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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO - EASTERN DIVISION

MICHAEL J. KNOPIK, et al.,

Plaintiffs,

-vs-

JUDGE LAMBROS  
CASE NO. 69-722

PENN CENTRAL COMPANY, et al.,

Defendants.

- - - - -

Arbitration hearing held in the  
above-captioned matter taken before Sandra L.  
Mazzola, a Registered Professional Reporter and  
Notary Public within and for the State of Ohio,  
at Stouffer's Tower City Centre, Public Square,  
Cleveland, Ohio, commencing on Thursday, May 3,  
1990 at 9:50 a.m.

- - - - -

MEHLER & HAGESTROM  
Court Reporters  
1750 Midland Building  
Cleveland, Ohio 44115  
216.621.4984  
FAX 621.0050  
800.822.0650

1           ARBITRATION COMMITTEE:

2                     Fred Blackwell, Esq., Chairman  
3                     Walter R. Steffen, Esq.  
4                     Jeffrey H. Burton, Esq.

5           APPEARANCES:

6                     Carla Tricharichi, Esq.  
7                     Charles Tricharichi, Esq.  
8                     Brian A. Glassman, Esq.,

9                             On behalf of the Claimants;

10                     William E. Kershner, Esq.  
11                     S. Sandile Ngcobo, Esq.  
12                     Thomas R. Skulina, Esq.

13                             On behalf of the Company.

14           ALSO PRESENT:

15                     Mr. Raymond Beedlow  
16                     Mr. Christ Steimle  
17                     Mr. Walter Potosky  
18                     Mr. Micahel McLaughlin  
19                     Mr. James Knapik  
20                     Mr. George Ellert  
21                     Mr. Robert Schlosberg.

22  
23  
24  
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1 11:47 a.m. are you ready to call your first  
2 witness?

3 MS. TRICHARICHI: Yes. The  
4 claimant calls Mr. George Ellert on  
5 cross-examination.

6 MR. BLACKWELL: All right. We're  
7 working under a schedule now. We're going to  
8 recess at one sharp and return from  
9 one-forty-five to two and then continue through  
10 the afternoon. Proceed.

11 GEORGE C. ELLERT, of lawful age, called  
12 for the purpose of cross-examination being by me  
13 first duly sworn, as hereinafter certified, was  
14 examined and testified as follows:

15 CROSS-EXAMINATION OF GEORGE C. ELLERT

16 BY MS. TRICHARICHI:

17 Q. Mr. Ellert, can you state your name for the  
18 record, please?

19 A. George C Ellert.

20 Q. What's your address, Mr. Ellert?

21 A. 16307 St. Anthony Lane, Cleveland, Ohio.

22 Q. Mr. Ellert, are you presently working?

23 A. No. I'm retired.

24 Q. And from where are you retired?

25 A. I'm retired from Conrail.

- 1 Q. And let's go back and get an employment history  
2 from you. When did you first begin work with  
3 the railroad and what railroad did you work for?
- 4 A. I commenced working for the New York Central  
5 Railroad in Inglewood, Illinois and Chicago in  
6 1941.
- 7 Q. What was your job at that time?
- 8 A. I hired out as a locomotive fireman while I went  
9 to school in Chicago.
- 10 Q. And subsequent to being a fireman, did you move  
11 to a different position?
- 12 A. Yes. I was promoted to an engineer. I went in  
13 the Service in 1942. I come back in 1946.
- 14 Q. You mean Army, the Service, in the war?
- 15 A. That's right. Yes.
- 16 Q. And you returned in 1946, I think you said. And  
17 where did you work at that time?
- 18 A. I went back to the New York Central Railroad in  
19 Chicago and also back to school. I worked as a  
20 fireman and as an engineer until 1951. I was  
21 promoted to a road foreman of engines out of  
22 Chicago in the western division.
- 23 Q. How long did you hold that job?
- 24 A. Until 1953. I was given the job as a  
25 transportation inspector in Cleveland, Ohio

1 under the general manager.

2 Q. Now, as that position were you part of  
3 management or labor?

4 A. Part of management. I was part of management as  
5 a road foreman of engines.

6 Q. Okay. And that was in 1953, and what position  
7 did you hold after that?

8 A. Transportation independent -- oh, after that,  
9 after 1955 I was assigned as night trainmaster  
10 in Cleveland, Ohio in the Cleveland yard area.

11 MR. BLACKWELL: What year was  
12 that?

13 A. 1953.

14 MR. BLACKWELL: You were  
15 transportation inspector, I've got in '53.

16 THE WITNESS: That is right.

17 MR. BLACKWELL: Were you night  
18 trainmaster at the same time?

19 A. Well, afterwards, no. I was promoted in '53.  
20 In '54 I was a night trainmaster. Then in the  
21 latter part of '54 I was assigned as a passenger  
22 trainmaster in the Cleveland Union Terminal.

23 Q. And how long did you hold that position?

24 A. Until 1957.

25 Q. And then where did you work?

1 A. I was appointed as assistant superintendent in  
2 Erie, Pennsylvania.

3 Q. Assistant superintendent of what?

4 A. Of the Lake Division.

5 Q. Of the New York Central Railroad?

6 A. Of the New York Central Railroad.

7 Q. And then how long did you hold that position?

8 A. Oh, I came back here in 1968 in Cleveland, Ohio  
9 as transportation superintendent.

10 Q. And how long did you hold that position?

11 A. From 1961.

12 Q. No. You said you came back in 1965.

13 A. '68.

14 Q. You just said you held it until '61.

15 MR. BLACKWELL: '68,  
16 transportation superintendent, Cleveland. You  
17 said '61. I think you meant '71 was your next  
18 date.

19 THE WITNESS: No, no. You got me  
20 mixed up here. I came back here in 1958 into  
21 Cleveland.

22 MR. BLACKWELL: '58, okay.

23 A. I went to Erie in '57, came back here in '58.

24 Q. And then where did you go?

25 A. Toledo, Ohio.

1 Q. You went to Toledo in 19 when?

2 A. '61.

3 Q. And what was your job there?

4 A. Transportation superintendent of the Toledo  
5 Division of the New York Central.

6 Q. And how long did you hold that position?

7 A. Until 1968.

8 Q. And at that juncture where did you go?

9 A. I came back to Cleveland, Ohio.

10 Q. And you held what position?

11 A. Assistant to the manager of labor relations.

12 Q. And who was the manager of labor relations?

13 A. C L. Stalder.

14 Q. And he was your immediate superior, is that  
15 correct?

16 A. Yes, that's correct.

17 Q. And that was in 1968, you said?

18 A. Yes, ma'am.

19 Q. Okay. And after that time where did you work?

20 A. I continued in that office until Charlie Stalder  
21 retired and I was appointed the assistant  
22 manager of labor relations.

23 Q. In what year?

24 A. I don't know exactly. 1975 maybe.

25 Q. Some time in the '70s?

- 1 A. Yeah.
- 2 Q. And then was that your final position with the  
3 railroad?
- 4 A. Yes, it was.
- 5 Q. And when did you retire?
- 6 A. August of 1981.
- 7 Q. Of 1981?
- 8 A. Yes, ma'am.
- 9 Q. And since that time, what capacity have you  
10 served in with the railroad?
- 11 A. I haven't served in any capacity with the  
12 railroad.
- 13 Q. You have never served as a technical advisor  
14 before for them?
- 15 A. Well, I've been called in on a case, yes.
- 16 Q. On more than one occasion, is that correct?
- 17 A. Maybe one other occasion.
- 18 Q. And other than the fact that you receive a  
19 pension from the railroad, that's the only other  
20 ongoing contact you have with the railroad?
- 21 A. That is right.
- 22 Q. And when you serve as technical advisor, you are  
23 compensated for your services, are you not?
- 24 A. Yes, I am.
- 25 Q. As you are today?

1 A. Yes.

2 Q. Now, Mr. Ellert, isn't it fair to say that the  
3 railroad's current position is that the  
4 plaintiffs were covered by the merger protection  
5 agreement, but that they lost their rights to  
6 benefits by failing to report for work in the  
7 freightyard, is that a fair statement?

8 A. They waived their benefits by not reporting for  
9 work.

10 Q. That's not my question. It was a yes or no  
11 question. Is it fair to say that the railroad's  
12 current position is that the plaintiffs were  
13 covered by the merger protection agreement but  
14 that they lost their right to benefits by  
15 failing to report for work in the freightyard?

16 A. Yes.

17 Q. Is it also fair to say that before July 14,  
18 1976, the railroad's position was as follows.  
19 That the employees in question, claimants in  
20 this case, were not New York Central employees?

21 A. I'll have to qualify that. It was very evident  
22 that they were New York Central employees when  
23 they worked on the Lakefront and C.U.T.  
24 employees when they worked in the Cleveland  
25 Union Terminal.

1 Q. And it's still your position that they were  
2 C.U.T. and not New York Central employees, is  
3 that correct?

4 A. They were on the Cleveland Union Terminal  
5 seniority roster, which is one of our exhibits.

6 Q. And when they worked at C.U.T. locations, they  
7 were not New York Central employees?

8 A. They got a Cleveland Union Terminal paycheck.

9 Q. That's not my question. Listen to my question,  
10 please, Mr. Ellert.

11 A. I did.

12 Q. When they were working at the Cleveland Union  
13 Terminal's locations, it is your position that  
14 they were not New York Central employees. Is  
15 that correct?

16 A. That is correct. That is correct.

17 Q. And that is still your position?

18 A. Yes, yes, ma'am.

19 Q. To this day that's the railroad's position, they  
20 were not New York Central employees when they  
21 were working at the Cleveland Union Terminal's  
22 location?

23 A. That is correct.

24 Q. That's correct.

25 MR. BLACKWELL: What happened to

1 your date, your time frame in this interrogation  
2 before '76? Is that still in your question?

3 MS. TRICHARICHI: My question was  
4 before '76.

5 MR. BLACKWELL: You started off  
6 before.

7 MS. TRICHARICHI: Before '76 what  
8 was his position, and he's saying that  
9 essentially the railroad says today that it's  
10 the same position.

11 Q. And the position that you took is consistent  
12 with -- I'm handing you what's been previously  
13 marked as Plaintiffs' Exhibit 53. The position  
14 that they were not New York Central employees is  
15 --

16 MR. BLACKWELL: Hold up a minute,  
17 now, and let us get ours. 53? Exhibit 53?

18 MS. TRICHARICHI: That's correct.

19 Q. Actually can I have this one and I'll give you  
20 another one.

21 MR. BURTON: Can you identify the  
22 exhibit, just give me the title of it?

23 MS. TRICHARICHI: The title is the  
24 Answer of Penn Central Transportation Company.

25 MR. BLACKWELL: Is that an extract

1 from --

2 MS. TRICHARICHI: That's the first  
3 page of the answer.

4 MR. BLACKWELL: I have just one  
5 page.

6 THE WITNESS: That's all I have.

7 MS. TRICHARICHI: Right. That's  
8 the first page of the answer in case number  
9 69-722 from which this arbitration is derived.

10 MR. BLACKWELL: Okay.

11 Q. And in that answer, the Penn Central denied that  
12 these people were New York Central employees,  
13 isn't that correct?

14 A. That's what it says.

15 Q. And I turn your attention to Plaintiffs' Exhibit  
16 61, which is the Interstate Commerce Commission  
17 ruling of 1974.

18 MR. BLACKWELL: 61 you're at now?

19 MS. TRICHARICHI: That's correct.

20 Q. Page 548 of that exhibit indicates, does it not,  
21 that the employees of the subsidiary Cleveland  
22 Union Terminal were determined by the Interstate  
23 Commerce Commission to in fact be employees  
24 entitled to the merger protection benefits under  
25 the 1964 agreement, does it not?

1 A. That's true.

2 Q. And that is --

3 MR. BLACKWELL: Can you point to a  
4 paragraph that you're referring to there on page  
5 548?

6 MS. TRICHARICHI: 548, first  
7 complete paragraph in the left column, we  
8 further find the material allegation of Penn  
9 Central did not agree --

10 MR. BLACKWELL: Okay.

11 MS. TRICHARICHI: And also directly  
12 across from that in the right column, the  
13 subsidiary employees have therefore been  
14 entitled to the protection.

15 MR. BLACKWELL: Okay. I got you.

16 Q. And despite that ruling by the Interstate  
17 Commerce Commission, it's your position as you  
18 sit here today that the Cleveland Union Terminal  
19 employees, when they worked at Cleveland Union  
20 Terminal locations, were not New York Central  
21 employees, despite that, is that correct?

22 A. No, it is not.

23 Q. Well, didn't you just tell me that when they  
24 worked at Cleveland Union Terminals that they  
25 were not New York Central employees?

1 A. When they worked in the Cleveland Union Terminal  
2 proper, yes.

3 Q. That's right. And the ICC ruling says that they  
4 were New York Central employees when they worked  
5 at the Cleveland Union Terminal locations.

6 MR. KERSHNER: I've got to object.  
7 The document speaks for itself.

8 A. For itself.

9 Q. Well, you are in --

10 MR. BLACKWELL: Let me get this  
11 clarification. You just made a reference that  
12 it is your position. You don't really mean  
13 him. It's Penn Central's position.

14 MS. TRICHARICHI: It's the  
15 carrier's position.

16 MR. BLACKWELL: Okay. Let's keep  
17 it clear. She's not talking about you  
18 personally. It's your knowledge of the  
19 carrier's position.

20 MS. TRICHARICHI: Right.

21 MR. BLACKWELL: So now with that --  
22 I'm not sustaining this objection. Restate your  
23 question.

24 Q. Despite the ruling of the ICC that I have handed  
25 to you -- of which you were aware, were you not,

1 as assistant director of labor relations at the  
2 New York Central Railroad?

3 A. I can't answer that.

4 Q. You were aware of the Interstate Commerce  
5 Commission proceedings with regard to  
6 subsidiaries of New York Central in reference to  
7 the merger protection agreement, were you not?

8 A. No, I was not.

9 Q. You were never aware of that?

10 A. Not until a later date, much later.

11 Q. And you were assistant director of labor  
12 relations?

13 A. Yes, I was.

14 Q. But the carrier's position is in contradiction  
15 to the ICC ruling, is it not?

16 A. They were put on the merger protection agreement  
17 in 1969 by agreement.

18 MR. BLACKWELL: Well, excuse me.  
19 You're not being responsive now, and part of it,  
20 I think it's getting a little lost. This  
21 witness has stated that he had no knowledge back  
22 in -- well, whatever time frame you're in -- of  
23 the ICC decision. He said that he became aware  
24 of it later. He hasn't said when or he hasn't  
25 said what he's aware of.

1           So get in evidence what he knows, if  
2           anything, about the ICC decision and then take  
3           your questions from there because he's now  
4           giving you more information about an agreement  
5           that doesn't seem to be responsive to this.

6   Q.   Well, Mr. Ellert, you said that now you are  
7           aware of the 1974 ICC ruling, is that correct?

8   A.   That's right.

9   Q.   And that's before this date?

10  A.   That's before this date.

11  Q.   You've seen it before this?

12  A.   Yes, I have.

13  Q.   Or you are aware of it, is that correct?

14  A.   Yes.

15  Q.   And what I said to you then is that although you  
16           were not aware of it in 1974, despite the ruling  
17           that the employees of the subsidiary Cleveland  
18           Union Terminals were covered under the merger  
19           protection agreement, it was your position at  
20           the time of the furlough that they were not  
21           covered? It was the carrier's position that  
22           they were not covered employees, is that  
23           correct?

24  A.   At the time of the furlough, yes.

25  Q.   Yes. And it's also your position as you sit

1 here today, which you just testified to, that  
2 when they were working at the Cleveland Union  
3 Terminal locations, they were not New York  
4 Central employees, didn't you just tell me that?

5 A. I did, yes.

6 Q. Despite the ICC ruling?

7 A. I was not aware of the ICC ruling.

8 Q. You told me that you're aware of it today.  
9 You've been aware of it for some time?

10 A. After I retired, yes.

11 Q. I turn your attention to Plaintiff's Exhibit  
12 28. You're aware as articulated in this letter  
13 from Lyons to Henry Anderson, that the  
14 railroad's position was in 1968 that the C.U.T  
15 was not included in the proposed merger and,  
16 therefore, the employees were not entitled to  
17 the protection; it says that, isn't that  
18 correct?

19 A. It says that C.U.T is not included in the  
20 proposed merger. The employees are therefore  
21 not entitled to protection.

22 Q. And that was the carrier's position?

23 A. That's right.

24 Q. And it was the carrier's position even before --

25 MR. BLACKWELL: Excuse me. I'm not

1           negating what you're doing here. I just want to  
2           know what is this witness's connection with this  
3           document and what you've just brought out  
4           there?

5                       MS. TRICHARICHI: That in fact this  
6           was a correct statement of the carrier's  
7           position.

8                       MR. BLACKWELL: Well, you're not  
9           asking him if he saw the document back in '68 or  
10          '69?

11                      MS. TRICHARICHI: No. I didn't ask  
12          him that. If that's a correct statement.

13                      MR. BLACKWELL: Does this document  
14          from the union reflects the carrier's position  
15          as he knew it then.

16                      MS. TRICHARICHI: That's right.

17                      MR. BLACKWELL: Okay. Go ahead.

18 Q.       And it is your position that it does reflect the  
19       carrier's position?

20 A.       That's what it says.

21 Q.       And it was your position that before the  
22       furlough this was also the carrier's position,  
23       isn't that correct, that the people who worked  
24       at Cleveland Union Terminal location were not  
25       New York Central employees?

1 A. That was our position, yes.

2 Q. Prior to the furlough also?

3 A. Yes.

4 Q. And that was communicated by the carrier to the  
5 employees, isn't that true?

6 A. I don't recall how it was ever communicated  
7 except that they received C.U.T paychecks.

8 Q. Well, you testified that this was a correct  
9 statement of the carrier's position, isn't that  
10 true?

11 A. That's true.

12 Q. And that was communicated to the employees?

13 A. By Mr. Lyons.

14 Q. Yes. And that was correct. He did not misstate  
15 your position?

16 A. No.

17 Q. I want to turn your attention to Exhibit 34 --  
18 and that was prior to the furlough, January 22,  
19 1969 was prior to the furlough, was it not?

20 A. That's correct.

21 Q. Direct your attention to Exhibit 34 which is a  
22 letter from Mr. Lyons to Mr. Beedlow. And this  
23 was after the furlough, was it not?

24 A. Yes, it was, after the furlough.

25 Q. The third paragraph, Mr. Ellert, starting, It

1 has been the carrier's position that the  
2 Cleveland Union Terminal is not a party to the  
3 merger or signatory to the employee protection  
4 agreement and C.U.T prior right employees are  
5 not recognized as being eligible for the  
6 protection provided by the agreement.

7 That is a correct statement of the  
8 carrier's position after the furlough, is it  
9 not, Mr. Ellert?

10 A. That's right.

11 Q. It's also true that in the last line of the  
12 fourth paragraph, that there is a representation  
13 to the claimants that there is no assurance that  
14 any attempts to become covered would be  
15 successful, isn't that true? I'm referring to  
16 the line, While we feel we have a strong case,  
17 we have no assurance we will be successful in  
18 our efforts to have those members protected?

19 A. That's Mr. Lyons' statement to Beedlow.

20 Q. But there was no assurance from the carrier at  
21 that point that the employees would be  
22 protected?

23 A. I don't know that.

24 Q. Well, you've told them they weren't employees,  
25 did you not?

1 A. I never told them they were in the employees  
2 because they got New York Central paycheck also.

3 Q. I told them when they worked at the Cleveland  
4 Union Terminal locations, they were not New York  
5 Central employees, did you not?

6 A. When they worked at the Cleveland Union  
7 Terminal, they were not.

8 Q. There was no question they were not?

9 A. They were not.

10 Q. And you still think they were not?

11 A. Not today, no. Because they're covered by  
12 merger protective agreement of 1969.

13 Q. Didn't you tell me earlier that as you sit here  
14 today when they would work at the C.U.T.  
15 location, they were not New York Central  
16 employees?

17 A. When they worked in the Cleveland Union  
18 Terminal, right, they were not New York Central  
19 employees because they got Cleveland Union  
20 Terminal paychecks.

21 Q. Thank you, Mr. Ellert.

22 MR. BLACKWELL: Excuse me, Miss  
23 Tricharichi. Let me, for my own understanding  
24 now, when you're using this nomenclature, New  
25 York Central employees, you're not using it on a

1 narrow -- you're meaning that to indicate  
2 coverage by the merger protective agreement.

3 MS. TRICHARICHI: That's right.

4 MR. BLACKWELL: Yes, it means more  
5 than just --

6 MS. TRICHARICHI: You were not a  
7 New York Central employee as contemplated under  
8 the merger protection agreement of 1964.

9 MR. BLACKWELL: Okay. I just want  
10 to make sure that the witness and you are on the  
11 same wave length.

12 Q. All right. Now, you said you knew Mr. Stalder  
13 isn't that true?

14 A. Yes, I did.

15 Q. He was your superior, was he not?

16 A. Yes, he was.

17 Q. And he was a representative of management, is  
18 that correct?

19 A. That is correct.

20 Q. Now, I want to refer you to Plaintiff's Exhibit  
21 58, which is the sworn testimony of Mr.  
22 Stalder. What you've told us today was  
23 reiterated by Mr. Stalder, was it not, at line  
24 11, beginning at line 11?

25 A. Page 5?

1 Q. 5.

2 A. Yes.

3 Q. Is this a correct statement of the carrier's  
4 position? Was there any question in your mind  
5 that the men on the C.U.T. roster, or the  
6 plaintiffs in this case, were not covered under  
7 protection of the November 1984 agreement?

8 Answer. I knew they were not because the  
9 Cleveland Union Terminal was not a part of the  
10 merger.

11 That's a correct statement of the carrier's  
12 position, is it not?

13 A. Yes.

14 Q. And subsequently on line 20, Mr. Stalder says  
15 they were not involved in that agreement  
16 whatsoever. Is that correct?

17 A. That's correct.

18 Q. And on page 6 at the bottom, line 23, Mr.  
19 Stalder says, the question was asked, now on  
20 that -- the date of this agreement, they're  
21 referring to when the merger protection  
22 agreement was signed were the plaintiffs in this  
23 case present employees of the New York Central  
24 Railroad in your opinion, sir? Answer. It is  
25 in my opinion they were not. So that was the

1 opinion of the carrier, the definitive opinion,  
2 is that correct?

3 A. That is correct.

4 Q. And then on line 12, page 7, So if they were not  
5 New York Central employees, they had no rights  
6 under the '64 agreement? Answer. Correct. And  
7 the next question, At that time, sir, was it not  
8 the company's position the New York Central  
9 Railroad's position that they were not New York  
10 Central employees? Answer. That is correct.

11 And that's also your understanding, is it  
12 not?

13 A. Yes, that's correct.

14 Q. And that is an opinion that was consistently  
15 held by the labor relations section of the New  
16 York Central, is that correct?

17 MS. TRICHARICHI: That's line 22 to  
18 25.

19 A. Yes.

20 MR. BLACKWELL: And what's your  
21 question to Mr. Ellert?

22 Q. That's a correct position of the carrier?

23 MR. BLACKWELL: As he understood  
24 it?

25 MS. TRICHARICHI: Yes. As he

1 understood it.

2 Q. Also at page 43 of the same exhibit, it's a  
3 correct statement that Mr. Stalder made that  
4 it's the railroad's position that before the top  
5 and bottom agreement was signed, the employees  
6 who worked in the Cleveland Terminal location  
7 were not New York Central employees, is that  
8 correct?

9 MR. KERSHNER: Where are you  
10 reading?

11 MS. TRICHARICHI: I'm  
12 paraphrasing.

13 MR. KERSHNER: Well, you purported  
14 to read it. I think you should read the whole  
15 thing.

16 MS. TRICHARICHI: I didn't purport  
17 to read it. I was paraphrasing the question.

18 MR. BLACKWELL: Well, if you're  
19 going to paraphrase --

20 Q. Okay. Here is the question. Is this the  
21 railroad's position? So it was the railroad's  
22 position and to take that position the first  
23 step was that these men, C.U.T roster men, were  
24 never New York Central employees before the top  
25 and bottom agreement was signed giving them New

1 York Central rights. You must start with that  
2 assumption, must you not? Yes.

3 A. What page are you reading?

4 Q. Page 43, line 9 of the same exhibit we were on  
5 before. That's a correct statement of the  
6 carrier's position, isn't it?

7 A. That's what he stated.

8 Q. No, but that is a correct statement of the  
9 carrier's position, is it not?

10 A. Yes.

11 MR. BLACKWELL: What was the  
12 answer?

13 THE WITNESS: Yes.

14 MR. BLACKWELL: Okay. Go ahead.

15 Q. Is that because it was your position that he was  
16 an employee of a subsidiary company?

17 A. I don't understand. Who was the employee of the  
18 subsidiary company?

19 Q. Why did you think that they weren't covered by  
20 the 1964 merger protection agreement?

21 A. Because it was -- because we felt they were a  
22 subsidiary -- they belonged to a subsidiary  
23 company.

24 MR. BLACKWELL: Well, excuse me.  
25 You need a little more there, don't you?

1 Q. Well, what subsidiary company did you think they  
2 were employees of?

3 MR. BLACKWELL: No, no. That's  
4 okay, but you know, you could be covered -- you  
5 know, that doesn't make you in or out.

6 Q. Well, was the basis of your opposition to their  
7 being covered that they were not covered because  
8 they were an employee only of a subsidiary  
9 company?

10 A. That is correct.

11 Q. What was the parent company of that subsidiary?

12 A. As was stated here before, the New York Central  
13 was 93 percent of the Cleveland Union Terminal  
14 Company.

15 MR. BLACKWELL: You're working with  
16 that material at line 21 now on page 43?

17 MS. TRICHARICHI: That's right.

18 Q. Okay. So now I'm reading from Judge Lambros's  
19 opinion from 1976. Would you say this was --

20 MR. BLACKWELL: Do you have a --

21 MS. TRICHARICHI: Page 38, line 15,  
22 Exhibit No. 45.

23 MR. BLACKWELL: 45?

24 MS. TRICHARICHI: Oh, it's not in  
25 your folder. It was previously submitted to

1           you. That was the one exhibit, that long  
2           exhibit that was previously submitted at the  
3           preconference hearing.

