDATED RAIL CORPORATION for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Martha C. Baron

Martha C. Baron
 Notary Public in and for
 the District of Columbia
 My Commission expires June 14, 1980

This Instrument Prepared by
 the United States Railway
 Association Pursuant to the
 Act:

DOCUMENT NO. PC-CRC-AA

SCHEDULE A

TO THE BILL OF SALE AND ASSIGNMENT BY AND BETWEEN

ROBERT W. BLANCHETTE, RICHARD C. BOND AND JOHN H. MCARTHUR

AS TRUSTEES OF THE PROPERTY OF

PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

AND

CONSOLIDATED RAIL CORPORATION

REAL PROPERTY

Certain properties conveyed by this Bill of Sale and Assignment are identified in part by their relation to real property identified in this Schedule A. Such real property consists of all of the real property certified by USRA to the Special Court pursuant to Section 209(c) of the Act: (1) for conveyance from Grantor to Grantee, (2) for conveyance to Grantee by or from any third party hereinafter listed, with respect to which real property USRA's certification includes a Release of Lease to be executed and delivered by Grantor to Grantee, and (3) for conveyance to Grantee by or from any such third party if the real property constitutes a part of or underlies any line of railroad identified in any other conveyance document from Grantor to Grantee or from any other such third party to Grantee.

The third parties are:

This Schedule A consists of pages A1 through A2 inclusive.

Chicago, Kalamazoo and Saginaw Railroad
Detroit Manufacturers Railroad
Fort Wayne and Jackson Railroad Company
Holyoke and Westfield Railroad Company
Joliet and Northern Indiana Railroad Company
The Kalamazoo, Allegan and Grand Rapids Railroad Company
The Little Miami Railroad Company
The Mahoning and Shenango Valley Company
The Mahoning Coal Railroad Company
The New York Connecting Rail Road Company
Pennsylvania Tunnel and Terminal Railroad Company
The Peoria and Eastern Railway Company
Shamokin Valley and Pottsville Railroad Company
Manor Real Estate Company
The New York and Long Branch Railroad Company
Pennsylvania-Reading Seashore Lines
West Jersey and Seashore Railroad Company
Pena Central Transportation Company
Beech Creek Railroad Company
The Michigan Central Railroad Company
Pennel Company
Cleveland and Pittsburgh Railroad Company
The Cleveland Cincinnati Chicago and St. Louis Railway Company
The Connecting Railway Company
Pittsburgh, Fort Wayne and Chicago Railway Company
The Northern Central Railway Company
The Philadelphia Baltimore and Washington Railroad Company
The Philadelphia and Trenton Rail Road Company
The Pittsburgh, Youngstown & Ashtabula Railway Company
Union Railroad Company of Baltimore
The United New Jersey Railroad and Canal Company
The Delaware Railroad Company
Erie and Pittsburgh Railroad Company
The Chicago River and Indiana Railroad Company
The Hudson River Bridge Company at Albany
Pennsylvania and Atlantic Railroad Company
Waynesburg Southern Railroad Company
South Manchester Railroad Company
Central Indiana Railway Company
The Indianapolis Union Railway Company
Union Depot Company (of Columbus, Ohio)
The Erie and Kalamazoo Railroad Company
The Dayton Union Railway Company
Bay Shore Connecting Railroad Company

DOCUMENT NO. PC-CRC-AA-B

SCHEDULE B

TO THE BILL OF SALE AND ASSIGNMENT BY AND BETWEEN

ROBERT W. BLANCHETTE, RICHARD C. BOND AND JOHN H. MCARTHUR

AS TRUSTEES OF THE PROPERTY OF

PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

AND

CONSOLIDATED RAIL CORPORATION

LEASES OF REAL PROPERTY

All Grantor's right, title and interest in, under and to all leases and other agreements, whether or not denominated a lease, under which Grantor possesses, occupies, uses or enjoys, as of the date of delivery hereof, a leasehold estate, tenancy or other right of use, occupancy or possession in land, buildings or other real property, which estate, tenancy or right is used or useful in the provision of rail services to be assumed by Grantee in connection with the properties identified in Schedule A.

Grantee assumes the foregoing leases and agreements and the obligation to perform and observe all covenants and conditions therein contained on the part of Grantor to be performed and observed after the date of delivery hereof, including the obligation to make required payments thereunder to the extent accruing after such date. Grantee assumes no liabilities or obligations of any kind which have accrued prior to the date of delivery hereof or which hereafter arise out of events which occurred prior to such date, in connection with the foregoing leases and agreements or any property held, used or enjoyed thereunder. Grantee agrees to indemnify and hold harmless Grantor against all losses, claims or damages which Grantor may suffer or be required to pay by reason of Grantee's failure to pay and discharge, as and when required, the obligations hereby assumed.

PROVIDED, HOWEVER, any other provision of this Bill of Sale and Assignment notwithstanding, there is specifically reserved and excepted from conveyance to Grantee hereunder, the following leases and agreements:

This Schedule B consists of pages B1 through B2 inclusive.

DOCUMENT NO. PC-CRC-AA-C

SCHEDULE C

TO THE BILL OF SALE AND ASSIGNMENT BY AND BETWEEN

ROBERT W. BLANCHETTE, RICHARD C. BOND AND JOHN H. MCARTHUR

AS TRUSTEES OF THE PROPERTY OF

PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

AND

CONSOLIDATED RAIL CORPORATION

MATERIALS, SUPPLIES AND EQUIPMENT

To the extent not conveyed to Grantee by Schedule G, all Grantor's right, title and interest in and to all materials, supplies, equipment, (including whitelined cars, as hereinafter defined), machinery, tools, parts, furnishings, fixtures, artifacts, memorabilia, scrap, floating equipment and other tangible personal property including but not limited to materials and supplies which would properly be carried in Account Number 712 of the Interstate Commerce Commission's Uniform System of Accounts (herein collectively "Materials and Supplies") which on the date of delivery hereof are physically located:

1. On premises identified in Schedule A; or
2. On premises conveyed to Grantee by Schedule B; or
3. At any location other than those described in subparagraphs 1 and 2 immediately preceding, whether of Grantor or another, to the extent the Materials and Supplies there situated were or would have been used in the ordinary course of Grantor's business:
 - a. On or at premises described in subparagraphs 1 and 2 above or elsewhere in connection with the provision of rail services of Grantor which are being assumed by Grantee pursuant to the Act; or

This Schedule C consists of pages C1 through C3 inclusive.

- b. By Grantor's employees who have accepted or hereafter accept employment with Grantee.

PROVIDED, HOWEVER, any other provision of this Schedule C notwithstanding, there are specifically reserved and excepted from conveyance to Grantee hereunder, the following:

1. All Grantor's rolling stock and equipment which would properly be recorded in Accounts 25, 37, 52, 53, 54, 55, 56, 57 and 58 of the Interstate Commerce Commission's Uniform System of Accounts. This exception does not include the appurtenant materials, supplies, tools and parts, which pass under this Bill of Sale and Assignment; and
2. Trackage materials and supplies being transferred to other grantees simultaneously herewith in implementation of the Final System Plan; and
3. Any Materials and Supplies reserved and excepted from conveyance to Grantee under Schedule G; and
4. Scrap and whited lined cars sold by Grantor prior to the date of delivery hereof, provided such sales have been approved by USRA and the purchaser has been identified to Grantee and provided, further, that such scrap and whited lined cars are removed by the purchaser within forty-five (45) days from such date; and
5. Materials and Supplies which shall remain the property of Grantor:

a. OFFICE FURNITURE AND EQUIPMENT

1) such office furniture and equipment as has been regularly used by those employees below the level of Assistant Vice President, who, after conveyance, will remain in the employ of Grantor.

