



**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

Ex. 20



PERIN CENTRAL

Detroit, Michigan 48216

January 10, 1969

T. D. O'Neil  
20 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 employee subject to use by the Company in accordance with the terms of the Merger Implementing Agreement.

  
Manager-Freight Accounting



PENN CENTRAL

Detroit, Michigan 48216

January 10, 1969

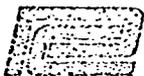
Mr. A. M. Wilger  
10 Beechmont Ave. - Apt. 4-B  
Cincinnati, Ohio 45230

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. Isheper  
Manager-Freight Accounting



PENN CENTRAL

Detroit, Michigan 48216

January 10, 1969

E. Feldscher  
Show #8  
No 44129

This is to advise you that your position will be abolished effective  
end of your tour of duty on Friday, January 24, 1969.

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

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

Manager-Freight Accounting



PENN CENTRAL

Detroit, Michigan 48216

January 10, 1969

Mr. P. J. Franz  
6823 Fry Road  
Middleburg Hts., Ohio 44130

This is to advise you that your position will be abolished effective at the close of your tour of duty on Friday, , January 24, 1969 .

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

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.

  
Manager-Freight Accounting

Ex 20



PERIN CENTRAL

Detroit, Michigan 48216

January 20, 1969

Wattjen  
Underbocker Rd.  
Cincinnati, Ohio

This is to advise you that your position will be abolished effective  
the end of your tour of duty on Friday, January 24, 1969.

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

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

*E. D. Superior*  
Manager - Freight Accounting

✓  
506  
✓



6823 Fry Road  
Middleburg Hts., Ohio  
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,

*Phillip J. Franz*  
Phillip J. Franz

PJF/jh  
cc: A. Doyle, Local Chairman  
Lodge 1192, Detroit

Ex 21

January 14, 1969

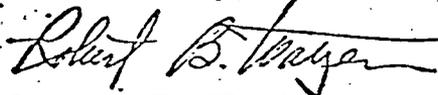
E. T. Scheper  
Manager-Freight Accounting  
Penn Central  
Detroit, Michigan 48216

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

BW/jh  
cc: C. Russo, Local Chairman  
Collinwood, Ohio



January 16, 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 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 Merger Agreement.

Yours truly,

Phillip J. Franz

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

EN 22  
/

725

RECEIVED  
JAN 28 1969  
NYC-W. SYS BRD

Mr E.P. Schoper  
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  
9154 Westview Apt 8  
Parma Ohio

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

Dewitt, New York  
January 28, 1969

Mr. 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. Hall*  
*Revision #11*

Albany, 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 # 1214, at Selkirk, N.Y. will be abolished at the close of business on Feb. 7, 1968.

Due to the Penn Central Co. converting the former Albany Central billing to the Regional SRA billing performed by the former Penn RR and in this connection the work performed by me in the TAC Center in the Albany area being transferred to the office of the Regional Comptroller of the Office at New York, N.Y. and under the present existing agreement and the terms of the major Implementing Agreement and as there is no position available to me under the 30-mile radius, I wish to exercise my option at this time of this coordination and request via your office a separation Albany according to Section 9 of the Washington Agreement.

Respectfully

Donald E. Bundy

Ident # 619074

Box 354 RD #1

Selkirk, N.Y. 12158

cc: Mr. E. Schyman MFR

2A South Miller Ave

Albany N.Y. 12208

Enc. - three 2/28/68

January 16, 1969

E.T. Schepfer  
Manager-Freight Accounting  
Pena Control  
Detroit, Michigan 48216

Dear 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 Merger Agreement.

Yours truly,

Robert B. Watjen

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



DAVID C. BUNDY AND JAMES E. FELDSCHER, PLAINTIFFS-APPELLANTS, v. PENN  
CENTRAL COMPANY AND BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, DEFENDANTS-APPELLEES.  
ROBERT B. WATJEN ET AL., PLAINTIFFS-APPELLANTS, v. PENN CENTRAL COMPANY AND  
BROTHERHOOD OF RAILWAYS, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS,  
EXPRESS AND STATION EMPLOYES, DEFENDANTS-APPELLEES.

Nos. 71-1319, 71-1322.

United States Court of Appeals, Sixth Circuit.

February 11, 1972.

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Bernard S. Goldfarb, Cleveland, Ohio, on brief, for  
plaintiffs-appellants.

James L. Highsaw, Jr., Washington, D.C., for  
defendants-appellees; John F. Dolan, Cleveland, Ohio, on brief  
for Trustees of The Penn Central Transp. Co., Harold A. Ross,  
Cleveland, Ohio, on brief for Brotherhood of Railway, Airline and  
Steamship Clerks, etc.

Appeal from the United States District Court for the Northern  
District of Ohio.

Before WEICK, McCREE and KENT, Circuit Judges.

WEICK, Circuit Judge.

[1] These appeals are from orders of the District Court granting  
motions of the defendants for summary judgment. They were  
consolidated for briefing and oral argument.

[2] The controversy between the parties arose out of the merger of  
New York Central Railroad Company with Pennsylvania Railroad  
Company to form Penn Central Transportation Company<sup>[fn1]</sup>, which  
merger was approved by the Interstate Commerce Commission on

April 6, 1966, and became effective February 1, 1968.

[3] The six plaintiffs in the two appeals were all employees of New York Central, engaged in rate revision work. They claimed that they were adversely affected by the merger and the transfer of their jobs to other locations. They instituted an action for damages in the District Court against Penn Central and the labor union (BRAC) of which they were members, alleging that the railroad conspired with the union in entering into an agreement on October 18, 1966, implementing a previous agreement dated May 20, 1964, which implementing agreement was not fair and equitable and that it operated to place them in a position worse than their previous employment, all in violation of the order of ICC and Section 5(2)(f) of the Interstate Commerce Act (49 U.S.C. § 5(2)(f)); and that BRAC violated its duty to fairly represent them, by not processing their grievances.

[4] Motions for summary judgment were filed by the plaintiffs and the defendants, which motions were submitted to the District Court on affidavits. The District Court filed a Memorandum Opinion in each case on March 4, 1971, in which it granted the motion of the defendants for summary judgment as to each plaintiff except the claim of plaintiff Robert B. Watjen, for unfair representation, which claim was reserved for trial on its merits. Watjen's appeal and that of his three co-plaintiffs were docketed in this Court as No. 71-1322.

[5] In view of the fact that Watjen's complaint for unfair representation is still pending in the District Court, it is clear that no final order has been entered by the District Court in appeal number 71-1322, and therefore it will be dismissed for lack of jurisdiction. Rule 54(b), Fed.R.Civ.P.

## I

[6]

### CONSPIRACY

[7] In appeal number 71-1319 involving plaintiffs Bundy and Feldscher, we have jurisdiction and we will first consider the questions raised pertaining to the alleged conspiracy.

[8] In our opinion, there was no evidence to prove that BRAC conspired with Penn Central. The mere fact that the railroad entered into an implementing

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agreement with the union is not proof of any conspiracy. The agreement entered into on May 20, 1964 prior to the merger, which agreement was approved by the ICC, provided that the parties would enter into an implementing agreement. To comply with an order of the ICC would hardly constitute a conspiracy.

## II

[9]

### UNFAIR REPRESENTATION

[10] The District Court found that appellant Bundy never presented any grievance to the union, nor to any of its representatives.

[11] With respect to appellant Feldscher, the Court was of the view that it was questionable whether he had ever filed a grievance, but assuming that he had, the union did not prosecute his grievance because it felt his grievance was without merit.

[12] A labor union may not be held liable for failure to prosecute a grievance "absent a showing of fraud, misrepresentation, bad faith, dishonesty of purpose or such gross mistake or inaction as to imply bad faith." *Balowski v. International Union, etc.*, 372 F.2d 829, 834 (6th Cir. 1967).

[13] The District Court held that the union acted in good faith. We agree.

### III

#### [14] WRONGFUL DISCHARGE

[15] The District Court denied the claim for wrongful discharge because (1) plaintiffs had not exhausted their administrative remedies, and (2) the laws of Ohio and of New York require such prior exhaustion. *Belanger v. New York Cent. R.R.*, 384 F.2d 35, 36 (6th Cir. 1967); *Pacilio v. Pennsylvania R.R.*, 381 F.2d 570 (2d Cir. 1967); *Ladd v. New York Cent. R.R.*, 170 Ohio St. 491, 166 N.E.2d 231 (1960). In our opinion this ruling was correct.

[16] There was also a lack of diversity jurisdiction, since some of the members of BRAC resided in Ohio. *Sweeney v. Hildebrandt*, 373 F.2d 491 (6th Cir. 1967).

### IV

[17] There remains for consideration the question of whether plaintiffs can maintain their action for violation of Section 5(2)(f) of the Interstate Commerce Act and the Order of ICC.

[18] The District Court held that plaintiffs could not maintain their action because they had not exhausted their remedies before the Railroad Adjustment Board. The Court relied on *O'Mara v. Erie Lackawanna R.R.*, 407 F.2d 674 (2d Cir. 1969).

[19] It is unfortunate that the District Court did not have before it our decision in *Nemitz v. Norfolk & Western R.R.*, 436 F.2d 841 (6th Cir., decided Jan. 15, 1971, and affirmed by the Supreme Court Nov. 15, 1971 in *Norfolk & Western R.R. v. Nemitz*, 404 U.S. 37, 92 S.Ct. 185, 30 L.Ed.2d 198). *Nemitz* was apparently not cited to it.

[20] In *Nemitz*, one of the questions raised by the Railroad in the appeal was that *Nemitz* had not exhausted his remedies before the Railroad Adjustment Board. In holding that the Railway Labor Act was inapplicable, this Court said:

"In deciding the jurisdictional issues thus presented, the Court must dispose of a preliminary question: whether the Railway Labor Act,

45 U.S.C. Sec. 153 et seq., is applicable, even if it be assured that the rights here asserted by the appellees stem from an I.C.C. order. If the Railway Labor Act applies, jurisdiction does not lie. *Brotherhood of Local Engineers v. Chicago & Northwestern Ry. Co.*, 314 F.2d 424 (8th Cir.), cert. denied, 375 U.S. 819, 84 S.Ct. 55, 11 L.Ed.2d 53 (1968).

"Section 5(11) of 49 U.S.C. provides in part, that 'the authority conferred by this section shall be *exclusive* and

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*plenary.*' (Emphasis added.) Various cases dealing with consolidations pursuant to 49 U.S.C. § 5 justify our emphasizing the words 'exclusive' and 'plenary.' *Brotherhood of Loc. Eng. v. Chicago & Northwestern Ry. Co.*, *supra*; *Brotherhood of Maintenance of Way Employees v. United States*, 366 U.S. 169, 81 S.Ct. 913, 6 L.Ed.2d 206 (1961); *Railway Labor Executives' Association v. United States*, 339 U.S. 142, 70 S.Ct. 530, 94 L.Ed. 721 (1950); *United States v. Lowden*, 308 U.S. 225, 60 S.Ct. 248, 84 L.Ed. 208 (1939). These cases dealt with the propriety of granting exclusive authority to the Interstate Commerce Commission in consolidations pursuant to 49 U.S.C. § 5, and with the intent of Congress as evidenced by the defeat of the Harrington Amendment. The cumulative effect of the decisions is that there must be exclusive and plenary authority in the I.C.C. to achieve the purposes of the Act. The authority vested in the I.C.C. to effectuate proposed mergers would be rendered ineffective if authority to adjust work realignments through fair compensation did not exist. Since, under the Railway Labor Act, employees cannot be compelled to accept or arbitrate new working rules or conditions, the application of the Railway Labor Act to situations such as that presented here, like the Harrington Amendment, would threaten to prevent many consolidations, and, therefore, should not be applied. *Brotherhood of Loc. Eng. v. Chicago & Northwestern Ry. Co.*, *supra*." (*Id.* at 845)

[21] The Supreme Court in affirming our decision did not even discuss the exhaustion issue, nor is it mentioned in the dissenting opinion.