4                   MR. BLACKWELL: I've taken it out.  
5           Is it out of everybody's notebook?

6                   MS. TRICHARICHI: Well, each of you  
7           got --

8                   MR. SKULINA: I'm not denying  
9           that. It's just that this was so neat, we  
10          thought everything was here.

11                   MR. BLACKWELL: How many pages in  
12          that?

13                   MS. TRICHARICHI: 44 pages. That's  
14          why it was not resubmitted. I indicated in my  
15          submission --

16                   MR. BLACKWELL: Oh, yes. That's  
17          the one I said don't send it to me until you're  
18          really ready to send it to me.

19                   MS. TRICHARICHI: And we did send  
20          it.

21                   MR. BLACKWELL: Oh, you did?

22                   MS. TRICHARICHI: Oh, yes, sir. It  
23          was submitted to you in advance.

24                   MR. BLACKWELL: All right. Let me  
25          see if I can find it.

1 MS. TRICHARICHI: But if you want  
2 us to recopy it, we will do that.

3 MR. BLACKWELL: No. I don't want  
4 extra copies.

5 MR. SKULINA: What is it, Carla?

6 MS. TRICHARICHI: It's the 1976  
7 ruling of the Court.

8 MR. BLACKWELL: Excuse me. Let's  
9 see what the front looks like. Let me see the  
10 front of it.

11 MS. TRICHARICHI: The front of it  
12 looks like this. We have one fresh copy, Mr.  
13 Blackwell. I'll just hand it to you. Maybe you  
14 can share it.

15 MR. BLACKWELL: Was that order put  
16 in the carrier's exhibits, Mr. Kershner?

17 MR. KERSHNER: I don't think it  
18 is. It is not.

19 MS. TRICHARICHI: No. It was  
20 deleted from the carrier's exhibits. That's all  
21 right. Here is a fresh copy, Mr. Blackwell, and  
22 you can share that and we will try and get you  
23 more after lunch.

24 MR. BLACKWELL: Which page are you  
25 at?

1 MS. TRICHARICHI: Page 38.

2 Q. You are aware there was a court proceeding in  
3 1976, are you not, Mr. Ellert?

4 MR. KERSHNER: One moment, please,  
5 if I might. I'd like to make certain that if  
6 you're going to be reading from the Judge's  
7 ruling, that you read it accurately.

8 MS. TRICHARICHI: Well, he will be  
9 looking at it. Here. The question I'm reading  
10 is here.

11 Q. Would this be a correct statement of the  
12 railroad's position that -- well, first let me  
13 go back. You are aware that there was a court  
14 proceeding in 1976, are you not?

15 A. If that's --

16 Q. Before Judge Lambros?

17 A. There were several court proceedings. I don't  
18 know the exact dates.

19 Q. And would Judge Lambros' position, would Judge  
20 Lambros' explanation of the railroad's position  
21 be correct? The railroad took the position that  
22 we are not merging subsidiaries; we were only  
23 merging the Penn Central, New York Central and  
24 took the position that subsidiary employees do  
25 not carry over their prior right seniority

1           date. That would be a correct statement of the  
2           carrier's position, would it not?

3   A.   I presume it would be.

4   Q.   Now, Mr. Ellert, you sat here and heard your  
5           counsel in his opening remarks, did you not?

6   A.   Yes, I did.

7   Q.   And you remember him saying that the top and  
8           bottom agreement and the 1969 agreement to which  
9           you referred were implementing agreements and  
10           necessary to implement the 1964 merger  
11           protection agreement?

12   A.   They assisted in the implementation of the  
13           agreement, yes.

14   Q.   That's your understanding, is it not?

15   A.   That's true. That's true.

16   Q.   So then you would disagree with your superior,  
17           Mr. Stalder, when he testified in 1976 that,  
18           quote, The top and bottom agreement -- the  
19           question was, The top and bottom agreement was  
20           not one of these implementing agreements. It  
21           had nothing to do as to what was to be done  
22           under the merger, did it? His answer, None  
23           whatsoever.

24                           MR. BLACKWELL: I think it's better  
25           to show that --

1 A. Well --

2 MR. BLACKWELL: Excuse me. Hold it  
3 a minute. Show the page to the witness.

4 MS. TRICHARICHI: I wasn't asking  
5 about any other question. I was asking about  
6 that question.

7 MR. KERSHNER: Well, you are  
8 offering this apparently to have the witness  
9 testify --

10 MS. TRICHARICHI: I'm impeaching  
11 this witness.

12 MR. KERSHNER: But I want to make  
13 certain that we're looking at the entire  
14 statement and not just a separate statement  
15 taken out of context.

16 MS. TRICHARICHI: And you'll have  
17 time to rehabilitate your witness.

18 MR. BLACKWELL: Well, do you  
19 represent that that is a full and complete  
20 transcript of the testimony that you're dealing  
21 with?

22 MS. TRICHARICHI: That was the  
23 certification from the court reporter that it  
24 was a full and complete transcript of the  
25 testimony of Mr. Stalder at the proceeding in

1 1976.

2 MR. BLACKWELL: Well, that  
3 representation seems to answer that concern, Mr.  
4 Kershner.

5 MR. KERSHNER: Here.

6 MR. BLACKWELL: Now, I want the  
7 witness to see what he's talking about there.

8 Q. Right. Okay. I'm handing you what is a  
9 transcript of Mr. Stalder's testimony in the  
10 trial in 1976, and is it a correct statement  
11 that when asked the question, The top and bottom  
12 was not one of these implementing agreements.  
13 It had nothing to do with what was to be done  
14 under the merger, did it? And his answer was,  
15 None whatsoever. Is that a correct reading of  
16 what Mr. Stalder said?

17 A. That is correct.

18 Q. And he was your superior, is that correct?

19 A. Yes, he was.

20 Q. But that's in direct contradiction to what you  
21 just told us, isn't it? Didn't you just tell us  
22 that the 1965 top and bottom agreement was an  
23 implementing agreement to the 1964 merger  
24 protection agreement?

25 A. I think the record will show that it is not.

- 1 Q. That it is not an implementing agreement?
- 2 A. That's right.
- 3 Q. It had nothing to do with the 1964 agreement?
- 4 A. It was before the 1964 agreement because in our  
5 office we were not aware of the 1964 merger  
6 protective agreement. And this was made  
7 entirely separate from the 1964 merger  
8 agreement.
- 9 Q. You were assistant director of labor relations  
10 and you were not aware of the merger protection  
11 agreement in the merger of the Penn Central and  
12 the New York Central Railroad, is that a correct  
13 statement?
- 14 A. What date?
- 15 Q. 1964 merger protection --
- 16 A. We were not informed one iota about the merger  
17 of the Penn Central and New York Central.
- 18 Q. You weren't informed, so then it could not be an  
19 implementing agreement of the 1964 agreement,  
20 could it?
- 21 A. That's right.
- 22 Q. Because you were unaware of it?
- 23 A. That's correct.
- 24 Q. It had nothing to do with the 1964 agreement?
- 25 A. Not at that time, no.

1 Q. So it had nothing to do with getting coverage  
2 for the Cleveland Union Terminal employees, did  
3 it?

4 A. The top and bottom, the seniority rosters?

5 Q. Had nothing to do with getting them coverage  
6 under the merger protection benefits of 1964,  
7 did it?

8 A. Yes, it did, later on. It certainly came into  
9 play.

10 Q. You testified, did you not, that at the time the  
11 top and bottom agreement was executed, you had  
12 no knowledge of the merger protection agreement,  
13 isn't that correct?

14 A. That is correct.

15 Q. And therefore, you had no knowledge of the  
16 benefits that were contained within the merger  
17 protection agreement, isn't that correct?

18 A. At that time, yes.

19 Q. At that time. And also at the time the top and  
20 bottom was executed, isn't that right?

21 A. That is correct.

22 Q. So therefore, the top and bottom agreement could  
23 by definition not be an implementing agreement  
24 of the merger protection agreement?

25 A. It was a separate agreement entirely from the

1 merger protective agreement.

2 Q. And had nothing to do with extension of the  
3 benefits of the merger protection agreement to  
4 the people who worked at the Cleveland Union  
5 Terminals, isn't that correct?

6 A. On that date, yes.

7 Q. So that would be in contradiction to what your  
8 counsel said today, that it was an implementing  
9 agreement of the merger protection -- that the  
10 1965 agreement was an implementing agreement of  
11 merger protection agreement.

12 A. It played a vital part in the merger protective  
13 agreement.

14 Q. Even though it was executed when you didn't even  
15 know anything about the merger protection  
16 agreement?

17 A. That is correct.

18 Q. Played a vital part but you didn't know anything  
19 about the merger protection agreement, is that  
20 your testimony?

21 A. Subsequently it played a vital part.

22 Q. Subsequently the railroad determined that maybe  
23 they could make it a vital part, is that what  
24 you are saying now?

25 A. Oh, no, no, I'm not.

- 1 Q. By the way, who was Mr. Swert?
- 2 A. Mr. Swert, he was -- at that time he was a  
3 general chairman for the BRT, Brotherhood of  
4 Railroad Trainmen in 1964.
- 5 Q. So he was part of labor, was he not?
- 6 A. Yes, he was.
- 7 Q. And subsequently did Mr. Swert take any other  
8 position?
- 9 A. Yes. He went with the carrier.
- 10 Q. He went with the carrier?
- 11 A. Yes.
- 12 Q. And when did he go with the carrier?
- 13 A. I don't know the exact date. It was after  
14 maybe -- I don't have the right date. I don't  
15 know what date, but subsequently he did go.
- 16 Q. Do you know if Swert was a signatory to the top  
17 and bottom agreement?
- 18 A. Oh, very well. So was Mr. Hahn.
- 19 Q. He was a signatory, right, and Mr. Hahn was,  
20 too?
- 21 A. With the aid of a vice president by the name of  
22 Grady.
- 23 Q. And at the time then he was representing labor,  
24 isn't that correct?
- 25 A. Yes, he was.

1 Q. And isn't it true that only a short time later,  
2 a month, month and a half later he went and  
3 worked as director of labor relations --

4 A. I think the records will show the date. I don't  
5 know the date.

6 Q. -- for the New York Central Railroad?

7 A. The records will show the date. I don't know  
8 what the date was.

9 Q. He moved to the carrier?

10 A. Yes, he did.

11 Q. Shortly thereafter, isn't that true?

12 A. I don't know how soon thereafter, but he did.

13 Q. Now, you've mentioned that Mr. Hahn was a  
14 signatory to 1965 agreement, did you not?

15 A. That is right.

16 Q. You've read the brief that the carrier  
17 submitted, haven't you?

18 MR. BLACKWELL: What was the  
19 question?

20 Q. You've read the brief that the carrier  
21 submitted, haven't you?

22 A. Yes, I have.

23 Q. And the carrier indicates that it was clear on  
24 the face of the 1965 agreement that these people  
25 were New York Central employees. Isn't that

1 what the carrier states?

2 A. After the merger protection agreement of 1969,  
3 yes, they were protected.

4 Q. Well, I want you to look at Exhibit No. 24 of  
5 this packet, which is a letter from Mr. Hahn to  
6 Mr. McLay. Mr. Hahn who was a signatory to the  
7 '65 agreement, isn't that right?

8 A. Yes, he was.

9 Q. And despite the carrier's representation that it  
10 was clear on the face of the top and bottom  
11 agreement that these people were covered under  
12 it, doesn't his letter indicate that in fact  
13 it's not clear to Mr. Hahn, who is even a  
14 signatory to the top and bottom agreement, that  
15 they were covered? Isn't he in fact at  
16 paragraph 3 asking for inclusion?

17 A. You want to read the paragraph?

18 Q. Well, you read along with me and you tell me if  
19 I'm incorrect. Once merger plans are finalized,  
20 they will no longer consider our request for  
21 inclusion because of our Johnny come lately  
22 approach, and because the outcome of the section  
23 6 notices are uncertain as to their final  
24 provisions, this may be our last chance to be  
25 considered in this alternate manner. I think

1 the period right now for bargaining purposes  
2 would be propitious. And that man was a  
3 signatory to the 1965 top and bottom agreement,  
4 was he not?

5 A. Yes, he was.

6 Q. So it wasn't clear to him that the people who  
7 worked at C.U.T. --

8 MR. KERSHNER: I'm going to  
9 object. How can you determine whether it was  
10 clear to Mr. Hahn or not?

11 Q. Well, Mr. Hahn is asking for inclusion, is he  
12 not, on the face of the letter?

13 MR. KERSHNER: The document speaks  
14 for itself.

15 MR. BLACKWELL: Well, on the basis  
16 of this objection, I won't sustain it at this  
17 point, but this terminology does not on its face  
18 take the characterizations that you're imputing  
19 to it, so you need to point to something else or  
20 give us some more explanation unless this  
21 witness is accepting it as that, and I frankly  
22 don't know.

23 Q. Well, let's look at the first paragraph of this  
24 letter then.

25 MR. BLACKWELL: Well, why don't you

1 ask this witness if he concurs with your  
2 construction of the third paragraph.

3 Q. Is it fair to say that based on this letter, Mr.  
4 Hahn was asking for the C.U.T. location people  
5 who worked at the C.U.T. location to be included  
6 under the merger protection benefits, isn't that  
7 fair to say?

8 A. As of this date, yes.

9 Q. Yes. And that's after the top and bottom was  
10 signed, is it not?

11 A. That's afterwards, yes.

12 Q. So it was not clear on the face of the top and  
13 bottom agreement that they were included in the  
14 merger protection agreement, isn't that true?

15 A. At that time, yes.

16 Q. That's right. It wasn't. And that contradicts  
17 the statement of your counsel in their brief at  
18 page 7 on February 16, 1965, A further agreement  
19 was executed by and between the New York Central  
20 Western District of the C.U.T. and the yard  
21 service employees of both carriers by the BRT,  
22 specifically, the general grievance committee  
23 and the general chairman of the Railroad  
24 Trainmen Cleveland Union Terminals Lodge No.  
25 927. This agreement extended the MPA and its

1 generous lifetime guarantee to the C.U.T.  
2 employees and consolidated the separate --

3 MR. BLACKWELL: Where are you?

4 MS. TRICHARICHI: The bottom of the  
5 page 7 of the carrier's brief.

6 MR. BLACKWELL: Excuse me. You're  
7 giving that to this witness with a question?

8 MS. TRICHARICHI: Yes.

9 MR. BLACKWELL: Well, give us a  
10 clue as to your question.

11 A. No way.

12 Q. My question is based on your testimony that it  
13 was not clear from Mr. Hahn's letter that these  
14 people were included in the merger protection  
15 agreement, even after the top and bottom  
16 agreement, then that would mean that this  
17 statement by your counsel is incorrect, isn't  
18 that true? And this is the statement. This  
19 agreement extends --

20 MR. KERSHNER: Well, let him --

21 MS. TRICHARICHI: Well, he hasn't  
22 heard the --

23 A. I think the agreement stands on itself.

24 MR. BLACKWELL: Well, how much are  
25 you going to read to him?

1 MS. TRICHARICHI: One sentence.

2 MR. BLACKWELL: Okay.

3 Q. This agreement extends the merger protection  
4 agreement and its generous lifetime guarantees  
5 to the C.U.T. employees and consolidated the  
6 separate seniority rosters for yard service  
7 employees of the New York Central terminal  
8 district and the C.U.T.

9 A. It certainly did after a later date. It  
10 certainly did.

11 Q. At the time it was drafted it did not put them  
12 on the merger protection agreement, did it, Mr.  
13 Ellert?

14 A. At the time it was drafted, no.

15 Q. And it wasn't intended to at the time it was  
16 drafted, was it, Mr. Ellert?

17 A. It gave them rights in the freightyard with 65  
18 percent of the New York Central portion.

19 Q. That's not my question. My question was it was  
20 not intended to extend to them the merger  
21 protection agreement benefits at the time it was  
22 drafted, was it?

23 A. It had no reference to it whatsoever.

24 Q. It had no reference whatsoever. It didn't say  
25 they were New York Central employees on the face

1 of the '65 agreement, did it?

2 A. If they accepted employment in the freightyard,  
3 then they wouldn't have been New York Central  
4 employees. Those that went to the freightyard  
5 were New York Central employees.

6 Q. Regardless of their prior status, it's the  
7 carrier's position that they only magically  
8 became New York Central employees subsequent to  
9 these agreements, isn't that true?

10 A. Not magically. This was done by agreement with  
11 the organization and the carrier, not by magic,  
12 so to speak.

13 Q. Despite the fact that when they originally hired  
14 on, they signed New York Central application  
15 forms, they went to New York Central doctors for  
16 their examinations, they carried a New York  
17 Central rail card, despite all those things,  
18 before these agreements they were never New York  
19 Central employees, is that correct?

20 A. The forms don't mean a thing. In fact Dr.  
21 Mischler was not a New York Central doctor. He  
22 was a Cleveland Union Terminal doctor.

23 Q. The forms don't mean a thing? Let me ask you  
24 this. You said you worked at Cleveland Terminal  
25 locations --

- 1 A. Yes, I did.
- 2 Q. -- at times, did you not?
- 3 A. Yes, I did.
- 4 Q. And you were a New York Central employee, were  
5 you not?
- 6 A. I was New York Central -- I was in charge of  
7 Cleveland Union Terminal employees at the time.
- 8 Q. And you got a New York Central paycheck, did you  
9 not --
- 10 A. Yes, I did.
- 11 Q. -- when you were working at this Cleveland Union  
12 Terminal location?
- 13 A. Yes, I did, I got a New York Central paycheck.
- 14 Q. Mr. Ellert, you've been previously deposed in  
15 this case, have you not?
- 16 A. Been previous -- no.
- 17 Q. Your deposition has been taken at a prior time  
18 in this case, wasn't it?
- 19 A. That's true. That's true.
- 20 Q. I'm going to direct your attention to that book,  
21 it's Exhibit 57. It is a transcript of your --  
22 this is a portion, a small portion of the  
23 transcript when you were deposed, isn't that  
24 correct?
- 25 A. That's correct.

1 Q. And that indicated that in fact the Cleveland  
2 Union Terminal location was 93 percent owned by  
3 the New York Central, isn't that right?

4 A. Yes.

5 Q. Okay. And isn't it also true that all of the  
6 Cleveland Union Terminal officers were officers  
7 of the New York Central Railroad, isn't that  
8 true?

9 A. Yes.

10 Q. Okay. And that's what you told me in your prior  
11 deposition, isn't that true? I'll read it to  
12 you. Do you know whether or not the officers of  
13 Cleveland Union Terminals Company were also  
14 officers of the New York Central, if you know?  
15 In the later years, yeah. So they were. There  
16 was an interlocking directorship?

17 A. Yes, there was.

18 Q. And isn't it true that the 1965 --

19 MR. BLACKWELL: Excuse me. Did you  
20 bring in some information not in your exhibits?

21 MS. TRICHARICHI: Yes, this is an  
22 additional page.

23 MR. BLACKWELL: Are you going to  
24 submit that for the record?

25 MS. TRICHARICHI: Well, he has

1 testified to it. It's page 40 of that same  
2 deposition.

3 MR. BLACKWELL: Well, I suggest you  
4 duplicate that and submit it to us as a  
5 reference to this testimony. That's page 40?

6 MS. TRICHARICHI: Page 40 of the  
7 same --

8 MR. BLACKWELL: Of the deposition.

9 MS. TRICHARICHI: Same deposition.

10 Q. And Mr. Ellert, it's true that Mr. D.B. Fleming  
11 signed the 1965 agreement, the top and bottom  
12 agreement, on behalf of both the New York  
13 Central and the Cleveland Union Terminal  
14 Company, isn't this true?

15 A. I think it shows that, yes.

16 Q. So he signed it for both companies, is that  
17 correct, which you perceived were two companies?

18 A. Yes. He was the general manager of the western  
19 region.

20 Q. He was the general manager of the western region  
21 of the New York Central, isn't that true?

22 A. Which included the subsidiary.

23 Q. And he signed it on behalf of --

24 A. Both.

25 Q. -- Cleveland Union Terminals?

- 1 A. That's correct.
- 2 Q. And isn't it true that after 1954 the Cleveland  
3 Union Terminal office and the New York Central  
4 office existed in the same location?
- 5 A. After what date?
- 6 Q. 1954.
- 7 A. Even before that date.
- 8 Q. No. After that date.
- 9 A. All right. Yes.
- 10 Q. Is that a correct statement?
- 11 A. Part of the offices were. Not entirely.
- 12 Q. Well, you were deposed back in 1976. The  
13 question was asked to you, Well, do you know  
14 whether or not there were offices. And the  
15 answer, There were no separate offices after  
16 1954 to my knowledge. Is that a correct  
17 statement?
- 18 A. Divisional offices, yes.
- 19 Q. No separate divisional offices?
- 20 A. No.
- 21 Q. So the Cleveland Union Terminal office was the  
22 same as the New York Central office --
- 23 A. Yes, it was.
- 24 Q. -- for that division?
- 25 A. They had their own comptroller.

1 Q. That's not my question. They had the same  
2 office?

3 A. All right. They had the same office.

4 Q. Isn't it also true that the superintendent of  
5 the Cleveland Division of the New York Central  
6 also had jurisdiction over the operation of the  
7 Cleveland Union Terminal properties?

8 A. Yes.

9 Q. But he wasn't paid by the Cleveland Union  
10 Terminals, was he?

11 A. Received a New York Central paycheck.

12 Q. Received a New York Central paycheck. Mr.  
13 Ellert, was there a separate book of rules for  
14 the Cleveland Union Terminal?

15 A. No, there were not. There was not.

16 Q. What book of rules was used at the Cleveland  
17 Union Terminal location?

18 A. The New York Central book of rules.

19 Q. And there were no separate C.U.T. switch keys,  
20 were there?

21 A. To my knowledge, there were not.

22 Q. Okay. What switch keys were used at the  
23 Cleveland Union Terminal location?

24 A. New York Central switch keys.

25 Q. And if an employee was hurt on the job at the

1 Cleveland Union Terminal location, whom did they  
2 make a claim against?

3 A. They submitted the claims, but probably on New  
4 York Central forms.

5 Q. On New York Central forms. And isn't it true  
6 that as far back as 1954 the New York Central  
7 office handled all the employment applications  
8 for the Cleveland Union Terminal location?

9 A. Yes.

10 Q. Isn't it true that potential passenger yard  
11 employees at the Cleveland Union Terminal  
12 location completed the same application form --

13 A. Yes.

14 Q. -- as in New York Central?

15 A. Yes.

16 Q. And would it be fair to say that the employees  
17 at the Cleveland Union Terminal location  
18 received the same medical and insurance  
19 benefits --

20 A. Yes.

21 Q. -- that the New York Central employees received,  
22 isn't that correct?

23 A. That's correct.

24 Q. But despite all these similarities that we've  
25 gone through, the New York Central nonetheless

1           contended that the plaintiffs in this case were  
2           not New York Central employees, isn't that  
3           correct?

4   A.   Because it was considered that that --

5   Q.   I didn't ask you that. I said a different  
6           question. Despite all the similarities --

7   A.   Yes.

8   Q.   -- that we've gone through --

9   A.   All right. I'll answer it yes.

10   Q.   Now, you heard your attorney refer to what is  
11           Plaintiffs' Exhibit 21, which is a 1964 letter  
12           from Mr. Stalder to Mr. Hahn, didn't you? You  
13           heard him refer to that letter?

14   A.   Yes, to Mr. Grady and Mr. Hahn.

15   Q.   Right. And in that letter a request was made to  
16           ascertain which of the C.U.T. yardmen would be  
17           desirous of working at Collinwood. I'm  
18           referring to the last part of that first  
19           paragraph. The purpose of said consultation  
20           will be that of reaching an understanding as to  
21           the method of canvassing the C.U.T. yardmen to  
22           ascertain which of them are desirous of working  
23           in Collinwood, and if any of them desire to work  
24           at Collinwood, to reach agreement as to the  
25           protection of their C.U.T. rights at

1 Collinwood.

2 Isn't it true that no such canvas that was  
3 referred to in that letter was ever conducted?

4 A. The carrier would not have made the canvassing.

5 Q. Do you know if any such canvassing was  
6 conducted?

7 A. I'm not aware that -- I'm not aware of it.

8 Q. Now, Mr. Ellert, you were in the department of  
9 labor relations of the carrier, is that correct?

10 A. After 1968, yes.

11 Q. And it's your testimony that the department of  
12 labor relations in 1968 was under care of the  
13 merger protection agreement of '64, is that  
14 correct?

15 A. I didn't say in 1968 we weren't.

16 Q. Well, when were you aware?

17 A. Possibly in 1968 when it occurred.

18 Q. When the merger occurred is the first time the  
19 department of labor relations was aware of the  
20 merger protection agreement?

21 A. We had no documents whatsoever that were given  
22 to us with regards to the merger protection  
23 agreement.

24 Q. Mr. Ellert, can you tell me how the supplemental  
25 wage guarantee under the merger protection

- 1 agreement would work?
- 2 A. The supplemental wage guarantees?
- 3 Q. Yes.
- 4 A. I think it's spelled out in our Exhibit C,  
5 Appendix E.
- 6 Q. No. I want you to tell me in your own words how  
7 that worked.
- 8 A. I think it states in the Appendix E whereby on  
9 request of an individual through a  
10 representative of the union, they can acquire  
11 for him his guarantee.
- 12 Q. What was the point of a supplemental wage  
13 guarantee?
- 14 A. It was to make them whole.
- 15 Q. Make them whole?
- 16 A. Make them whole.
- 17 Q. If they didn't make as much money after the  
18 merger as they had made before?
- 19 A. If they did not make as much money as was their  
20 guarantee.
- 21 Q. As was their guarantee. And their guarantee was  
22 based on the period of time that they had worked  
23 before the merger, isn't that true?
- 24 A. That is true.
- 25 Q. And in this particular instance under the merger

1 protection agreement, the base period for  
2 determining supplemental wage was May 1963 to  
3 May 1964, isn't that a correct statement?