2) such portion of the office furniture and equipment as has been used in common for the performance of a function, e.g., accounting, as represents the same ratio to the total of such furniture as the employees of Grantor who will remain in the employ of Grantor after conveyance for the performance of such function bears to the total number of employees who were involved therein prior to conveyance.

3) such office furniture and equipment as has been used by Robert W. Blanchette, Trustee, in his office in Room 1836 Six Penn Center, Philadelphia, Pennsylvania.

4) office furniture and equipment of a type and quality appropriate to employees below the level of corporate officer for those corporate officers (Assistant Vice-President level and above) who will remain in the employ of the Grantor after conveyance.

5) Law Books. One copy of such law books, within each city

as are duplicate copies of any in the law libraries which are conveyed to the Grantee in that city either under this Bill of Sale and Assignment, or under a bill of sale and assignment from another transferor, effective April 1, 1976. Also, the second copy (if any) of the set of bound volumes of the Reorganization Proceedings of the New Haven Railroad, wherever they may be, which duplicate the set in the Law Department Library at Six Penn Center, Philadelphia, Pennsylvania. If there is no second copy, Grantee will make its set available to Grantor or Grantor's agents at any reasonable time for inspection or to make extracts therefrom or copies thereof at Grantor's expense.

The allocation of office furniture and equipment and law books above provided for shall be based on an inventory to be made jointly by Grantor and Grantee no later than five (5) business days prior to conveyance date. In the event of any dispute as to any such allocation such dispute will be resolved by USRA.

b. TRUSTEES' SUPPLIES, ETC.

Such stationery and office supplies as were acquired specifically for the use of the Trustees in the administration of the Estate.

Notwithstanding any other provision of this Schedule, all Materials and Supplies, wherever located, which have been acquired pursuant to agreements entered into between the Grantor and USRA and/or the Federal Railroad Administration under Sections 213 and 215 of the Act are conveyed to the Grantee, to the extent of Grantor's interest therein.

"Whitelined cars", as used herein, means all Grantor's rolling stock which is no longer carried in ICC Accounts 25, 37, 52, 53, 54, 55, 56, 57 or 58 but which has not been reduced to scrap or salvage.

DOCUMENT NO. PC-CRC-AA-D

SCHEDULE D

TO THE BILL OF SALE AND ASSIGNMENT BY AND BETWEEN

ROBERT W. BLANCHETTE, RICHARD C. BOND AND JOHN H. MCARTHUR

AS TRUSTEES OF THE PROPERTY OF

PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

AND

CONSOLIDATED RAIL CORPORATION

BOOKS, FILES AND RECORDS

All current and historical books, files, records, instruments and documents of every kind in which Grantor has any interests, proprietary or custodial, including but not limited to:

Business records; muniments of title, deeds, tracings and other real estate records; personnel records and files; paper documents; manuals; correspondence; data files; tariff and division files; engineering records including valuation accounts, track charts and blueprints,

wherever located and by whomever maintained or possessed, which are in any manner related to rail properties conveyed to Grantee pursuant to the Act or to operations, finances or activities associated therewith or which relate to the employment by Grantor of any person who has or may hereafter become an employee of Grantee (herein "Files and Records").

PROVIDED, HOWEVER, any provision of this Schedule D notwithstanding, there are reserved and excepted from conveyance to Grantee hereunder the books, files and records listed below of Grantor and of Grantor's subsidiaries and affiliates the stock of which is not conveyed to Grantee by Schedule I hereof. The following exceptions do not apply to books, files and records of Grantor's subsidiaries or affiliates the stock of which is conveyed by Schedule I.

This Schedule D consists of pages D1 through D6 inclusive.

1. Corporate Records.

Minutes of meetings of directors, shareholders and other corporate bodies such as finance, pension and executive committees, together with supporting correspondence, memoranda and documents relating to such meetings; corporate charters, by-laws, corporate licenses and franchises issued by governmental bodies relating to corporate existence, and corporate seals, annual and interim reports issued to stockholders and to regulatory agencies; records and correspondence pertaining to the mergers and reorganizations of the predecessor companies of Grantor, its subsidiaries and affiliates.

2. Stock and Bond Records.

Stock and bond ledgers, registers and records of stock and bond transfers and correspondence relating to such transfers; unissued and cancelled bonds and stock certificates; records relating to the payment of dividends and interest; documents, records and correspondence relating to the listing of the securities of Grantor or Grantor's subsidiaries or affiliates on stock exchanges and correspondence with stock holders and bond holders relating to their ownership of securities of the Grantor or Grantor's subsidiaries or affiliates.

3. Financial Agreements.

Mortgages, bond indentures, corporate lease instruments except those relating to interests assumed by Grantee, loan agreements, guaranty agreements, subordination agreements, other financial agreements, and reports to indenture trustees and the SEC, together with any amendments or supplements thereof and correspondence and memoranda relating thereto, other than financial agreements the obligation of which Grantee is required to assume pursuant to the Act or assumes voluntarily.

4. Treasury Records.

Cash books, statements, reports, journals and ledgers relating to cash deposits and remittances, and supporting files and records; records of investments and securities owned by or held for the account of Grantor, its subsidiaries and affiliates other than records of investments in those corporate entities the stock of which is transferred to Grantee by Schedule I.

5. Accounting Records.

Files, ledgers, journals, statements, reports and other documents and records relating to the books of account of Grantor and its subsidiaries and affiliates.

6. Real Estate Records.

Deeds, leases and other documents, including valuation charts, maps and blueprints relating solely to real property which is not conveyed to Grantee by Schedule B hereof or by the documents identified in Schedule A.

7. Tax Records.

Tax returns, annual franchise and license tax reports to regulatory bodies and governmental agencies together with supporting correspondence and memoranda.

8. Personnel Records.

Personnel and medical records of Grantor's employees who remain in the employ of Grantor after the date hereof.

9. Legal Files.

Files and records of Grantor's legal department (including counsel for Grantor) that: (1) do not relate to obligations or liabilities assumed by Grantee, and (2) are not essential to the administration of rail operations assumed by Grantee; files and records which have been prepared by or for Grantor, its employees, agents, consultants or counsel in anticipation of specific litigation the conduct of which is not assumed by Grantee.

10. Trustee's Files.

Minutes of meetings of the trustees of the Debtor; the files and records of trustees and their staff relating to bankruptcy and reorganization proceedings of the Debtor, including pleadings and memoranda, affidavits and exhibits in support thereof; records relating to pre-bankruptcy claims filed with the Grantor other than those relating to obligations assumed by Grantee; and the Reorganization Library established pursuant to Order No. 1179 in the reorganization proceedings.

11. Valuation Records.

Memoranda, documents, correspondence, computer tapes and print-outs and other papers prepared for Grantor by its employees, and counsel and by consultants engaged by the Grantor for such purpose, which relate to the valuation of the rail properties conveyed by Grantor and its subsidiaries or affiliates pursuant to the Act and which are not used or useful in the administration of rail operations assumed by Grantee.