[22] Because the District Court decided this case on the exhaustion issue, it never reached the merits of the case. We are urged to decide the case on the record before us. We decline to do so.

[23] 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.

[24] 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.

[25] These issues must first be determined at the trial level.

[26] On the remand, the District Court should conduct an evidentiary hearing and consider the issues with respect to each plaintiff in light of the decisions of this Court and of the Supreme Court in *Nemitz*. Since no final order has been entered in appeal number 71-1322, the District Court has jurisdiction to modify its order as it may determine.

[27] The appeal in No. 71-1322 is dismissed for lack of jurisdiction. In appeal No. 71-1319 the judgment of the District Court is affirmed with respect to the issues of conspiracy, wrongful discharge, and unfair representation, and is remanded for trial on the issues pertaining to the alleged violation of Section 5(2)(f) and the order of ICC.

[fn1] Penn Central is currently involved in reorganization proceedings pending in the United States District Court for the Eastern District of Pennsylvania, under the title of "In the Matter of Penn Central Transportation Company, Debtor, No. 70-347."

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AGREEMENT FOR ARBITRATION

THIS AGREEMENT, made this 18<sup>th</sup> 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

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: *17 names*

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: *17 names*

*Canner*  
G. V. Sophner, P. O. Sowinski, L. S. Pentz, J. Crtalic,  
R. McNeely, John F. Gallagher, Joseph M. Jarabeck, E. W.  
*Canner* *Canner*  
Kochenderfer, Gus Janke, P. E. McLaughlin, William Bilinsky,  
Paul D. Foecking, 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?

Claimants: *alt p. 46*

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?

Claimants: *alt p. 46*

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



FILED

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NORTHERN DISTRICT OF OHIO  
CLEVELAND

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ROBERT WATJEN, <i>et al.</i> ,	)	
Plaintiffs	)	
v.	)	Case No.: 69-675
PENN CENTRAL	)	
Defendants	)	
	)	
MICHAEL J. KNAPIK, <i>et al.</i> ,	)	
Plaintiffs	)	
v.	)	Case No.: 69-722
PENN CENTRAL	)	
Defendants	)	
	)	
DAVID C. BUNDY, <i>et al.</i> ,	)	
Plaintiffs	)	
v.	)	Case No.: 69-947
PENN CENTRAL	)	
Defendants	)	
	)	
G.V. SOPHNER, <i>et al.</i> ,	)	
Plaintiffs	)	
v.	)	Case No.: 74-914
PENN CENTRAL	)	
Defendants	)	
	)	
	)	JUDGE SOLOMON OLIVER, JR.
	)	

ORDER

Currently pending in these matters is Plaintiffs' Motion to Reinstate and Resume Jurisdiction over the Above Captioned Cases. Plaintiffs originally filed this motion in mid-1998 before Judge

James G. Carr. Defendant did not respond, and due to intervening developments related to the case, Plaintiffs did not notify the Court of their intention to pursue the motion until late 2004. The Court held a telephonic conference on October 13, 2004, and ordered the parties to submit briefs on the Motion. The Court subsequently heard oral argument on the Motion to Reinstate on January 26, 2005. For the reasons stated below, the Court grants Plaintiffs' Motion and re-assumes jurisdiction for the limited purpose of ordering the parties to return to arbitration to resolve these matters fully and completely.

### I. FACTS

These cases reappear before the Court over twenty-five years after the Court dismissed them and sent them to arbitration. In 1969, a number of railroad employees sued Penn Central Railroad following the 1968 merger of New York Central Railroad Company and Penn Central Transportation Company. The Plaintiffs filed a series of four lawsuits in this Court, three in 1969 and one in 1974, which were before now-retired Judge Thomas D. Lambros. The lawsuits alleged a denial of the protections afforded to Plaintiffs by the 1964 Merger Protection Agreement between the union and the new, merged railroad.

On November 29, 1979, after granting a directed verdict in favor of Defendant as to some of Plaintiffs' claims at a trial on the merits, Judge Lambros dismissed all four cases and sent them to arbitration on the remaining claims, finding that "reference to arbitration of these disputes will result in resolution of all the permanent claims much more quickly than in any proceedings which the Court could devise." (1979 Order at 6.) Judge Lambros explicitly rejected the idea that the court would retain jurisdiction to review the arbitration panel's decision. (*Id.* at 4.) Finally, Judge Lambros recommended that the cases be arbitrated one at a time, in a specific order, before the same

arbitration panel:

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 69-675 and C 69-947.

(*Id.* at 7.)

Pursuant to Judge Lambros' order, the parties proceeded to arbitration on the *Knapik* case, No. 69-722. The arbitration panel found for the defendant in 1983. The *Knapik* plaintiffs filed an appeal with Judge Lambros, arguing that the chairman of the arbitration committee was partial to the railroad defendant. In a November 1985 order, Judge Lambros agreed, vacating the arbitration committee decision because "the Chairman of the arbitration panel was too closely linked with one side of this conflict, and such an association created an appearance of partiality." (1985 Order at 3.)

The parties thus returned to arbitration on the *Knapik* case. However, it was not until 1988 that the parties agreed on a panel, and due to numerous delays, the panel did not hear the case until May 1990. A year and a half later, in December 1991, Plaintiffs wrote to the arbitration panel inquiring about the panel's progress and requesting a prompt decision. The arbitration panel finally issued a decision in 1994, finding against all seventeen *Knapik* plaintiffs. Soon thereafter, Plaintiffs appealed the arbitration decision to the Surface Transportation Board (STB).

In May 1998, over three years after they had appealed to the STB, Plaintiffs had received no ruling on the appeal. Plaintiffs thus filed the instant motion to reinstate with the district court. Pursuant to Judge Lambros' order, the parties had not started arbitration on the other three cases, because the first one had not been completed. Plaintiffs at that time argued that the arbitration

process had been futile, that Judge Lambros' goal of quickly resolving the proceedings had been frustrated, and that the court should resume its jurisdiction to address the remaining matters.

The STB finally rendered a decision in December 1998, nearly four years after the appeal was filed. The STB affirmed the arbitration panel's finding with respect to seven plaintiffs, and reversed the panel's finding with respect to ten plaintiffs because "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." (STB 1998 Order at 4.) However, the STB did not grant any award to the remaining ten plaintiffs:

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.

(*Id.* at 9.)

In January 1999, the parties filed cross-appeals of the STB decision with the Sixth Circuit. Plaintiffs appealed the dismissal of the seven plaintiffs, and Defendant appealed the reversal as to the other ten plaintiffs. The STB took the position before the Sixth Circuit that its decision as to the ten plaintiffs was not a final order and therefore not appealable; thereafter, Defendants voluntarily withdrew their appeal. In December 2000 the Sixth Circuit affirmed the STB's dismissal as to seven plaintiffs, but did not rule as to the other ten plaintiffs because the issue was no longer properly before them. *Augustus v. Surface Transp. Bd.*, 2000 U.S. App. LEXIS 33966 (6th Cir. Dec. 22, 2000).

On April 4, 2001, Plaintiffs wrote two letters to the National Mediation Board ("NMB"). In the first letter, Plaintiffs requested arbitrators to hear the claims of the remaining ten

*Knapik* plaintiffs that had been remanded by the STB, and in the second, Plaintiffs requested arbitrators for the *Bundy* and *Watjen* cases. (Pl. Reply Br. Ex. 7, 8.)

On April 17, 2001, Defendant responded by sending two letters to the NMB opposing arbitration or the appointment of any new arbitrators. (Pl. Reply Br. Ex. 9, 10.) The first letter, opposing arbitration for the yet-to-be-arbitrated *Bundy* and *Watjen* cases, stated:

[t]he plaintiffs have for 22 years failed to assert their right to arbitrate these claims to their own detriment as well as the detriment of Penn Central Corporation . . . Assuming, arguendo that the Court determines that these cases are arbitrable, its Opinion and Order specifically states that all of the cases are to be heard by the same panel. Accordingly, there is no need to convene a new panel.

(Pl. Reply Br. Ex. 9 at 2.) The second letter opposes convening a new panel for arbitration on the issues remanded by the STB, because

it would be inimical to the interests of both parties to this dispute, and contrary to the intent of the STB's decision "to reach a just and speedy resolution." to go through the time consuming process of convening a new panel. The claimants themselves, from the inception of this case, have been primarily responsible for its long and tortuous history. They have continued further delay by failing for over 28 months to submit the remanded portion of the STB's decision to the arbitration panel for a determination of the issue of the claimants' entitlement to compensation.

(Pl. Reply Br. Ex. 10.)

Subsequently in May 2001 the Plaintiffs responded with a follow up letter to the NMB. This letter briefly outlined the procedural history of the case, argued that Plaintiffs had been vigilant in pursuing their claims, and reasserted a request for a list of mediators. (Pl. Reply Br. Ex. 11.) On July 31, 2001, the NMB issued a list of arbitrators to the parties, noting that it was acting solely in a ministerial capacity and had no authority to determine the appropriateness of arbitration between any parties. (Pl. Reply Br. Ex. 13.)

Exactly two years later, on July 31, 2003, Plaintiffs wrote to the NMB, asserting that “I selected arbitrators and forwarded those selections to opposing counsel. To date opposing counsel has not responded.” (Pl. Reply Br. Ex. 14.) The letter went on to request the appointment of specific arbitrators. NMB denied the request on August 19, 2003, indicating it had no authority to appoint arbitrators. (Pl. Reply Br. Ex. 15.)

In 2004, Plaintiffs contacted the Court seeking to schedule a hearing on its 1998 Motion to Reinstate. At oral argument, counsel for Plaintiff represented to the Court that at least two members of the arbitration panel that had issued the 1994 decision were retired and no longer available to arbitrate cases. (Tr. pp. 46-48.)

## II. LAW AND ANALYSIS

### A. Jurisdiction

None of the four cases referred to arbitration by Judge Lambros has been finally and completely arbitrated, and arbitration was never commenced in three cases. The question before the Court is whether the Court has authority to resume jurisdiction over these matters. Plaintiffs argue that after twenty-five years, the parties have not substantially complied with Judge Lambros’ order which dismissed the cases and ordered the parties to arbitration. Defendant argues that this Court is without jurisdiction to reinstate these cases, because doing so would run counter to Judge Lambros’ 1979 dismissal of the cases. According to Defendant, Plaintiffs want the Court to vacate the 1979 order “simply because compliance with his order has not been as smooth and expedient as hoped.” (Def. Opp. to Pls. Mot. to Reinstate Juris. 5.)