4 A. That's true, yes.

5 Q. And so therefore --

6 MR. BLACKWELL: May '63 to '64?

7 MS. TRICHARICHI: That's correct.

8 That was the base period.

9 MR. BLACKWELL: That's the earnings  
10 in May '63 to '64.

11 Q. And there were, subsequent to that, general wage  
12 increases, were there not?

13 A. Yes, there were.

14 Q. Cost of living or something like that that were  
15 computed subsequently, is that correct?

16 A. That's correct.

17 MR. BLACKWELL: Well, what are you  
18 saying here? The earnings base was laid in and  
19 then with provisions to adjust it upward with  
20 subsequent increases?

21 MS. TRICHARICHI: That's correct.

22 MR. BLACKWELL: Correct?

23 A. Yes.

24 MR. BLACKWELL: Go ahead.

25 Q. Now, it was the railroad's position though that

1 the people who worked at the Cleveland Union  
2 Terminal location were not employees of the New  
3 York Central during the base period, isn't that  
4 true?

5 A. Yes.

6 Q. So they could not have earned any wages during  
7 the requisite period for determining the base  
8 period?

9 A. They worked, so they made earnings.

10 Q. But the understanding under the merger  
11 protection agreement is that you had to have  
12 performed compensated service between May 1963  
13 and May 1964, is that not correct?

14 A. Compensated service.

15 Q. Compensated service.

16 A. Yes.

17 MR. BLACKWELL: As a New York  
18 Central --

19 MS. TRICHARICHI: For the New York  
20 Central Railroad.

21 MR. BLACKWELL: Well, as a New York  
22 Central employee.

23 MS. TRICHARICHI: As New York  
24 Central employee.

25 MR. BLACKWELL: All right. Go

1 ahead.

2 A. They did compute the guarantees for these men --

3 Q. Not my question. Wasn't it the railroad's  
4 position that they did not perform compensated  
5 service for the New York Central Railroad  
6 because they were not New York Central employees  
7 from the years 1963 to 1964, which was the base  
8 period?

9 A. The records will indicate that they got New York  
10 Central paychecks during this period of time  
11 when they worked for the New York Central  
12 Railroad on the Lakefront.

13 Q. Wasn't it the railroad's position that in terms  
14 of determining their base period wages in 1963  
15 and 1964, their earnings that they earned at the  
16 Cleveland Union Terminal location were not to be  
17 considered in those base period wages because  
18 they were not considered New York Central  
19 employees when they were working at the  
20 Cleveland Union Terminal location? Isn't that a  
21 fair statement of the carrier's position?

22 A. As of which date are you speaking of?

23 Q. In 1965, 1966, 1967.

24 A. Yes.

25 Q. 1967?

1 A. Yes. Yes.

2 Q. Isn't that a fair --

3 A. Yes, I'll say yes.

4 Q. Subsequent to the furlough, wasn't that their  
5 position also?

6 A. Yes.

7 MR. BLACKWELL: The merger  
8 agreement is dated in --

9 MS. TRICHARICHI: 1964.

10 A. '64.

11 MR. BLACKWELL: And it was  
12 effective in '68.

13 MS. TRICHARICHI: '68.

14 A. '68.

15 MR. BLACKWELL: And let's just try  
16 to close our time gap here. Your series of  
17 questions here to Mr. Ellert, I believe, covered  
18 a time frame and your statement about whether  
19 the carrier considered these claimants New York  
20 Central employees in the period May '63 to '64  
21 carried forward into '68, your question did?

22 MS. TRICHARICHI: Yes.

23 MR. BLACKWELL: And his answer was  
24 no, through the end of your questions, that the  
25 carrier did not consider them New York Central

1 employees.

2 MS. TRICHARICHI: Correct.

3 A. Yes.

4 MR. BLACKWELL: That is correct?

5 A. Yes.

6 MS. TRICHARICHI: That they  
7 continued to not consider them employees.

8 MR. BLACKWELL: All right. All  
9 right.

10 Q. Such that under the top and bottom agreement,  
11 which you've already told us was drafted without  
12 any consideration of a coverage under the merger  
13 protection agreement, when under the top and  
14 bottom agreement they were given September 10,  
15 1964 seniority dates, then they would not have  
16 worked during the base period of May 1963 to May  
17 1964, isn't that a correct statement?

18 A. No, because some of them did work.

19 Q. The new seniority date that they were given  
20 under the top and bottom agreement was September  
21 10, 1964, was it not?

22 A. That's correct, yes.

23 Q. And with that date per se by definition, they  
24 could not have performed compensated service  
25 while at the Cleveland Union Terminal location

1           between May '63 and May '64, isn't that correct?

2   A.   That's correct.

3   Q.   So that seniority date necessarily put them  
4       outside the scope of the merger protection  
5       agreement by definition, did it not?

6   A.   At that date, yes.

7   Q.   You keep saying at that date.

8   A.   Well, prior to 1968. '68, yes.

9   Q.   And they would not then have been eligible for a  
10       wage guarantee, isn't that true?

11  A.   Not at that time, yes.

12  Q.   They would not have been eligible?

13  A.   Right.

14  Q.   Because they wouldn't have performed compensated  
15       service during the requisite period, isn't that  
16       correct?

17  A.   Well, some of those went to the freightyard  
18       after 1965 and before 1968 and they certainly  
19       had a guarantee.

20  Q.   The people who went had a guarantee?

21  A.   You betcha.

22  Q.   And they should have gotten their guarantee,  
23       isn't that correct?

24  A.   That's right.

25  Q.   That's right. But they didn't make what they

1           should have made under their guarantee in  
2           addition to the subsequent wage increases, isn't  
3           that right?

4   A.   That's right.

5   Q.   If they were entitled to that?

6   A.   That's correct.

7   Q.   Did you bring with you today records of what the  
8           claimants in your case earned during the base  
9           period May 16, 1963 and May 16, 1964?

10  A.   I don't know if we have them or not.

11  Q.   Did you bring those records with you today?

12  A.   I don't have them.

13  Q.   Do you know if your counsel has them with them?

14  A.   I don't know whether they do or not.

15                   MS. TRICHARICHI:   Okay.   For the  
16                   record, Mr. Blackwell, as you know, we have  
17                   previously requested these documents,  
18                   specifically the base period earnings in our  
19                   interrogatories and in response thereto -- well,  
20                   you made a response in writing, but also the  
21                   railroad made a response by letter of February  
22                   28, 1990 from Mr. O'Neill who was the carrier's  
23                   previous representative.

24                   MR. BLACKWELL:   First of all, let's  
25                   see if they've got anything that fits the

1 description you're talking about because this is  
2 not a new item. Mr. Skulina, do you remember  
3 this?

4 MR. SKULINA: Pardon me?

5 MR. BLACKWELL: Do you remember  
6 these payroll records that are in discussion  
7 now?

8 MR. SKULINA: They're here.

9 MR. BLACKWELL: Well, okay. Let's  
10 get your report on that before we see what we  
11 have to do, whether there's anything we have to  
12 deal with, Miss Tricharichi.

13 MR. BURTON: The question is to the  
14 witness. The witness already says he doesn't  
15 know.

16 MS. TRICHARICHI: Well, I'm  
17 digressing in a motion.

18 MR. BLACKWELL: Well, she is  
19 entitled to know where they are.

20 MR. SKULINA: They didn't have them  
21 and they brought them.

22 MR. BLACKWELL: Okay. Well, that  
23 was within the parameters of our earlier  
24 understanding.

25 MR. KERSHNER: There is a letter to

1 the arbitrator from Robert O'Neill which  
2 encloses a copy of these earnings that you've  
3 requested indicating a copy to Miss Tricharichi  
4 as well as Mr. Steffen and Mr. Skulina.

5 MS. TRICHARICHI: You are  
6 referring, I take it, to this --

7 MR. BLACKWELL: I took that to be  
8 an inventory of what was available.

9 MS. TRICHARICHI: Right. Then I  
10 will ask the witness based on -- I am in receipt  
11 of what you would call a handwritten document  
12 here --

13 MR. KERSHNER: Prepared by Mr.  
14 O'Neill.

15 MS. TRICHARICHI: -- prepared by  
16 Mr. O'Neill.

17 MR. KERSHNER: Listing a number of  
18 employees, including the plaintiffs', earnings  
19 May '63 through April '64, with Cleveland Union  
20 Terminal earnings in one column, New York  
21 Central freightyard earnings in another, total,  
22 and then a computation of what the guarantee  
23 would be in the case of each of the employees  
24 based upon a combination of the C.U.T. and New  
25 York Central earnings, which I understand was

1           agreed between the parties.

2                   MS. TRICHARICHI: But I'm asking do  
3 you have the documents that created this  
4 document? Do you have the W-2s that created  
5 this document?

6                   MR. KERSHNER: No.

7                   MS. TRICHARICHI: This document on  
8 its face has no --

9                   MR. KERSHNER: We do not have the  
10 W-2s.

11                   MS. TRICHARICHI: It does not show  
12 me any documentation of how these numbers were  
13 derived.

14                   MR. KERSHNER: I agree it does not  
15 show how the numbers were derived, but I do not  
16 have W-2s to support this document.

17                   MS. TRICHARICHI: You don't have  
18 any documentary material to support the  
19 composition of this document?

20                   MR. KERSHNER: Not with me.

21                   MR. BLACKWELL: Do you have a  
22 request?

23                   MS. TRICHARICHI: Well, you were  
24 requested to bring them with you to this  
25 proceeding.

1 MR. BLACKWELL: Well, they're not  
2 here, so what's your request now? I haven't  
3 reviewed the file for this, but my recall is  
4 that it was said that if the paper detail was in  
5 fact needed and called for, Mr. O'Neill said he  
6 didn't know where it was physically, but  
7 somebody indicated that they thought it was  
8 within the Cleveland area, and that if it came  
9 to be called for, then it could be searched for  
10 in the Cleveland area.

11 MR. SKULINA: It is not in the  
12 Cleveland area. The '63, '64 records are not in  
13 the Cleveland area. I have no idea where they  
14 are.

15 MR. KERSHNER: At this point in the  
16 proceedings I don't think it's relevant or  
17 necessary. It's only if and when there is a  
18 damage --

19 MS. TRICHARICHI: It's highly  
20 relevant on the issue of liability, highly  
21 relevant as to whether the people who returned  
22 got any benefits.

23 MR. KERSHNER: The W-2s supporting  
24 that aren't necessary to prove the authenticity  
25 of that.

1 MS. TRICHARICHI: I disagree with  
2 you and I will show that it is relevant.

3 MR. BLACKWELL: Let me ask this.  
4 We were going to take a 1:00 recess. So you  
5 know, I think I'm going to say let's stick to  
6 that because we're not -- this is what I wanted  
7 to discuss with -- it seems to be getting at  
8 what I want to discuss with my colleagues  
9 anyway.

10 So let's take a 45-minute recess at this  
11 time and we'll resume with Mr. Ellert then.

12 - - - -

13 (Thereupon, a recess was had.)

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1                   THURSDAY AFTERNOON SESSION, MAY 3, 1990

2                   MR. BLACKWELL: Well, let's go on  
3 record. It's 2:00 and Mr. Ellert it's not  
4 here. He will be here momentarily.

5                   Let's see if we can deal with this exhibit  
6 that we were discussing just before the recess.  
7 That is a headnote prepared by somebody at Mr.  
8 O'Neill's solicitation. Anyway, underlying that  
9 are daily payroll records, one assumes.

10                  So in that regard, Mr. Kershner, you just  
11 came into this. Maybe you know and maybe you  
12 don't. We had an understanding early on in this  
13 that this case would be bifurcated. The first  
14 phase would deal with the question of liability  
15 and we would not go into who shot John on the  
16 money matters unless there was an affirmative  
17 decision on liability. And if there's that,  
18 then the parties might be able to trace it out  
19 themselves, but if they couldn't, then the  
20 committee would retain jurisdiction to deal with  
21 it.

22                  And if the decision is that the claimants  
23 or some of them are entitled to merger  
24 protection agreement benefits, that decision  
25 would be returned and then it would go into the

1 second phase to determine what the compensations  
2 are to be due.

3 Now, in that regard, what you are exploring  
4 here, Miss Tricharichi, seems to me to be not on  
5 the question of liability but on the question of  
6 what compensation would be due in the event a  
7 prevailing award is rendered by the committee on  
8 the basic liability question.

9 MS. TRICHARICHI: May I speak to  
10 that, Mr. Blackwell?

11 MR. BLACKWELL: Yes, please.

12 MS. TRICHARICHI: No, it has  
13 absolutely nothing to do with damages.  
14 Absolutely nothing to do with damages. It  
15 solely has do with liability and I'll explain  
16 how it has to do with liability.

17 The carrier's position, we anticipate, will  
18 be based partially on their brief, and what Mr.  
19 Kershner said and as clarified in their brief on  
20 page 8, their position is on July 11, 1969 a  
21 further agreement was executed expanding the  
22 C.U.T. employee worker work rights.

23 Just as an aside, I've been told that I  
24 speak too fast, so please tell me if I'm going  
25 too fast.

1           In that agreement the train service  
2 employees of the Cleveland Union Terminal were  
3 expressly made subject to all the terms and  
4 conditions of the merger protection agreement  
5 effective August 1969 without prejudice and to  
6 the carrier's position in similar disputes with  
7 employees of other subsidiaries.

8           In other words, we anticipate their  
9 position to be that essentially the 1969  
10 agreement was the panacea for any problems, was  
11 the absolute and total cure-all for any problems  
12 these employees could possibly have had. And  
13 it's our argument, and we will prove through the  
14 lack of wage guarantee of people who went, that  
15 in fact the 1969 agreement was never, ever  
16 applied to the people who went, and that's  
17 absolutely critical.

18           MR. BLACKWELL: The people who went  
19 where?

20           MS. TRICHARICHI: To the people who  
21 returned to work. In other words, their  
22 argument is they should never have had a problem  
23 with not going, but even if they did, the 1969  
24 agreement -- now I'm arguing their case -- the  
25 1969 agreement should have cured any problems

1 they would have had.

2 And we will prove through documentary  
3 evidence that the 1969 agreement was never  
4 complied with even for the people who returned  
5 to work. And that is critical to show  
6 because -- and also if you look at their  
7 Exhibit 10, their statement is those men who  
8 accepted employment -- and this is their  
9 exhibit -- those men who accepted --

10 MR. BLACKWELL: Wait a minute.

11 MS. TRICHARICHI: Defendant's  
12 Exhibit 10. I'm sorry. I didn't mean to go too  
13 fast.

14 MR. BLACKWELL: Wait a minute.  
15 This last notebook is in --

16 MS. TRICHARICHI: Well, I think it  
17 has numbers at the end of --

18 MR. KERSHNER: Towards the end, the  
19 first portion.

20 MS. TRICHARICHI: That's at the  
21 last line, the last two lines after the  
22 claimants' names, the very bottom, the line  
23 says, Those men who accepted employment earned  
24 more than their guarantee. That's absolutely  
25 false. And we'll show that it's false.

1 MR. BLACKWELL: Where are you?

2 MS. TRICHARICHI: No, no. Here at  
3 the very end, Mr. Blackwell, the very bottom.  
4 Their argument is that the 1969 agreement cured  
5 everything. There was no reason for the people  
6 not to go to work after the 1969 agreement.

7 We will show that by the fact that they did  
8 not earn their guarantee even after the '69  
9 agreement, that there was good reason for the  
10 people not to go and the people who did go did  
11 not get what they were entitled to under the '69  
12 agreement. That is why it goes to liability and  
13 not to damages.

14 As a matter of fact, we do not intend to  
15 show a whole litany of people. We have a few  
16 specific examples that were showed which are  
17 representative of the fact that the terms of the  
18 1969 agreement were never applied to these  
19 claimants.

20 MR. BLACKWELL: Are we talking in  
21 this area now only about employees who did  
22 return to work when others did not return to  
23 work?

24 MS. TRICHARICHI: No, we are  
25 talking about both. Because those who did not

1 return did not return based on watching the  
2 people who did return and who didn't get what  
3 they were supposed to. The testimony of my  
4 clients will be we watched a man go back in 1968  
5 when he was called back to work, and he never  
6 got the benefits, and therefore, I knew in 1969  
7 when I was called back to work that I wasn't  
8 going to get them either.

9 MR. KERSHNER: That's an important  
10 distinction you make though, if true. You say  
11 he was called back and returned in '68 and  
12 allegedly didn't receive any guarantee. Did he  
13 apply for a guarantee?

14 MS. TRICHARICHI: The testimony  
15 will be he did apply, and not only did he apply,  
16 those who went back in '69 after the 1969  
17 agreement also will testify that they did not  
18 get wage guarantees and that affected -- wait a  
19 minute. Just a minute -- and that affected the  
20 people who didn't go back because they watched  
21 the others who went back and they knew they  
22 didn't get their benefits.

23 MR. KERSHNER: Were any --

24 MS. TRICHARICHI: And that was  
25 significant to their decision not to go back.

1 MR. KERSHNER: Were any grievances  
2 filed or arbitrations held?

3 MS. TRICHARICHI: Yes, grievances  
4 were absolutely filed.

5 MR. KERSHNER: Were there  
6 arbitrations?

7 MR. BLACKWELL: Well, I suspect you  
8 are getting too deep into the fact material  
9 now. We've got to get some ground rules for how  
10 we are going to handle this. You've got  
11 witnesses who will testify that the  
12 representation here from your viewpoint now, not  
13 what your witness will say, that this is not  
14 valid because the promises here were not  
15 delivered.

16 MS. TRICHARICHI: That's exactly  
17 right. And I do not have documents for -- I  
18 don't intend to admit documents for all these  
19 claimants.

20 MR. BLACKWELL: Okay. How many  
21 witnesses do you have who will testify, give  
22 that kind of testimony?

23 MS. TRICHARICHI: Well, I have  
24 documents for three particular employees that  
25 illustrate this point. Now, they're all on this

1 chart with the supporting W-2s, not for purposes  
2 of damages. I have not calculated damages. I  
3 do not want you to look at the damages.

4 MR. BLACKWELL: Okay. Let me ask  
5 you this then. You've got that much in hand.

6 MS. TRICHARICHI: That's right.

7 MR. BLACKWELL: And you want what  
8 the carrier has on all of the other claimants?  
9 Is that what you want, or on some of them?

10 MS. TRICHARICHI: No. We just want  
11 to put in evidence on some though. I asked him  
12 if he brought them because I intend to show some  
13 of these documents --

14 MR. BLACKWELL: Okay. This is what  
15 I'm driving at here. Seems to me you are  
16 prepared to make a proffer, and if, you know, if  
17 their headnote or their inventory, from what you  
18 say, you know, they can put it in evidence, but  
19 if you're going to proffer those, then the  
20 burden is going to be on them to produce some  
21 rebuttal.

22 MS. TRICHARICHI: But I want you to  
23 understand the reason I'm admitting it is not  
24 for damages.

25 MR. BLACKWELL: Okay. Okay. I

1 understand now. Maybe I should have asked you.  
2 I thought you were going to ask for a search of  
3 the warehouse.

4 MS. TRICHARICHI: Well, we did. I  
5 would like those eventually.

6 MR. BLACKWELL: I mean now. And I  
7 don't want to hold this hearing up for that.

8 MS. TRICHARICHI: No.

9 MR. BLACKWELL: Okay. So then you  
10 don't have a problem. You're just putting the  
11 carrier on notice that this kind of evidence,  
12 you are going to proffer, and if they think  
13 they've got something that will show  
14 differently, it's up to them to go locate it.  
15 They have told you they don't have anything here  
16 today, correct?

17 MS. TRICHARICHI: Yes. And in  
18 light of the fact that we previously requested  
19 that they bring these things, I would submit  
20 that if they don't have them here or if they  
21 don't have them during the period of this  
22 hearing, that it shows --

23 MR. BLACKWELL: Well, okay.  
24 They're on notice of what you are doing.

25 MS. TRICHARICHI: And I think they

1 should also be on notice, and not for damages  
2 purpose, they should be on notice, Mr.  
3 Blackwell, that if they have these documents,  
4 they were bound to produce them today by virtue  
5 of the correspondence that went back and forth  
6 and by virtue of the clear representation of Mr.  
7 O'Neill that a search would be made, and I dare  
8 say if they magically appear at some later time,  
9 they have had months to produce these  
10 documents.

11 MR. BLACKWELL: Well, whatever  
12 characterization, even if you want to put on  
13 what happens later, you're free to do so. I  
14 don't think we have to decide that at this  
15 point.

16 MR. KERSHNER: May I respond to  
17 that, what she just said?

18 MR. BLACKWELL: Yes.

19 MR. KERSHNER: What we are talking  
20 about, as I understand it, is W-2s for the years  
21 1963 and '64, is that correct?

22 MS. TRICHARICHI: And beyond, if  
23 you look at my request for production of  
24 documents, which you should have a copy of.

25 MR. KERSHNER: And Mr. O'Neill

1 indicated to you that he would make a search for  
2 those documents.

3 MS. TRICHARICHI: I'll read you the  
4 correspondence if you would like.

5 MR. KERSHNER: It would seem to me  
6 that given the dates we're talking about, 1963  
7 and '64, that if anyone would have access to  
8 those W-2s, it would be the claimants  
9 themselves.

10 MS. TRICHARICHI: I would think it  
11 would be the carrier considering that they would  
12 create the documents that were previously  
13 created by the carrier and the carrier was well  
14 aware for years that this was an ongoing  
15 dispute. They were documents -- W-2s or created  
16 by the employer, as you know, and these  
17 documents were created by the carrier. The  
18 carrier is the custodian of these records. The  
19 carrier was well aware of this ongoing dispute  
20 for years and years. That's why I have asked  
21 them to produce these records.

22 MR. BLACKWELL: It seems now we're  
23 talking about -- we have shifted gears into the  
24 discussion of documents that have not been  
25 produced or have not been located or something

1       like that. And that's premature. Let's deal  
2       with what we have. If it becomes pertinent and  
3       they're asked to be produced and they're not,  
4       then we'll see what the pertinence of that is at  
5       the time. Everybody knows that we're -- you  
6       know, this has been -- what are we into -- the  
7       second decade now? Third decade. It's been  
8       going on a long time.

9                   MS. TRICHARICHI: I'm not that old.

10                  MR. BLACKWELL: So we'll do what we  
11       do, and I don't think -- well, I won't make any  
12       preliminary rulings on anything. I will just  
13       say let's put into evidence the evidence that we  
14       have and then the carrier reacts in whatever way  
15       Mr. Kershner and Mr. Burton deem and we'll go  
16       from there.

17                  Now then this witness has established that  
18       he was not familiar with any of those wage  
19       record documents before we left, and he did not  
20       know what the carrier had, and it turns out Mr.  
21       O'Neill sent out a headnote or an inventory or a  
22       topical heading of an inventory, and I don't  
23       know whether Mr. Ellert is even familiar with  
24       that document or not.

25                  MS. TRICHARICHI: Well, I'll go

1 back and try --

2 MR. BLACKWELL: You don't really  
3 need anything more from him because you're going  
4 to put in evidence through your witnesses,  
5 aren't you?

6 MS. TRICHARICHI: Well, I would  
7 like to ask a few more questions if you don't  
8 mind.

9 MR. BLACKWELL: No. I'm just  
10 saying on this subject. I mean on these  
11 documents. If you want to ask him any more on  
12 it, go ahead. I just don't see --

13 MS. TRICHARICHI: Well, he did  
14 testify to some understanding of the wage  
15 guarantee, so I would like to explain, based on  
16 the documents that I'm going to show him, how  
17 that would apply.

18 MR. BLACKWELL: Okay. That's  
19 fine.

20 Q. Mr. Ellert, in light of the previous discussion  
21 you've just heard, is it the carrier's position  
22 with respect to those employees who did return  
23 to work, that they all earned more than their  
24 wage guarantee when they returned?

25 A. In fact, from the information we gathered, they

1 did. We expect that they did.

2 Q. Let me digress for just a minute. Mr. Ellert,  
3 you said you were a superintendent at the  
4 Cleveland Union Terminal location, is that  
5 correct?

6 A. Yes, I was.

7 Q. Can you tell me how many people were on  
8 a crew --

9 A. Five men.

10 Q. And what were those five men's positions?

11 A. An engineer, a fireman, a conductor and two  
12 brakemen.

13 Q. And the claimants in this case were the  
14 brakemen, is that correct?

15 A. Conductor and brakemen.

16 Q. Two or the three people on that crew would have  
17 been like our clients?

18 A. Yes.

19 Q. They would have had those positions. And so  
20 then there was also a fireman and an engineer,  
21 is that right?

22 A. That's correct.

23 Q. And they also, the fireman and engineer also  
24 worked at the Cleveland Union Terminal location,  
25 is that correct?

1 A. Yes.

2 Q. Subsequent to the merger protection agreement,  
3 can you tell us whether the -- well, isn't it  
4 true that those other people, the fireman and  
5 engineer, were covered under the merger  
6 protection agreement?

7 A. Yes, they were.

8 Q. They were covered?

9 A. They were covered.

10 Q. So the carrier took a very different position  
11 toward those two people on the crew than they  
12 did with regard to our clients on the crew,  
13 isn't that correct?

14 A. Only to the position of when they worked in the  
15 Cleveland Union Terminal.

16 Q. But the other two people on the crew were also  
17 working in the Cleveland Union Terminal yards,  
18 were they not?

19 A. They were.

20 Q. But they were covered employees under the merger  
21 protection agreement?

22 A. I cannot stipulate at this time that they  
23 weren't collecting any guarantees until after  
24 1969.

25 Q. I didn't ask you about guarantee. I asked you

1           that the position of the carrier was that those  
2           other two people that were part of the crew,  
3           when they were working at the Cleveland Union  
4           Terminal location, were covered by the merger  
5           protective agreement?