Grantee shall make or cause to make any files and records conveyed to it by Grantor available to Grantor or Grantor's agents or nominees at any reasonable time upon reasonable notice, for inspection or to make extracts therefrom or copies thereof at Grantor's expense, as may be reasonably requested by Grantor. In the event Grantee wishes to destroy any files and records conveyed hereunder, Grantee shall notify Grantor in writing of its intention to do so, identifying such files and records, whereupon Grantor may within ninety (90) days of the date of such notice (1) give its written consent to such destruction, or (2) at its own expense take possession of such files and records specified in Grantee's notice as it wishes to retain and remove the same from Grantee's premises. Upon receipt of such consent or expiration of such 90 days, whichever first occurs, Grantee may destroy such files and records as have not been removed.

Grantor shall make or cause to make any files and records reserved and excepted from conveyance hereunder available to Grantee or its agents or nominees at any reasonable time upon reasonable notice for inspection and to make extracts therefrom or copies thereof at the expense of Grantee, as may be reasonably requested by Grantee; provided, however, that Grantor shall not be required to give Grantee access to Trustee's Files, Legal Files or Valuation Records, as described in paragraphs 9, 10, and 11 of the foregoing list of reservations and exceptions. In the event Grantor wishes to destroy any files and records retained by it Grantor shall notify Grantee of its intention to do so, identifying such files and records, whereupon Grantee shall, within ninety (90) days of the date of such notice, (1) give its written consent to such destruction, or (2) at its own expense take possession of such files and records specified in Grantor's notice as it wishes to retain and remove the same from Grantor's premises. Upon receipt of such consent or expiration of such 90 days, whichever first occurs, Grantor may destroy such files and records as have not been removed.

Grantor and Grantee shall notify each other of any relocation to another building of files and records which are either conveyed hereunder or reserved and excepted from conveyance or of any change in the identification system of said files and records.

Grantor, its officers, agents and employees, will not knowingly disclose to or permit to be acquired by any person or corporation, without Grantee's prior written consent, any information contained in the Files and Records conveyed hereunder or in the files and records reserved and excepted from conveyance which information might be used to the detriment or prejudice of Grantee in its relations with its shippers, consignees, suppliers, competitors, or employees or which might improperly disclose Grantee's business transactions to a competitor, except as may be required in response to any legal process lawfully issued in any judicial or administrative proceeding, or as considered necessary or desirable by Counsel for Grantor in the conduct of such proceeding.

DOCUMENT NO. PC-CRC-AA-E

SCHEDULE E

TO THE BILL OF SALE AND ASSIGNMENT BY AND BETWEEN

ROBERT W. BLANCHETTE, RICHARD C. BOND AND JOHN H. MCARTHUR

AS TRUSTEES OF THE PROPERTY OF

PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

AND

CONSOLIDATED RAIL CORPORATION

EXECUTORY CONTRACTS AND AGREEMENTS

Grantor's rights of whatever name or nature, in law or in equity, in, under and to each and every contract to which Grantors or their predecessors in interest are or were parties and which is in effect on the date hereof and which is used or useful in the provision of rail services to be assumed by Grantee in connection with the properties conveyed to Grantee by this Bill of Sale and Assignment and the properties identified in Schedule A, except as hereinafter provided.

Grantee assumes the foregoing contracts and the obligation to perform and observe all covenants and conditions therein contained on the part of Grantor to be performed and observed after the date of delivery hereof, including the obligation to make required payments thereunder to the extent accruing after such date. Grantee assumes no liabilities or obligations of any kind which have accrued prior to the date of delivery hereof or which thereafter arise out of any event, act or failure to act which occurred prior thereto in connection with the foregoing contracts or any property which is the subject thereof. Grantee agrees to indemnify and hold harmless Grantor against all losses, claims or damages which Grantor may suffer or be required to pay by reason of Grantee's failure to pay and discharge, as and when required, the obligations hereby assumed.

PROVIDED, HOWEVER, any other provision of this Schedule E notwithstanding, the following contracts are expressly reserved and excepted from conveyance to Grantee and Grantee assumes no obligations in connection therewith:

This Schedule E consists of pages E1 through E8 inclusive.

1. Any contract or agreement reserved and excepted from conveyance to Grantee by any other schedule of this Bill of Sale and Assignment or by any conveyance document certified by USRA to the Special Court in connection with the properties identified in Schedule A; and
2. All leases, conditional sale agreements and equipment trust agreements which would properly be carried in Accounts 25, 37, 52, 53, 54, 55, 56, 57 or 58 of the Interstate Commerce Commission's Uniform System of Accounts; and
3. The following:
 - a. Any employment contract between Grantor, Debtor or Debtor's predecessor in interest and any individual officer or employee, other than existing collective bargaining agreements entered into by Grantor, Debtor or Debtor's predecessor in interest, which collective bargaining agreements are assumed by Grantee to the extent required by Section 504(a) of the Act.

b. Retention by Estate:

All agreements and contracts relating solely to property excepted and reserved in the documents described in Schedule A.

c. Other contracts:

1) CONSTRUCTION

All construction agreements which would require Grantee, to complete said construction subsequent to conveyance date, without complete financial remuneration.

2) DEMOLITION

All demolition agreements which would require Grantee, to complete said demolition subsequent to conveyance date, without complete financial remuneration.

3) REHABILITATION & MODERNIZATION

All agreements for rehabilitation or modernization of rail properties which would require Grantee, to complete such rehabilitation or modernization subsequent to conveyance date, without complete financial remuneration.

4) LEASES

Office Equipment - All agreements for the lease, service, repair or other use of office equipment materials and supplies which agreements relate solely to office equipment, materials and supplies located on premises other than (1) premises identified in Schedule A, (2) premises conveyed to Grantee by Schedule B, or (3) premises in which Grantee is given a temporary right of occupancy pursuant to the Final System Plan.

5) REAL ESTATE OPTIONS

Options granted prior to Conveyance Date by any person whomsoever to any person whomsoever to purchase or lease any part of the real property to be conveyed to Grantee identified in Schedule A the exercise of which is not contemplated by the Final System Plan.

6) CREDIT CARDS

All agreements which relate to the use of credit cards of whatever kind or nature.

7) PURCHASING

All Executory contracts, agreements, orders, blanket orders, and consignment agreements, for the purchase of goods of any kind other than agreements for the purchase of fuel by the Grantor and other than such agreements which have been entered into in order to enable Grantor to satisfy its obligation under construction agreements which are assumed by Grantee.

8) Professional Services (Non-Medical) - All agreements pursuant to which professional services (other than medical) are furnished to Grantor.

9) MAINTENANCE AND SECURITY

All agreements for the maintenance and security of rail properties, real or personal, which are not conveyed to Grantee.

10) FINANCIAL

All financial agreements including but not limited to loan agreements, mortgages, promissory notes, bond indentures, note purchase agreements, guarantee agreements and other agreements involving the loan of money to or purchase of the indebtedness of Grantor other than financial agreements which Grantee is required to assume pursuant to the Act and the Final System Plan.

11) SURVEYS AND TEST BORINGS

All surveys and test borings agreements.