The Court finds the Plaintiffs’ argument to be persuasive. Judge Lambros’ order has not been substantially complied with. Further, the Court finds it does have authority to assume jurisdiction

to ensure compliance with the order. It is well settled law that "a district court always has jurisdiction to enforce its own orders." *McAlpin v. Lexington 76 Auto Truck Stop, Inc.*, 229 F.3d 491, 504 (6th Cir. 2000) (upholding court's authority to enforce that portion of a settlement agreement which the court incorporated into its order dismissing the case) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380-81 (1994)). In *Kokkonen*, the Supreme Court held that a court has jurisdiction "to manage its proceedings, vindicate its authority, and effectuate its decrees," but a court has no jurisdiction to enforce terms of a settlement agreement where the terms were not explicitly incorporated into the dismissal order. 511 U.S. at 380-81. Unlike in *Kokkonen*, Judge Lambros' dismissal order has specific terms that the Court has jurisdiction to enforce. Where a court's order dismissing a case incorporates or contains specific requirements, the court has ancillary jurisdiction to enforce its order. Since Judge Lambros clearly ordered the parties to arbitrate these matters in 1979, this Court has authority to require the parties to comply with that requirement.

#### **B. Laches**

Defendant argues that the doctrine of laches requires that the motion be denied because Plaintiffs have failed to timely pursue the motion and their underlying claims. The equitable doctrine of laches applies where there is a "negligent and unintentional failure to protect one's rights." *Elvis Presley Enter., Inc. v. Elvisly Yours, Inc.*, 936 F.2d 889, 894 (6th Cir. 1991). The two elements of laches are: "(1) unreasonable delay in asserting one's rights; and (2) a resulting prejudice to the defending party." *Brown-Graves Co. v. Central States, Southeast & Southwest Areas Pension Fund*, 206 F.3d 680, 684 (6th Cir. 2000). Defendant's argument that laches bars Plaintiffs from pursuing the motion or the claims any further is without merit.

Because the remedy of laches is equitable in nature, the Court must apply the equitable maxim "he who comes into equity must come with clean hands." The Court concludes that Defendant does not come with clean hands. In assessing the causes of delay over the past five years, the Court concludes, based on Plaintiffs' letters calling for new mediation panels and a return to arbitration, that Plaintiffs are no more responsible than Penn Central for the delay. (Pl. Reply Br. Ex. 9, 10.) Penn Central rejected Plaintiffs' calls for a new mediation panel for the remaining *Knapik* plaintiffs, insisting on resuming hearings with the old arbitration panel, even though there is some indication the old panel was no longer hearing cases.<sup>1</sup> Additionally, some portion of the delay in resuming arbitration is attributable to Penn Central's argument that *Watjan* and *Bundy* should not be arbitrated due to laches. This argument is inconsistent with the previous agreement between the parties to follow Judge Lambros' suggestion that *Knapik* be concluded before commencing the other cases. Defendant Penn Central seeks an equitable remedy of laches, but it bears at least as much responsibility as Plaintiffs for the recent delay in these cases.

Even if unclean hands did not bar laches, the facts do not support Defendant's contention that Plaintiffs unreasonably delayed in asserting their rights, either in pursuing a ruling on this motion or in seeking arbitration for their clients. Shortly after filing the motion to reinstate in 1998, the Surface Transportation Board issued its long awaited ruling. It was reasonable for Plaintiffs to refrain from aggressively pursuing their motion to reinstate with the district court, because the STB decision was appealed to the Sixth Circuit, and the case was moving forward again. After the Sixth

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<sup>1</sup> The Court does not make a finding of fact as to the availability of the old arbitration panel. Plaintiff represented at oral argument that at least two of the three members of the arbitration panel had retired and were no longer arbitrating cases. (Tr. pp. 45-46.)

Circuit ruling in December 2000, Plaintiffs began trying to convene an arbitration panel to continue moving the case forward, but Defendants refused to select a panel or even recognize Plaintiffs' right to move forward. From 2001 to 2003, Plaintiffs sent numerous letters to the National Mediation Board and to Defendant seeking a resumption in arbitration. It is apparent to the Court that during this time, Plaintiffs still hoped to proceed with their claims by making a good faith effort to re-start arbitration without forcing the district court to become involved again. Only after exhausting these efforts did Plaintiffs turn to the district court for assistance, and rather than filing a new motion, they instead sought ruling on their 1998 motion to reinstate.

Additionally, Defendant's suggestion that Plaintiffs alone are to blame for the tortured history of this case is not well taken. The record shows that the case has been pending before various decisionmaking tribunals - the two arbitration panels, the Surface Transportation Board, the district court, and the Sixth Circuit - for a substantial portion of its history. In at least two situations, Plaintiffs sent letters or filed motions seeking to speed up the progress of the decisionmaking process.<sup>2</sup> While Defendant stressed at oral argument that Plaintiffs had multiple opportunities to arbitrate the matter and blamed the delays on Plaintiffs' appeals, Plaintiffs were within their rights to appeal the arbitration findings, and have yet to receive a final ruling on the first case that went to arbitration. Further, Defendant has exercised its appeal rights in this case as well. Since the Sixth Circuit decision in December 2000, Plaintiffs have not been complacent, but have corresponded with Penn Central and the National Mediation Board seeking to re-start arbitration.

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<sup>2</sup> In 1991, Plaintiffs sent a letter to the arbitration panel requesting a decision, and in 1998, Plaintiffs filed the instant motion with the Court while waiting for a decision from the STB.

Even if Plaintiffs' delay was unreasonable, Penn Central has made no showing as to the second prong of laches, that it has been prejudiced by the delay. Mere assertions of hardship are not enough to demonstrate prejudice. *See Connin v. Bailey*, 472 N.E.2d 328, 329 (S.D. Ohio 1984). Defendant asserts that "witnesses and parties have died" and they would be "unfairly disadvantaged in trying to defend against the motion to reinstate at this point."<sup>3</sup> (Def. Opp. Br. 8.) In *Connin*, the court found that "amorphous" assertions of loss of records or deaths of parties were not enough to establish material prejudice where the plaintiff sought to recover arrearages for child support against her former husband's estate more than thirty-five years after the court awarded her the child support. *Id.* Likewise in this case, Defendant's assertions do not establish material prejudice.

Defendant has been on notice of these cases since 1969 and 1974, and Plaintiffs never indicated or demonstrated any intent other than to resolve them fully. If Defendants could show that Plaintiffs were largely responsible for the delays, then they might be entitled to an opportunity to bolster their unsupported assertions regarding prejudice. However, since the Court concludes that Plaintiffs did not unreasonably delay in the prosecution of their 1998 motion or of these cases generally, there can be no resulting material prejudice to Defendants. Even if this were not the case, the Court concludes Defendant is barred from asserting laches by the doctrine of unclean hands.

### III. CONCLUSION

The Court concludes it has jurisdiction to enforce the Court's 1979 arbitration order. Judge Lambros ordered arbitration based on "the overwhelming federal policy favoring arbitration in complex labor relations cases." (1979 Order at 3.) This Court hereby reinstates the cases for the

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<sup>3</sup> The Court notes that deaths of parties and witnesses have affected Plaintiffs as well as Defendant.

limited purpose of ordering the parties to arbitration and ensuring the parties begin arbitration in a timely fashion.

The Court notes that because of the significant delay, the interests behind Judge Lambros' recommendation to try the cases consecutively before one arbitration panel are outweighed by the interest in resolving the matters expeditiously. Given twenty-five intervening years in which arbitration never commenced in three of the cases, it appears that Judge Lambros' reasonable suggestion did not bear the benefits that he envisioned. Accordingly, this Court finds that the best way to effectively enforce Judge Lambros' arbitration order is to require the parties to proceed to arbitration on all four cases simultaneously. Within sixty days from the date of this Order, the parties shall have chosen arbitrators for each case. In order to facilitate the matter, the parties must agree on a process for choosing arbitrators within fourteen days of this Order. If the parties cannot agree on a process, they must notify the Court as soon as they determine an agreement is not possible, but no later than fifteen days from the date of this Order. Arbitration in the *Knapik* case shall proceed with a new panel only if the Blackwell panel that heard the prior *Knapik* arbitration cannot be reconvened.

The Court believes this is the best way to proceed. However, if the parties both agree, in their own wisdom, to a different process, involving seriatim arbitration or an alternative timeline, the parties may submit such a plan to the Court for approval within fifteen days of this Order. For the reasons and on the terms stated above, Plaintiffs' motion to reinstate is granted.

IT IS SO ORDERED.

  
UNITED STATES DISTRICT JUDGE

February 18, 2005

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CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ROBERT WATJEN, <i>et al.</i> , Plaintiffs	)	JUDGE SOLOMON OLIVER, JR.
v.	)	
PENN CENTRAL	)	Case No.: 69-675 BFA3
Defendants	)	
	)	
MICHAEL J. KNAPIK, <i>et al.</i> , Plaintiffs	)	
v.	)	Case No.: 69-722 BFA3
PENN CENTRAL	)	
Defendants	)	
	)	
DAVID C. BUNDY, <i>et al.</i> , Plaintiffs	)	
v.	)	Case No.: 69-947 BFA3
PENN CENTRAL	)	
Defendants	)	
	)	
G.V. SOPHNER, <i>et al.</i> , Plaintiffs	)	
v.	)	Case No.: 74-914 BFA3
PENN CENTRAL	)	
Defendants	)	

ORDER

Now pending before the court is Defendant Penn Central's Motion to Reconsider or in the Alternative to Clarify Order. In the court's February 18, 2005 Order, the court ruled that it had jurisdiction to enforce a prior court order sending the parties to arbitration, and found that laches did

not bar the resumption of arbitration proceedings. Defendant now seeks to have the court reconsider its legal conclusion on laches.

Additionally, the court's February 18, 2005 Order broadly outlined a process for resuming arbitration, leaving the parties to agree on the details. It is now apparent to the court that the parties were unable to cooperate and reach such an agreement. As a result, Defendant now seeks to have the court clarify the details of the arbitration process for the parties.

For the reasons stated below, Defendant's Motion to Reconsider is denied and its Motion to Clarify is granted.

#### **I. MOTION TO RECONSIDER**

Penn Central contends the court should reconsider its laches ruling, asserting that Penn Central did come before the court with clean hands, and that it was Plaintiffs who caused unreasonable delay. However, Defendant offers no new facts or law, or citations to any case at all, to support reconsideration. Rather, Penn Central's motion reiterates the same basic arguments it made for laches in the first place. The court finds Penn Central's arguments in its Motion to Reconsider to be unpersuasive for the same reasons stated in the court's previous Order.

#### **II. MOTION TO CLARIFY ORDER**

Defendant seeks clarification of this court's February 18, 2005 Order, on three topics: (A) which Plaintiffs are permitted to participate in the upcoming arbitrations; (B) whether one panel will hear all four cases simultaneously, or whether different panels will hear each case simultaneously; and (C) how the panels will be selected.