6   A.   I would say they were not as Cleveland --

7   Q.   Didn't you just tell me that they were?

8   A.   I'm trying to think it out myself.

9   Q.   Okay. Let me ask you this. Were there jobs  
10          available for those who returned to work at the  
11          freightyard?

12  A.   Yes, there were.

13  Q.   They all got jobs?

14  A.   They could have, yes.

15  Q.   They all could have gotten jobs, is that your  
16          testimony?

17  A.   That's my testimony.

18  Q.   And they all could have gotten full-time jobs?

19  A.   I believe they could have, yes.

20  Q.   What's your understanding of the term, stand for  
21          a job?

22  A.   That was a vacancy which they could cover.

23  Q.   And in order to be able to stand for a job,  
24          there had to be a job available to you, isn't  
25          that true?

1 A. A position or a job?

2 MR. KERSHNER: Excuse me for a  
3 minute. Mr. Skulina has indicated that he had  
4 requested on a number of occasions a copy of the  
5 transcript from which your reading and you  
6 haven't given him a copy.

7 MS. TRICHARICHI: I will tell you  
8 that I got a call last Thursday from Mr.  
9 Skulina. The reason for the call initially was  
10 to ask me whether I had ordered a court reporter  
11 for this proceeding. I indicated that I had.  
12 He indicated to me that he would like whatever  
13 court reporter I asked to also cover the Friday  
14 or whatever time it took to conclude the  
15 hearing.

16 At that time in that conversation on  
17 Thursday afternoon -- Thursday, what day was  
18 that, April the -- one week ago, was the first  
19 time I ever had a request. You're incorrect  
20 when you say repeated. He asked me whether I  
21 had a transcript from the 1976 trial. I said I  
22 didn't know whether I had it, I didn't know what  
23 the location was. I would try to find it and if  
24 I found it, and he would be interested in  
25 sharing the cost, I might be able to provide it,

1 but I wasn't sure at that time.

2 We, through our own resources, had this  
3 written up a year and a half ago. I am sure  
4 that the railroad, had they wanted to do that,  
5 could have contacted the court reporter and had  
6 it typed up as well just like in any other  
7 proceeding. You choose or you do not choose to  
8 have something written up. I think a week  
9 before, for over, I think five, six hundred  
10 pages. And I never heard from Mr. Skulina  
11 again.

12 He asked me once on Thursday a week ago.  
13 You had the same right to call the court  
14 reporter as I did and incur the expense that I  
15 incurred.

16 MR. SKULINA: May I address that,  
17 sir?

18 MR. BLACKWELL: Proceed. Mr.  
19 Skulina is speaking.

20 MR. SKULINA: This file has been  
21 scattered in different portions. My occupation  
22 with this file was primarily in the Federal  
23 Court and involved in getting different rulings  
24 as to how the matter should be resolved, whether  
25 by jury or whether by ultimate dispute

1 resolution.

2 When we finally got this to the point that  
3 we're going to arbitrate it, Mr. O'Neill was  
4 going to be involved with the advocacy, as he  
5 had indicated, and I was here to be sure that  
6 there was compliance with the rules of the court  
7 and the portions that I was involved in.

8 When I was asked to assist and be of help  
9 to now the advocate here, I then asked them if  
10 they had -- actually they asked me, Do you have  
11 the transcript, and I said, Don't you have the  
12 transcript? And that's when we found out that  
13 neither of us had the transcript.

14 So I called the lawyer on the other side,  
15 which is something I've done many times when I  
16 don't have a transcript, and asked, Do you have  
17 the transcript, and you said you would look for  
18 it and in the early part of this week you would  
19 get it to me, and I said I would share half the  
20 cost.

21 MS. TRICHARICHI: I beg your  
22 pardon? That's an incorrect statement.

23 MR. BLACKWELL: Well, excuse me.  
24 Let him finish his statement.

25 MR. SKULINA: Well, at least it was

1 my understanding that she said she wasn't sure  
2 she had it. Then she said that she would look  
3 and she says the earliest she could get it to  
4 me, which is very reasonable, because it was  
5 Thursday that I called her, would be the early  
6 part of next week. She didn't promise that I  
7 would have it Monday or Tuesday. She said she  
8 would look and get back to me. And I told her  
9 that I would pay one-half the cost of the  
10 transcript and also added the extra aside that,  
11 I'm sure it would be welcome by you because it  
12 will give you some expenses back.

13 And that was it. And I didn't hear from  
14 her so I assumed that she didn't find the  
15 transcript. Now we hear she had the transcript.

16 MR. BLACKWELL: Let me ask you  
17 this. Is your offer on economics, is that still  
18 open?

19 MR. SKULINA: Yes.

20 MR. BLACKWELL: Well, it seems to  
21 me you've got a gentleman and lady's agreement  
22 about this transcript that whatever --

23 MS. TRICHARICHI: No.

24 MR. BLACKWELL: Wait a minute.

25 Whatever it is that's between you -- this is a

1 court transcript, correct?

2 MS. TRICHARICHI: That's correct.

3 MR. BLACKWELL: And Penn Central  
4 was a party in that?

5 MS. TRICHARICHI: Absolutely.

6 MR. BLACKWELL: Well, this is  
7 something that, you know, you've already stated  
8 you could have had it and maybe you should have  
9 had it. Now you don't have it and if you  
10 thought you had some way getting it and are now  
11 surprised that you didn't get it and there it  
12 is. I can't save you from that surprise. These  
13 things happen.

14 If you can resurrect your agreement about  
15 the economics, you are welcome, but you're not  
16 talking about something that I can resolve for  
17 you and I can't order this team to part with  
18 their transcript. Proceed.

19 Q. I kind of lost my train of thought but I think  
20 we were talking about standing for a job. Is it  
21 your understanding that standing for a job means  
22 there has to be a job available to go to?

23 A. That is right. A job or a position.

24 Q. Okay. And in order to get a certain job or  
25 position, a worker would have to -- or a

1 claimant or any other railroad worker would have  
2 to have sufficient seniority to stand for that  
3 job?

4 A. That's correct.

5 Q. Is that correct?

6 A. Yes.

7 MR. BLACKWELL: I can't restrain  
8 myself. Is there a difference between a job and  
9 a position in Cleveland?

10 THE WITNESS: No. A position on an  
11 extra list is different than covering a  
12 particular job. You have regular jobs and you  
13 have an extra list which covers jobs, so you  
14 have a position when you're on an extra list and  
15 when you are on a job, you have a job.

16 MR. BLACKWELL: Okay. And so then  
17 in effect, okay, now I get there is some meaning  
18 here that you stand either for a regular job or  
19 the extra list. That's what you are talking  
20 about?

21 THE WITNESS: That's what I'm  
22 talking about.

23 MR. BLACKWELL: That's what you  
24 mean when you say stand for a job.

25 Q. I ask you to explain just for all of our

1           edification what you mean when you say the extra  
2           board or extra position.

3   A.   It's agreed upon a certain number of employees  
4           would be assigned to an extra list to cover  
5           vacancies on regular assignments or on extra  
6           jobs that are called out on a particular day or  
7           a particular trick.

8   Q.   So is it fair to say that wasn't a regular job  
9           then, the extra board? What do you call it?

10   A.   Extra list.

11   Q.   Okay. That was not a regular full-time job?

12   A.   They were regulated on the earnings and the  
13           number of days they got in in a particular week  
14           or two weeks, and these were adjusted with the  
15           general yardmaster and the loyal committeeman.

16   Q.   But I mean when you stood for an extra job, that  
17           was just what you said, it was a fill-in type of  
18           job, right?

19   A.   That's right.

20   Q.   So it wasn't a regular, steady --

21                   MR. BLACKWELL: Excuse me. We're  
22           getting some confusion here. If you stand for  
23           the extra board, you have a regular job on the  
24           extra board; you work different assignments from  
25           the extra board. Whereas a man with a regular

1 assignment works the same assignment every day.  
2 An extra board man may work more days a week  
3 than a man on a regular assignment, is that  
4 true?

5 THE WITNESS: That's correct.

6 Q. But may also work less?

7 A. That's correct.

8 MR. BLACKWELL: Well, since we got  
9 that deeply into it. Some extra boards are  
10 guaranteed. Was this one guaranteed?

11 THE WITNESS: After the merger.

12 MS. TRICHARICHI: Okay. I don't  
13 understand what you mean by guaranteed.

14 MR. BLACKWELL: Meaning guaranteed  
15 that you get -- you are guaranteed --

16 THE WITNESS: A certain amount of  
17 money.

18 MR. BLACKWELL: -- a number of days  
19 per month whether you are called out to work  
20 that number or not. It's a minimum number of  
21 days.

22 Q. And you were saying there was a guarantee based  
23 on the merger protection agreement? Is that the  
24 guarantee you are referring to?

25 A. Their monies would determine whether they had a

- 1           guarantee or not.
- 2   Q.   What they earned in that compensated base period
- 3           of May '63 to '64 would determine whether they
- 4           had a guarantee?
- 5   A.   That is correct.
- 6   Q.   Is that correct?
- 7   A.   That's correct.
- 8   Q.   That's the time during which the railroad said
- 9           that they weren't employees, is that correct?
- 10  A.   That's right.
- 11  Q.   Now, I refer to this statement in Defendant's
- 12           Exhibit 10 whereby the carrier says that those
- 13           men who accepted employment earned more than
- 14           their guarantee. By the way, it was the New
- 15           York Central that had control of the personnel
- 16           records of the plaintiffs until at least 1968,
- 17           isn't that correct?
- 18  A.   Yes.
- 19  Q.   And do you know what the men earned from 5-16-63
- 20           to 5-16-64, our claimants?
- 21  A.   Only what was sent out, I presume, by Mr.
- 22           O'Neill.
- 23  Q.   All right. Well, let's look at that. I'm
- 24           handing you what's previously been marked as --
- 25           I don't think it was marked. It was an added

1 defense exhibit attached to the February 28  
2 letter of Mr. O'Neill to which the claimants  
3 objected by letter.

4           However, I'm handing you this. Now, can  
5 you identify this document?

6 A. Yes, I can.

7 Q. Can you tell me who it was prepared by?

8 A. I don't know who prepared it. There's no  
9 signature to it.

10 Q. Can you tell me when it was prepared?

11 A. No.

12 Q. Does it in fact have any identifying statement  
13 on the face of the document?

14 A. It says, Earnings May 1963 through April '64.

15 Q. Is it on any stationery?

16 A. If you consider this stationery.

17 Q. Does it indicate --

18 A. Look like it's legal paper.

19 Q. Is it on letterhead?

20 A. No.

21 Q. Is it on a New York Central form?

22 A. No.

23 Q. Is it even typed?

24 A. I don't know that it necessarily would have to  
25 be typed.

- 1 Q. That wasn't my question. Is it?
- 2 A. No.
- 3 Q. Does it indicate the supporting documentation  
4 that was used to develop that document?
- 5 A. Explain what you mean.
- 6 Q. In other words, there are a series of numbers on  
7 that document?
- 8 A. Yes.
- 9 Q. Does it indicate where those numbers came from?
- 10 A. Yes.
- 11 Q. Where did they come from?
- 12 A. It says C.U.T., N.Y.C., total and guarantee,  
13 8-1-69.
- 14 Q. So do you know where those numbers came from?
- 15 A. I presume from the payroll department.
- 16 Q. You presume, but you don't know?
- 17 A. I presume.
- 18 Q. Are you aware that you or your counsel has the  
19 payroll records from which that document was  
20 derived?
- 21 A. I'm not aware of that, no.
- 22 Q. You're not aware of that?
- 23 A. No.
- 24 Q. And from what your counsel said today, you don't  
25 have those documents here today, the payroll

1 records?

2 A. We don't have.

3 Q. You don't have. And you don't know whether it  
4 was developed from the payroll records, do you,  
5 because you didn't create that document?

6 A. Not under my supervision, no.

7 Q. Let me ask you this question. W-2s, would you  
8 say W-2s are an accurate indicator of an  
9 individual's annual earnings?

10 A. I would think they would be.

11 Q. And if you worked for the carrier, you would be  
12 issued W-2s, would you not?

13 A. Yes, I would.

14 Q. Just like you were when you worked for them?

15 A. Yes.

16 Q. And they are prepared by the carrier for its  
17 employees, are they not?

18 A. Yes, they are.

19 Q. While we're having you identify documents, let  
20 me hand you what is already identified as  
21 Defense Exhibit 10. Can you identify that  
22 document for me?

23 A. Defense Exhibit 10 shows several headings on the  
24 page.

25 Q. Again, can you tell me who prepared that

1 document?

2 A. No, I can't.

3 Q. Can you tell me what stationery that document is  
4 on?

5 A. No.

6 Q. Does it indicate by whom the document was  
7 prepared?

8 A. No, it doesn't.

9 Q. Is the document signed?

10 A. No, ma'am.

11 Q. Does it in fact have any identifying marks as to  
12 its preparation?

13 A. No, it doesn't.

14 Q. Does it say when it was prepared?

15 A. No, it doesn't.

16 Q. Does it say what documentary information was  
17 used in preparation of that document?

18 A. No, it doesn't.

19 Q. Now, Mr. Ellert, I'm handing you a series of  
20 W-2s for a man by the name of Kenneth Day. Did  
21 you know Mr. Day?

22 A. Yes, I did.

23 Q. And where did Mr. Day work?

24 A. In the Cleveland Union Terminal.

25 Q. And was he in fact one of the plaintiffs in this

1 case, if you know?

2 A. Yes, he was.

3 Q. And is he now deceased?

4 A. I think he is. I'm not sure.

5 MS. TRICHARICHI: Just for the  
6 record, I will tell you he is deceased. All  
7 right.

8 Q. Now, Mr. Day, do you have any idea when Mr. Day  
9 began work with the railroad?

10 A. It was prior to 1954.

11 Q. Before 1954, probably back in the '40s, isn't  
12 that a fair statement?

13 A. I think the records will show it on the  
14 seniority rosters. I don't know.

15 Q. Okay. Now, the records that you have been  
16 given --

17 MS. TRICHARICHI: Our concern is  
18 about the authenticity of this document, and not  
19 waiving any objections we may have, I'm  
20 referring to this legal-sized paper that we  
21 already examined Mr. Ellert on its preparation.

22 Q. Let's look at Mr. Day on here. He's on the  
23 first page. Here is a copy of this. Now, Mr.  
24 Day is here on the first page.

25 MS. TRICHARICHI: Do you have a

1 copy of this, Mr. Blackwell?

2 MR. BLACKWELL: No, I don't.

3 MS. TRICHARICHI: It was attached  
4 to Mr. O'Neill's letter. I didn't send it, of  
5 course.

6 MR. BLACKWELL: Go ahead. What's  
7 the date of that letter of Mr. O'Neill?

8 MS. TRICHARICHI: February 28, 1990  
9 from Mr. O'Neill to you, Mr. Blackwell.

10 MR. BLACKWELL: Yes, I got it.

11 Q. Okay. Let's just assume for purposes of  
12 argument that these figures the railroad has  
13 come up with, even though we don't know exactly  
14 where they came from, are correct. All right.

15 At the top of this it says May '63 through  
16 April '64, which we've already established are  
17 the test periods, are they not?

18 A. Yes.

19 Q. Okay. If you look down at Mr. Day, the figure  
20 under the total column is \$7,206.44. Does  
21 everyone see where I'm looking? Now, the number  
22 says \$7,206.44, which would have been the yearly  
23 total, is that correct, of the C.U.T. and the  
24 New York Central wages, is that correct?

25 A. \$7,206.44, yes.

1 Q. Right. And then if you average that out on a  
2 monthly basis, that would average out to  
3 \$780.75, okay, and that would be the guarantee,  
4 would it not?

5 A. That's what it says.

6 Q. That would be the monthly guarantee --

7 A. Yes.

8 Q. -- for that particular man, right?

9 A. Right.

10 Q. Well, using their figures, they say the  
11 guarantee in August 1, 1969 is \$780.75. This  
12 would be the monthly guarantee, right, in 1969,  
13 right? So if you look at this chart that we've  
14 created here, Mr. Day -- this is using their  
15 figures, and I put a little asterisk here,  
16 assuming the correctness of defendants'  
17 information on which they have no documentary  
18 information, and I put a little two asterisks  
19 over here, the subsequent general wage  
20 increases, which we talked about as cost of  
21 living increases, were things that were  
22 requested as part of discovery but which were  
23 never submitted by the defendant.

24 So this man, if he earned -- if his  
25 guarantee as of 8-1-69 was \$9,369, because

1           that's multiplying -- we said \$781, that's  
2           rounding it out to 781, that would be \$9,369.  
3           So that would be that man's yearly guarantee,  
4           would it not?

5   A.   That's what it would be.

6   Q.   Okay.  And that means that if he made less in  
7           the subsequent years than \$9,369, then he was  
8           entitled to a wage guarantee that would bring  
9           him up to that position, right, isn't that the  
10          point of the wage guarantee?

11  A.   If he were available for service.

12  Q.   If he were available for service?

13  A.   Available for service.

14  Q.   If he were working?

15  A.   Yes, he would.

16  Q.   If he reported for work and stood for work and  
17          was available for work?

18  A.   That's right.

19  Q.   Isn't that right?  And the point of that is that  
20          under the merger protection agreement of 1964,  
21          you couldn't be placed in a worse position,  
22          isn't that a fair statement?

23  A.   That's what it says.

24  Q.   So they weren't going to put him in a worse  
25          position with regard to wages.

1           Now, refer to the W-2s that we've given  
2           you, which indicate what his real earnings were  
3           in those years. And they were in fact  
4           significantly less than this guarantee, were  
5           they not? These are, of course, photocopies of  
6           the originals. Well, I mean if you look at, for  
7           example, 19 --

8           A. '68.

9           Q. '68, look at the figure on 1968.

10                   MR. BLACKWELL: Are these first two  
11           Days the same one?

12                   MS. TRICHARICHI: Well, the bottom  
13           one is from Penn Central; okay. The middle one  
14           is from St. John's. That shouldn't have been in  
15           here, but anyway, it doesn't matter. The bottom  
16           on the first page, 1969, says \$2,759.62, okay.  
17           That was his earnings from Penn Central in 1968,  
18           right, because by then the company was now  
19           called Penn Central because it was after the  
20           merger, is that correct? And that indicates he  
21           stood for work and was working in that year,  
22           1968.

23                   And in fact, by the records of the railroad  
24           he returned to work 2-21-68. I might point out  
25           that this is an odd figure considering he was

1 furloughed 2-28-68. So these dates here in this  
2 column are the dates that were given to us by  
3 the railroad. I will not verify their  
4 accuracy. But even assuming their figures.

5 So if you look at his earnings from 1968,  
6 it says \$2,759, so we round it off to \$2,760.  
7 That indicates he certainly made less in 1968  
8 than the \$9,369, isn't that right?

9 A. That's right. On these documents.

10 Q. But the W-2 would also indicate if he had gotten  
11 a wage guarantee, right, because that's a wage  
12 that's a supplemental income that he is getting  
13 in lieu of wages, so it's considered income to  
14 the person, is that correct?

15 A. That's correct.

16 Q. And that would have been indicated on his W-2,  
17 would it not?

18 A. I have to elaborate on this. I just want to  
19 answer it in this manner because in 1968 they  
20 were not getting guarantees because they had not  
21 submitted any at this time.

22 MR. BLACKWELL: Well, all right.  
23 You could say that but her question now is -- I  
24 think you can also answer that the wage  
25 guarantee is expected to be reflected on the W-2

1 when paid.

2 A. Yes, that's right. When paid. In '68 it wasn't  
3 paid.

4 Q. And theoretically it should have come into  
5 effect when he went back to work because he  
6 stood for work and was available for work, isn't  
7 that right?

8 A. Guarantees were not figured at that time in  
9 1968, but they would be included had he returned  
10 for work and applied for his guarantee.

11 Q. Well, he did return to work by your own  
12 admission, did he not? As a matter of fact, if  
13 you --

14 A. He was working.

15 Q. If you refer to Defendant's Exhibit 10, which is  
16 your carrier's exhibit --

17 A. I'm not refuting that. He was working.

18 Q. He was working, right?

19 A. Yes.

20 Q. Okay. And he, in fact, was working all these  
21 years, '69, '70, '71, '72, '73, '74, right?

22 A. That's what it indicates.

23 Q. All right. Well, that's what the W-2s that  
24 we've submitted indicate also. Isn't that  
25 right?

1 A. That's what these show.

2 Q. Okay. And if he had been getting a guarantee  
3 that brought him up to his \$9,000, it would be  
4 indicated on that W-2, would it not?

5 A. Had he applied for his guarantee.

6 Q. That was not my question. If he was getting --  
7 if he was receiving his guarantee, it would have  
8 shown on the W-2, would it not, Mr. Ellert?

9 A. I think it would have.

10 Q. It would have. So therefore, he was not getting  
11 a guarantee, is that fair to say, he wasn't  
12 getting his guarantee?

13 A. Apparently not.

14 Q. Apparently not. Why don't we take Mr. Benko,  
15 B E N K O.

16 MR. BURTON: Is that chart going to  
17 be made a part of the record?

18 MS. TRICHARICHI: Yes. You could  
19 make a copy of it, I guess, somehow.

20 Q. There you go. Okay. I've handed you the same  
21 type of W-2s we looked at for Mr. Day for Mr.  
22 Benko. And Mr. Benko is also on this first page  
23 of this document submitted by Mr. O'Neill. And  
24 he is the fifth person on the list on the first  
25 page.

1           Again, if you go through the same analysis  
2           here, looking at according to the railroad, he  
3           would have had a monthly guarantee of \$758.56,  
4           isn't that correct?

5   A.   That's right.

6   Q.   Are you reading along with me?

7   A.   Yes.

8   Q.   All right. So we rounded that out to \$759. And  
9           that would have been the monthly guarantee. So  
10           if you multiply that by 12, that comes out to  
11           \$9,103. You can check my math, but I think  
12           that's about right. Sound fair enough?

13   A.   Okay, sure.

14   Q.   So again, then if you compare those with the  
15           W-2s I've just submitted to you, they indicate  
16           that in fact he made considerably less than that  
17           guarantee in 1968, '69, '70, '71, '72, '73,  
18           isn't that a fair statement?

19   A.   That's what the figures show.

20   Q.   That's what the figures show. Again, so they  
21           don't show that he got his guarantee for those  
22           years?

23   A.   It doesn't indicate that.

24   Q.   Doesn't indicate it, but it does indicate that  
25           he did go to work in those years, right?

- 1 A. Yes, he did.
- 2 Q. In fact Defense Exhibit 10 submitted by your  
3 carrier says, Accepted recall 1969, worked in  
4 the New York Central freightyard.
- 5 A. All right.
- 6 Q. Isn't that right?
- 7 A. Right.
- 8 Q. And that was the freightyard he was supposed to  
9 go to pursuant to the 1965 agreement where he  
10 was supposed to get all his benefits, right?
- 11 A. That's correct.
- 12 Q. And the 1969 agreement where he was supposed to  
13 get all his benefits, isn't that right?
- 14 A. That's correct.
- 15 Q. He did what he was supposed to do, isn't that  
16 right, he reported to work?
- 17 A. Did he work full-time?
- 18 Q. He reported to work like the furlough notice  
19 told him to do, didn't it?
- 20 A. Yes, he did.
- 21 Q. He reported to work like the carrier told him to  
22 when they sent him those letters in 1969, didn't  
23 he?
- 24 A. Yes.
- 25 Q. That's right, he did.

1 MR. BLACKWELL: I suggest we begin  
2 marking these before we get too many.

3 MS. TRICHARICHI: Okay. This is  
4 the last one.

5 MR. BLACKWELL: Well, how should we  
6 mark this one?

7 MS. TRICHARICHI: If you want to be  
8 sequential --

9 MR. KERSHNER: Excuse me. Are all  
10 these claimants deceased?

11 MS. TRICHARICHI: Yes, all these  
12 are dead.

13 MR. KERSHNER: So they won't be  
14 able to be examined as to their earnings,  
15 whether they put in for guarantees or they were  
16 denied guarantees, obviously.

17 MS. TRICHARICHI: If you can  
18 resurrect them.

19 MR. KERSHNER: Then I'll object to  
20 the introduction of any of this stuff on the  
21 basis there is no voir dire available, there is  
22 no testimony as to the circumstances under which  
23 they did not receive guarantees.

24 MS. TRICHARICHI: You will have  
25 testimony from their contemporaries who were

1 placed in the same position as they were --

2 MR. KERSHNER: It's total hearsay.

3 MR. BLACKWELL: Well, that

4 objection won't be sustained. It will be taken  
5 into account that the information that might be  
6 forthcoming on cross is absent here, but that  
7 doesn't make this inadmissible.

8 Let's mark these in evidence, please.

9 MS. TRICHARICHI: Okay. I think my  
10 last one --

11 MR. BLACKWELL: You can start a  
12 hearing series fresh if you want to.

13 MS. TRICHARICHI: Or I can just say  
14 70, 71, 72 so they will be even.

15 MR. BLACKWELL: Okay. This is 71,  
16 the Day.

17 MS. TRICHARICHI: Okay. Mr. Day  
18 would be then Plaintiff's Exhibit 70 because our  
19 last exhibit was 69.

20 MR. KERSHNER: Do A and B and C.

21 MR. BLACKWELL: Might as well. And  
22 that is a three-page.

23 MS. TRICHARICHI: 70B would be  
24 Benko.

25 MR. BLACKWELL: No. Benko is 71.

1 MS. TRICHARICHI: Oh, okay. I'm  
2 sorry. Okay. Benko is going to be 71.

3 MR. BLACKWELL: 71A through  
4 whatever.

5 MS. TRICHARICHI: Okay. I see. A  
6 through E. Benko is 71A through E. And the  
7 final person is Mr. Tomczak. He has three  
8 pages. He is A through C, 72.

9 MR. STEFFEN: Do you have an extra  
10 copy of 72?

11 MS. TRICHARICHI: Yes. I haven't  
12 passed them around. I gave you one, Mr.  
13 Kershner, of Tomczak?

14 MR. KERSHNER: I have three pages.

15 MS. TRICHARICHI: So because Mr.  
16 Burton had that question, do you think we should  
17 mark this as an additional exhibit? Do you want  
18 to make this Plaintiffs' Exhibit 73?