12) JOINT FACILITY AND TRACKAGE AGREEMENTS

<u>DATE</u>	<u>FACILITY</u>	<u>LOCATION</u>	<u>ROADS</u>
10-20-1930	Intlkr. & Crsg.	Federman, MI.	AA-PC
05-02-1949	Maintenance & Operation	Akron Union Psgr. Depot	AA-PC-B&O
09-24-1958	Swtg. Cars	General Foods Boardman, OH.	Y&S-PC-P&LE
01-18-1883	Trackage	State Line, PA. Cumberland, MD.	WM-PC
02-02-1949	M&O Intlkr.	Falconer, NY	EL-PC
01-03-1936	Joint Swtg.	American Maize, Hammond, IN.	IHB-PC
01-21-1965	Trackage, B&O CT Whiting Branch	East Chicago IL.	B&O CT-PC
09-14-1973	Trackage	Seymour, IN North Vernon, IN.	B&O-PC
09-19-1962	Trackage, T&S Branch	Albany, NY Green Island, NY	D&H-PCTC

13) OPERATING AGREEMENTS

Intermodal - Rental Agreement for PCTC Terminal; between PCTC and Port Authority of New York. Registry No. 161-871, Lease No. L-NS-736, dated June 29, 1971.

14) SIDE TRACK AGREEMENTS

All industrial side track agreements, track construction or rehabilitation agreements and marine or intermodal terminal development agreements which require the payment of refunds per car, trailer or container to any person, firm, association, cooperative, etc.

15) NUCLEAR MATERIALS AGREEMENTS

All such agreements.

16) INSURANCE AGREEMENTS

<u>Policy or Bond No.</u>	<u>Insurance Co.</u>	<u>Kind of Insurance</u>	<u>Term of Insurance</u>
NS-257	Nuclear Energy Liability Ins. Assoc.	Nuclear Liability \$125,000,000	1-1-76 to 1-1-77
MS-50	Mutual Atomic Energy Liability Underwriters		
C-663-4339 (renewal of)	Great Amer. Ins. Co.	Automobile Liability State of Mass.	1-1-76 to 1-1-77
39C-C10548	Hartford Accident & Indemnity Co.	Protective Liability (Over-size Loads)	1-1-76 to 1-1-77
318-002286	Argonaut Ins. Co.	Physicians & Surgeons Professional Liability \$1,000,000	1-10-76 to 1-10-77
75-03-0907	Lloyds	Fire & Explosion Legal Liability \$1,500,000 excess of \$500,000	1-26-76 to 1-26-77
5084131	Lloyds	Excess Liability Operation of U.S. DOT Test Cars \$1,850,000 excess of \$150,000	2-19-75 to 2-19-76 (and any renewal)

INSURANCE AGREEMENTS (con'td)

<u>Policy or Bond No.</u>	<u>Insurance Co.</u>	<u>Kind of Insurance</u>	<u>Term of Insurance</u>
R-5484	Mutual Fire, Marine & Inland Ins. Co.	Fire & Extended Coverage Shop Properties at Renova, Pa. leased to Berwick Forge & Fabricating Co.	3-1-75 to 3-1-77
MW-22478	Lloyds	Protective Liability Acts or omissions of independent contractors \$2,000,000 single limit	3-9-76 to 3-9-77
LX-2672509	Firemen's Insurance Co.	Contingent liability non rail assets \$2,500,000 excess of \$5,000	3-21-75 to 9-21-76
8485443	Great Amer. Ins. Co.	Automobile Liability \$500,000 S.L.	4-1-75 to 4-1-76
HEC4356878	Home Ins. Co.	Excess Automobile Liability \$1,500,000 excess of \$500,000	4-1-75 to 4-1-76
R5499	Mutual Fire Marine & Inland Ins. Co.	Fire, E.C. & V.S.M.M. Ins.-Refrigeration Plant, W. 13th St., NYC	4-1-75 to 4-1-76
Various	Various	Excess Liability Ins. \$33,000,000 excess of \$2,000,000	4-16-75 to 4-16-76
858244	Great Amer. Ins. Co.	Automobile Lia- bility Canadian Vehicles \$500,000 single limit	4-17-75 to 4-17-76
M24-97-54	Employers Fire Ins. Co.	Fire, EC&V.&M.M. Ins. - Pitt Penn Terminal, Pittsburgh, Pa.	4-19-75 to 4-19-76

INSURANCE AGREEMENTS (con'td)

<u>Policy or Bond No.</u>	<u>Insurance Co.</u>	<u>Kind of Insurance</u>	<u>Term of Insurance</u>
629-3441	Federal Ins. Co.	All Risk 121 M.W. Univaus	12-12-75 to 12-12-76
625-45-36	Fed. Ins. Co.	All Risk U.S.R.A.M.W. Roadway Equip. (Service)	7-16-75 to 7-16-76
625-45-25	Fed. Ins. Co.	All Risk U.S.R.A.M.W. Road- way Equip. (Storage)	5-6-75 to 5-6-76
Various	Lloyds & Northbrook	Fiduciary Liability \$5,000,000	8-15-75 to 8-15-76
ZCV002760	California Union Ins. Co.	Railroad Protective Trailvan & automo- bile terminals \$500,000 B.I.	9-15-75 to 9-15-76
RM8507	Boston Old Colony Ins. Co.	Registered Mail & Express Ins. \$5,000,000	9-1-75 to 9-1-76
DDD61297	Hartford Accident & Indemnity Co.	Fidelity Bond Money & Securities & Depositors Forgery \$2,000,000	8-11-75 to 8-11-76

17) PASSENGER OPERATIONS

- a) Operating Agreement between the Massachusetts Bay Transportation Authority and the Trustees of the Penn Central Transportation Company dated as of July 22, 1974 as amended and extended to date.
- b) Agreement between the Southeastern Pennsylvania Transportation Authority and the Trustees of the PCTC dated as of July 1, 1975 as amended or supplemented to date.
- c) Agreement between the State of New Jersey and the Trustees of the PCTC dated January 1, 1975 as amended and extended to date.
- d) Agreement between the State of Rhode Island and the Trustees of PCTC dated January 10, 1975.
- e) Agreement between the National Railroad Passenger Corporation (Amtrak) and the Trustees of the PCTC dated as of April 16, 1971 as amended and supplemented to date.
- f) Supplemental Agreement (acquisition of passenger equipment) between SEPTA and the Trustees of the PCTC, dated October 11, 1971.
- g) Agreement between Conestoga Stage Lines and the Trustees of the PCTC for bus service between York and Lancaster, Pennsylvania, as amended or extended to date.

18) NON-AGREEMENT EMPLOYEES

Any and all agreements, plans or obligations of whatever nature and kind relative to so-called "Employee Relief Department Benefits", "Death Benefits" and "Medical or Health Benefits" pertaining to those non-agreement employees and officials of Grantor who, subsequent to the date of delivery hereof, became employees of Grantee.

19) PENSION BENEFIT PLANS

All employee pension benefit plans and other deferred compensation arrangements and all contracts and agreements relating thereto, other than that certain agreement dated 1970 by and between Penn Central Transportation Company and The Ashtabula and Buffalo Dock Co. covering, inter alia stevedoring services at Ashtabula, Ohio, and other than that certain agreement dated March 7, 1946 by and between The Lakefront Dock and Railroad Terminal Company and The New York Central Railroad Company and The Baltimore and Ohio Railroad Company, as amended, both of which are conveyed to Grantee.

DOCUMENT NO. PC-CRC-AA-F

SCHEDULE F

TO THE BILL OF SALE AND ASSIGNMENT BY AND BETWEEN

ROBERT W. BLANCHETTE, RICHARD C. BOND AND JOHN H. MCARTHUR

AS TRUSTEES OF THE PROPERTY OF

PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

AND

CONSOLIDATED RAIL CORPORATION

SPECIAL FUNDS

All accounts receivable, deposits, escrows, bank accounts, interests in negotiable instruments, funds, reserves, cash and cash equivalents to the extent that they are (or should have been, in accordance with applicable accounting standards) segregated, earmarked, held aside or otherwise specifically allocated to the payment of liabilities that the Grantee is or will become liable to pay or represent amounts attributable to the operations or activities of the Grantor for which the Grantee assumes, on its own behalf or on behalf of The National Railroad Passenger Corporation, either voluntarily or by operation of law, any present or future liability, absolute or contingent.