### A. Which Plaintiffs May Participate

Defendant raises two issues with respect to participation in arbitration: (1) whether, under *Augustus v. Service Transportation Board*, 2000 U.S. App. LEXIS 33966 (6th Cir. 2000), employees from the *Watjen*, *Bundy*, and *Sophner* cases who did not return to work may participate in arbitration; and (2) whether any Plaintiffs must be dismissed because they have died and the Plaintiffs have failed to substitute a party. The court finds that both of these issues would be most properly resolved by the arbitration panels, with one exception: the *Knapik* plaintiffs specifically dismissed by the Sixth Circuit in *Augustus* may not participate in arbitration.

### B. One Panel or Four Panels

While the parties and Judge Lambros thought the initial process would be the most efficient and likely to produce the most consistent results, the fact is that many years later, not one of the four cases has been adjudicated to completion. Given the passage of time and in an effort to ensure that the process does not drag on for an indefinite future period of time, the court clarifies that the parties shall proceed simultaneously with four separate panels hearing each case.

### C. Panel Selection Process

Defendant also seeks clarification on the panel selection process. Defendant first urges that Fred Blackwell, the neutral arbitrator who headed the panel that decided the *Knapik* cases in 1994, should head a new panel. Plaintiffs oppose reconvening the Blackwell panel.

Reconvening the Blackwell panel, as it was originally comprised, is impossible because Wallace Steffen, one of the arbitrators, is retired. The court previously ordered that "arbitration in the *Knapik* case shall proceed with a new panel only if the Blackwell panel that heard the prior *Knapik* arbitration cannot be reconvened." (Feb. 18 Order). The advantage of the Blackwell panel

was that each of its members had familiarity with the issues in the case. This benefit would be substantially lost by adding a new member and/or members to the panel at this stage, who has/have no knowledge of the case and could alter the working dynamic of the old panel. Additionally, as Plaintiffs point out, the Blackwell panel last met eleven years ago; any advantage in subject matter familiarity may be overstated based on the passage of time and memory. Therefore, consistent with the court's prior Order, the Blackwell panel should not be reconvened since it cannot be reconvened in its entirety.

It is thus clear that four new panels are necessary. The parties offer different suggestions regarding how to select a new panel. Defendant suggests that a three-member panel comprised of former federal judges be convened, with only neutral arbitrators. It asserts that "[i]t is the Defendant's experience that federal judges are well informed and expedient in alternative dispute resolutions." (Def. Mot. for Recons. 8.) Defendant also posits that arbitration experts have advocated the elimination of non-neutrals from the arbitration process. Plaintiffs contend that using former federal judges and abandoning the use of non-neutral arbitrators would be contrary to the procedures called for in the Railway Labor Act and the Merger Protection Agreement. Plaintiffs also argue that this represents a change in the process the parties have previously used for selecting arbitrators in this case. The relevant portion of the Railway Labor Act states:

(a) In the case of a board of three the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

45 U.S.C. § 157(2)(A). The court concludes that the parties shall continue to follow this process. However, the statute does not preclude the use of former federal judges as arbitrators. Should Defendant wish to select a former federal judge as its non-neutral, it may do so. Plaintiffs are under no obligation to do the same. The two neutrals shall follow the RLA process for naming a third, neutral arbitrator, and the parties will turn to the Mediation Board in the event of a failure to agree on the neutral.

### III. SANCTIONS

Plaintiffs request sanctions against Defendant on the basis of the frivolous motion for reconsideration. The court declines to enter sanctions.

### IV. CONCLUSION

The court resumed jurisdiction over these matters for the limited purpose of determining whether the parties should resume arbitration. The parties should seek to resolve any future disagreements over process among themselves, or in front of the new arbitration panels. Nonetheless, the court today orders the following:

- The parties shall proceed to arbitration in all four cases simultaneously before four arbitration panels;
- The arbitration panels shall be entirely new, each comprised of two non-neutrals, who will select a neutral pursuant to 45 U.S.C. § 157;
- The parties are free to select any qualified arbitrators; and
- The new arbitration panels will resolve the issue of which Plaintiffs may proceed with arbitration.

IT IS SO ORDERED.

/S/ SOLOMON OLIVER JR.  
UNITED STATES DISTRICT JUDGE

April 28, 2005

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05 JUN 28 AM 11:10

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

ROBERT WATJEN, <i>et al.</i> ,	)	JUDGE SOLOMON OLIVER, JR.
Plaintiffs	)	
v.	)	Case No.: 69-675
PENN CENTRAL	)	
Defendants	)	
	)	
MICHAEL J. KNAPIK, <i>et al.</i> ,	)	
Plaintiffs	)	
v.	)	Case No.: 69-722
PENN CENTRAL	)	
Defendants	)	
	)	
DAVID C. BUNDY, <i>et al.</i> ,	)	
Plaintiffs	)	
v.	)	Case No.: 69-947
PENN CENTRAL	)	
Defendants	)	
	)	
G.V. SOPHNER, <i>et al.</i> ,	)	
Plaintiffs	)	
v.	)	Case No.: 74-914
PENN CENTRAL	)	
Defendants	)	<u>ARBITRATION ORDER</u>

The court, after considering the neutral arbitrators recommended by the respective parties, appoints Steven H. Steinglass, Esq. as the neutral arbitrator for the above-captioned cases. Attorney Steinglass has indicated that serving as a neutral in this case does not raise a conflict of interest with any party or attorney on the case, that he was unaware of the case prior to the court contacting him,

and that neither party has had any discussion with him regarding the case or his appointment as the neutral arbitrator.

The parties should contact Mr. Steinglass as soon as possible to begin the arbitration process.

He can be reached at:

Steven H. Steinglass, Esq.  
2374 Tudor Drive  
Cleveland Heights, OH 44106  
216-321-0718  
[steven.steinglass@law.csuohio.edu](mailto:steven.steinglass@law.csuohio.edu)

IT IS SO ORDERED.

  
UNITED STATES DISTRICT JUDGE



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April 17, 2001

Mr. Roland Watkins  
Director of Arbitration Services  
National Mediation Board  
1301 K Street, Suite 250E  
Washington, D.C. 20572

RE: Memorandum Opinion and Order of the  
Federal District Court - Northern District of Ohio  
Case Nos. 69-675 and 69-947

Dear Mr. Watkins:

By letter dated April 4, 2001, Tricarichi & Carnes, counsel for the plaintiffs in the captioned cases, requested a list of arbitrators for the ostensible purpose of convening a panel to hear the dispute addressed by the Court's Memorandum Opinion and Order dated November 27, 1979, a copy of which is enclosed.

At the time of the Order, which directed that the cases be arbitrated, they had been litigated for ten years. After lamenting the protracted and tortuous nature of the litigation the Court stated:

"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 C-69-722, defendant has moved to compel arbitration on the remaining contract issues as provided in the Merger Protection Agreement of 1964." (Opinion p. 2) emphasis supplied.

The Court, directing the parties to arbitrate all of the cases, noted:

"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

GV: #183892 v1 (3XW401!.WPD)

Philadelphia	Washington, D.C.	Detroit	New York	Pittsburgh	
Berwyn	Cherry Hill	Harrisburg	Princeton	Tysons Corner	Wilmington

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Mr. Watkins  
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April 17, 2001

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 69-675 and C 69-947.” (Opinion p. 7) emphasis supplied.

Clearly the Court’s Opinion and Order does not contemplate a 22 year hiatus between the date of its Order and the convening of an arbitration panel in the captioned cases. Although the Court’s Opinion is advisory regarding the structuring of the arbitration proceedings the fact that the Court suggests that the “same panel” hear all of the cases strongly suggests that the cases were to be arbitrated over a period of weeks not decades.

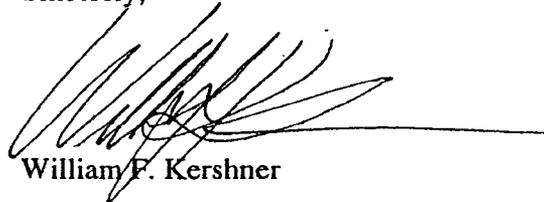
The doctrine of laches clearly applies to these cases. The plaintiffs have for 22 years failed to assert their right to arbitrate these claims to their own detriment as well as the detriment of Penn Central Corporation.

All of the witnesses with knowledge of the factual background of the cases and who are essential to verify the documents and records in the cases are deceased. Moreover, the physical integrity of the documents and records themselves have been adversely affected by the passage of time and movement to and from multiple storage facilities.

Assuming, arguendo that the Court determines that these cases are arbitrable, its Opinion and Order specifically states that all of the cases are to be heard by the same panel. Accordingly, there is no need to convene a new panel

For the foregoing reasons Penn Central Corporation respectfully requests that the Board decline Tricarichi & Carnes’ request for a list of arbitrators.

Sincerely,



William F. Kershner

wfk/pas  
Enclosure  
pc: Tricarichi & Carnes  
Bernard Goldfarb  
Michael Cioffi

**Pepper Hamilton LLP**  
Attorneys at Law

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April 17, 2001

Mr. Roland Watkins  
Director of Arbitration Services  
National Mediation Board  
1301 K Street, Suite 250E  
Washington, D.C. 20572

RE: STB Finance Docket No. 21989 (Sub-No.3)  
December 2, 1998

Dear Mr. Watkins:

By letter dated April 4, 2001, Tricarichi & Carnes, counsel for ten claimants referenced by the captioned decision of the Surface Transportation Board, ("STB"), requested a list of three arbitrators for the ostensible purpose of convening a panel for the purpose of determining the issue of the entitlement of the claimants to compensation under a 1964 Merger Protection Agreement. The STB's decision vacated a portion of the arbitration panel's decision and remanded the case to the parties for further action consistent with its findings. A copy of the decision is enclosed for your reference.

The STB chose to remand the case, rather than order an arbitration *de novo*, in the interest of expediting a resolution of this dispute. To select a new panel of arbitrators, schedule hearing dates and inform the panel of the factual and evidentiary background of this complex case would consume an inordinate amount of time.

The history of the case reveals that there was a hiatus of 11 years between the convening of the first arbitration panel in 1983, whose decision was vacated, and the final decision of the current panel in 1994. It would be inimical to the interests of both parties to this dispute, and contrary to the intent of the STB's decision "to reach a just and speedy resolution", to go through the time consuming process of convening a new panel.

GV: #184356 v1 (3Y9001!WPD)

Philadelphia	Washington, D.C.	Detroit	New York	Pittsburgh	
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Mr. Watkins  
Page 2  
April 17, 2001

The claimants themselves, from the inception of this case, have been primarily responsible for its long and tortuous history. They have continued further delay by failing for over 28 months to submit the remanded portion of the STB's decision to the arbitration panel for a determination of the issue of the claimants' entitlement to compensation.

For the foregoing reasons, it is respectfully submitted that the Board decline to submit a list of arbitrators in the captioned case.

Sincerely,



William F. Kershner

wfk/pas

Enclosure

pc: Tricarichi & Carnes  
Bernard Goldfarb  
Michael Cioffi



GENERAL COMMITTEE OF ADJUSTMENT  
UNITED TRANSPORTATION UNION  
PENN CENTRAL - (former NYC West)

Cleveland, Ohio  
August 25, 1969  
File - Gen. 124.01 &  
927 Agreements.