19 MR. BLACKWELL: Which one are you  
20 talking about?

21 MS. TRICHARICHI: This chart. Do  
22 you want to make the chart Plaintiffs'  
23 Exhibit 73?

24 MR. BLACKWELL: Use that and make  
25 it 73. I think that will be in evidence.

- 1 Q. Okay. If we go through the same analysis with  
2 Mr. Tomczak using the figures -- he's the third  
3 from the bottom on the first page -- 1969, the  
4 guarantee figure for the railroad was \$835.74,  
5 so we rounded that number to \$836, and if you  
6 multiply that by 12, that's approximately  
7 \$10,029. If you look at the W-2s that I have  
8 just submitted, which are Plaintiffs' Exhibit  
9 72, they indicate, do they not, that he made  
10 considerably less in the years following the  
11 merger than his guarantee?
- 12 A. In 1968 he only worked one month.
- 13 Q. Right. How do you know he only worked one  
14 month?
- 15 A. Because he never reported to the freightyard.
- 16 Q. What is your understanding of when he was  
17 returned to the freightyard?
- 18 A. Prior to 1970.
- 19 Q. Okay. Well, look at '70 and '71. He was  
20 working then, was he not?
- 21 A. Yes, he was.
- 22 Q. And he wasn't making his guarantee, isn't that  
23 correct?
- 24 A. That's what it shows.
- 25 Q. Right. So under the terms of the merger

1 protection agreement he should have made up what  
2 he missed that was less than his guarantee,  
3 isn't that correct? That's the point of a wage  
4 guarantee?

5 A. That's right.

6 MR. BLACKWELL: You didn't testify  
7 that he declined work, did you, in '69?

8 A. I haven't testified that, no.

9 Q. He was working, was he not?

10 A. I don't know if he was working five days a week  
11 or not. I don't know if he marked off. I have  
12 no idea.

13 Q. He worked in the freightyard, did he not? Isn't  
14 that what your Exhibit 10 indicates for Tomczak?

15 A. He could have worked in the freightyard or maybe  
16 his seniority entitled him after that date to go  
17 back to the C.U.T. I don't know.

18 Q. Well, here is your document --

19 A. He could have marked off.

20 Q. Well, here is your document here, Exhibit 10,  
21 which you say you don't have any idea when or  
22 how or what it was prepared with, but let's  
23 assume that it has some validity. Tomczak  
24 accepted recall 1-6, worked in the New York  
25 Central freightyard. Deceased.

- 1 A. But that doesn't mean he worked continuously in  
2 the freightyard. He exercises his seniority to  
3 the best job he could hold.
- 4 Q. That's right. He exercises his seniority to the  
5 best job he can hold, isn't that right?
- 6 A. Or the job he wanted to hold.
- 7 Q. And that was the best job he could hold; this is  
8 how much he could make in the best job he could  
9 hold?
- 10 A. Yes, without marking off or laying off of his  
11 own volition.
- 12 Q. Well, you have no documents, do you?
- 13 A. No, I don't have.
- 14 Q. These were his W-2s. And not only does this  
15 indicate the wage guarantee was not given to  
16 these men, there was no cost of living -- we  
17 don't even know what the cost of living increase  
18 is supposed to be, because that was requested  
19 but never received, but there was in fact  
20 general wage increases, were there not?
- 21 A. Yes.
- 22 Q. And they would have been applied to the  
23 guarantee, would they not have?
- 24 A. Yes, they would have.
- 25 Q. Yes. Okay. We went over your testimony, your

1 previous testimony, Mr. Ellert. You previously  
2 testified in 1976 in your deposition that the  
3 plaintiffs were not protected employees under  
4 the merger protection agreement. That was the  
5 carrier's position in 1976, was it not? In 1976  
6 in the trial --

7 A. When was my deposition?

8 Q. Your deposition was in 1976.

9 A. I don't recall what the carrier's position was  
10 at that time.

11 Q. You don't recall? Maybe I'll refresh your  
12 memory.

13 A. In 1969 they were protected under the merger  
14 protective agreement.

15 Q. In 1969 they were protected under the merger  
16 protective agreement, but you testified -- so  
17 then you would disagree with your superior, Mr.  
18 Stalder, who testified in the proceeding in 1976  
19 that they were not in fact covered?

20 A. You're taking that out of context. I'd have to  
21 read the whole thing to determine just where he  
22 got his position.

23 Q. But you know it was the carrier's position based  
24 on the documentation that we showed you before  
25 that they were not covered, isn't that correct?

1 A. There were times that we agreed they were not  
2 covered, yes.

3 Q. There were times that you agreed they were not  
4 covered. And in fact, the 1976 trial was, if my  
5 math is right, seven years after the  
6 implementation of the 1969 agreement, was it  
7 not?

8 A. If that's the number of years involved, I guess  
9 it is.

10 Q. Yeah. It was. And they were not receiving  
11 their wage guarantee even in '76, were they, or  
12 '71 or '72 or '73 or '74 or '75, were they?

13 A. I don't know.

14 Q. Well, the documents indicate they were not.

15 A. Did they apply --

16 MR. KERSHNER: The documents don't  
17 indicate whether or not they were receiving  
18 guarantees or under what circumstances they were  
19 employed.

20 MS. TRICHARICHI: Do you want to  
21 testify, Mr. Kershner?

22 MR. KERSHNER: I'm objecting to  
23 your line of questioning.

24 MS. TRICHARICHI: You can get the  
25 objection without comments.

1 MR. BLACKWELL: I won't sustain  
2 that objection. Proceed.

3 Q. Can you tell me why subsequent to 1976 when the  
4 federal district court ruled that these people  
5 were always New York Central employees, they  
6 never even to this day and after '76 when the  
7 Court said they were New York Central employees  
8 regardless of the contrary representations of  
9 the railroad, why their benefits were never  
10 restored?

11 A. As I say, New York Central or Penn Central?

12 Q. Why did Penn Central not restore their benefits  
13 after they were determined, conclusively  
14 determined, to have always been New York Central  
15 employees since the time of their hire?

16 A. That is not what it stated.

17 Q. That is not what the '76 order from the Court  
18 says?

19 A. To my knowledge that is not what it stated to my  
20 knowledge.

21 Q. Wait a minute. We'll see.

22 MR. KERSHNER: I've got to object.  
23 The documents speak for themselves. You don't  
24 have to get it through him. They're on the  
25 record.

1 MS. TRICHARICHI: Well, it's  
2 introduced.

3 Q. They were not restored to the benefits that the  
4 railroad represented that they would get under  
5 the -- first under the 1964 agreement, then  
6 under the 1965 agreement and then under the 1969  
7 agreement, they never got those benefits, did  
8 they, the ones who went back to work?

9 A. Under Exhibit C, Appendix E provides the  
10 provisions in which they would apply for the  
11 guarantee. You read it.

12 Q. You're not being responsive to my question.

13 A. I think I am being responsive.

14 MR. BLACKWELL: No. That is not  
15 responsive. Let me give you some guidance here  
16 though. Now, this witness is not the spokesman  
17 for you to get through to this board and on this  
18 record what the court order said. So leave the  
19 court order to tend to itself in your analysis.

20 And the questions you're putting to this  
21 witness are factual, and aside from what the  
22 court order said about who was an employee or  
23 not, it's a proper question to you, Mr. Ellert.

24 Did these people who returned pursuant to  
25 the recall to work that you're talking about

1 now -- correct? It is a proper question -- did  
2 they to your knowledge get paid guarantees under  
3 the merger protection agreement? And it's not  
4 responsive to say they could have applied or  
5 anything. Isn't your question did they get  
6 payment?

7 MS. TRICHARICHI: Yes.

8 MR. BLACKWELL: That's a proper  
9 question. If you know.

10 THE WITNESS: I don't know.

11 MR. BLACKWELL: All right.

12 Q. You're their technical advisor, are you not?

13 A. Yes, I am.

14 Q. You're supposed to be familiar with this case,  
15 are you not?

16 A. I am very familiar with it.

17 Q. Isn't it true that based on the fact of  
18 nonreceipt of these benefits, the people who  
19 went got exactly the treatment that the people  
20 who didn't go said that the people who had went  
21 got, that is, a waiver of their original hire  
22 date and none of the protection of the merger  
23 protection agreement?

24 MR. KERSHNER: Objection.

25 A. That is not right.

1 MR. KERSHNER: Objection. She  
2 wants him to conjecture as to what people  
3 thought.

4 MR. BLACKWELL: Well, this again, I  
5 won't sustain this. This is an if you know.  
6 And I think you may have too many questions in  
7 there. So break it down. And if you know, it's  
8 a proper --

9 Q. Do you know if the people who went back ever got  
10 their original hire date restored on the  
11 seniority roster at any time?

12 A. They never lost their seniority.

13 Q. They never lost their seniority?

14 A. No, ma'am.

15 Q. Their C.U.T. seniority date, their original hire  
16 date was on the rosters?

17 A. That's correct.

18 Q. And you can show me a roster where it was on?

19 A. Yes, I can.

20 Q. Subsequent to the merger, their original hire  
21 date?

22 A. In their prior C.U.T. territory, yes.

23 MS. TRICHARICHI: I would request  
24 the carrier to show me such a roster.

25 MR. BLACKWELL: All right. Can you

1 be in charge of carrying out that request, Mr.  
2 Ellert --

3 THE WITNESS: I think we can.

4 MR. BLACKWELL: -- since you seem  
5 to have direct knowledge of that.

6 MR. SKULINA: We have a roster.

7 THE WITNESS: I don't know if it's  
8 on that roster or not, but it is on a roster and  
9 it shows their -- I don't know which roster, but  
10 I've seen rosters with their original date.

11 Q. Do you want to hand me a copy?

12 A. The seniority district 4 roster will show it if  
13 we have one.

14 Q. Well, I'm handing you what has been marked as  
15 Plaintiff's Exhibit 3, a roster dated 2-16,  
16 1965, subsequent to the signing of the merger  
17 protection agreement and subsequent to the date  
18 of the top and bottom agreement. And what  
19 does --

20 MR. BLACKWELL: Is that one of your  
21 exhibits?

22 MS. TRICHARICHI: That's one of  
23 mine.

24 Q. What does that indicate their seniority date is  
25 on that date?

- 1 A. It's a freightyard seniority distribution.  
2 9-10-64.
- 3 Q. It indicates 9-10-64, does it not?  
4 A. That's right.
- 5 Q. Plaintiffs begin on page 2 down here. Day is  
6 the last one on page 2?  
7 A. Right.
- 8 Q. Also using the exhibit that your lawyer here  
9 just handed me, the roster, looking at Mr. Day,  
10 since we've used him, the seniority date that I  
11 see for this roster that's handed to me that's  
12 dated 7-1-68, what seniority date does it give  
13 Mr. Day?  
14 A. 9-10-64.
- 15 Q. 9-10-64?  
16 A. Right.
- 17 Q. So his original hire date wasn't listed, was it?  
18 A. It was -- in its proper perspective on the  
19 proper roster could be listed because there is  
20 other rosters.
- 21 Q. It's not listed on the New York Central Lake  
22 District Central Division roster, was it?  
23 A. Well, it wouldn't be. That's strictly --
- 24 MS. TRICHARICHI: I have no further  
25 questions.

1 MR. BLACKWELL: Before you leave  
2 that, is your answer here because you are  
3 construing 9-10-64 as the original hire date in  
4 response to this question?

5 THE WITNESS: That's not the  
6 original hiring date, no.

7 MR. BLACKWELL: What was your  
8 question?

9 MS. TRICHARICHI: Was their  
10 original hire date ever restored.

11 MR. BLACKWELL: That's what she was  
12 using.

13 THE WITNESS: They never lost it so  
14 it couldn't be restored.

15 MR. BLACKWELL: You mean the pre --

16 THE WITNESS: Their prior rights.

17 MR. BLACKWELL: She's talking about  
18 pre '64, their first hire date.

19 MS. TRICHARICHI: The original hire  
20 date.

21 MR. BLACKWELL: That's what she is  
22 talking about.

23 A. That's right. They never lost that.

24 Q. They never lost that but it wasn't on the  
25 roster, huh?

1 A. It doesn't have to show on this particular  
2 roster. There was no need for it on this  
3 roster.

4 MR. BLACKWELL: Okay.

5 A. But there are subsequent rosters where it  
6 appears when it is very prevalent.

7 Q. Let me just ask you one other question. As  
8 superintendent of the location, the Cleveland  
9 Union Terminal location, did you have occasion  
10 to preside over disciplinary action if there was  
11 a violation of rules by the railroad workers?

12 A. Yes.

13 Q. You did. And you're familiar with the  
14 procedures, isn't that right?

15 A. Pretty much so.

16 Q. And when someone was disciplined, there was a  
17 hearing, was there not?

18 A. Investigation or hearing.

19 Q. There was an investigation or a hearing?

20 A. That's correct.

21 Q. And that was a matter of course, that was the  
22 procedure that had to be followed --

23 A. By agreement, yes.

24 Q. -- in order to punish the employee?

25 A. Yes.

1 Q. That is correct?

2 A. That's correct.

3 MS. TRICHARICHI: I don't have any  
4 further questions.

5 MR. BLACKWELL: Before Mr. Kershner  
6 takes you, if he is --

7 MR. TRICHARICHI: Well, this is  
8 cross-examination. He's not in his case.

9 MR. BLACKWELL: Okay. Okay. Well,  
10 we'll see.

11 MR. KERSHNER: Are you going to  
12 mark this exhibit?

13 MS. TRICHARICHI: What do you want  
14 to call this?

15 MR. SKULINA: Joint 34A.

16 MS. TRICHARICHI: Well, it's not  
17 our --

18 MR. KERSHNER: It was referenced.  
19 The witness looked at it. It was on the  
20 record.

21 MS. TRICHARICHI: What do you want  
22 to call it?

23 MR. BURTON: Well, they put it in.

24 MS. TRICHARICHI: No. I didn't  
25 introduce it into the record.

1 MR. KERSHNER: We'll call it  
2 Carrier's --

3 MR. BLACKWELL: Well, it was  
4 displayed to this witness as an example. So  
5 let's mark it.

6 MS. TRICHARICHI: We'll make it  
7 joint. I don't care.

8 MR. BLACKWELL: I mean it was  
9 displayed to him.

10 MS. TRICHARICHI: How can we make  
11 it Joint Exhibit 34?

12 MR. SKULINA: Carrier 13.

13 MS. TRICHARICHI: Okay. Carrier  
14 13.

15 MR. BLACKWELL: I have one question  
16 for you before your release. Early on in the  
17 interrogation by Miss Tricharichi, in fact,  
18 shortly after we resumed here at two, she asked  
19 you if guarantees had been paid to the men who  
20 accepted recall in '68. Or that was the theme  
21 of her question. Do you recall that?

22 And your answer was the information, quote,  
23 we gathered, closed quote, indicated that the  
24 returnees got their MPA guarantee payments.  
25 Before that though, you had said that you had no

1 familiarity with this information involved in  
2 this material that Mr. O'Neill circulated. So  
3 was that just a general reference, we gathered,  
4 or did you have some reference to information  
5 that I'm missing here?

6 THE WITNESS: Do you have me down  
7 as saying that they did collect guarantees?

8 MR. BLACKWELL: Yes. I had you  
9 using this phrase, the information, quote, we  
10 gathered, closed quote. That sounds to me like,  
11 you know, we gathered, yeah. You know, you  
12 collect the data from payroll or bookkeeping or  
13 what. So now I'm asking you is that just a  
14 phrase or did you have an information gathering  
15 process in mind when you said that?

16 THE WITNESS: Well, when I was  
17 working, the guarantees came in to my office  
18 submitted by the claimants. And then people  
19 would survey to what their guarantees were and  
20 pay the necessary amount if it was due.

21 MR. BLACKWELL: So that was the  
22 individual case that was being administered back  
23 then?

24 THE WITNESS: That's right.

25 MR. BLACKWELL: Okay. And that was

1 not information that you gathered in connection  
2 with this litigation?

3 THE WITNESS: That's right.

4 MR. BLACKWELL: Okay. That  
5 clarifies it. So you were referring to what --

6 THE WITNESS: Overall.

7 MR. BLACKWELL: -- your memory of  
8 what was happening, what you thought was  
9 happening from the papers you saw crossing your  
10 desk back when people were applying for  
11 guarantees?

12 THE WITNESS: Yes, sir.

13 MR. BLACKWELL: Well, that's  
14 consistent with what you've said. I just wanted  
15 to get that established. All right. Where do  
16 we stand? Are you ready to go to another  
17 witness now?

18 MR. KERSHNER: Do the other two  
19 arbitrators have any questions?

20 MR. BLACKWELL: Excuse me. I guess  
21 you better hold. We do have a questioning  
22 process here.

23 It's your witness. You sort of belong half  
24 to each side right now, Mr. Ellert. But I'll  
25 let Mr. Steffen go first.

1 MR. BLACKWELL: I didn't say  
2 perception. You have testimony. You have  
3 testimony in the record to that same fact  
4 question aside from Stalder.

5 I don't think we can say it any more  
6 different ways, folks.

7 MS. TRICARICHI: Okay.

8 MR. BLACKWELL: So would you  
9 proceed with your cross.

10 - - - -

11 CROSS-EXAMINATION OF GEORGE ELLERT

12 BY MS. TRICARICHI:

13 Q. Mr. Ellert, I think you testified to your work  
14 history on a couple of occasions in the past two  
15 days. Can you tell me when exactly you returned  
16 to Cleveland in 1968? Was it in 1968 you  
17 returned to Cleveland?

18 A. Yes, it was.

19 Q. And when was that in 1968?

20 A. The first of February.

21 Q. First of February, 1968. And it's fair to say  
22 that based on your testimony yesterday that you  
23 were not personally present nor do you have  
24 personal knowledge of any meeting between Mr.  
25 Hahn and the claimants, or other similarly

1           situated employees regarding the top and bottom  
2           agreement? Is that a fair statement? You were  
3           not present at any such meeting?

4           A. No, I wasn't present at those meetings, no.

5           Q. In fact, you never knew about any such meeting  
6           until very recently when you had a conversation  
7           with Mr. Hahn, wasn't that your testimony  
8           yesterday?

9           A. No, I knew about this agreement after I became  
10          in the labor relations, and it became evident  
11          sometime after 1968, and within that period of  
12          time, I became aware of that agreement.

13          Q. No, I didn't ask you when you became aware of  
14          the agreement. When did you become aware of the  
15          1965 agreement?

16          A. I don't remember.

17                         MR. BLACKWELL: Aren't you talking  
18          about meetings, Ms. Tricarichi?

19                         MS. TRICARICHI: I am talking about  
20          meetings.

21                         MR. BLACKWELL: That developed the  
22          agreement?

23                         MS. TRICARICHI: Yes, that  
24          developed the agreement. I'm not talking about  
25          the --

1 Q. My question was you were not aware of any  
2 meetings regarding the top and bottom agreement  
3 that occurred between Mr. Hahn and the  
4 employees?

5 A. Not in 1968.

6 Q. Not in 1968?

7 A. Until after I saw the agreement.

8 Q. That's not my question. My question is not  
9 about your awareness of the agreement. My  
10 question is about your awareness of meetings  
11 between Mr. Hahn and the employees regarding the  
12 agreement.

13 A. I presume that they had to have meetings,  
14 because it was -- it was knowledgeable that they  
15 had union meetings, which I was very well aware  
16 of union meetings, but I'm not aware of this  
17 particular meeting. In order to come to some  
18 conclusion with the people, they must have  
19 presented it to the local people to determine.

20 Q. But you don't know that?

21 A. That they really wanted this top and bottom.  
22 Otherwise, it never would have been  
23 consummated.

24 Q. My question was you had no personal knowledge.  
25 Yes or no question. You have no personal

- 1           knowledge of such meetings.
- 2    A.   After I saw the agreement, I knew there had to  
3           be meetings.
- 4    Q.   You were not at those meetings, were you?
- 5    A.   No, I wasn't.
- 6    Q.   And didn't you testify yesterday that you  
7           learned recently, and I am quoting your words  
8           and the record will reflect, you learned  
9           recently in a conversation from Mr. Hahn that  
10          such meetings existed.
- 11   A.   I knew there were meetings that had previously  
12          existed --
- 13   Q.   That's a yes or no question, Mr. Ellert.
- 14   A.   I'm not going to answer it yes or no.
- 15   Q.   Is it true or is it not true that the record  
16          will reflect that yesterday you testified that  
17          you had conversations recently with Mr. Hahn  
18          regarding meetings that occurred between him and  
19          the men regarding the top and bottom agreement?
- 20   A.   I had talked with Mr. Hahn.
- 21   Q.   Recently?
- 22   A.   Yes, I have.
- 23   Q.   And that was the first time you became aware of  
24          such meetings?
- 25   A.   No, it was not.

1 Q. That was your testimony yesterday.

2 A. If it was, it was a misstatement.

3 Q. It was a misstatement; now you are saying  
4 something different?

5 A. It could be. Well, this is ten years ago, and I  
6 have been retired eight years.

7 Q. That's the whole point. This was ten years  
8 ago. Okay, and this was 20 years ago?

9 A. That's right.

10 Q. All right. Fine.

11 And you said you don't know when you became  
12 aware of the 1965 agreement, is that your  
13 statement today?

14 A. It was after 1968.

15 Q. It was after 1968?

16 A. That is right. After February of 1968. Let me  
17 emphasize. After February of 1968.

18 Q. You said -- okay. After February of 1968.

19 That's fine.

20 It was also your testimony, wasn't it, that  
21 you didn't know about the merger protection  
22 agreement until 1968, isn't that your  
23 testimony?

24 A. Yes. February of 1968, sometime after that.

25 Q. You were Assistant Director of Labor Relations

1 for the New York Central Railroad, and you  
2 didn't know about the existence of the merger  
3 protection agreement until four years after it  
4 was signed. Isn't that your statement?

5 A. Well, in 1967 --

6 Q. Now, my question was is that a fair  
7 representation of your testimony? Yes or no?  
8 If it's not, then you can say no.

9 A. I was in the operating department in 1967. I  
10 was in New York. November the 11th of 1967,  
11 when I heard from our people, this was like an  
12 iron curtain. These agreements were not being  
13 passed out or disseminated to anyone --

14 Q. They were not passed out or disseminated to  
15 anyone?

16 A. They were not --

17 Q. So when Mr. Beedlow testified --

18 A. Let me finish. Please let me finish.

19 MR. STEFFEN: She is entitled to  
20 get an answer.

21 MS. TRICARICHI: He is not being  
22 responsive.

23 MR. BLACKWELL: Proceed. This is  
24 appropriate response. Go ahead, Mr. Ellert.  
25 You can come back as soon as he answers. You

1           were speaking about the handling of the  
2           agreement.

3                           THE WITNESS:   That is right.

4   A.   (Continuing) I was on the Toledo Division in  
5           1967, and I was in New York at this meeting with  
6           top officials, there were eleven of us and we  
7           were waiting in the Biltmore Hotel to determine  
8           what was going to become of the merger, Perlman  
9           and President Stines of the Pennsylvania and all  
10          those people of the Pennsylvania were  
11          determining this, and we got this information,  
12          and that particular day, that was the first time  
13          I knew that there had to be an agreement.

14                        This information was not passed out to any  
15          general manager, to any division superintendent,  
16          which I was in Toledo, and after this occurred,  
17          they asked me if I would come back into  
18          Cleveland and help implement these agreements  
19          regarding the merger. That is why I had no  
20          knowledge of this 1964, as did no operating  
21          officer on the system, to my knowledge.

22                        MR. BLACKWELL: All right. To  
23          assist the clarity of the record here, Ms.  
24          Tricarichi's question is cast, correct me if I'm  
25          wrong, in terms of the agreement, "the

1 agreement" meaning the paper, correct?

2 MS. TRICARICHI: The merger  
3 protection agreement.

4 MR. BLACKWELL: The agreement, the  
5 hard copy. Your answer is information about the  
6 agreement, so her question I think is still  
7 before you. When did you see the agreement. Is  
8 that it?

9 MS. TRICARICHI: Well, I'll go on  
10 from there.

11 BY MS. TRICARICHI:

12 Q. So you heard testimony yesterday about all this  
13 correspondence that went on prior to 1968  
14 regarding the merger protection agreement, did  
15 you not? You heard the testimony yesterday and  
16 the day before?

17 A. I heard a lot of testimony, yes.

18 Q. And in fact, the letters that were introduced as  
19 part of the plaintiff's exhibits indicated  
20 repeated references to the merger protection  
21 agreement, isn't that a fair statement?

22 A. There was quite a bit of correspondence, that's  
23 true.

24 Q. So you are telling us that you were in the labor  
25 relations department, assistant director of the

1 labor relations department on the New York  
2 Central, and you didn't know about the terms of  
3 the merger protection agreement, but these  
4 employees, these individual employees were  
5 writing letters in 1966, 1967 about the terms of  
6 that agreement that you knew nothing about. Is  
7 that what you are telling us?

8 A. They were writing letters regarding the  
9 contemplated merger. They didn't have any  
10 information, any agreements either. To my --

11 Q. They didn't have any information about the  
12 merger protection agreement. Is that your  
13 statement?

14 A. To my knowledge they didn't have any more than  
15 what I knew.

16 Q. And they didn't refer to the merger protection  
17 agreement in any of their letters. They  
18 couldn't have, right, because they didn't know  
19 about it?

20 A. I didn't state that.

21 Q. You said that you didn't know about it, so they  
22 couldn't have known about it?

23 A. I didn't state that.

24 Q. Well, what did you state?

25 A. The record will show what I stated.

1 Q. So you weren't aware that in 1966, the claimants  
2 had begun pursuing grievances to determine  
3 whether they were covered under this agreement.

4 Is that a fair statement, you don't know that?

5 A. I was in Toledo, Ohio, superintendent of the  
6 division at this time, and I was --

7 Q. So you didn't know?

8 A. -- and I had a labor representative working for  
9 me, and if any information came to me about the  
10 merger at that time, it would have been given to  
11 my labor representative in Toledo, so I did not  
12 know at this particular time on the Toledo  
13 Division.