An example of the kind of accounts, funds, reserves and other assets intended to be included is deposits for equipment lost, destroyed or otherwise disposed of, under equipment trusts or conditional sale agreements which Grantee assumes.

This is the only page of Schedule F.

SCHEDULE G

TO THE BILL OF SALE AND ASSIGNMENT BY AND BETWEEN

ROBERT W. BLANCHETTE, RICHARD C. BOND AND JOHN H. MCARTHUR

AS TRUSTEES OF THE PROPERTY OF

PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

AND

CONSOLIDATED RAIL CORPORATION

DATA PROCESSING SYSTEMS AND SUPPLIES

All Grantor's data processing systems, supplies, leases, licenses, hardware and software, regardless of function, wherever located, and files and documentation pertaining thereto which are used or useful in the provision of rail services to be assumed by Grantee in connection with the properties conveyed to Grantee by this Bill of Sale and Assignment and the properties identified in Schedule A, including but not limited to:

Computers; data logging, reproduction, filing and retrieval equipment; photographic and facsimile transmission equipment; high and low speed computer terminals, computer peripheral units such as tape and disk drives, readers, printers, punches and their associated controllers, data capture and transmission devices such as ACI scanners. OCR and MICR equipment, plotting and display devices; data transmission equipment such as communication lines and microwave channels, COM equipment, EAM and TAB equipment; all leased and owned software packages and operating systems in administrative, operational or other use or in development; all data processing related furniture, storage cabinets, racks, shelves, flooring, environmental monitoring and control devices, power supply devices and air conditioning equipment; security and fire detection, prevention and control

This Schedule G consists of pages G1 through G5 inclusive.

or maintenance manuals, flow charts, narrative systems or program descriptions, schedules, training and presentation aids, training manuals inventories, paper tapes, maintenance and operation logbooks, journals and other records, reports, memos and correspondence relating to the foregoing; all Grantor's right, title and interest in, under and to any contract or agreement in effect on the date hereof for the purchase, sale, lease, licensing, service, repair or other use of any of the foregoing.

Grantee grants to Grantor a license to use, without payment of royalty, the following programs, copyrights of which have been conveyed to Grantee by Schedule J; provided, however, that Grantor may not sub-license or otherwise permit the use of such programs or any part thereof by any person or corporation other than Grantor's subsidiaries and affiliates:

- a. RPPSQUAL (Data validation)
- b. RPCREWHR (Operating Statistics Computations)
- c. RPCBLYC (Operating Statistics Computations)
- d. RPOSRP (Operating Statistics Summary Report)
- e. RPOSWR (Operating Statistics Summary Report)
- f. RPNF1040 (Operating Statistics Summary Report)

PROVIDED, HOWEVER, any other provision of this Schedule G notwithstanding, the following are expressly reserved and excepted from conveyance to Grantee and Grantee assumes no obligations in connection therewith:

- 1. Computer programs, documentation and accompanying data files providing a verified record of creditor claims for debts incurred prior to bankruptcy.
- 2. Computer programs, documentation and accompanying data files which are used to record the purchase and sale of Penn Central Company and subsidiary company stock certificates.

3. All Grantor's computer files and programs relating to model activities located at UNI-COLL Corp., 3401 Market Street, Philadelphia, PA., under contract between Wyer, Dick and Company and Grantor.

4. One copy of Grantor's computer files and programs relating to model activities located on magnetic tape at Computer Sciences Corporation, 815 Commerce Drive, Oakbrook, IL., under Day and Zimmermann Identification Number EDB005.

5. Inventory and Valuation files:

a. All Grantor's computer files and programs relating to Grantor's Inventory and Valuation and located at Day and Zimmermann, 1818 Market Street, Philadelphia, PA.

b. All Grantor's computer files and programs relating to Grantor's Inventory and Valuation identified as disk packs PCDZ 01, PCDZ 02 and PCDZ 03 and located at 15 N. 32nd St., Philadelphia, PA.

c. All Grantor's computer files and programs relating to Grantor's Inventory and Valuation, located in bonded storage at L.W. Pierce, 4 Horne Drive, Folcroft, PA.

6. Data files used to record income collection and accounting activities relating to the use and sale of real property which is reserved and excepted from conveyance to Grantee under the documents identified on Schedule A.

7. Data Applicable to Grantor's Operations:

a. Personnel Accounting and payroll data and history relating to employees remaining with the Trustees.

b. Data relating to the employment background and work histories of employees remaining with the Trustees.

c. Data currently contained in the master files of the Roadway Accounting Mechanized System applicable to non-operating assets which will not be conveyed to Grantee.

Grantee assumes all leases and other contracts conveyed hereby and agrees to perform and observe all covenants and obligations therein contained on the part of Grantor to be performed and observed after the date hereof, including the obligation to make any required payments thereunder to the extent accruing after the date hereof. Grantee assumes no liabilities or obligations of any kind which have accrued prior to the date hereof or which hereafter arise out of events which occurred prior to the date hereof, in connection with the foregoing leases and other contracts or any property which is the subject thereof. Grantee agrees to indemnify and hold harmless Grantor against (1) all losses, claims or damages which Grantor may suffer or be required to pay by reason of Grantee's failure to pay and discharge, when and as required, the obligations hereby assumed, and (2) damages for which Grantor is held liable as a result of Grantee's use, after the date hereof, of the properties conveyed to Grantee by this Schedule G.

Grantee will retain (either in original or duplicate form, as Grantee may elect) all computer programs, files and documentation conveyed to it hereunder (herein "Grantor's Materials") and will, at any reasonable time, upon reasonable notice, permit Grantor or its agents to inspect, duplicate or make extracts of Grantor's Materials and will, at Grantor's request, process for Grantor any programs which are a part of Grantor's Materials, in the form conveyed hereunder. However, Grantee shall not be obligated to alter, amend or supplement Grantor's Materials or to provide or permit processing, inspection, extraction or duplication of any programs, files or documentation other than Grantor's Materials, except as may be hereafter agreed upon in writing. Grantee shall not be liable to Grantor for any loss or liability caused by machine malfunction, including loss or liability occasioned by errors in duplication of Grantor's Materials, but will, at Grantor's expense, correct any of the errors in Grantor's Materials caused by duplication thereof.

Grantor will retain (either in original or duplicate form, as Grantor may elect) all computer programs, files and documentation reserved and excepted from conveyance hereunder and will, at any reasonable time, upon reasonable notice, permit Grantee or its agent to inspect, duplicate or make extracts of such retained programs, files, and documentation; provided, however, Grantor shall not be required to permit access, duplication, or extraction of or to the computer materials described in paragraphs 3, 5(a), 5(b), 5(c) and 6 of the foregoing list of exceptions from conveyance except that Grantor shall permit access to and inspection, duplication and extraction of those portions of the computer materials described in paragraph 3 of the foregoing list of exceptions from conveyance as may be useful in a future conversion of the CRAM model to IBM equipment. Grantor's obligation to retain such programs, files and documentation shall cease one year from the date hereof.