Mr. Henry Anderson  
Loc. Chm. #875,  
10900 Peony Ave.,  
Cleveland, Ohio.

Dear Sir and Brother:

Attached is copy of letter dated August 22, 1969, from Mr. C. L. Stalder, Supt. Labor Relations and Personnel, concerning the status of various CUT yardmen who have failed to protect their seniority account of not exercising their seniority to work in the Cleveland terminal.

In your letter dated July 1, 1969, to Mr. Brinkworth, Division Supt., you state that Article 6 of the Agreement dated February 16, 1965 is prejudicial to the CUT Yardmen. As I previously pointed out to you, every group of men represented by this Committee is required to exercise their seniority within their home terminal or forfeit their seniority. If a leave of absence is granted, it is limited to 90 days as provided in Article 17 of the yard agreement. Roadmen are covered by Agreement dated November 27, 1931. Their rule reads in part, "----, failing to report ----, they will be taken off the seniority roster." In most cases it is the Local Chairman and the Local who enforce the rule rather than the Company.

Due to circumstances involved, this Committee prevailed on the Company to waive all the agreements involved until such time as we were able to resolve our dispute involving protective agreements for the CUT Yardmen. Such an agreement was recently made.

Each of the yardmen mentioned in Mr. Stalder's August 22, 1969 letter are being furnished a copy of his letter so that they are made aware of their present status. As you know, they are also listed on the Penn Central District 4 seniority roster where approximately 3000 names appear. As there are four (4) General Chairmen and numerous Local Chairmen involved who have joint jurisdiction over that roster, we can not expect any further extension of the time limit beyond September 15, 1969. It is therefore necessary that all concerned make themselves avail-

Mr. Henry Anderson, L. C. #875

Cleveland, Ohio  
August 25, 1969  
File - Gen. 121.04 &  
927 Agreements.

able and comply with all existing agreements before that date if they desire to retain their seniority.

Fraternally yours,

*J. A. Lyons*  
J. A. Lyons  
General Chairman

Enc.

cc: O. Williams, L. C. #875  
J. Curley, Sec. #875  
C. Steimle, Jr. Member 875  
W. Prochaska, Member 875  
M. J. McLaughlin, Member 875  
G. A. Gentile, Member 875  
C. C. Tomczak, Member 875  
W. J. Petosky, Member 875  
R. Beedlow, Member 875  
H. E. Doran, Member 875  
E. Tannenbaum, Member 875  
W. F. Grady, Member 875  
A. Augustus, Member 875



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

MICHAEL J. KNOPIK, et al., ) Civil Action No. C69-722  
Plaintiffs, )  
v. ) ANSWER OF PENN CENTRAL  
PENN CENTRAL COMPANY, et al., ) TRANSPORTATION COMPANY  
Defendants. )

Now comes the Penn Central Transportation Company and for its answer to the complaint herein says

1. The plaintiffs and their decedents, where applicable, were employees of The Cleveland Union Terminals Company, a common carrier by rail. On May 20, 1964, in the course of the merger of the Pennsylvania Railroad Company and The New York Central Railroad Company, an agreement was executed by and between the said companies and 23 unions, of which the Brotherhood of Railroad Trainmen was one. The Cleveland Union Terminals Company and its employees were not parties specifically provided for by the said agreement. Subsequent thereto, pursuant to negotiations, on February 16, 1965 the Brotherhood of Railroad Trainmen New York Central Lines West, Western District, by its General Chairman and the Brotherhood of Railroad Trainmen, Cleveland Union Terminals Company District, by its General Chairman, and The New York Central Railroad Company and the Cleveland Union Terminals Company, by its General Manager and the General Manager of each of them, executed an agreement relating to the consolidation of the New York Central Cleveland Terminal District Yard Service Employee Roster and the Cleveland Union Terminals Yard Service Employee Roster thereby establishing New York Central Cleveland Terminal District (Freight Yard) seniority for Cleveland Union Terminals Yard Service Employees, effective February 16, 1965, and granting

to each member of the Cleveland Union Terminals Yard Service Roster seniority rights therein with the seniority date of September 10, 1964 on a common New York Central Freight Yard Seniority Roster. This date and relative seniority will be the only seniority date available to be exercised by the Cleveland Union Terminals employees bidding New York Central freight yard assignments. In addition thereto, any assignment, including the extra list then in the Cleveland Union Terminals Company territory, not bid in by Cleveland Union Terminals yardmen, were on February 16, 1965 open for bid to all New York Central freight yard yardmen with the seniority date prior to January 2, 1964 in order of their seniority on the New York Central Freight Yard Rosters prior to that date, January 2, 1964. Such other assignments, including extra lists in the New York Central freight yard territory, not bid in by yard service employees with the New York Central Freight Yard seniority date prior to January 2, 1964 was opened to bid by Cleveland Union Terminals yardmen in seniority order. Subsequent thereto work was available to each and every and all of the plaintiffs upon a seniority basis as agreed by and between the General Chairman of the Brotherhood of Railroad Trainmen acting for the bargaining district New York Central Lines West and the bargaining district for the Cleveland Union Terminals Company, separately and severally, by agreement with the New York Central and the Cleveland Union Terminals.

Each of the plaintiffs and their decedents and other members of the Cleveland Union Terminals Company Yardmen Seniority Roster is presently better protected and afforded greater job opportunity than would otherwise have been available in the normal course of the business of the Cleveland Union Terminals Company and their rights under the agreements existing prior to the February 16, 1965 consolidation of the rosters..

3.

2. The substance of the complaint of the plaintiffs herein has been progressed pursuant to the Railway Labor Act and through the National Mediation Board. The plaintiffs and each of them and each of the members of the alleged class presently have an existing complaint and effective administrative remedy with the National Railroad Adjustment Board and its First Division pursuant to the labor agreements existing by and between the Cleveland Union Terminals Company and the Brotherhood of Railroad Trainmen and its General Chairman and the Penn Central Transportation Company, as successor by merger to The New York Central Railroad Company, and the Brotherhood of Railroad Trainmen by its General Chairman.

3. Defendant, Penn Central Transportation Company, denies the allegations of paragraphs 1, 2, 3, 7, 8, 9, 10, and 11.

4. Defendant, Penn Central Transportation Company, admits the allegations of paragraphs 4, 5, and 6.

Further answering, defendant denies each and every, all and singular, the allegations of plaintiffs' complaint contained, not herein specifically admitted to be true, and prays that plaintiffs' complaint be dismissed and that it be permitted to go hence without day at plaintiffs' cost.

\_\_\_\_\_  
JOHN F. DOLAN

1324 West Third Street  
Cleveland, Ohio 44113  
771-5000

Attorney for Defendant

NOTICE OF SERVICE

A copy of the within Answer has been forwarded this \_\_\_\_\_ day of \_\_\_\_\_, 1970, to Tricarichi, Carnes & Kube, 75 Public Square, Cleveland, Ohio 44113, attorneys for plaintiff.

\_\_\_\_\_  
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

G. V. SOPHNER, et al.,	)	CIVIL ACTION NO. C74-914
	)	JUDGE LAMBROS
Plaintiffs,	)	
	)	
-vs-	)	SEPARATE ANSWER OF DEFENDANT,
	)	PENN CENTRAL TRANSPORTATION
PENN CENTRAL TRANSPORTATION	)	<u>COMPANY.</u>
COMPANY, et al.,	)	
	)	
Defendants.	)	

1. Robert W. Blanchette, Richard C. Bond and John H. McArthur, Trustees of the Property of Penn Central Transportation Company, Debtor, defendant herein, state by way of answer that the Penn Central Transportation Company is a corporation engaged in operating a system of railroad in this state and other states.

2. Further answering, defendant, Penn Central Transportation Company, denies the allegations of Paragraphs 1, 2, 3 and 4 of plaintiffs' complaint.

3. Defendant, Penn Central Transportation Company, admits that it has been engaged in interstate commerce.

4. Defendant, Penn Central Transportation Company, denies that it in any way acted in bad faith and denies the remaining allegations of Paragraphs 6, 7, 8, 9, 10, 11 and 12 of plaintiffs' complaint.

5. Further answering, defendant, Penn Central Transportation Company, denies each and every, all and singular, the allegations of plaintiffs' complaint not herein expressly admitted as true.

6. Defendant, Penn Central Transportation Company, denies that plaintiffs have stated a cause of action as to it.

WHEREFORE, having fully answered, defendant, Penn Central Transportation Company, prays that judgment be rendered on its behalf, that it may go hence without day, together with its costs herein.

JOHN F. DOLAN

---

THOMAS R. SKULINA  
420 Northern Ohio Bank Building  
Cleveland, Ohio 44113  
Telephone: 771-3658

Attorneys for Defendant, Penn  
Central Transportation Company.

NOTICE OF SERVICE

A copy of the foregoing SEPARATE ANSWER OF DEFENDANT, PENN CENTRAL TRANSPORTATION COMPANY, was mailed this 23rd day of June, 1975, to Michael R. Kube of Tricarichi, Carnes & Kube, The Illuminating Bldg., 55 Public Square--Suite 2120, Cleveland, Ohio, 44113, attorney for plaintiffs; also to the Brotherhood of Railway Carmen, 6112 West Melrose Street, Chicago, Illinois, 60634.

---

Attorney for Defendant, Penn  
Central Transportation Company.



# CONRAIL



February 28, 1990

FEDERAL EXPRESS

Mr. Fred Blackwell  
19129 Roman Way  
Gaithersburg, MD 20879

Re: Knopik et al. vs. Penn Central

Dear Mr. Blackwell:

Following my advice to you on February 12, 1990 of my pending retirement from the Consolidated Rail Corporation as of March 1, 1990, the Employees' representative and the Employees' appointed Arbitration Committee Member let loose a salvo of five letters between February 14 and February 19 in regards to my retirement.

I will not attempt to comment on each and every letter, but due to the nature of the statements made, I must set the record straight.

My retirement from Conrail was not a planned action on my part. It came about through a short notice offer of voluntary separation and early retirement to non-agreement employees. A very attractive pension offer was made to senior employees and designed so that a large number of positions would be eliminated. I had nothing to report to the Arbitration Committee until I was advised my application was accepted. The Arbitration Committee was promptly advised on February 12, 1990 of my pending retirement.

In addition to the Company pension, I am also filing for my Railroad Retirement Pension effective March 1, 1990. Both pensions could be seriously compromised if I were to continue working after the date my pensions are effective. It is naive of the Employees to consider that I am in the same category as George Ellert, who is a retired railroad worker appearing as a witness. A retired railroad worker, who is compensated for appearing as a witness, does not have his pension compromised as would an active employee who files for a pension and continues an employment relationship instead of retiring.

Mr. Fred Blackwell  
February 28, 1990  
Page 2

The Employees are also confused in regards to the role of Thomas Skulina, Esquire. Mr. Skulina is not actively involved in the preparation of the Carrier's brief for this arbitration case. His primary function as counsel for Penn Central is to assure that the Board complies with the orders of Judge Lambros. Skulina represented Penn Central before Judge Lambros when the arbitration order was issued.