14 Q. Okay, so you didn't know. That doesn't mean  
15 that it didn't exist. It just means you just  
16 didn't know about it?

17 A. Isn't it a matter of fact that it was written in  
18 1964 or something thereabout?

19 Q. You are not listening to my questions.

20 A. I certainly am.

21 Q. No, you're not. I said, I'm asking you were you  
22 aware of the fact that in 1966, the claimants  
23 began a process, a grievance process, in which  
24 they disputed the fact that the Carrier was not  
25 considering them to be covered under the merger

1 protective agreement? Are you aware that they  
2 began that process? Yes or no.

3 A. I can't answer it yes or no, but I will answer  
4 it. When I came into Cleveland in 1968 --

5 MS. TRICARICHI: I just think  
6 this --

7 MR. BLACKWELL: If you don't want  
8 anything except a yes or no, say so.

9 Q. Are you aware that they began this process in  
10 1966?

11 A. After reading the file, after 1968, when I was  
12 in labor relations, yes.

13 Q. So you were not aware -- the answer was no,  
14 then, you were not aware that they had begun the  
15 proceeding to determine whether they were  
16 covered?

17 A. They were under the Toledo Division at that  
18 time, and I was manager of the -- they were  
19 under the Cleveland division at this particular  
20 time, and I was manager of the Toledo Division.  
21 So I was not aware.

22 MS. TRICARICHI: I would request  
23 that Mr. Blackwell instruct the witness to be  
24 responsive to the questions.

25 MR. BLACKWELL: All right. You are

1 getting yourselves at an unnecessary impasse, it  
2 seems to me. Now, you want a yes or no answer,  
3 this witness says he can't give you a yes or no  
4 answer, and if he can't give you a yes or no  
5 answer, you are going to have to hear what he is  
6 prepared to give you and then make your  
7 construction of whether it is yes or no and see  
8 if you can get it that way. But on what he is  
9 talking about now, I don't -- it seems to me  
10 that his qualifications are pertinent.

11 Now, let me just say to you, now, to  
12 expedite this, think -- listen to what is said.  
13 Your yes or no's are being solicited. Now, to  
14 the extent that you can give a yes or no answer,  
15 please do so. Then the pertinent  
16 qualifications, that's Mr. Kershner's  
17 responsibility. He will come back, and whatever  
18 needs to be done there will be done on  
19 redirect. So let's have that again.

20 BY MS. TRICARICHI:

21 Q. The first item we talked about in our line of  
22 questioning this morning was your discussions  
23 with Mr. Hahn. It's your understanding that  
24 back in 1965 Mr. Hahn had discussed the top and  
25 bottom agreement with the men. Is that a fair

1 statement?

2 A. He did, yes.

3 Q. He did? And you know that for sure? Of your  
4 own personal knowledge?

5 A. At that time, no.

6 Q. At that time, you didn't know or --

7 MR. KERSHNER: He already testified  
8 that Hahn had told him in subsequent  
9 conversations that he had --

10 MR. BLACKWELL: Excuse me. These  
11 questions are couched in terms of your direct  
12 knowledge of meetings. You are answering in  
13 terms of your knowledge of what must have  
14 occurred because of your experience in the  
15 Railroad industry, and as I read -- as I  
16 understand your testimony, and would you please  
17 listen, Mr. Kershner, see if we are hearing the  
18 same thing, you said you had no direct knowledge  
19 of meetings, of the negotiations, the meetings  
20 and negotiation on the '65 agreement at any  
21 time, when they occurred or later.

22 There came a time, and that's recently,  
23 when you had a conversation with Mr. Hahn, that  
24 he told you about the direct meetings held back  
25 prior to the execution of the '65. And your

1 knowledge, then, is based on what he told you.  
2 Is that correct?

3 THE WITNESS: That's correct.

4 MR. BLACKWELL: And you have no  
5 reason to doubt that meetings, in fact you are  
6 satisfied meetings were held because meetings  
7 have to be held to reach such an agreement.

8 THE WITNESS: That is correct,  
9 yes.

10 MR. BLACKWELL: I think we have a  
11 witness that says he had no direct knowledge of  
12 the meetings, still doesn't have, but he was  
13 told that direct meetings were held by Mr.  
14 Hahn. Proceed.

15 BY MS. TRICARICHI:

16 Q. It's your understanding as part of those  
17 meetings the employees understood that they were  
18 to be included under the merger protection  
19 agreement. Is that your understanding? That  
20 was their understanding.

21 A. Yes.

22 Q. That was their understanding, that they were to  
23 be included? All right.

24 Then why do you think, can you explain to  
25 me why if it was their understanding that

1           pursuant to the top and bottom agreement they  
2           were to be included under the merger protection  
3           agreement, Mr. Hahn about eight months after the  
4           signing of the top and bottom agreement would  
5           write a letter asking to be included?

6           If that was your understanding -- well, can  
7           you tell me why he would do that, if he  
8           understood already when he signed the top and  
9           bottom agreement that they were going to be  
10          included?

11        A.   At that time, I can't say yes. I can expound on  
12          it after 1968, though.

13        Q.   So you don't know?

14        A.   No. At that time, no.

15                   MR. BLACKWELL: At that time,  
16                   meaning the time of the letter?

17                   THE WITNESS: Of the letter. At  
18                   the time of the letter, no.

19                   MS. TRICARICHI: And I am referring  
20                   to Plaintiff's Exhibit 24 for the record.

21                   MR. TRICARICHI: You know, I would  
22                   appreciate for the record if Mr. Kershner does  
23                   not nod his head after questions to the witness,  
24                   and that's been noted by everybody here. You  
25                   nod your head to the witness. Now, that is not

1 correct and ethical.

2 MR. KERSHNER: I have seen the same  
3 kind of behavior on your side when you examined  
4 your own witnesses.

5 MR. TRICARICHI: No, you have not.

6 MR. KERSHNER: It is not unusual at  
7 all to have that.

8 MR. BLACKWELL: Frankly, I haven't  
9 noticed it, but let's not have any  
10 communications between counsel and witness  
11 either. Nods, winks, gestures or otherwise.

12 BY MS. TRICARICHI:

13 Q. So the men who testified yesterday that no such  
14 meeting ever occurred are not telling the  
15 truth? Is that right?

16 A. I don't know.

17 Q. You don't know. I think you testified on  
18 Thursday that in order to compute the wage  
19 guarantee, you should use just the men's New  
20 York Central earnings. Isn't that what you  
21 said?

22 A. No, I did not.

23 Q. You did not say that? What did you say?

24 A. If I made any reference to wage guarantees, I  
25 referred to the wages of the CUT and the New

1 York Central, which were combined earnings, and  
2 it was stipulated under the 1969 agreement on  
3 how they would be computed.

4 Q. Wasn't it your position prior to the 1969  
5 agreement that since they weren't to be  
6 considered employees during the period of time  
7 that they worked at the Cleveland Union Terminal  
8 location that therefore their wages would not be  
9 included as part of any wage guarantee  
10 computation?

11 A. That was never my position.

12 Q. If they weren't employees prior to 1969, if they  
13 weren't employees when they worked at the  
14 Cleveland Union Terminal, which was the  
15 Carrier's position, you have acknowledged  
16 that --

17 A. That was the Carrier's position, yes.

18 Q. That was the Carrier's position, so if they  
19 weren't employees during the time they worked at  
20 that location, then their wages at that location  
21 could not have been combined for purposes of  
22 determining guarantees.

23 A. It was resolved by the agreement of 1969 that  
24 they would be. It was not my opinion --

25 Q. Prior to 1969 -- .

1 A. All right. Prior to 1969 --

2 Q. At the time of the furlough, for example.

3 A. At the time of the furlough?

4 Q. Yes. February 25th, 1968.

5 A. The agreement was not in existence.

6 Q. I'm not talking about the 1969 agreement. I'm  
7 talking about what the Carrier's position was  
8 with regard to what the wage guarantee  
9 constituted for these men.

10 A. You know, at that time, no one knew anything  
11 about wage guarantees.

12 Q. It was in the merger protection agreement, but  
13 you didn't know anything about it?

14 A. That is right. At that time --

15 Q. You were head of labor relations and you --

16 A. Before 1968.

17 Q. You were Assistant Director of Labor Relations  
18 and you knew nothing about the wage guarantee  
19 provision?

20 MR. KERSHNER: He already testified  
21 he was in Toledo, not in labor relations in  
22 Cleveland. The beginning of '68 but not prior  
23 to that time.

24 MS. TRICARICHI: I asked him in  
25 1968.

1 MR. KERSHNER: And he testified he  
2 learned in 1968 about it.

3 MR. BLACKWELL: Let me ask counsel  
4 to subside with your questions. Don't be  
5 argumentative, please. You are entitled to be  
6 firm and aggressive in your cross-examination,  
7 but don't argue with the witness. Just put the  
8 questions to him.

9 BY MS. TRICARICHI:

10 Q. So now your position is that after 1969, wage  
11 guarantees should be computed with the CUT wages  
12 and the New York Central combined. Isn't that  
13 right?

14 A. That is what the agreement says, yes.

15 Q. And that's the Carrier's position?

16 A. That was in 1969, under the agreement.

17 Q. Okay. But despite that fact, after the 1969  
18 agreement, the wage guarantees for the men who  
19 went back were never given, isn't that a fair  
20 statement?

21 A. What do you mean by "never given"? I don't  
22 understand the language of "never given."

23 Q. The employees were never paid the wage  
24 guarantees retroactive to 1968 after the company  
25 decided in 1969 that they should have been paid

1 based on their combined earnings.

2 A. Many employees were paid guaranteed wages.

3 MR. BLACKWELL: Well, the question  
4 is, Mr. Ellert, these claimants, not many  
5 employees. Did these -- is your question why  
6 did not, or did they?

7 MS. TRICARICHI: No, have they  
8 been.

9 MR. BLACKWELL: Have these  
10 claimants who returned pursuant to the recall  
11 notice in '68 received merger protection  
12 agreement benefits, to your knowledge? If you  
13 know?

14 THE WITNESS: I do not know.

15 Q. You do not know. And after the 1974 ICC ruling  
16 that in fact the Cleveland Union Terminal  
17 employees were employees, were to be covered  
18 under the merger protection agreement, after  
19 that 1974 ruling, were these men paid their wage  
20 guarantees retroactive to 1968, or '69 even?

21 A. None of them came to my attention, that they  
22 were paid or not paid, except one.

23 Q. So you don't know whether they were paid or not  
24 paid, you are just unaware?

25 And after 1976, when Judge Lambros again

1 determined that the claimants were always New  
2 York Central employees, whether or not they were  
3 working at the Cleveland Union Terminal location  
4 or at the lakefront location, even after 1976,  
5 the wage guarantees were not paid retroactively  
6 to the men who returned to work. Isn't that a  
7 fair statement?

8 A. Had they submitted claims and processed, they  
9 would have been paid.

10 MR. BLACKWELL: Excuse me. Let's  
11 use some precise nomenclature. Put the question  
12 did they receive --

13 Q. Did they receive --

14 MR. BLACKWELL: And that covers all  
15 that he is hesitant about presuming. Did they  
16 receive.

17 Q. Did they receive?

18 MR. BLACKWELL: If you know.

19 Q. After Lambros' '76 ruling?

20 A. I don't know.

21 Q. You don't know? And you don't know to this day  
22 whether they have been paid?

23 A. I don't know that any were paid.

24 Q. That they received the wage guarantee?

25 A. From what I heard, they did not.

1 Q. Despite the fact that during this time you were  
2 head of labor relations, during this period in  
3 the 1970s you were head of labor relations?

4 A. Yes, I was.

5 Q. You don't know?

6 A. I don't know what?

7 Q. Whether they received their wage guarantee.

8 A. I can't answer that yes or no.

9 Q. You said you don't know.

10 MR. BLACKWELL: Excuse me. I think  
11 you already said no several different times.  
12 You do not know whether they received merger  
13 protection benefits.

14 THE WITNESS: Payments. I do not  
15 know. Yes.

16 MR. BLACKWELL: And you heard from  
17 them yesterday their testimony, that that's what  
18 you have heard.

19 THE WITNESS: That he said what  
20 they said. That's what I heard. Yes.

21 Q. By the way, who is responsible, whose  
22 responsibility was it to keep the wage records  
23 of the employees?

24 A. It was under the division headquarters.

25 Q. And was that part of your duties?

1 A. No.

2 Q. No, you had nothing to do with keeping the wage  
3 records?

4 A. No.

5 Q. You were not -- you were not keeper of the  
6 personnel records, is that a fair statement? At  
7 any time?

8 A. Personnel records and these records are  
9 different.

10 MR. BLACKWELL: Personnel -- you  
11 are talking about payroll records?

12 MS. TRICARICHI: Payroll records.

13 MR. BLACKWELL: Payroll and  
14 personnel are not generally in the Railroad  
15 industry the same thing.

16 Q. Well, was the Railroad responsible for keeping  
17 those records?

18 A. Yes.

19 Q. The Railroad was responsible for keeping those  
20 records?

21 A. Yes. I stated they were.

22 Q. And the Railroad was responsible for determining  
23 what the guarantee was based on the records that  
24 they kept. Isn't that --

25 A. Based on the records that were submitted by the

1 employees and on the records we kept. Yes.

2 Q. No, no. Not based on the records that were  
3 submitted. Based on what their earnings were,  
4 which were documents generated by the Railroad,  
5 isn't that what the guarantee was based on?

6 MR. BLACKWELL: You are talking  
7 about the test period?

8 MS. TRICARICHI: That's correct.

9 THE WITNESS: It has to be the test  
10 period.

11 MR. BLACKWELL: Well, he is talking  
12 about more than that, so specify it is the test  
13 period you are talking about.

14 Q. The test period wages --

15 A. All right.

16 Q. Records of those wages were kept by the Carrier,  
17 were they not?

18 A. That is correct.

19 Q. And the guarantee was based on those records,  
20 were they not?

21 A. Correct, yes.

22 Q. And so therefore the guarantee was also kept by  
23 the -- the record of the guarantee was also kept  
24 by the Railroad, is that a fair statement?

25 A. That's correct. Yes, it is.

1 Q. And your testimony is you don't have any of  
2 those records, is that correct?

3 A. I don't have any of them, no.

4 Q. And you have searched the records?

5 A. I didn't search any records.

6 Q. Well, your representative, Mr. O'Neill, stated  
7 that a search was made of the records, did he  
8 not?

9 A. To some extent.

10 MR. KERSHNER: He didn't represent  
11 that Mr. Ellert searched the records. You asked  
12 him if he himself searched the records.

13 MR. BLACKWELL: Excuse me. What  
14 was the division you said that was keeping this  
15 record? You gave it a name?

16 THE WITNESS: At that time, these  
17 men were under the Cleveland or Lake Division.  
18 It would be under the Cleveland or Lake Division  
19 records, where these would be kept in the  
20 Western Region.

21 Q. The Cleveland or Lake Division kept the payroll  
22 records of these CUT employees, is that what you  
23 are saying?

24 THE WITNESS: They may have been at  
25 that time regional records with these divisions,

1 but they were kept.

2 Q. At the division level?

3 MR. BLACKWELL: At the division  
4 level?

5 THE WITNESS: They were kept -- I  
6 don't know what the accounting procedure was at  
7 that time --

8 MR. BLACKWELL: I understand it  
9 wasn't your direct area, but you did give a  
10 location where they were kept and I was just  
11 trying to pick it up. It was the divisional  
12 headquarters where you would think these were  
13 being kept at the time?

14 THE WITNESS: The region was also  
15 in Cleveland at that time, so they could have  
16 been at regional headquarters.

17 Q. And how could the records of people that you  
18 didn't believe to be employees, Cleveland Union  
19 Terminal employees, be kept -- didn't believe to  
20 be New York Central employees be kept at the New  
21 York Central Lake Division offices?

22 A. Because they were one office within itself.

23 Q. Okay. Because they were really employees of the  
24 New York Central? Isn't that a fair statement?

25 A. That was my feeling. That was my feeling.

1 Q. You personally felt that they were?

2 A. I personally felt that they were.

3 Q. Personally felt that they were, but the Carrier  
4 forced you to take the position in your position  
5 as Director of Labor Relations that they were  
6 not?

7 A. By the Carrier's position I had to.

8 Q. So you think today as they stand here they are  
9 entitled to the benefits of the merger  
10 protection agreement? Is that a fair  
11 statement?

12 A. Well, at that time I thought they were party to  
13 the merger protection agreement.

14 Q. And they should have been entitled to the  
15 benefits?

16 A. Until it was explained to me that there were  
17 some 50 subsidiaries. I'm only thinking of the  
18 Cleveland Union Terminal myself, which I knew  
19 these employees, and I knew they had 90 percent,  
20 97 percent. The New York Central had 97 percent  
21 of the operational responsibilities, but then  
22 when I was told 50 other subsidiaries come into  
23 this, I was stymied. I couldn't say hey, I'm  
24 going to give it to these people, because I knew  
25 them and I, I felt they should be entitled to

1           it.

2   Q.   You felt they should be entitled?

3   A.   I did.

4   Q.   As an officer of the Carrier you felt that they  
5        should?

6   A.   Personally, I did.

7   Q.   And you were aware, aren't you, that in the ICC  
8        ruling of 1974, the Interstate Commerce  
9        Commission in fact did vindicate your position  
10       and say that all the subsidiaries of the New  
11       York Central were entitled to merger protection  
12       under the 1964 agreement. Isn't that right?

13  A.   Yes, that's what was determined.

14  Q.   They did say that?

15                   MR. BLACKWELL:   What was the  
16        statement?

17                   THE WITNESS:   Yes.

18  Q.   So those merger protection benefits should be  
19        restored to those people who were and always  
20        have been New York Central employees?

21  A.   They have the provisions under which to submit  
22        claims for restoration at that time.

23  Q.   So now if they submitted the claims they should  
24        be paid, the people who returned to work, at the  
25        very least. Is that correct?

- 1 A. I think time limits were provided in this case  
2 under the agreements.
- 3 Q. So now they are barred because they didn't  
4 submit them during a particular time. Is that  
5 your position now? That even though you believe  
6 they were always entitled to them, and now the  
7 ICC and Judge Lambros says that they are  
8 entitled to them, your position now is that they  
9 can't get them because they didn't timely submit  
10 them? Is that what your statement is?
- 11 A. To my -- I'm not saying that, no.
- 12 Q. Well, fine. Despite the fact that this  
13 litigation has been ongoing since 1969, the  
14 Railroad no longer has kept the records of these  
15 people. Fair statement?
- 16 A. I don't know.
- 17 Q. You don't know?
- 18 A. I don't know?
- 19 A. You are talking up to date, I don't know.
- 20 Q. You brought everything that you had, did you  
21 not? You or your counsel?
- 22 A. Whatever they brought is available, I'm sure.
- 23 Q. And nothing else has been available?
- 24 A. In what respect?
- 25 Q. A search has been done of the records, pursuant

1 to my discovery request?

2 A. I presume it has been.

3 Q. You presume.

4 A. I presume.

5 Q. That's the representation that was made to you?

6 MR. KERSHNER: He's not in a  
7 position to know whether there was a search  
8 made.

9 MR. BLACKWELL: Why don't we get a  
10 statement based on Mr. Ellert's direct  
11 knowledge, because my impression, and I don't  
12 know whether I got this, is that he has  
13 represented that he doesn't know where the  
14 records might be today. Am I correct or  
15 incorrect in that?

16 Mr. Ellert, have you -- what is your direct  
17 knowledge of the payroll records of these  
18 claimants in the early '60s and later, if any?

19 THE WITNESS: I don't know where  
20 the records are in the early '60s, and the  
21 records from 1968 to a portion, to a period of  
22 time later are available.

23 Q. They are available?

24 A. They are available.

25 Q. And they have not been produced to me, despite

1 my request for them?

2 A. I don't know if they have or haven't.

3 Q. You don't know if they have or not.

4 A. That is correct.

5 Q. You are aware that I requested that your counsel  
6 produce them.

7 MR. KERSHNER: Again, he is not in  
8 a position to testify as to what was requested.

9 MS. TRICARICHI: I want the record  
10 to show that Mr. Ellert has just said that there  
11 may be records that were available from times  
12 subsequent to 1968, and I want -- that there are  
13 records somewhere, and I want the record to  
14 reflect that those are exactly the records that  
15 I requested from the Railroad some three, four,  
16 five months ago, at which time their  
17 representative, Mr. O'Neill, made the  
18 representation that a search would be conducted  
19 for those records, and if those records were  
20 obtained that they would be produced to me, and  
21 I have not to date received the records, nor  
22 have they been brought with you today.

23 In addition, I want to note that Mr.  
24 Blackwell as a result of the telephone  
25 conference on this particular subject indicated

1           that the Railroad, because they are aware of my  
2           request, should be apprised and should be  
3           prepared to bring those documents with them to  
4           this hearing. Is that a misstatement of your --

5                   MR. BLACKWELL: It is fairly close,  
6           but I'll speak for myself.

7                   MS. TRICARICHI: Okay.

8                   MR. BLACKWELL: Let me ask you  
9           this: Do you have any idea how -- well, no.

10                   MS. TRICARICHI: I don't want to  
11           continue this.

12                   MR. BLACKWELL: Let's deal with  
13           this record thing right now. I imagine Mr.  
14           Skulina may have to be brought in at this point,  
15           he may have some information on this. Now,  
16           let's get clear.

17                   Now, you just said that the records from  
18           '68 forward are available. Now, I don't know  
19           what that means. The word "available" can, that  
20           could be a number of -- that can be a  
21           multiplicity of sins or a multiplicity of  
22           conveniences. We don't know. But I have gotten  
23           the understanding from either you or Mr. O'Neill  
24           or maybe both of you combined somewhere in this  
25           that what -- that those records underlying this

1 note or this inventory could be -- might be  
2 available, but it would be a -- but you don't  
3 want to go to the time consuming leg work of  
4 going through a warehouse somewhere until you  
5 know that it's, you know, it's now time to  
6 produce them.

7 MR. SKULINA: We do not have 1964.  
8 We do have 1968 through 1974, but they are  
9 useless at this time until we get someone who  
10 can interpret the, what they mean.

11 MR. BLACKWELL: Well, I recall the  
12 words "scattered."

13 MR. SKULINA: They were scattered.

14 MR. BLACKWELL: But you have done  
15 something about that?

16 MR. SKULINA: I put some in order  
17 because I wanted to know what was there, and so  
18 I felt that if it gets to a damage issue, then  
19 we are just going to have to all go -- not all,  
20 we'll go to the warehouse --

21 MR. BLACKWELL: But what about the  
22 '64?

23 MR. SKULINA: I have established --

24 MR. BLACKWELL: You have  
25 established that they are not in existence

1 anywhere?

2 MR. SKULINA: I don't know that,  
3 sir. I just know what I have.

4 MS. TRICARICHI: Let me ask you  
5 this question, then. Mr. O'Neill, as  
6 representative of the Carrier, by correspondence  
7 dated February 28th, 1990, submitted what has  
8 not previously been marked but I would like to  
9 mark because it was submitted as evidence as a  
10 supplement to their evidence submission, it was  
11 submitted but it was never marked as a separate  
12 exhibit, he submitted it specifically as a  
13 supplement to their document production. And I  
14 quote for you, Mr. O'Neill. Even letter of  
15 February 20th. "Enclosed is a copy of the  
16 document that should be an exhibit." I refer to  
17 this document. This document, you have already  
18 testified, you don't know what documents were  
19 used to derive these numbers on this paper?

20 A. I don't know.

21 Q. Is that correct?

22 MR. BLACKWELL: Why don't you mark  
23 that.

24 MS. TRICARICHI: I would like to  
25 mark this. What is the next exhibit number?

1 statement that the Chair made.

2 The point of putting on this chart, Exhibit  
3 Number 73, was not to just show the specific,  
4 you know, the specific damages figures. I  
5 thought that was clear, because there was a  
6 threshold ruling made on why this evidence was  
7 even allowed in. The whole point of it was  
8 despite the Railroad's representation that the  
9 1969 agreement would be the cure-all, a panacea  
10 for these problems, that in fact it was not, and  
11 they did not live up to their representations,  
12 and not only did that affect the people who  
13 returned to work, but it affected the people who  
14 didn't return to work because the people who  
15 didn't return to work watched the people who  
16 returned to work, and knew they weren't getting  
17 what the Railroad had said they were entitled to  
18 get. That is the point.

19 MR. BLACKWELL: I was aware that  
20 this was the sense in which you had put that  
21 in.

22 MS. TRICARICHI: All right. Thank  
23 you

24 BY MS. TRICARICHI:

25 Q. Now, your counsel yesterday examined you on this

1 Carrier's Exhibit 13, which is the roster. Now,  
2 you recall being examined on this Carrier's  
3 Exhibit 13, the roster?

4 A. Yes.

5 Q. And your counsel pointed to you, to 22 people at  
6 the very end of the roster. Do you remember  
7 that testimony?

8 A. Yes, I do.

9 Q. It is the last two pages, the 22nd. And your  
10 testimony yesterday was, was it not, that at the  
11 time the roster was prepared you had no idea  
12 what those 22 men were doing. Didn't you?

13 A. That's right.

14 Q. That's right. You had no idea. So you don't  
15 know whether those men were working in the  
16 freight yard or anywhere else, do you?

17 A. I don't know whether they were.

18 Q. You don't know? Okay. In fact, you heard Mr.  
19 Steimle's testimony yesterday that until 1985  
20 his work was very irregular; you heard his  
21 testimony.

22 A. I heard his testimony, yes.

23 Q. And then it's a fair statement, look at this  
24 testimony, that Mr. Steimle was senior to -- Mr.  
25 Steimle was Number 438, and the 22 that you were

1 discussing began at Number 441. Isn't that  
2 fair?

3 A. That's correct.

4 Q. Okay. So if Mr. Steimle testified that he  
5 wasn't working on a regular basis in 1968 or  
6 thereafter until 1985, then because of the way  
7 seniority works in the Railroad, it's a fair  
8 assumption that the rest of the 22 people  
9 weren't working either?