Grantee will retain, process and permit access, inspection, duplication and extraction of and to Grantor's Materials for a period of one year from the date hereof. Thereafter, except as may otherwise be required by the terms of an agency agreement entered into by Grantor and Grantee pursuant to Section 211(h)(2) of the Act, Grantee's obligation to retain, and permit access to and inspection, duplication and extraction of and from Grantor's Materials shall cease on the sixtieth (60th) day after the date of notice to Grantor of Grantee's intention to cease retention of that portion of Grantor's Materials specified in said notice and Grantee's obligation to process Grantor's Materials shall cease on the ninetieth (90th) day after the date of notice to Grantor or Grantee's intention to cease processing of that portion of Grantor's Materials specified in such notice.

Notwithstanding any other provision of this Schedule G, Grantee shall not be obligated to provide or permit access to or duplication, processing or any other use of Grantor's Materials in violation of the terms of any lease, license or other agreement under which Grantor's Materials are owned, possessed, used or enjoyed by Grantee, or if the proprietary rights of any third party in or to Grantor's Materials would be infringed.

Grantor, its officers, agents and employees, will not knowingly disclose to or permit to be acquired by any person or corporation, without Grantee's prior written consent, any information contained in Grantor's Materials or in any programs, files, documentation or other materials reserved and excepted from conveyance hereunder which information might be used to the detriment or prejudice of Grantee in its relations with its shippers, consignees, suppliers, competitors or employees or which might improperly disclose Grantee's business transactions to a competitor, except as may be required in response to any legal process lawfully issued in any judicial or administrative proceeding, or as considered necessary or desirable by Counsel for Grantor in the conduct of such proceeding.

Grantor shall reimburse Grantee for all direct costs, such as computer rental based on a proportionate usage, for labor and materials and for a fair allocation of other processing cost, which Grantee may incur in connection with the retention, processing, duplication, inspection or extraction of Grantor's Materials by or for Grantor.

DOCUMENT NO. PC-CRC-AA-H

SCHEDULE H

TO THE BILL OF SALE AND ASSIGNMENT BY AND BETWEEN

ROBERT W. BLANCHETTE, RICHARD C. BOND AND JOHN H. MCARTHUR

AS TRUSTEES OF THE PROPERTY OF

PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

AND

CONSOLIDATED RAIL CORPORATION

**RIGHTS, POWERS, FRANCHISES, PRIVILEGES
AND IMMUNITIES**

To the extent not conveyed to Grantee by the execution and delivery of conveyance documents certified by USRA to the Special Court in connection with the properties identified in Schedule A, all rights, powers, franchises, licenses, easements, privileges and immunities, including any fuel entitlements or allocations, which Grantor may own, possess or enjoy, granted by any person, corporation or other entity, including but not limited to any governmental body or authority, whether federal, state or local, by permit, license, statute, ordinance or otherwise, which are used or useful in the provision of rail services assumed by Grantee in connection with the properties conveyed to Grantee by this Bill of Sale and Assignment or identified in Schedule A.

Grantee agrees to perform and observe, from and after the date of delivery hereof, all covenants and obligations upon which Grantor's ownership, possession or enjoyment of any right, power, franchise, license, easement, privilege or immunity conveyed hereunder is conditioned, including the obligation to make any payment therefor, to the extent accruing after such date. Grantee assumes no other liabilities or obligations of any kind of Grantor arising out of or in connection with the foregoing rights, powers, franchises, licenses, easements, privileges or immunities or any property which is the subject thereof, which have accrued prior to the date of delivery hereof or which thereafter arise out of events which have occurred prior thereto. Grantee agrees to indemnify and hold harmless Grantor against all losses, claims or damages which Grantor may suffer or be required

This Schedule H consists of pages H1 through H2 inclusive.

to pay by reason of Grantee's failure to pay and discharge, when and as required, the obligations hereby assumed.

PROVIDED, HOWEVER, the following is reserved and excepted from conveyance:

All items enumerated above which relate solely to property excepted and reserved in the conveyance documents certified by USRA to the Special Court in connection with the properties identified in Schedule A.

DOCUMENT NO. PC-CRC-AA-1

SCHEDULE I

TO THE BILL OF SALE AND ASSIGNMENT BY AND BETWEEN

ROBERT W. BLANCHETTE, RICHARD C. BOND AND JOHN H. MCARTHUR

AS TRUSTEES OF THE PROPERTY OF

PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

AND

CONSOLIDATED RAIL CORPORATION

CORPORATE INTERESTS

All capital stock owned by Grantor in the corporations named below and also any interest of Grantor as creditor of such corporations (except as to current accounts). Any collections by or distributions to Grantee with respect to such a creditor interest shall be for the account of Grantor. However, Grantee assumes no obligation to collect or require repayment of any indebtedness owing by the corporations named below to Grantor or to enforce any contract or agreement relating to any such indebtedness.

1. The Belt Railway Company of Chicago (Chicago Belt Railway Company)
2. Illinois Terminal Railroad Company
3. Peoria and Pekin Union Railway Company
4. Detroit Terminal Railroad Company
5. The Toledo Terminal Railroad Company
6. Indiana Harbor Belt Railroad Company
7. Calumet Western Railway Company
8. The Akron & Barberton Belt Railroad Company
9. The Nonogahela Railway Company
10. Trailer Train Company
11. Fruit Growers Express Company
12. Niagara Junction Railway Company
13. Merchants Despatch Transportation Corporation
14. Lakefront Dock and Railroad Terminal Company (OPTION)
15. Richmond-Washington Company

16. Chicago Union Station Company
17. Pennsylvania Truck Lines, Inc.
18. Penn Central Communications Corporation
19. Raritan River Rail Road Company

This is the only page of Schedule I.

DOCUMENT NO. PC-CRC-AA-J

SCHEDULE J

TO THE BILL OF SALE AND ASSIGNMENT BY AND BETWEEN

ROBERT W. BLANCHETTE, RICHARD C. BOND AND JOHN H. MCARTEUR

AS TRUSTEES OF THE PROPERTY OF

PENN CENTRAL TRANSPORTATION COMPANY, DEBIOR

AND

CONSOLIDATED RAIL CORPORATION

INTELLECTUAL PROPERTY RIGHTS

All patents, shop rights, trademarks, trade names, trade secrets, copyrights, customer lists and other intellectual property and rights (including any applications for the registration of any of the foregoing and any licenses for the use thereof) owned, possessed, or enjoyed by Grantor and useful in the provision of rail services assumed by Grantee in connection with the properties conveyed to Grantee by this Bill of Sale and Assignment or identified in Schedule A.

Specifically including, but not limited to the following:

1.

<u>PATENT NO.</u>	<u>DATE</u>	<u>TO WHOM ISSUED:</u>	<u>TYPE</u>
2552271	5/8/51	H. W. Fairs	Cartridges for hot bearing or hot box alarms
2543161	2/27/51	H. W. Fairs	Improvements in roller bearing hot box alarms*
2566040	8/28/51	L. C. Simmons	Improvements in fuel producing method and burner
2566041	8/28/51	L. C. Simmons	Improvements in steam heating boiler control systems
2654327	10/6/53	A. L. Simpson	Improvements in freight cars*
2659858	11/17/53	R. H. Winchester	(NOT KNOWN)

* Patents shown terminated on our records.

This Schedule J consists of pages J1 through J4 inclusive.