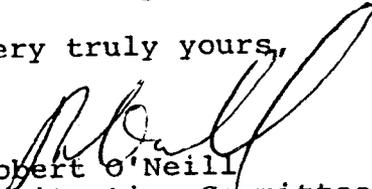
Before closing, I have two other matters to be brought to your attention. The first involves Employees' Exhibit 54, which, from the index of exhibits, indicates that such exhibit consists of 44 pages of Oral Rulings of Judge Lambros, 7/14/76. From my notes, the oral rulings were discussed in October of 1989, however, I did not agree to their presentation as an exhibit and a copy of same was not furnished to me. In any event, the 44 pages were made an exhibit but were not reproduced in the Employees' exchange of exhibits. The employees have stated they will submit the 44 pages if you will direct them to do so. Please consider this request to direct the Employees to distribute at this time a complete copy of their 44 page exhibit, designated as Exhibit 54, to all parties that received the initial distribution of exhibits.

Finally, I have taken into account your ruling regarding the Employees' request for a discovery proceeding. As I understand it, you ruled there was no need to have such a process at this time, but as the Carrier was aware of those areas where the Employees were requesting discovery, the Carrier was to begin now to search records and have such "new evidence" available at the hearing. I have ordered a search for pertinent documents. So far, I have obtained a work sheet of Cleveland Union Terminal employees that indicates their Cleveland Union Terminal earnings, their New York Central earnings that were combined to develop test period earnings, and each employees' monthly "guarantee" under the Penn Central Merger Protective Agreement. Enclosed is a copy of that document that should be an exhibit. In order to expedite the review of this document, I am enclosing a copy for those parties who will receive a copy of this letter to you.

Mr. Fred Blackwell  
February 28, 1990  
Page 3

This is my last official act as member of the Arbitration Committee. You will be advised under separate cover as to the appointment of my successor on the Arbitration Committee.

Very truly yours,



Robert O'Neill  
Arbitration Committee

Enclosures

cc: Carla Tricarichi, Esquire  
55 Public Square  
Illuminating Bldg., Suite 2120  
Cleveland, OH 44113

Wallace Steffen, Esquire  
330 Standard Bldg.  
Cleveland, OH 44113

Thomas Skulina, Esquire  
Ohio Savings Plaza  
1801 E 9 Street  
Suite 709  
Cleveland, OH 44114

Enclosure

NAME	EARNINGS MAY 1963 THRU APR 64			GUARANTEE 8-1-69	No.
	CUT	NYC	TOTAL		
H ANDERSON	6940 78	22 50	6963 28	753	55
H ARBUCKLE	35 65	68 78	07 6913 72	747	68
J ARENA	44 78	64 69	44 6514 22	657	65
C BAUKER	1263 12	340 27	1603 39	173	15
E BENKO	3958 50	3026 89	6985 39	758	56
W BRIDELL	6620 91	* 22 50	6643 41	722	80 2
J BLESSING	1274 60	5694 41	6969 01	720	01
G CHERLIN	73 36	6269 54	6342 90	688	94
K DAY	6640 48	565 96	7206 44	780	75
H DORAN	2487 06	1048 53	3535 59	381	89
R GARVIN	6593 57	45 00	6638 57	713	19
R W GARVIN	6770 17	* 23 82	6793 99	739	86 2
C GARRETT	72 01	6766 81	6838 82	735	23
J GASTON	2777 31	2813 78	5591 09	604	10
G GENTINE	23 82	3447 40	3471 22	577	17
E GREEN	34 70	3343 93	3378 63	384	24
M GRATSON	481 94	5746 94	6228 88	670	03
E HENNINBER	9107 63	* 23 82	9131 45	989	21 2
P HAVAN	2840 44	5305 41	8145 85	886	80
W LEISHER	3859 61	2762 01	6621 62	712	00
B MOORE	6350 75	1173 20	7523 95	819	15
G NORRIS	6544 48	339 83	6884 31	742	70
H PETERSON	8872 39	46 90	8919 29	978	64
C STEINER	780 73	1812 83	2593 56	280	22
C TOMCZAK	5720 43	2134 01	7854 44	835	74
F UHER	6497 07	* 22 50	6519 57	703	03 2
A WOLF	5736 03	3583 05	8719 08	928	11

NAME	EARNINGS MAY 1963 THRU APRIL 64			GUARANTEE NO
	CUT	NYC	TOTAL	
J.F. ACKEE	321 44	6302 42	6623 86	8-1-69 717 30
A. AUGUSTUS	1367 60	1620 35	2987 95	323 45
R. BEEDLOW	2177 69	1814 80	3992 49	431 57
S.J. CARA	8105 29	412.00	8517 29	928 81
R.L. DANE				*914 42 1
W.S. DORT	8964 68	* 59 47	9024 15	993 91 2
C. FERGUSON	NO SERVICE PERFORMED BETWEEN 1-64+2-68			
T. FORAN	9572 06	314 48	9886 54	1082 62
P. GIOVANETTI				*724 57 1
W.E. GRADY	4520 79	2484 39	7005 18	754 19
W.W. HAHN	6570 35	272 26	6842 61	737 91
H.H. HEEMAN	8766 38	* 46 00	8812 38	954 69 2
O.B. HUMMEL	6706 39	* 58 15	6764 54	739 12 2
M. KNAPLIK	4700 52	2580 07	7280 59	792 68
M. McLAUGHLIN	1948 54	4882 98	6831 52	736 97
K.V. MILLARD	6237 85	770 56	7008 41	755 02
K.D. MITCHELL	9079 71	62 49	9142 20	986 96
M. POKRANT	NO SERVICE PERFORMED BETWEEN 1-64+2-68			
W.S. POTOSKY	2239 19	2271 29	4510 40	488 84
H. PRESTON	NO SERVICE PERFORMED BETWEEN 1-64+2-68			
W. PROCHASKA	1495 66	452 92	1948 58	214 16 3
C.S. SIMS	2290 37	1007 29	3298 16	357 32 3
S. TANNEBAUM	6361 35	1990 54	8351 89	898 96
F.J. WEISBARTH				*1005 31 1
G.C. WEYLS	166 03	6543 98	6710 01	722 55

NOTES:

1. TAKE MASTER. GUARANTEE BASED ON AVERAGE OF THREE EMPLOYEES IMMEDIATELY SENIOR AND THREE IMMEDIATELY JUNIOR. (WEISBARTH - THREE JUNIOR)
2. NO SERVICE PERFORMED ON NYC IN 1964
3. DID NOT PERFORM 12 MONTHS SERVICE IN STANDARD BASE PERIOD. MONTHS PRIOR TO BASE WERE USED.



To Bob Siverd  
From Ray Islem

Subject: Knapik vs FCC

Attached are lists of the Knapik claimants. List A covers the ~~Knapik~~ claimants who never returned to work and List B reflects the claimants who did return to work.

The guarantee figures I have devised have been calculated to Mar 31, 1976 or an earlier date because of retirement, death or the acceptance of non-railroad employment.

Inasmuch as I could not locate the payroll records for a few months between Feb 1968 and Dec 1974 and could not locate any payroll records for all of 1975 and the first quarter of 1976, the guarantees are inflated.

total On the other hand, the guarantee figure has not been adjusted for general wage increases during the period and would deflate the guarantee figure.

30

Basically, I have established a ballpark figure I at this time.

EMPLOYEE	GUARANTEE <sup>(2)</sup>	COMMENTS.
(1) MICHAEL J KNAPIK	\$ 8,659.52 ✓ ✓	Retired 12-1-68.
✓ (1) JACK F. ACREE	# 70,295.40 ✓ ✓	Furloughed 2-25-66
(1) RAYMOND BEELOW	8,483.22 ✓ ✓	Furloughed 2-25-66
EDWARD J. BENKO	54,887.73 ✓ ✓	Recalled 6-13-69
KENNETH B. DAY	42,542.31 ✓ ✓	Recalled 6-8-68.
HARVEY E. DORAN	12,985.92 ✓ ✓	Died 8-28-72.
JOSEPH B. GASTONY	9,958.86 ✓ ✓	Retired 10-18-73.
✓ GEORGE A. GENTILE	15,677.81 ✓ ✓	Recalled 9-15-69.
(1) WILLIAM E. GRADY	15,318.77 ✓ ✓	Died Oct. 1969.
MICHAEL McLAUGHLIN	12,107.49 ✓ ✓	DISABLED June 1969
GEORGE R. NORRIS	27,882.92 ✓ ✓	Retired 4-29-75
CHRIST STEIMLE JR.	13,681.68 ✓ ✓	Recalled 12-12-69
✓ CLARENCE C. TOMCZAK	37,084.04 ✓ ✓	Retired ?
✓ FRANK C. ZHAR.	20,328.25 ✓ ✓	Died 3-16-72
(1) SAM TANNENBAUM	58,098.08 ✓ ✓	Furloughed 2-25-66
(1) ANTONIO Augustus.	31,698.10 ✓ ✓	Furloughed 2-25-66
(1) WALTER V. POTOSKY	47,906.32 ✓ ✓	Furloughed 2-25-66
Total	<u>517,596.42</u>	

(1) NEVER ACCEPTED RECALL NOTICE

(2) GUARANTEE CALCULATED Thru 3-31-76 or to date of death, retirement or to date of non railroad employment.

54,887.73 +  
42,542.31 +  
12,985.92 +  
9,958.86 +  
15,677.81 +  
12,107.49 +  
27,882.92 +  
13,681.68 +  
37,084.04 +  
20,328.25 +

010

247,137.01 †

247,137.01 +  
270,459.41 +

002

517,596.42 †

000

0. 5

8,659.52 +

70,295.4 +

8,483.22 +

15,318.77 +

37,084.04 +

20,328.25 +

20,328.25 -

37,084.04 -

88,098.08 +

31,698.1 +

47,906.32 +

011

270,459.41 5

By way of summary, between February 21, 1968 and December 1969, the following Claimants returned to work, and worked until retirement or their death, as the case may be:

List  
B

1. Jack F. Acree - Died 7/6/82
2. Edward J. Benko - Retired (date unknown)
3. Kenneth B. Day - Retired (date unknown)
4. Harvey E. Doran - Died in 1972
5. Joseph D. Gastony - Retired 1973
6. George A. Gentile - Retired (date unknown)
7. George R. Norris - Retired 5/1/75
8. Christ Steimle, Jr. - Retired 1989
9. Clarence C. Tomczak - Died 9/18/82
10. Frank C. Uher - Died 1972

The following Claimants did not at any stage return to

work:

List  
A

1. Antonio Augustus
2. Raymond Beedlow
3. William E. Grady (died 10/69)
4. Michael J. Knapik
5. Michael H. McLaughlin (disabled)
6. Walter V. Potosky
7. Sam Tannenbaum

On September 15, 1969, the Claimants, through their attorney, filed a civil action, File No. C 69-722, in the United States District Court for the Northern District of Ohio, Eastern



September 1, 1965

MEMORANDUM

The job stabilization agreement of February 7, 1965 - entered into with the clerks, telegraphers, signalmen, hotel and restaurant employes, and M. of W. organization - places certain limits on our right to reduce forces in these crafts - even in the event of a sharp reduction in traffic, except under certain emergency conditions. The limitations, however, apply only to so-called "protected" employes. Seasonal workers and other specified "non-protected" employes - in general, all those hired subsequent to October, 1964 - are not covered by the agreement limitations and can be laid off at any time to the extent that their services are not needed.