10 A. That's an assumption.

11 Q. That's an assumption, you don't know, but that  
12 would be a fair assumption with regard to  
13 seniority and how seniority works on the  
14 Railroad?

15 A. Correct.

16 Q. But you don't know whether they were working or  
17 not?

18 A. Right.

19 Q. And it was a strict seniority board, was it  
20 not?

21 A. It was not a strict seniority board.

22 Q. It was not a strict seniority board?

23 A. No, ma'am.

24 Q. Seniority had nothing to do with whether people  
25 could get jobs? .

1 A. You are talking about a strict seniority board,  
2 we are talking about a seniority board as far as  
3 extra lists are concerned was not a strict  
4 seniority board.

5 Q. But as to regular jobs, it was a strict  
6 seniority board, was it not?

7 A. For regular jobs, it was a strict seniority  
8 board, yes.

9 Q. All right.

10 Q. Didn't you testify today that it wasn't you who  
11 was in charge of keeping the records in 1968  
12 when you went back?

13 MR. KERSHNER: What kind of  
14 records?

15 MS. TRICARICHI: Personnel and wage  
16 records.

17 Q. Was it your --

18 A. Well, personnel records were kept in some  
19 respect, but not wage records.

20 Q. Not wage records?

21 A. In our department.

22 Q. I cite you to your deposition of the 17th of  
23 May, 1976, at page 14. The question was you  
24 were familiar with the personnel and wage  
25 records, yes.

1 MR. KERSHNER: You asked him if he  
2 kept them. This is a different question. Is he  
3 familiar with them? Totally different issue.

4 MS. TRICARICHI: Okay.

5 Q. You were familiar with all those records, is  
6 that right?

7 A. I knew they were records.

8 Q. You knew they were records.

9 A. Yes.

10 Q. They were kept in your department?

11 A. No, they were not kept in my department.

12 MR. KERSHNER: He said they weren't  
13 kept in his department.

14 THE WITNESS: I will explain --

15 Q. No, I don't want you to. There is no question  
16 before you.

17 A. I was on the region --

18 Q. Mr. Ellert, there is no question before you.

19 A. All right. Thank you.

20 Q. So you don't know, your testimony is you don't  
21 know whether the claimants turned in wage  
22 guarantee statements, is that right? You said  
23 you didn't know?

24 A. Only one came to my attention. The others I  
25 don't know.

1 Q. You don't know on the others? Despite the  
2 correspondence that you heard about, that you  
3 heard testimony of, the claimants requesting  
4 merger protection benefits -- let me ask you  
5 this: One of the big items in the merger  
6 protection agreement with regard to protection  
7 of these employees was a wage guarantee, was it  
8 not? Lifetime wage guarantee. That was a major  
9 tenet in the merger protection agreement, was it  
10 not?

11 A. It certainly was, yes.

12 Q. And that was something you knew the employees  
13 were very concerned about, isn't that right?

14 A. Yes, yes. Definitely.

15 Q. And despite that concern that you are aware of,  
16 you don't know whether they bothered to file  
17 wage guarantees. Right?

18 A. It never came to my attention, yes.

19 Q. It never came to your attention.

20 Now, your counsel showed you what they  
21 previously marked as Defendant's Exhibit 10  
22 yesterday, and actually they didn't show you  
23 Defendant's Exhibit 10, they showed you  
24 Defendant's Exhibit 3, which is the furlough  
25 notice, and asked you to go down that list and

1 tell us who had gone back to work. Do you  
2 remember?

3 A. Yes, I do.

4 Q. Can you remember who went back to work, that's  
5 what he said, and I took down the people that  
6 you recited for us.

7 A. They went back to work -- they went back to  
8 work, yesterday, to NYC.

9 Q. Subsequent to the furlough?

10 A. After the furlough --

11 Q. No, no. There is no question before you, okay?

12 Now, you remember being asked, and  
13 answering that question?

14 A. Yes, I was.

15 Q. All right. And you remember in response to that  
16 question you listed the following people, Day,  
17 Norris, Uher, Tomczak, Gentile, McLaughlin,  
18 Benko, Duran and Steimle. That was your answer  
19 yesterday. That's what the record will  
20 reflect.

21 A. You asked me about the claimants. That is  
22 correct.

23 Q. The claimants that went back. That's correct.

24 A. The claimants.

25 Q. But in Defendant's Exhibit 10, your own records

1           indicate that in fact Mr. McLaughlin did not go  
2           back to work. Isn't that a fair statement?

3   A.   I think the records show that he was on  
4           disability.

5   Q.   But my question was did he return to work?

6   A.   No, he didn't.

7   Q.   But you testified yesterday that he did?

8   A.   I did not.

9   Q.   He was not on the list that you recited  
10           yesterday?

11   A.   I knew he was on disability. The record showed  
12           he was on disability.

13   Q.   So if I said that yesterday you said that  
14           McLaughlin didn't go back to work, I would be in  
15           error. The record will reflect that you said  
16           yesterday McLaughlin went back to work.

17   A.   I knew he never went back to work, he was on  
18           disability all this time, and he was never  
19           removed from the seniority roster.

20   Q.   All right. And you neglected in your recitation  
21           yesterday to indicate that Mr. Acree and Mr.  
22           Gastony went back to work. You forgot them,  
23           didn't you?

24   A.   As the records show, Mr. Acree went back for a  
25           couple of days, I don't know when they were, but

1 I knew personally that Mr. Gas -- who are you  
2 speaking of?

3 Q. Gastony.

4 A. Gastony. I think he went back to work.

5 Q. You just don't remember, do you?

6 A. I'm sure he went back to work. I think the  
7 records will show that he went back to work.

8 Q. Yesterday you did not recite the two names as  
9 part of the group that went back to work.

10 A. I could have referred to the records and shown  
11 that he did go back to work. From my memory and  
12 my recollection, I pointed out best as I could  
13 who went back to work.

14 Q. You could have forgotten, couldn't you?

15 A. I certainly could have.

16 Q. It's been a long time, hasn't it?

17 A. It's been a few years.

18 Q. It's been years, hasn't it, and the memory could  
19 be off?

20 A. I told you the men that were not claimants that  
21 went back to work, and I pointed it out to you.

22 Q. And you told us the men that were claimants  
23 also?

24 A. And I knew Mr. McLaughlin was on disability, I  
25 know Mr. Steimle was on disability, and I knew

1           that they could not work.

2   Q.   The record will reflect what you said  
3       yesterday.

4                   MS. TRICARICHI:  I have no further  
5       questions of this witness.

6                   MR. BLACKWELL:  All right.  We are  
7       through with cross.  We'll take a few minutes  
8       break, prepare your notes, see what you want to  
9       do.

10                   MS. TRICARICHI:  Can we have a  
11       short break, so we can get done?

12                               - - - -

13                               (Thereupon, a recess was had.)

14                               - - - -

15                   MR. BLACKWELL:  We are resuming at  
16       11:15 with redirect by Mr. Kershner.  Proceed.

17                               - - - -

18                               REDIRECT EXAMINATION OF GEORGE ELLERT

19                   BY MR. KERSHNER:

20   Q.   Mr. Ellert, you had testified that when you came  
21       to Cleveland, I believe in February of 1968,  
22       from Toledo --

23   A.   That is correct.  Yes.

24   Q.   That it was your impression that the merger  
25       protection agreement should apply to the

1 employees, is that correct? The CUT employees?

2 A. Yes.

3 Q. Did you disagree with Management's position on  
4 that issue?

5 A. I was very much surprised when I was told that  
6 the CUT employees, brakemen, were not covered  
7 under the merger protection agreement, because  
8 it was a subsidiary.

9 Q. And there was also a disagreement, was there  
10 not, between the company and the union on that  
11 issue. Is that correct?

12 A. Yes, there was.

13 Q. How do you normally resolve those kinds of  
14 disputes between the union and the company?

15 A. Through arbitration.

16 Q. Was there any grievance or arbitration on this  
17 issue?

18 A. After it was determined that the Cleveland Union  
19 Terminal was one of the 50 such corporations  
20 considered as subsidiaries, this brought it into  
21 a grievance matter, because in my opinion and  
22 without the other subsidiaries, I am positive in  
23 my opinion that they would have been considered  
24 under the merger protective agreement.

25 Q. The question was was there any grievance filed

1 protesting the non-coverage of the CUT employees  
2 in any arbitration as a consequence of that  
3 under the collective bargaining agreement.

4 A. Not to my knowledge.

5 Q. Now, you mentioned that in 1974 that the ICC  
6 vindicated your position with respect to the  
7 coverage of the CUT employees under the merger  
8 protection agreement. In 1969, there was also  
9 an agreement, was there not?

10 A. Yes, sir.

11 Q. What did that agreement do?

12 A. That agreement gave them protection as merger  
13 protected employees and for guarantees, in 1969.

14 Q. As of August 1st of that year?

15 A. As of August 1st of '69 in a consolidation of  
16 the Cleveland freight yards.

17 MR. KERSHNER: I have no further  
18 questions.

19 - - - -

20 FURTHER CROSS EXAMINATION OF GEORGE ELLERT

21 BY MS. TRICARICHI:

22 Q. You are familiar with the terms of the merger  
23 protection agreement, aren't you, of 1964, Mr.  
24 Ellert? Are you not?

25 A. I know the agreement exists.

1 Q. And as part of the agreement, there is a section  
2 that says that in case of dispute, there is an  
3 arbitration proceeding that can be referred to,  
4 I believe in Section 1-E.

5 A. As I recall, 1-E spells out provisions for  
6 filing for guarantees, yes, if that's what you  
7 are asking.

8 Q. No, I was asking for provisions with regard to  
9 arbitration in the case of disputes.

10 A. Yes, that would be in the agreement, I'm sure,  
11 somewhere.

12 Q. And you are familiar that this case in Court, to  
13 the extent that Judge Lambros sent this case  
14 into arbitration subsequent to his threshold  
15 findings of fact and conclusions of law, you  
16 know that Judge Lambros heard some of the  
17 issues?

18 A. Yes.

19 Q. And then decided that the remaining issues  
20 should be determined by arbitration, is that a  
21 fair statement?

22 A. Yes.

23 Q. I refer you to page three, this is Exhibit  
24 Number 50, which is a copy of -- no, I'm sorry,  
25 it's 55, which is Judge Lambros' opinion.

1 MR. KERSHNER: If you are going to  
2 ask the witness to construe the opinion of Judge  
3 Lambros, I suggest that that be left for  
4 argument and post hearing brief.

5 MS. TRICARICHI: You asked him  
6 about the methods of grievance. You brought up  
7 the subject.

8 MR. KERSHNER: That's correct.

9 MS. TRICARICHI: Okay, and I said  
10 that there was a reference to it, and he said he  
11 was familiar with the merger protective  
12 agreement. He said he was also familiar with  
13 the fact that Judge Lambros had sent this case  
14 into arbitration, that's his testimony, okay, so  
15 I want to refer him to one sentence at page four  
16 of this opinion.

17 MR. BLACKWELL: All right. And  
18 this is within the parameters of the redirect,  
19 which solicited testimony that no grievances  
20 were filed, according to Mr. Ellert's testimony,  
21 correct?

22 MS. TRICARICHI: Yes.

23 BY MS. TRICARICHI:

24 Q. Is it your understanding that Judge Lambros sent  
25 this case into arbitration pursuant to Section

1 1-E of the arbitration -- let me just ask you  
2 this question: Is it your understanding that  
3 Judge Lambros sent this case into arbitration  
4 pursuant to Section 1-E of the merger protection  
5 agreement, which is the arbitration section that  
6 we just spoke of?

7 A. I would presume so, if those were the guidelines  
8 to be followed, yes.

9 Q. So in fact, this hearing that we are having  
10 today is in fact that arbitration under 1-E.

11 A. If it's under 1-E or whatever paragraph that  
12 covers it, I presume that is correct.

13 Q. So the plaintiffs have properly pursued their  
14 grievance, and this is their hearing on that  
15 grievance.

16 MR. KERSHNER: You know, this is --  
17 you are calling for a legal conclusion on the  
18 part of the witness. Judge Lambros' opinion,  
19 which is in evidence, speaks for itself.

20 MR. BLACKWELL: Excuse me. I am  
21 going to treat this as admissible. Mr. Ellert  
22 is your technical expert. You talked about  
23 grievances filed. He can give an answer. You  
24 don't have to accept it. It is obviously  
25 subject to discussion and argument and briefs or

1           whatever.  Whatever his answer is.

2                           MS. TRICARICHI:  Can you read him  
3           the question?

4   - - - -  
5                           (Thereupon, the requested portion of  
6           the record was read by the Notary.)

7   - - - -

8   A.  As far as a grievance is concerned, I would say  
9       it's being conducted in that manner, yes.

10                           MS. TRICARICHI:  No further  
11       questions, Mr. Ellert.

12   - - - -

13                           REDIRECT EXAMINATION OF GEORGE ELLERT

14                           BY MR. KERSHNER:

15   Q.  Mr. Ellert, are you saying that there was in  
16       fact a grievance filed under the collective  
17       bargaining agreement that we are now hearing  
18       today?

19   A.  Yes.

20   Q.  When was that grievance filed?

21   A.  The only grievance I know that was filed was  
22       through the Courts.

23   Q.  So you are talking about the case before Judge  
24       Lambros that was filed in 1979, you are equating  
25       that with a grievance?

1 MS. TRICARICHI: '69.

2 Q. '69. Pardon me?

3 A. That's what I am equating as a grievance.

4 Q. But there was no grievance filed under the  
5 collective bargaining agreement with your office  
6 as Director of Labor Relations, was there?

7 A. That would come through as time claims.

8 Q. You are saying there is no grievance procedure  
9 under the merger protection agreement that these  
10 employees could have used?

11 A. Yes, there was.

12 Q. Did they file a grievance under that merger  
13 protective agreement with your office?

14 A. No, they did not.

15 Q. They just filed this lawsuit, is that correct?

16 A. That is correct.

17 MS. TRICARICHI: Are you finished?

18 MR. KERSHNER: Finished.

19 - - - -

20 RE CROSS EXAMINATION OF GEORGE ELLERT

21 BY MS. TRICARICHI:

22 Q. Didn't you testify when I asked you on cross  
23 that you were unaware of any grievance that had  
24 been filed in 1966? '65 or '66? Didn't you  
25 testify, didn't you tell me that this morning?

- 1           You were unaware?
- 2    A.   I think you are playing with words between  
3           grievances and claims filed.  I mean, they are  
4           two different matters, in my opinion, and with  
5           my working relationship as a labor relations  
6           man.
- 7    Q.   Well, you heard the claimants testify that they  
8           did file a grievance in 1965 or 1966.  Didn't  
9           you, yesterday?  A grievance.
- 10   A.   A grievance.  Not claims, a grievance.
- 11   Q.   A grievance.  You heard them testify to that --
- 12   A.   There were many letters that are on file.  If  
13           you are considering those grievances --
- 14   Q.   You heard them testify they filed a grievance,  
15           did you not?
- 16   A.   I heard them testify to that.
- 17   Q.   And you would disagree with that, they did not  
18           file a grievance?
- 19   A.   What do you consider a grievance?
- 20   Q.   You are the technical expert.  You know what a  
21           grievance is, don't you?
- 22   A.   Well, I'm separating a grievance from a  
23           procedure under the rules of the organization to  
24           file claims and be appealed in subsequent  
25           steps.

1 MR. STEFFEN: Well, he'll be  
2 testifying later, I imagine, and I think we can  
3 handle questions then.

4 MR. BURTON: I intend to do the  
5 same, wait until later, if I have anything at  
6 all.

7 MR. BLACKWELL: Well, I have none.  
8 I just wanted clarification of that phrase which  
9 you've done for me. So let's take a five-minute  
10 break here for coffee or beverage and we will  
11 take your next witness.

12 - - - -  
13 (Thereupon, a recess was had.)

14 - - - -  
15 MR. BLACKWELL: Ready to call your  
16 next witness?

17 MS. TRICHARICHI: Yes. The  
18 claimants call Mr. Beedlow, B E E D L O W

19 RAYMOND BEEDLOW, of lawful age, called  
20 for the purpose of direct examination, being by  
21 me first duly sworn, as hereinafter certified,  
22 was examined and testified as follows:

23 DIRECT EXAMINATION OF RAYMOND BEEDLOW

24 BY MS. TRICHARICHI:

25 Q. Mr. Beedlow, will you state your name for the

- 1 record?
- 2 A. Raymond Beedlow, Raymond Edward.
- 3 Q. And what's your date of birth, Mr. Beedlow?
- 4 A. 7-6-27.
- 5 Q. What's your address?
- 6 A. 1636 Northland, Lakewood.
- 7 Q. What's your marital status?
- 8 A. Single, divorced.
- 9 Q. Mr. Beedlow, can you tell us how you came to  
10 work at the railroad?
- 11 A. Yes. I got the job through my father who was an  
12 employee of the New York Central.
- 13 Q. And who was your father employed by?
- 14 A. The New York Central Railroad.
- 15 Q. And did you ever work with your father?
- 16 A. Oh, yes, many times.
- 17 Q. And where did you work with him?
- 18 A. At the CT and also at the Lakefront, both  
19 places, and the coach yards.
- 20 Q. When did you begin working full-time for the  
21 railroad?
- 22 A. On August 6, 1948.
- 23 Q. And with what railroad did you begin working at  
24 that time?
- 25 A. The New York Central.

1 Q. Were you required by the railroad to have a  
2 physical?

3 A. Yes, I was.

4 Q. And handing you --

5 MS. TRICHARICHI: Mr. Ellert, where  
6 is the copy that you were looking at?

7 MR. STEFFEN: Is this it?

8 MS. TRICHARICHI: No. That's  
9 defendant's. This is the carrier's.

10 MR. BLACKWELL: Here is an extra  
11 one.

12 MS. TRICHARICHI: I got it. That's  
13 all right. This is fine. I got it.

14 Q. Okay. I think my last question was were you  
15 required by the railroad to have a physical?

16 A. Yes, ma'am.

17 Q. And I direct your attention to Plaintiff's  
18 Exhibit 6. Can you identify this document for  
19 me?

20 A. Yes. It's a New York Central System employee  
21 physical examination order for Cleveland.

22 Q. Is that your name on the document?

23 A. Yes, it is. And my date of birth and the date I  
24 entered service and so on.

25 Q. When does it indicate you entered the service of

- 1 New York Central?
- 2 A. It's got 8-5-48.
- 3 Q. And what form is this on?
- 4 A. It's a New York Central System.
- 5 Q. And it says that at the very top?
- 6 A. Yes, it does.
- 7 Q. And also in the corner?
- 8 A. Yes, it does.
- 9 Q. At the time of hire were you required to fill  
10 out an application form?
- 11 A. Yes, I was.
- 12 Q. And what type of application form was it?
- 13 A. Well, the company I worked for, New York Central  
14 Railroad.
- 15 Q. Okay. Were you required to do anything to  
16 maintain your employment status as far as  
17 continuing education when you worked for the  
18 railroad?
- 19 A. Well, we had periodical -- about every year you  
20 would have a book of rules classes.
- 21 Q. And who conducted the book of rules classes?
- 22 A. The New York Central Railroad.
- 23 Q. And was there a separate Cleveland Union  
24 Terminal book of rules?
- 25 A. No. There were no rules for the Cleveland Union

1 Terminal. They were just New York Central  
2 rules.

3 Q. Did you have occasion to work at Cleveland Union  
4 Terminals locations as a New York Central  
5 employee?

6 A. Yes, ma'am.

7 Q. And did you take a separate physical to work at  
8 the C.U.T. locations?

9 A. No. Just the one that I took on August the 5th  
10 of '48.

11 Q. The New York Central one?

12 A. That's right.

13 Q. Did you complete a separate job application form  
14 to work at the C.U.T. locations?

15 A. No.

16 Q. Were you issued a separate book of rules to work  
17 at the C.U.T. locations?

18 A. No, ma'am.

19 Q. I'm going to ask you to identify Plaintiff's  
20 Exhibit 9. Can you identify that form?

21 A. Yes.

22 Q. What is it?

23 A. That's an employee withholding exemption  
24 certificate for withholding taxes.

25 Q. Is that your form?

- 1 A. Yes, it is.
- 2 Q. And who made out this form and gave it to you?
- 3 A. The New York Central Railroad.
- 4 Q. Is that your signature at the bottom?
- 5 A. And at the top, both places.
- 6 Q. Okay.
- 7 A. My Social Security and so on.
- 8 Q. Okay. And let's go back to Plaintiff's
- 9 Exhibit 7. Can you identify that form? What is
- 10 that? Well, first of all, what --
- 11 A. It's a New York Central System form.
- 12 Q. All right. And what does it record?
- 13 A. It's got a six-digit identification number,
- 14 which when they went to computers, I was changed
- 15 from a four-digit to a six-digit in '65.
- 16 Q. And this is your old number, right?
- 17 A. No. This is my new number. My new number,
- 18 ma'am. And it's -- it looks like the bottom
- 19 part of it is -- looks like a time slip, only
- 20 it's not really a time slip.
- 21 Q. Okay. I want to refer you to --
- 22 A. One more thing I'd like to bring out here unless
- 23 you don't want to ask it.
- 24 Q. No.
- 25 A. The division. It says division here on this

1 time slip.

2 Q. Uh-huh.

3 A. It's got C.U.T. as a division on the New York  
4 Central.

5 MR. SKULINA: We've got the wrong  
6 exhibit. What number are we on?

7 MS. TRICHARICHI: No. You have  
8 Exhibit 7. My Exhibit 7. I think you're on the  
9 right one.

10 MR. SKULINA: He said the bottom of  
11 the time slip.

12 MS. TRICHARICHI: No. He said it  
13 looks like a time slip.

14 A. It's not a time slip put in. There's days, pays  
15 and so on on there.

16 MS. TRICHARICHI: I think he said  
17 it looks like a time slip but it's not a time  
18 slip.

19 MR. SKULINA: All right. I was  
20 looking for a time slip. I'm sorry.

21 Q. Let me ask you this. What division does this  
22 say you worked for?

23 A. It says I worked for the Cleveland Union  
24 Terminal Division.

25 Q. Under the line 1948, right?

- 1 A. Yes, ma'am.
- 2 Q. And further down where does it say you work?
- 3 A. The Lake Division, which was New York Central.
- 4 Q. All right. And under the location section, what  
5 does that say?
- 6 A. It's got a C.U.T. location next to division.
- 7 Q. Okay. Now, I want to refer you to Plaintiff's  
8 Exhibit 15. Can you identify what this card  
9 was?
- 10 A. Yes.
- 11 Q. Now, this is not your card, is it?
- 12 A. No, it isn't.
- 13 MR. BLACKWELL: Which exhibit is  
14 that?
- 15 MS. TRICHARICHI: 15.
- 16 Q. Did you have a card like this, Mr. Beedlow?
- 17 A. Yes.
- 18 Q. Except for the name, was your card just like  
19 this card?
- 20 A. Yes. It would be similar.
- 21 Q. What was that card?
- 22 A. It's a New York Central System pass that  
23 entitles you to ride New York Central trains as  
24 an employee. It's part of the fringe benefits.
- 25 Q. And that was given to employees?

1 A. All employees, yes.

2 MR. BLACKWELL: Which number are  
3 you on?

4 THE WITNESS: I'm on 15, sir.

5 MR. BLACKWELL: So are we. Let's  
6 see yours.

7 MS. TRICHARICHI: I thought it was  
8 a pass. Maybe a book of rules.

9 MR. BLACKWELL: His is a pass. But  
10 what we have here is different.

11 MR. KERSHNER: I think our 14  
12 appears to be --

13 MR. SKULINA: There's a pass here  
14 but we have got a book of rules thing.

15 THE WITNESS: There is a pass on  
16 14, too.

17 MS. TRICHARICHI: 14 is a pass and  
18 15 --

19 THE WITNESS: No. 15 is a pass  
20 also.

21 MR. KERSHNER: I've got the pass on  
22 14 and a book of rules certification on 15, as  
23 does the arbitrator.

24 MR. BLACKWELL: Okay. Well, he's  
25 got a pass though on two of his exhibits.

1 MR. STEFFEN: Which number are we  
2 going to use? 14? The pass is 14?

3 MR. BLACKWELL: Let's use 14 since  
4 everybody seems to have that.

5 Q. When you worked at C.U.T. locations, did you  
6 have a separate C.U.T. switch key?

7 A. Oh, no.

8 Q. Whose switch keys were they?

9 A. They were always New York Central. There were  
10 no C.U.T. switch keys.

11 Q. There were no C.U.T. switch keys?

12 A. No, ma'am.

13 Q. When you worked at C.U.T. locations, who was a  
14 member of the crew? Can you tell me what the  
15 crew was composed of?

16 A. Yeah. There was five people on a crew. The  
17 engine crew was the firemen and the engineer,  
18 and yard conductor and the head man and the  
19 hindman. So there would be three groundmen and  
20 two people up in the engine for the power.

21 Q. Did you know some of the firemen and the  
22 engineers?

23 A. My father was one of them, yes.

24 Q. You worked with those people every day?

25 A. Yes, ma'am. Had to.

- 1 Q. Let me ask you this. They worked at the  
2 Cleveland Union Terminal location with you, did  
3 they not, those other members of the crew?
- 4 A. Yes, ma'am.
- 5 Q. And by whom were those crew members employed?
- 6 A. They were employed by the New York Central  
7 Railroad.
- 8 Q. And when the merger came with regard to those  
9 people, were they covered under the merger  
10 protection agreement?
- 11 A. Of course.
- 12 Q. And how do you know that?
- 13 A. Because I know hundreds of them. And they're  
14 working now at different locations all over the  
15 railroad or on pension or dead.
- 16 Q. Was there ever any denial that they were in fact  
17 employees?
- 18 A. Nobody ever denied 90 percent of the people that  
19 worked at the C.U.T. location. They were all  
20 protected employees. We were considered  
21 unprotected.
- 22 Q. Your group was the only group that was  
23 considered --
- 24 A. No. Our group plus the car inspectors.
- 25 Q. In fact, did the C.U.T. have any crew members

1 Lodge, New York Central Colonial Footboard Lodge  
2 No. 927.

3 Q. Mr. Beedlow, I want to focus now on your  
4 attempts and those of your employees before the  
5 merger to get confirmation of your status from  
6 the New York Central. Are you aware of any  
7 steps that were taken to get confirmation of  
8 your status as a New York Central employee  
9 before the merger and the furlough?