<u>PATENT NO.</u>	<u>DATE</u>	<u>TO WHOM ISSUED:</u>	<u>TYPE</u>
2668741	2/9/54	H. T. Tockwell	Improvements in journal lubricators*
2637495	8/24/54	W. S. H. Hamilton	Starting and operating circuits for fluorescent lamps
2703375	3/1/55	W. S. H. Hamilton	Starting and operating circuits for fluorescent lamps
2667604	1/26/54	W. S. H. Hamilton	Improvements in starting and operating circuits for fluorescent lamps*
2714690	8/2/55	W. S. H. Hamilton	Fluorescent lighting circuits (NOT KNOWN)
2714691	8/2/55	W. S. H. Hamilton	Fluorescent lamp circuits
2717332	9/6/55	W. S. H. Hamilton	Fluorescent lamp circuits
2717333	9/6/55	W. S. H. Hamilton	Fluorescent lamp circuits
2729768	1/3/56	W. S. H. Hamilton	Fluorescent lamp circuits
2729769	1/3/56	W. S. H. Hamilton	Fluorescent lamp circuits
2730968	1/17/56	H. W. Fairs	Lading protection
2743383	4/24/56	W. S. H. Hamilton	Fluorescent lamp circuits
2767690	10/23/56	L. C. Simmons	Air systems for boiler control
2849813	9/2/58	F. O. Robbins et al. (License)	Reservation signboard indicator*
2852003	9/16/58	L. C. Simmons	Steam heating boiler control systems*
2852277	9/16/58	F. O. Robbins et al. (License)	Envelope for space reservation tickets*
2915178	12/1/59	D. W. Wolke (License)	Ticket holding apparatus
2915189	12/1/59	R. W. Wolke (License)	Ticket container and ticket divider and indicator
2973724	3/7/61	D. E. Miller et al.	Freight support and restraining system
3017841	1/1/62	D. E. Miller et al. (1/4 interest)	Freight support and restraining system
3075336	1/29/63	L. D. Hays	Separator for removing oil and water from compressed air system
3155191	11/3/64	G. W. Nelson	Automatic journal box oiling apparatus
3405449	10/15/68	C. F. Kantela	Rail track gauge
3895587	7/22/75	Richard M. Ball	Railroad car for transporting automobiles
2645938	7/21/53	A. E. F. Billstein	Improvements in rail flaw detecting device
2655166	10/13/53	C. K. Steins and W. H. Keller	Detector valve for hot bearing indicating systems

* Patents shown terminated on Grantor's records.

<u>PATENT NO.</u>	<u>DATE</u>	<u>TO WHOM ISSUED:</u>	<u>TYPE</u>
2659318	11/17/53	C. K. Steins and W. M. Keller	Improvements in freight cars for double deck leading of autos
2665937	1/12/54	C. J. Reigh	Improvements in a grapple
2674208	4/6/54	W. M. Keller and L. M. Showers	Improvements in cover for gondola cars
2732169	1/24/56	J. F. Matteo	Improvements in valve assembly
2817304	12/24/57	C. H. Newcomer, S. Nagy and L. M. Showers	Improvements to skid
2888183	5/12/59	C. K. Steins	Improvements to car coupling
2894462	7/14/59	G. H. Newcomer and L. M. Showers	Improvements to bulk head for freight cars
2914003	11/24/59	Max Seel and R. H. Brodeur	Improvements in railway cars
3070043	12/25/62	H. L. Decker	Snubber device
3121260	2/18/64	H. L. Decker and L. W. Bertram	Sliding door pusher block
(Application Serial No. 460243)	Filed 6/1/65	R. H. Brodeur and L. W. Bertram	Invention in "Railroad Car"

TRADEMARKS

The New York Visitor
Cruisin' Susan
Sleepercoach-
Early Bird
Data Central
Tele Central Design
Flexi Flo
Flexi-Flator
Super-Var
Trailven
Truc Train
Economeals.

REGISTERED NO.

347362
653901
832711
648007
805791
805792
810574
837304
858100
924473
656229
617300

DATE

6/22/37
10/29/57
7/25/67
7/2/57
3/15/66
3/13/66
6/28/66
10/17/67
10/1/68
11/23/71
-
-

APPLICATION NO.

Metroliner
Symbol for Metroliner
The Metroliners and Symbol
Turboservice

320370
320371
320369
332517

* Patents shown terminated on Grantor's records.

<u>COPYRIGHT:</u>	<u>REGISTRATION NO.</u>	<u>DATE</u>
Spectra Check Engine Maintenance Program Instruction Manual	A-118624	1/12/70

2. Copyrights of Computer Programs

<u>PROGRAMS</u>	<u>COPYRIGHT IDENTIFICATION NO.</u>
RPOSWR	A701412
RPPSQUAL	A701413
RPCREWHK	A701441
RPNF1040	A701442
RPCBHYLC	A701443
RPOSRP	A708843

PROVIDED, HOWEVER, the following are reserved and excepted from conveyance hereunder:

<u>TRADEMARKS</u>	<u>REGISTERED NO.</u>	<u>DATE</u>
New York Central	680181	6/9/59
Pennsy Trucktrain Service	565230	6/9/59
The Pennsy	573833	6/9/59
PRR Keystone	523628	6/9/59
Penn Central Post	877567	6/9/59

	<u>APPLICATION NO.</u>	
PC	323008	6/9/59

To the extent that any trademark above reserved and excepted is presently in use on rail properties conveyed to Grantee, Grantee shall have the right to continue use thereof without any liability to Grantor.

*from
Summit in PC-022-00*

BEFORE THE ARBITRATION COMMITTEE

STEVEN H. STEINGLASS, ESQ.
NEUTRAL ARBITRATOR

MICHAEL J. KNAPIK, et al.,
Claimants,
v.
PENN CENTRAL,
Carrier.

Case No. 69-722

ROBERT WATJEN, et al.,
Claimants,
v.
PENN CENTRAL,
Carrier.

Case No. 69-675

DAVID C. BUNDY, et al.,
Claimants,
v.
PENN CENTRAL,
Carrier.

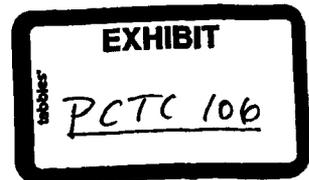
Case No. 69-947

G.V. SOPHNER, et al.,
Claimants,
v.
PENN CENTRAL,
Carrier.

Case No. 69-914

**DEFENDANT'S RESPONSES AND
OBJECTIONS TO PLAINTIFFS'
FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Defendant, Penn Central Corporation ("PCC"), by and through its undersigned counsel,
hereby serves its Responses and Objections to Plaintiffs' First Set of Requests for Production of
Documents ("Requests") as follows:



GENERAL OBJECTIONS

General Objection No. 1: PCC objects to the Requests to the extent that they seek information and/or documents that are not relevant to the subject matter of this action, or seek information and/or documents that are not reasonably calculated to lead to the discovery of admissible evidence.

General Objection No. 2: PCC objects to the Requests to the extent that they are overly broad, unduly burdensome, oppressive, or impose an unnecessary and unreasonable burden and expense on PCC.

General Objection No. 3: PCC objects to the Requests to the extent that they are vague, undefined and/or ambiguous.

General Objection No. 4: PCC objects to the Requests to the extent that they seek public information and/or documents to which Plaintiffs have equal access and which Plaintiffs can just as easily obtain.

General Objection No. 5: PCC objects to the Requests to the extent that they seek information and/or documents that PCC has already produced to Plaintiffs.

General Objection No. 6: PCC objects to the Requests to the extent they seek information and/or documents that cannot be obtained after a reasonably diligent search.