The limitations are clearly spelled out in the agreement. While the method of calculation necessary to arrive at the specified limitations is not clearly defined, all parties have apparently accepted the methodology which we have employed in the calculation of the "business index".

The average of the years 1963 and 1964 is used as the base. For each day of 1964 a total of net ton miles carried in the thirty days ending on that day is averaged with the corresponding thirty-day total of net ton miles carried in the period ending on the same date in 1963. A similar average of revenues (freight and non-freight) earned during each thirty-day period is computed using the base years. Against each of these base period numbers, respectively, thirty-day totals of current net ton miles and total revenue, actual and/or projected, must be tested to determine the percentage change from the base period. The two percentage change numbers thus obtained for net ton miles and total revenues, are then averaged to obtain a basic "business index" figure. If this "business index" indicates a decline in rail activity in excess of 5 per cent, then we are entitled to lay off 1 per cent of each craft's "protected" employes for each full percentage point that the decline in the "business index" exceeds 5 per cent.

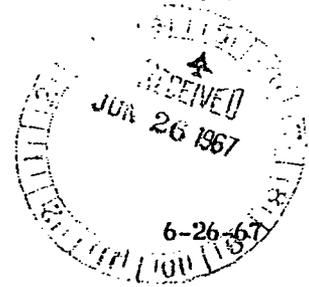
It will be noted that any single day's decline as compared with the base period is diluted to 1/30 of its weight as it is applied in the "business index". Therefore, any decline in rail traffic must be exceedingly sharp or protracted before it can affect the index to the extent necessary to bring about the 6 per cent decline, and thereby permit the layoff of "protected" employes.

Our Labor Relations people have interpreted the agreement to mean that a specified layoff may be made during any thirty-day period, viewed retrospectively or prospectively, of the day on which the "business index" declines by at least 6 per cent. If the index should continue to decline, additional employes may be laid off in steps of multiples of 1 per cent. If business improves gradually, employes must be restored in similar steps, at the end of each thirty-day period, to the limit that all laid-off employes must be

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PA STATE ARCHIVES

350 North Street, Harrisburg, PA 17120-0090  
PA Historical & Museum Commission



SUBJECT: Layoff of "Non Op" Employees under "Business Conditions" Clause

Under terms of the Job Stabilization Agreement of February 7, 1965 layoffs can be made if the "average percentage of both gross operating revenues and net revenue ton miles" decline "in excess of 5% below" the comparable average for the average of the same 30 day period in 1963 and 1964.

Realistically, the language of the contract means that layoffs may be made only if the ton-mile-operating revenue average drops by at least 6 percent below the base period average.

July net ton-miles, as forecast, are 5.38 percent above the 1963-64 base period; Forecast July Operating revenues are 3.73 percent below. On average, the two are 0.83 percent above the base period.

Unless PRR traffic shrinks far more than now anticipated, it does not seem that any layoffs can be accomplished during July 1967, under terms of this agreement. The average percentage would have to drop by an additional 6.83 percent for the clause to be invoked.

*D. C. Bevan*  
D. C. Bevan

- cc: Messrs. A. J. Greenough
- S. T. Saunders
- H. W. Large
- J. B. Jones
- A. P. Funkhouser
- W. R. Gerstnecker
- P. D. Fox
- R. E. Franklin
- W. S. Cook
- B. S. Cole
- J. J. Maher

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April 21, 1966

PERSONAL & CONFIDENTIAL

Messrs. Saunders  
Devan  
Greenough  
Smucker  
Large  
Jones  
Funkhouser

Subject: Business Conditions Clause of Job Stabilization Agreement of  
February 7, 1965 and April, 1966 B. L. F. & E. and Coal Strikes

This memorandum supplements and updates the memorandum of April 19, 1966 on the same subject.

The attached table assumes that the Coal Miners' Strike will continue through the end of the month of April and attempts to measure the impact of that strike together with the earlier one of the B. L. F. & E. on PRR activity through the month of April. This table also incorporates two additional days of actual ton-miles as compared with the April 19 memorandum.

The actual ton-miles for the thirteenth and fourteenth days of April reveal the presence of a larger quantity of Coal on our lines than had been incorporated in the estimates of April 19. From data that have become available since the preparation of the April 19 memorandum, it is evident that we had "on line" and/or "received" a far greater than normal number of carloads of Coal during the first four days of the Coal Miners' Strike. The effect of this is to reduce the impact of the strike on our level of activity as measured for purposes of the Job Stabilization Agreement, consequently, the last column of the table indicates a lesser effect than had been previously indicated. The probability is that the actual ton-miles for days immediately beyond the fourteenth of April will further reduce the impact of the strike.

The accompanying total indicates that the lowest level of PRR activity will be only 4.3 percent below the Job Stabilization Agreement base period on April 29.

It seems reasonable to assume that if the strike continues on into May, the effect on PRR activity will be lessened as the impact of the B. L. F. & E. strike is lost in the thirty day "moving-averages" that are part of the prescribed method of calculating the impact of business declines. Consequently, it does not appear that it will be possible to effect any lay-offs under the business conditions clause of the Job Stabilization Agreement as a result of the Coal Miners' Strike.

cc. G. W. K.  
P. D. F.  
✓ C. E. I.  
W. R. G.

*F. N. S.*  
*W. S. C.*

032

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PA Historical & Museum Commission





Commonwealth of Pennsylvania  
**Pennsylvania Historical and Museum Commission**

Bureau of Archives and History  
350 North Street  
Harrisburg, Pennsylvania 17120-0090  
[www.phmc.state.pa.us](http://www.phmc.state.pa.us)

September 13, 2007

To Whom It May Concern:

1. I, Jonathan R. Stayer, as an archivist at the Pennsylvania State Archives, am one of the custodians of records held by this institution.
2. The Pennsylvania State Archives received archival records of the Pennsylvania Railroad Company from its successor, the Penn Central Corporation.
3. These are accurate copies of the documents that were part of the records of the Pennsylvania Railroad Company that were deposited by the Penn Central Corporation with the Pennsylvania State Archives, Harrisburg, PA.
4. Archived documents were copied and affixed with a stamp reading "**Reproduction of An Original Record / Please Credit: / PA STATE ARCHIVES / 350 North Street, Harrisburg, PA 17120-0090 / PA Historical & Museum Commission.**"
5. These records are over thirty years old.

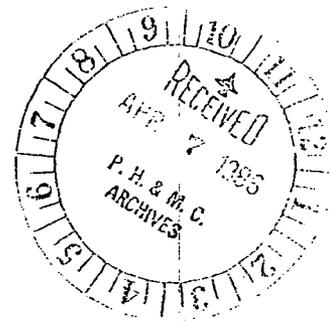
I do hereby verify the above statements are true and accurate to the best of my knowledge. I have hereunto set my hand and caused the seal of the said Commission to be affixed this Thirteenth day of September A.D. 2007.

A handwritten signature in black ink, appearing to read "Jonathan R. Stayer".

Jonathan R. Stayer  
Archivist III  
Pennsylvania State Archives



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DEPOSIT AGREEMENT

Deposit Agreement dated April 7, 1986 between THE PENN CENTRAL CORPORATION (the "Depositor") and the PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION (the "Commission").

WHEREAS, Depositor has in its possession valuable historic records and documents of Depositor, its predecessor corporations and its subsidiaries which it desires to save for the benefit of future generations, and Commission is willing to provide a repository for said records so long as they can be used for historical research; and

WHEREAS, Depositor and the Commission desire to evidence the terms upon which records and documents of Depositor (herein referred to as "Documents") will be deposited with the Commission;

NOW, THEREFORE, Depositor and the Commission, each intending to be legally bound hereby, agree as follows:

1. The Documents of Depositor listed on Schedule I attached hereto shall be deposited with the Commission under and subject to all the terms, agreements and conditions hereinafter set forth. Ownership of the Documents shall remain with Depositor.

2. The Commission shall prepare the documents for shipment. They will be packed in accordance with standard archival practices in order to ensure their safekeeping in transit. The

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Commission will bear the cost of packing and snipping the materials to its depository.

3. The Commission shall accept the Documents when presented to it, transport them to its depository, list them, catalogue them and store them. The Commission shall provide copies of preliminary as well as subsequent listings to the Corporate Secretary of the Depositor.

4. The Commission covenants and agrees with Depositor, that:

(1) Unless waived in writing by Depositor, the Documents will be placed at all times in a room or rooms in which they will be protected from damage by fire by a sprinkler system and smoke detectors or another system providing equal or better protection from damage by fire.

(2) The Documents will receive the same care and protection to secure their preservation and longevity, and will receive the same security protection, that a reasonable and prudent archivist would provide for valuable documents owned by the archivist.

(3) In the event any Document is lost, stolen, destroyed or damaged beyond repair for any reason, the Commission will notify Depositor thereof within fifteen (15) days after becoming aware of such event.

(4) The Commission will not permit any of the Documents to be removed from the premises of its depository with-

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out the prior written consent of the Depositor except that if any of the Documents are duplicates, or the Commission no longer desires to retain such Documents, it shall offer to return them to Depositor. If Depositor refuses to accept their return, the Commission may deposit them with another institution or destroy them.

(5) The Documents will be made available to employees or other persons designated by the Secretary or an Assistant Secretary of the Depositor for inspection, copying and reproduction (at the expense of Depositor) during normal business hours of the depository of the Commission.

(6) The Commission will return to Depositor upon thirty (30) days prior notice specific Documents as to which the Depositor shall certify to the Commission that they are needed (i) for use in the business of Depositor or (ii) for litigation in which the Depositor is engaged or preparing to engage or (iii) to enable Depositor to comply with a state or federal law, regulation or court order. The expenses of returning such Documents shall be borne by Depositor.

5. The initial term of the deposit of the Documents is for twenty years from the date of this agreement. By notice given by Depositor to the Commission, or by the Commission to Depositor, not less than six (6) months prior to the 20th anniversary of the date of this agreement, either Depositor or the Commission may terminate this agreement as to all or any of the Documents. In

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such event, all the Documents as to which such termination notice shall have been given shall be returned to Depositor within thirty (30) days after the 20th anniversary of the date of this agreement. The Commission shall prepare for shipment the Documents to be returned by placing them in suitable containers and sending the Documents to the location designated by Depositor. Any out-of-pocket expenses of the Commission in returning the Documents will be reimbursed by Depositor. If necessary and if required by the Commission, Depositor will advance the funds required to pay for transportation of the Documents.

6. The initial twenty-year term of this agreement shall be automatically extended for an additional twenty-year term as to all Documents as to which a termination notice shall not have been given by one party hereto to the other at least six (6) months prior to the termination of the initial twenty-year term. It is understood and agreed that the foregoing provisions relating to termination of the initial twenty-year term and the return of Documents at the end of the initial term shall be applicable to the termination and return of deposited Documents at the end of the second twenty-year term.