General Objection No. 7: PCC objects to the Requests to the extent that they request information and/or documents that are already within Plaintiffs knowledge, possession, and/or control.

General Objection No. 8: PCC objects to the Requests to the extent that they seek information and/or documents regarding matters that continue to be investigated and/or evaluated.

General Objection No. 9: PCC objects to the Requests to the extent that they seek information and/or documents protected by the attorney-client privilege, work-product doctrine, and/or any other applicable privilege or immunity.

General Objection No. 10: PCC objects to the Requests to the extent that they seek information and/or documents that contain confidential or proprietary business information.

SPECIFIC OBJECTIONS TO INSTRUCTIONS

PCC objects to Instruction (d) by incorporating General Objection Nos. 1-3.

PCC objects to Instruction (e) by incorporating General Objection Nos. 1 and 2.

PCC objects to Instruction (h) by incorporating General Objection No. 1.

PCC objects to Instruction (i) by incorporating General Objection Nos. 1 and 2.

Background for All Objections and Responses

The Penn Central Transportation Company (“PCTC”) was formed in the late 1960s through the mergers of several railroads, including The Pennsylvania Railroad Company, New York Central Railroad, and New York, New Haven & Hartford Railroad Company. From April 1846 through March 1976, these railroads provided passenger and freight rail service originating from numerous rail yards and related facilities located throughout the United States.

On June 21, 1970, PCTC filed a petition for reorganization in the United States District Court for the Eastern District of Pennsylvania (“Reorganization Court”), the Honorable Judge John P. Fullam presiding, under Section 77 of the Bankruptcy Act of 1898, as amended. After PCTC filed for reorganization, the United States Congress enacted the Rail Passenger Service

Act of 1970, 45 U.S.C. §§ 501-669 (“Rail Passenger Service Act”), which created the National Railroad Passenger Corporation (“Amtrak”) to provide rail passenger services. Pursuant to the Rail Passenger Service Act, PCTC entered into an agreement with Amtrak, effective May 1971, whereby Amtrak assumed responsibility for PCTC’s inter-city passenger services and used PCTC’s physical plants, equipment, and personnel. Thereafter, the Regional Rail Reorganization Act of 1973, 45 U.S.C. §§ 701-794, as amended (“Rail Act”), provided for the transfer from PCTC to the Consolidated Rail Corporation (“Conrail”) of the facilities and equipment required by Conrail and Amtrak and included provisions whereby Amtrak could acquire ownership or leasehold interests in the Northeast Corridor for inter-city passenger service.

On April 1, 1976, pursuant to the Final System Plan formulated by the United States Railway Association (“USRA”), § 743(b) of the Rail Act, and Special Orders issued by the Reorganization Court, PCTC transferred most of its trackage, equipment, real estate and personnel, and other records to Conrail. Personnel, and personnel records, associated with commercial transportation of goods became employees of Conrail at this time. That same day, Conrail reconveyed title of PCTC’s inter-city passenger services to Amtrak. Personnel, and personnel records, associated with inter-city passenger service became employees of Amtrak at this time. As a result of the USRA, Penn Central ceased and no longer existed as an operated railroad as of April 1, 1976. On October 24, 1978, the Reorganization Court’s final Order consummating PCTC’s reorganization (“Consummation Order”) took effect, and PCTC emerged from bankruptcy as The Penn Central Corporation. On March 25, 1994, The Penn Central Corporation changed its name to American Premier Underwriters, Inc.

Because of the passage of time, because PCTC ceased railroad operations over 30 years ago at which time PCTC's railroad employees left the company, and because many of the former railroad employees of PCC's predecessors have died or their whereabouts is not known to PCC, much of the information requested by these Interrogatories is not available to PCC except as contained in its business records from the relevant time periods.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Request for Production No. 1:

Produce a list of all instances in which Defendant made payments under the MPA to the employees. The list should include plaintiffs' names, case numbers, and identification of the forum in which each matter was adjudicated, arbitrated or mediated.

Response:

PCC objects to this Request by incorporating General Objection Nos. 3, 6, and 7 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 2:

For each year from 1967 to the present, provide Defendant's balance sheet (including assets, liabilities and equity) and profit & loss statement.

Response:

PCC objects to this Request by incorporating General Objection Nos. 1 and 10 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 3:

Produce a copy of all employment or other records of any kind related to Plaintiffs.

Response:

PCC objects to this Request by incorporating General Objection Nos. 5 and 7 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 4:

Produce a copy of all marketing and/or promotional literature, documents, policies, procedures, computer files, diskettes, maps, notes, photographs and/or tangible things related to, pertaining to and/or regarding the Defendants' representations to employees regarding the MPA.

Response:

PCC objects to this Request by incorporating General Objection Nos. 1-3, 9, and 10 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 5:

Produce for inspection and duplication each and every exhibit that you intend to use at the hearing of this matter.

Response:

PCC objects to this Request by incorporating General Objection No. 8 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 6:

Produce each and every document that contains discoverable information.

Response:

PCC objects to this Request by incorporating General Objection Nos. 2 and 3 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 7:

Produce each and every document relied upon in setting forth the answers to Plaintiffs' Interrogatories herein.

Response:

PCC objects to this Request by incorporating General Objection Nos. 2 and 3 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 8:

Produce all documents and tangible things provided to any of Defendant's experts in this case.

Response:

PCC objects to this Request by incorporating General Objection Nos. 2 and 8 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 9:

Produce a copy of all drafts and final versions of all expert reports.

Response:

PCC objects to this Request by incorporating General Objection Nos. 2, 8, and 9 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 10:

Produce a copy of all insurance policies that provide coverage, to the Defendant for the claims asserted by the Plaintiff.

Response:

PCC objects to this Request by incorporating General Objection Nos. 1 and 2 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and

pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 11:

Identify each and every document for each for every Plaintiff which supports the defenses cited in Interrogatory Number 3.

Response:

PCC objects to this Request by incorporating General Objection Nos. 2, 3, and 9 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 12:

Provide the loan agreements with banks or any other institutions from which the Defendant borrowed money or received lines of credit from 1968 to present.

Response:

PCC objects to this Request by incorporating General Objection Nos. 1, 2, and 10 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 13:

Provide copies of Defendant's 10K's and 10Q's and accompanying notes to accompany for each year from 1968 to the present.

Response:

PCC objects to this Request by incorporating General Objection Nos. 1 and 2 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 14:

Provide copies of Plaintiffs' W2's for 1964 to present

Response:

PCC objects to this Request by incorporating General Objection Nos. 2, 6, and 7 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 15:

Provide the value of "free transportation, pensions, hospitalization, and relief" for Defendants' employees for the years 1964 to date.

Response:

PCC objects to this Request by incorporating General Objection Nos. 2-4 and 6 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 16:

Produce all wage guarantee forms submitted by Plaintiffs pursuant to the MPA

Response:

PCC objects to this Request by incorporating General Objection Nos. 6-8 and 10 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Request for Production No. 17:

Produce all seniority lists applicable to the Plaintiffs.

Response:

PCC objects to this Request by incorporating General Objection Nos. 2, 3, and 7 and the Specific Objections to Instructions. Without waiving the foregoing objections and responses and

pursuant to Civil Rule 34(b), all documents will be produced to Plaintiffs as they are maintained in the usual course of business.

Respectfully submitted,

/s/ Jason D. Groppe
Michael A. Cioffi (0076990)
Jason D. Groppe (0080639)
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