7. Depositor agrees that researchers who meet requirements set by the Commission may have access to the records subject to the following:

(1) All Documents more than 25 years old shall be open to research unless otherwise separately agreed between Depositor

tor and the Commission or its depository as to specific Documents. Any such separate agreements shall be added to this agreement as an additional schedule.

(2) A list of any Documents less than 25 years old shall be prepared for review by Depositor which upon review shall determine access provisions.

(3) Personnel files shall be closed to research until 25 years after the death of the employee.

(4) The Commission may permit reproduction of Documents by researchers, if (a) the Documents are able to withstand copying and (b) a researcher who wishes to reproduce one or more pages of the Documents is required by the Commission to complete and sign a form which will contain his or her name and address, the date of the copying, a list of the Documents to be reproduced and a statement that (i) the researcher understands that except for brief quotations all rights of publication and all copyright rights are reserved to the Depositor and (ii) the researcher agrees that he or she will not cause or permit the publication of a reproduction of any page of the Documents without obtaining the prior written consent of the Depositor. Depositor shall be entitled to a copy of any such completed form upon request made to the Commission.

8. The Depositor may without advance notice to the Commission inspect the Documents at any time, and from time to time, during regular business hours of the depository of Commis-

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sion to determine whether they are being adequately cared for, maintained and preserved and have not been lost, stolen, destroyed, damaged beyond repair or disposed of.

9. All copyright and rights of publication of material in the Documents will remain with Depositor. Any person seeking to quote extensively from any page, or to publish a reproduction of any page, of the Documents must secure the prior written consent of Depositor. Brief quotations for the purpose of scholarly analysis are permitted.

10. The Documents will be stored without charge to Depositor. Depositor understands that the Commission does not insure its collections and will not insure the Documents.

11. If Depositor should wish to turn this deposit into a gift, the Commission will cooperate, so that this agreement can be changed.

12. All notices to the Depositor shall be addressed to:

The Penn Central Corporation  
500 West Putnam Avenue  
Greenwich, Connecticut 06836  
Attention: Corporate Secretary

or to such other person or such other address as the Depositor shall from time to time designate in writing to the Commission.

All notices to the Depository shall be addressed to:

Pennsylvania Historical and Museum Commission  
William Penn Memorial Museum  
Harrisburg, PA 17120  
Attention: Dr. Roland Bauman  
Chief Div. of Archives and Manuscripts

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or to such other person or such other address as the Commission shall from time to time designate in writing to the Depositor.

13. (1) If the Commission shall default in whole or in part in the due observance or performance of any of its agreements contained in paragraphs 4(1), 4(2), 4(4), 4(5) and 4(6) of this agreement, and such default shall continue for seven (7) days after the giving of notice by Depositor to the Commission of the existence of the Default; or

(2) If in the opinion of Depositor a substantial number of the Documents delivered to Commission are lost, stolen, destroyed without permission of Depositor or in accordance with another provision of this agreement, or are damaged beyond repair (otherwise than due to the normal deterioration of such Documents over a period of time); or

(3) If the Commission shall default in the due observance or performance of any other covenant, agreement or obligation of the Commission contained in this agreement, and the same shall continue for ten (10) days after notice from Depositor;

Depositor may, if it so elects, terminate this agreement by giving written notice to that effect to the Commission; and in such event the Documents will be returned to Depositor within thirty (30) days after the date of delivery of such notice to the Commission in the same manner as set forth in the fourth, fifth and sixth sentences of paragraph 5 of this agreement.

14. The Commission will, if requested by Depositor, but not more than once a year, certify to Depositor by an authorized officer of the Commission that the Commission is in compliance the covenants, agreements and obligations to be performed or observed by it under the terms of this agreement, or if not in full compliance, the Commission will specify the particular matter as to which it is not in compliance or observance, and the steps, if any, being taken to remedy the same.

15. This agreement shall be binding upon and inure to the benefit of the successors to the parties hereto. This agreement shall not be assignable by the Commission without the prior written consent of Depositor.

IN WITNESS WHEREOF, Depositor and the Commission have caused this agreement to be duly executed as of the date first above written.

THE PENN CENTRAL CORPORATION

By E. R. Vardell  
Senior Vice President and  
Controller

PENNSYLVANIA HISTORICAL AND  
MUSEUM COMMISSION

By [Signature]

4/7/86

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Schedule I

Pennsylvania Historical and Museum Commission

1. Pennsylvania Railroad Minute Books (1847-1956).
2. Pennsylvania Railroad Board Files (1847-1956).
3. Pennsylvania Railroad Financial Records - ledgers, journals (1847-1960); cashbooks (1847-1890).
4. Pennsylvania Railroad Stock Records - ledgers and transfer books (1847-1900).
5. Secretary's office correspondence and papers (1870-1956).
6. Real Estate Department letter books and records (1865-1900).
7. Pennsylvania Railroad Annual Report (1847-1969).
8. Pennsylvania Railroad subsidiaries and absorbed companies records:
  - a. Records of the Northern Central Railroad includes minutes, board files and financial records (1828-1969).
  - b. Records of Cumberland Valley Railroad (1895-1919).
  - c. Schuylkill and Juniata Railroad (1860-1910).
  - d. West Pennsylvania Railroad (1850-1910).
  - e. Philadelphia and Erie Railroad (1850-1910).
  - f. Erie and Western Transportation Company (1865-1920).
  - g. Susquehanna Coal Company (1867-1941).
  - h. Manor Real Estate Company (1886-1969).
9. Annual Reports to the ICC (1889-1969).

10. Microfilm-Pennsylvania Railroad:
  - a. Mechanical Engineering Drawings (1880-1951).
  - b. Real Estate Maps and Atlases (1831-1960).
11. Pennsylvania Railroad four (4) volume history by Coverdale and Colpitts (1946) - 1 set.
12. Lehigh Valley Railroad Records - minutes, correspondence and account books (1846-1956), but not including documents of Lehigh Valley Coal Company.
13. Controller, Finance and Law Files (Data Base Record Control Numbers):
  - a. PC106 - Bond issues history.
  - b. PC130 - Valuation papers.
  - c. PC132 - New York-New Haven and Hartford RR Co. reorganization documents.
  - d. PC134 - National Office Managers Association.
  - e. PC161 - Treasurers' long books.
  - f. PC171 - Pennsylvania Railroad statistics.
  - g. PC172 - Pennsylvania Railroad statistics.
  - h. PC177 - Pennsylvania Railroad statistics.
  - i. PC178 - Pennsylvania Railroad statistics.
  - j. PC186 - Pennsylvania Railroad accounting practices and procedures.
  - k. PC196 - Pennsylvania Railroad merger of subsidiaries.
  - l. PC317 - Manor Real Estate Company coal lands.
  - m. PC319 - Pennsylvania Railroad steam locomotives and multiple unit cars.

PENN CENTRAL CORPORATION\* AND CONRAIL DEPOSIT AGREEMENTS

PERTINENT FACTS:

1. THE DEPOSITS ARE FOR 20 YEARS - - THE AGREEMENTS WILL ROLL OVER FOR ANOTHER 20 YEARS UNLESS THE PHMC IS NOTIFIED 6 MONTHS IN ADVANCE THAT THE DEPOSITORS DESIRE ALL OR SELECT RECORDS BACK.
2. ANY RECORDS NEEDED TO CONDUCT BUSINESS OR FOR LEGAL PURPOSES MUST BE PROMPTLY RETURNED BY THE PHMC AT THE DEPOSITORS' EXPENSE. (WITHIN 30 DAYS FOR PENN CENTRAL)
3. DUPLICATE OR UNWANTED RECORDS MUST BE OFFERED BACK TO THE DEPOSITORS BEFORE THEY ARE PLACED AT ANOTHER INSTITUTION OR DESTROYED.
4. NONE OF THE PENN CENTRAL DEPOSIT CAN BE REMOVED FROM THE STATE ARCHIVES WITHOUT THE PRIOR CONSENT OF THE DEPOSITOR. IF IN THE OPINION OF PENN CENTRAL, THE PHMC DEFAULTS ON TERMS OF THE AGREEMENT OR PLACES THE RECORDS IN A SITUATION WHERE A SUBSTANTIAL NUMBER OF DOCUMENTS ARE LOST, STOLEN OR DAMAGED, THE AGREEMENT CAN BE TERMINATED BY PENN CENTRAL.
5. ALL DOCUMENTS MORE THAN TWENTY-FIVE YEARS OLD WILL BE OPEN TO RESEARCHERS. PERSONNEL CASE FILES (AND CARD FILES PER LETTER OF OCTOBER 19, 1990) SHALL BE CLOSED TO RESEARCH FOR TWENTY-FIVE YEARS AFTER THE DEATH OF THE EMPLOYEE.
6. ALL COPYRIGHT AND RIGHTS OF PUBLICATION OF MATERIAL REMAIN WITH THE DEPOSITORS. RESEARCHERS MUST OBTAIN PERMISSION FROM THE DEPOSITORS BEFORE ANY PAGE OF ANY DOCUMENT CAN BE QUOTED EXTENSIVELY OR PUBLISHED. BRIEF QUOTATIONS FOR THE PURPOSE OF SCHOLARLY ANALYSIS ARE PERMITTED. COPYING OF MATERIALS IS PERMITTED FOR RESEARCHERS IF THE CONDITION OF THE DOCUMENTS WARRANT IT BUT IN THE CASE OF PENN CENTRAL ONLY IF THE USER COMPLETES A SIGNED FORM GIVING HIS OR HER NAME, ADDRESS, DATE OF COPYING, A LIST OF DOCUMENTS TO BE REPRODUCED AND THAT THEY UNDERSTAND THE TERMS UNDER WHICH THE MATERIALS MAY BE CITED AND OR PUBLISHED.
7. IF THE DEPOSITORS SHOULD WISH TO CONVERT THE DEPOSIT INTO A GIFT, THE PHMC WILL COOPERATE AS APPROPRIATE.

\* AMERICAN PREMIER UNDERWRITERS, INC. AS OF 1994

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**General Objection No. 2:** PCC objects to the Interrogatories 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 Interrogatories to the extent that they are vague, undefined and/or ambiguous.

**General Objection No. 4:** PCC objects to the Interrogatories to the extent that they seek public information to which Plaintiffs have equal access and which Plaintiffs can just as easily obtain.

**General Objection No. 5:** PCC objects to the Interrogatories to the extent that they seek information that PCC has already produced to Plaintiffs.

**General Objection No. 6:** PCC objects to the Interrogatories to the extent they seek information that cannot be obtained after a reasonably diligent search.

**General Objection No. 7:** PCC objects to the Interrogatories to the extent that they request information that is already within Plaintiffs' knowledge, possession, and/or control.

**General Objection No. 8:** PCC objects to the Interrogatories to the extent that they seek information regarding matters that continue to be investigated and/or evaluated.

**General Objection No. 9:** PCC objects to the Interrogatories to the extent that they seek information 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 Interrogatories to the extent that they seek information that contains 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.

## **SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES**

### **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.