10 A. Now, how long do we have? Yes. Hundreds of  
11 attempts.

12 Q. Okay. I'm going to direct your attention to  
13 Exhibit 23. Can you identify this letter?

14 A. It's an article.

15 Q. No. 23.

16 A. I'm sorry.

17 Q. That's all right.

18 A. Yeah. This is --

19 Q. Have you seen this letter before?

20 A. Yes, I have.

21 Q. How did you happen to see letters like this?

22 A. Well, we were a member of the New York Central  
23 Lines West, and this man wrote this letter on  
24 our behalf to get us merger benefits.

25 Q. And did you have a position with the union?

1 that were employed by anyone other than the New  
2 York Central?

3 A. No, ma'am.

4 Q. Is it fair to say that the C.U.T. location  
5 couldn't have operated without the New York  
6 Central personnel, the C.U.T. could not have  
7 stood alone?

8 A. Well, the C.U.T, they had just a couple of miles  
9 of track. They had no equipment. They had no  
10 employees. They had track between West 25th and  
11 East 34th Street but it still come under New  
12 York Central jurisdiction. The C.T. tower was  
13 who divided the plant or who controlled the  
14 plant and they were all, of course, New York  
15 Central people.

16 Q. And your supervisors at the C.U.T locations, who  
17 were they employed by?

18 A. Everybody was New York Central.

19 Q. Were you aware of any disciplinary procedures  
20 for railroad workers?

21 A. Very much so.

22 Q. And if a man was disciplined for conduct while  
23 working at the C.U.T locations by what entity  
24 were these disciplinary proceedings conducted?

25 A. By the New York Central Railroad as their

1 violation of the rules. There were no C.U.T  
2 rules to violate.

3 Q. Well, what were the procedures that occurred  
4 when someone might violate a rule, an employee?

5 A. Well, they would call in all the parties and  
6 hold due process, take minutes if there was  
7 minutes called for, and either the trainmaster  
8 or superintendent or both of the New York  
9 Central Railroad would conduct the hearings.

10 Q. And were you at any of those hearings?

11 A. Oh, yes.

12 Q. And could an employee be disciplined without  
13 such a --

14 A. No. Oh, no. You're entitled to a hearing, and  
15 you are entitled to due process. They stopped  
16 anybody firing you many, many years ago, 50, 60  
17 years ago, without a hearing.

18 Q. Based on information that you just testified to,  
19 was the C.U.T a separate railroad?

20 A. No, ma'am. It was a location on the New York  
21 Central.

22 Q. Are you aware of the corporate structure of the  
23 C.U.T?

24 A. Yes.

25 Q. What --

1 A. Yes, from what I've seen, but you know, I've  
2 never went to the library and checked it out.

3 Q. Right. What is your understanding of what the  
4 corporate structure was?

5 A. Well, it was 93 percent owned and controlled by  
6 the New York Central.

7 Q. Mr. Beedlow, what was the name of the union you  
8 belonged to when you worked for the New York  
9 Central Railroad?

10 A. I belonged to the Brotherhood of Railroad  
11 Trainmen.

12 Q. When you were working at the C.U.T locations,  
13 what was the name of the union that you belonged  
14 to?

15 A. The Brotherhood of Railroad Trainmen, always the  
16 same local, the same lodge.

17 Q. You weren't a member of two different unions  
18 when you worked at two --

19 A. No, not at all.

20 Q. What union lodge was it. I didn't catch the  
21 union lodge.

22 A. It was New York Central Colonial Footboard Lodge  
23 927. That was the number.

24 MR. BLACKWELL: Colonial what?

25 THE WITNESS: Colonial Footboard

- 1 A. Yes, I did.
- 2 Q. And what was that position?
- 3 A. I was a local secretary-treasurer for about ten  
4 years.
- 5 Q. And as secretary-treasurer of your lodge, did  
6 you have occasion to see documentation and  
7 correspondence?
- 8 A. Yeah. You'll see my name on all of them. I was  
9 always entitled to copies of everything.
- 10 Q. Okay. Like as in this exhibit --
- 11 A. Yes, as a secretary or as treasurer.
- 12 Q. -- where you were copied here on this exhibit?
- 13 A. Here it shows as a secretary.
- 14 Q. Without having to read the whole letter -- we  
15 can read it if you want -- but what was the  
16 purpose of this letter back in May 1965?
- 17 A. Well, he was writing the general manager of the  
18 New York Central Railroad, and that's who it's  
19 addressed to, Mr. Fleming.
- 20 Q. What was the purpose of the letter?
- 21 A. The purpose of the letter was that he was giving  
22 them a strike notice on the New York Central  
23 Railroad.
- 24 Q. Why were they doing that?
- 25 A. Because the railroad's position was that we were

- 1 not parties to the merger.
- 2 Q. And what was --
- 3 A. And this man knew who we were. He was a  
4 freightyard employee and worked in the  
5 freightyard for many years.
- 6 Q. Mr. McLay, you are talking about?
- 7 A. Yes.
- 8 Q. And what was the employees' position at this  
9 time?
- 10 A. Beg your pardon?
- 11 Q. What was the employees' position? You've told  
12 us what you understand the carrier's position  
13 was.
- 14 A. Well, I sure knew who I worked for. I filed my  
15 tax returns every year like a good citizen.
- 16 Q. Okay. Is it fair to say your position was you  
17 worked for the New York Central?
- 18 A. Yes, ma'am.
- 19 Q. You always worked for the New York Central?
- 20 A. Always did.
- 21 Q. And when did you originally hire out?
- 22 A. August 6, 1948.
- 23 Q. And the next exhibit, 24.
- 24 A. Yes, ma'am.
- 25 Q. Again, this was before the furlough, wasn't it,

1           October 12, 1965?

2           A.   October the 12th, '65.

3           Q.   Right.   And what was the point of this?

4           A.   Well, if you notice, it's not -- he was asking  
5           for us to be included in the merger.

6           Q.   Mr. Hahn was asking the railroad for you to be  
7           included in the merger?

8           A.   Yes.   On October 12, '65, two and a half years  
9           before the merger.

10          Q.   Okay.   And is that because you foresaw a problem  
11          with that inclusion?

12          A.   Well, of course.   We were already -- they had  
13          already signed a merger protection agreement  
14          nearly two years prior to that and the company's  
15          position was that we were not going to be  
16          included because we were not employees according  
17          to them.

18          Q.   And that was their position to you?

19          A.   That's always been their position.

20          Q.   And look to Plaintiff's Exhibit 25.   It's  
21          another letter.   This is dated January 21,  
22          1966.   Also before the furlough?

23          A.   Yes.

24          Q.   The merger.   Again, what's the point of this  
25          letter, Mr. Beedlow?

1 MR. KERSHNER: Which exhibit are  
2 you on?

3 A. 25.

4 Q. I'm on 25. You were copied with this, were you  
5 not?

6 A. Yes, ma'am.

7 Q. Yeah. And what's the point of this letter?

8 A. I got a copy of that.

9 Q. What's the gist of this letter? Take your  
10 time.

11 A. Yeah. He is demanding that we get full  
12 protection as Cleveland Union Terminal  
13 employees.

14 Q. Under what agreement?

15 A. Under an agreement that he's asking to be  
16 implemented with a meeting with the general  
17 manager. Here he calls him a Cleveland Union  
18 Terminals Company general manager, or terminal  
19 manager rather. He wore two hats.

20 Q. I'm directing your attention to the last  
21 paragraph.

22 A. Yeah, ma'am.

23 Q. That the employees come under the provisions of  
24 the agreement for protection of the employees in  
25 the event of a merger. That was the merger

- 1 protection agreement, was it not?
- 2 A. He is saying that, he is demanding that we be  
3 included.
- 4 Q. Under the merger protection agreement?
- 5 A. No. First he's demanding a meeting to include  
6 the Cleveland Union Terminal people per se with  
7 full benefits as of '66, and then he goes on to  
8 say that there's many things going on and if  
9 they will get full benefits under the merger at  
10 a later date, that they will also get them, that  
11 they will not waive any rights or benefits that  
12 they would pertain -- attain in the event of a  
13 merger of the Pennsylvania and New York Central  
14 Railroad.
- 15 Q. So these were concerns of yours?
- 16 A. Very much.
- 17 Q. Even way before the furlough, way before the  
18 merger was consummated?
- 19 A. Yeah, of course, they were.
- 20 Q. Fair to say for years before the merger?
- 21 A. Yeah. Once we found out that the merger  
22 protection agreement had been signed and the  
23 company's position was that we were not going to  
24 be included, we fought a 20-year battle, 25-year  
25 battle.

1 Q. And you were still working at the time when  
2 these letters were being written on your behalf?

3 A. Yes, yes, of course. I was working as an  
4 officer of the lodge. That's why I got the copy  
5 here.

6 Q. Let's look at Exhibit 27. In your position as a  
7 union official did you have occasion to see this  
8 document?

9 A. Yes, ma'am.

10 Q. And tell us what that is.

11 A. Yeah. It's a Western Union telegram that was  
12 sent by -- I'm sure it was probably Mahoney.

13 Q. Who was Mahoney?

14 A. He was an attorney for the RLE & A.

15 Q. What was Mahoney's representation, what was he  
16 doing in this -- I think it's an ICC proceeding?

17 A. Well, the union had requested help in order to  
18 process our grievances, and Mahoney's worked for  
19 the Railway Labor Executive Association and was  
20 assigned to this case.

21 Q. And position that you were taking was -- and  
22 this was in front of the Interstate Commerce  
23 Commission, was it not?

24 A. Yes, it -- well, yes, there was many areas.

25 Q. So in addition to writing directly to the

1           company, you were pursuing your remedies before  
2           the Interstate Commerce Commission, isn't that  
3           true?

4   A.   Yes.  I wrote directly to the National Mediation  
5           Board, Interstate Commerce Commission and many  
6           other places.

7   Q.   You wrote to the National Mediation Board?

8   A.   Yes, I did.

9   Q.   And you had a grievance before the National --

10  A.   Yes, we did.  It was assigned a number.

11  Q.   But it never got a hearing, did it?

12  A.   No.  It evidently was withdrawn.  I don't know,  
13           but for years and years --

14  Q.   You never were heard on the grievance, is that  
15           right?

16  A.   No.  Never heard.  It was filed in '65.

17  Q.   Filed in '65 originally, the grievance?

18  A.   Yes.

19  Q.   Before the furlough, is that right?

20  A.   Oh, three years -- nearly three.

21  Q.   Three years before the furlough and three years  
22           before the merger was consummated, isn't that  
23           correct?

24  A.   That's true.

25  Q.   I want to direct your attention to Plaintiff's

1 Exhibit 28.

2 A. Yes, ma'am.

3 Q. Can you identify this document, Mr. Beedlow?

4 A. Yes. I got a copy of it.

5 Q. Again, you got a copy at the bottom. What was  
6 the point of this letter? This is just before  
7 the furlough?

8 A. Yes, this was less than 30 days before the  
9 merger.

10 Q. And what was the representation of the carrier's  
11 position even right before the furlough?

12 A. It says that they continue to say we're not  
13 parties to the merger, that C.U.T is not  
14 included in the proposed merger and the  
15 employees are therefore not entitled to such  
16 protection. He mentions the Railway Labor  
17 Executive Association in here, too, also.

18 Q. Now, we've showed a number of letters here which  
19 the panel can read in their entirety, but why  
20 was it important to you as an employee to be  
21 covered by the merger protection agreement?  
22 What did that mean to you as an employee?

23 A. Well, it meant that I was supposed to have a  
24 lifetime job with lifetime protection and no  
25 reduction in wages, fringe benefits, working

1 conditions and so on and so on, hospitalization,  
2 everything that goes with it.

3 That was part of the docket, finance docket  
4 2-19-89 and 2-19-90 that was filed with the  
5 Interstate Commerce Commission. They put up  
6 \$82,000,000 good faith money to protect all the  
7 employees, and that was known as the Patcher  
8 Report.

9 Q. And prior to this time had you ever been given  
10 any reason to think that you were -- I'm  
11 directing your attention to Plaintiffs'  
12 Exhibit 22.

13 A. Yes, ma'am.

14 Q. What is that?

15 A. It's a letter put out but I got no copy.

16 Q. No. 22.

17 A. I've got it.

18 Q. No. I think you are on the wrong one.

19 MS. TRICHARICHI: You want us to  
20 stop?

21 MR. KERSHNER: Yes, please.

22

23 (Thereupon, a discussion was had off  
24 the record.)

25

1 MR. BLACKWELL: Proceed.

2 Q. Mr. Beedlow, we are on 22. Let's stay with 22  
3 here for a minute. Can you identify what  
4 Exhibit 22 is?

5 A. That was the company newspaper, our company.

6 Q. So it was the New York Central. Did you receive  
7 that newspaper?

8 A. Yes, of course.

9 Q. And when did you get that newspaper, not this  
10 particular issue, but in general when did you  
11 get the newspaper?

12 A. We generally got them when we received our  
13 paychecks.

14 Q. And that was distributed to you?

15 A. No. We had to go up to the payroll office and  
16 get them.

17 Q. They were there at the payroll office?

18 A. Yes. You had to give them your employee  
19 identification number and also any  
20 identification if he didn't know you.

21 Q. And that was during the period also when you  
22 worked at the Cleveland Union Terminal location?

23 A. That's where we got paid.

24 Q. Okay. And that's where these Headlights were?

25 A. Yes, ma'am.

1 Q. And did you usually read the Headlight?

2 A. Oh, yeah.

3 Q. Okay. And would it be fair to say you relied on  
4 much of the information that was printed in the  
5 Headlight?

6 A. Well, you know, if the company says it, it's got  
7 to be gospel.

8 MR. BLACKWELL: If the company says  
9 what?

10 A. It if the company says something in writing, I  
11 would have to take it that what they're saying  
12 is true.

13 Q. What was the railroad's position in response to  
14 all the inquiries and requests for clarification  
15 that we've gone over already? We went over all  
16 these inquiries and requests for clarification  
17 of your status?

18 A. Yes, ma'am.

19 Q. The correspondence?

20 A. Yes.

21 Q. And you identified it and indicated that you  
22 were copied on it. What was the railroad's  
23 response to all these inquiries and requests for  
24 clarification?

25 A. Their position has never changed, that we are

1 not New York Central employees. Therefore,  
2 we're not covered by the merger, we're not  
3 entitled to any protection, we didn't have any  
4 test period earnings. It's right down the  
5 line. They've been that way for 25 years.

6 Q. And you weren't entitled to any test period  
7 earnings because --

8 A. Because we were not employees of New York  
9 Central Railroad.

10 Q. During the compensated --

11 A. According to them, yes, ma'am.

12 Q. The test period. Mr. Beedlow, are you familiar  
13 with what's been referred to as the top and  
14 bottom agreement of 1965?

15 A. Yes, fairly familiar.

16 Q. And when did you first become aware of its  
17 existence?

18 A. Not until they tried to enforce it some time in  
19 '68. Around February, later part of February.

20 Q. And the document was three years old by that  
21 time, isn't that right?

22 A. That's right.

23 Q. And as a secretary-treasurer of the lodge, did  
24 you usually see these documents?

25 A. By law I had to see them.

1 Q. Had you ever seen that document?

2 A. No, ma'am. Didn't know it existed.

3 Q. Never saw it in '65?

4 A. Never saw it until February of '68 or after  
5 before I got my hands on it probably.

6 Q. Around the time of the furlough was the first  
7 time you ever --

8 A. Yeah. I didn't see it then. I probably didn't  
9 get a copy of it until April or May. I don't  
10 know.

11 Q. We looked at Plaintiffs' Exhibit 24 before.  
12 Actually 23, 24 and 25 we talked about before.  
13 Were these all correspondence that was written  
14 after the date of the 1965 top and bottom  
15 agreement?

16 A. Yes. Many months and a couple of years.

17 Q. And was the top and bottom agreement ever  
18 referred to in any of that correspondence with  
19 regard to your protection?

20 A. No, ma'am.

21 Q. In fact, Mr. Hahn, who wrote Exhibit 24, was a  
22 signatore to the top and bottom agreement, isn't  
23 that a fair statement?

24 A. Yes.

25 Q. And he doesn't refer to it, does he?

- 1 A. It's never mentioned, ma'am, you know, for many  
2 years. Several years.
- 3 Q. Was the top and bottom agreement ever enforced  
4 before the furlough?
- 5 A. We were not aware of it. There was never an  
6 attempt to enforce it, of course.
- 7 Q. Let me ask you this question. And you have  
8 known Mr. Ellert for a long time, haven't you?
- 9 A. Yes, ma'am. I helped break him in.
- 10 Q. And how did you know him? What position did he  
11 hold?
- 12 A. Well, when he first came there, I was a  
13 conductor at the mail hall and it was I think  
14 around Christmas of probably '53 and he was  
15 breaking in as management at that position, and  
16 it was partially my job to show him around, and  
17 we tried to work together. It was --
- 18 Q. He was always on the management side as long as  
19 you knew him?
- 20 A. Yes, ma'am.
- 21 Q. And did you eventually work for him or with him  
22 at the Cleveland Union Terminal location?
- 23 A. Oh, yeah. I worked with him on and off for many  
24 years.
- 25 Q. Let's return to the top and bottom agreement.

1       Were you ever given the opportunity to vote on  
2       the top and bottom agreement before its  
3       adoption?

4   A.   We didn't know it existed.  Of course, we  
5       weren't.

6   Q.   So Exhibit 21 where there's some discussion  
7       of a --

8   A.   Yes.

9   Q.   -- canvassing, was that canvassing ever done?

10  A.   No, ma'am.

11  Q.   And how would you know that, Mr. Beedlow?

12  A.   Well, I'd have to know that.  For an agreement  
13       of this sort to go through, it would probably  
14       take years of correspondence between the  
15       so-called locals involved.  You're also mixing  
16       craft and classes, which I've never heard of  
17       being done in any railroad because the railroads  
18       separated the classes and crafts.

19  Q.   Okay.  It's your understanding -- and you are a  
20       passenger --

21  A.   I was a passenger service employee, yes.

22  Q.   Passenger service employee.  Not a freight  
23       service employee?

24  A.   No.  As opposed to freight, yes.

25  Q.   Had you been given the chance to vote on the top

1 and bottom agreement, how would you have voted?

2 A. Well, I definitely would have voted against it.

3 Q. And why? What's wrong with the top and bottom  
4 agreement?

5 A. Well, on the face of it it doesn't appear -- if  
6 you just take a quick glance at it, it doesn't  
7 say that we are, it doesn't say that we aren't.  
8 But it's how the interpretation of the agreement  
9 came about. They stated that we were never New  
10 York Central until they signed that agreement,  
11 and it was --

12 Q. And their interpretation was you were still not  
13 New York at the time of that agreement, isn't  
14 that right?

15 A. That's exactly right.

16 Q. They don't refer to you as New York Central  
17 employees in that agreement, do they?

18 A. No, no.

19 Q. The sole reference to you -- I believe it's  
20 Exhibit D, Defendant's Exhibit D is the top and  
21 bottom agreement.

22 A. I don't have it.

23 Q. You don't have it. Nowhere on the face of the  
24 agreement do they refer to you as New York  
25 Central employees, isn't that a fair statement?

- 1 A. I went over it many, many times. I don't see  
2 any place that it says between the Cleveland  
3 Union Terminals Company and the New York Central  
4 freightyard.
- 5 Q. They only refer to Cleveland Union Terminals,  
6 isn't that correct?
- 7 A. I think they call it the Cleveland Union  
8 Terminal Company.
- 9 Q. Isn't it true that you received paychecks from  
10 the New York Central prior to this?
- 11 A. Of course. I was their employee.
- 12 Q. And nonetheless on its face it does not say  
13 you're a New York Central employee, does it?
- 14 A. The top and bottom agreement? No.
- 15 Q. And also does it say anything about your  
16 inclusion under the merger protection agreement  
17 of 1964 in this agreement?
- 18 A. Doesn't mention it at all.
- 19 Q. Doesn't mention it at all, does it?
- 20 A. No, ma'am.
- 21 Q. So it's not in reference to the merger  
22 protection agreement that this was drafted?
- 23 A. Not at all. It was according to them a  
24 consolidation of two separate carriers.
- 25 Q. Would that have been important for you to see an

1 agreement that had any confirmation of your New  
2 York Central status?

3 A. Well, at that time, of course, it would have  
4 been.

5 Q. Would that have been important to you?

6 A. Because the merger protection agreement had  
7 already been signed 15 months earlier, and we  
8 were not included in it.

9 Q. Let's talk about the merger for a minute. When  
10 did the merger occur?

11 A: February 1, '68.

12 Q. And what railroads were involved?

13 A. The New York Central, the former New York  
14 Central on that date and the former  
15 Pennsylvania.

16 Q. And if you refer to Plaintiff's Exhibit 29, can  
17 you identify that for us?

18 A. Yes, ma'am.

19 Q. What is that?

20 A. That's a letter from the respective presidents  
21 of both railroads on Penn Central stationery  
22 dated February 1, '68.

23 Q. And to whom was that letter addressed?

24 A. To all Penn Central employees.

25 Q. And as of February 1, 1968, a Penn Central

1           employee had to be either a former Penn employee  
2           or a former New York Central employee, is that a  
3           fair statement?

4   A.   Yes, ma'am.

5   Q.   Now, you knew you were a former Penn employee,  
6           isn't that right?

7   A.   That's exactly right.

8   Q.   So did you receive that letter, first of all?

9   A.   Yes.

10   Q.   So if you received this letter, you weren't a  
11           former Penn employee, so what were you as of  
12           February 1, 1969?

13   A.   I was what I had always been, a New York Central  
14           employee.

15   Q.   Or a former New York Central employee?

16   A.   Well, as of that date. The day before I was New  
17           York Central, period.

18   Q.   I want to turn your attention to Plaintiff's  
19           Exhibit 30. Can you identify that document?

20   A.   Yes, ma'am.

21   Q.   And what was that?

22   A.   That was a letter written by -- well, typed, not  
23           signed really -- by the transportation  
24           superintendent of the New York Central Railroad  
25           on New York Central stationery.

- 1 Q. And why was that posted?
- 2 A. This was three weeks after the merger on  
3 February 21.
- 4 Q. And it's on New York Central stationery?
- 5 A. Yes, it is.
- 6 Q. And is your name on this list?
- 7 A. Yes, it is. It's typed in.
- 8 Q. How many workers' names appear on this list?
- 9 A. I think 29.
- 10 Q. And when were you effectively furloughed, Mr.  
11 Beedlow?
- 12 A. Effective February 25th.
- 13 Q. I want you to look back at Plaintiff's Exhibit D  
14 which is the top and bottom agreement.
- 15 A. Yeah, okay.
- 16 Q. And then read that along with the furlough  
17 notice, the end of the furlough notice. It's  
18 paragraph 6 that I'm referring to specifically  
19 in the top and bottom agreement.
- 20 A. All right. Okay. I've glanced at it.
- 21 Q. If you read that in conjunction with the  
22 paragraph at the bottom of the furlough notice,  
23 what was your understanding of what the railroad  
24 was saying to you?
- 25 A. They were demanding that I mark up in the

1 freightyard with September 10, '64 seniority or  
2 face possible discipline.

3 Q. Now --

4 A. Only it was worded much stronger than that.

5 Q. And what was the effect of being given  
6 September 10, 1964 seniority to you?

7 A. Well, on April 30, '64 the test period ran out.

8 Q. Okay. And why don't you explain again the test  
9 period.

10 A. And at that time they had promoted all the  
11 one-arm switch tenders and so on, and they had  
12 given them job protection. Some people who had  
13 been crippled, the railroad -- if they -- years  
14 ago if you were run over at a railroad crossing  
15 and you weren't killed, sometimes they would  
16 give you a job. So they had promoted all these  
17 people and put them on the footboard as of  
18 April 30, '68 which was the cutoff date for  
19 protection.

20 Q. Okay. Why do you say it was the cutoff date for  
21 protection?

22 A. Because that was when the test period ran out.

23 Q. Okay. And what's your understanding of what the  
24 test period was? What's the significance of  
25 test period?

- 1 A. According to them there was a test period set up  
2 and it had been changed many times -- I think  
3 the last change was May 1963 through April 30,  
4 '64.
- 5 Q. What's the significance of the test period, Mr.  
6 Beedlow?
- 7 A. That if you come outside of the scope of the  
8 test period, you would not be a protected  
9 employee and you would get no guarantee, would  
10 not be considered a New York Central employee in  
11 the event of a merger.
- 12 Q. So the time period was used for determining the  
13 guarantee, is that a fair statement?
- 14 A. Yes, ma'am.
- 15 Q. And if you didn't work during the test period,  
16 you weren't entitled to a guarantee?
- 17 A. Well, if you weren't an employee, evidently you  
18 couldn't work, that's true.
- 19 Q. And they were saying that you weren't an  
20 employee?
- 21 A. They said I was never an employee of the  
22 railroad.
- 23 Q. So the company that said you were an employee  
24 told you to go work or they would fire you even  
25 though they didn't employ you, is that a fair

1 statement?

2 A. Yes, they said that I never had worked for them  
3 but if I don't go to where they tell me to and  
4 accept the loss of 16 years seniority, that they  
5 are going to fire me from a job I never held.

6 Q. And that was the position the railroad was  
7 taking in your mind?

8 A. That's the position.

9 Q. Somewhat confusing. Is it fair to say it was  
10 the position the railroad was taking?

11 A. Well, in light of the documents I think it's  
12 somewhat confusing.

13 Q. This is a digression. Let me ask you, Mr.  
14 Beedlow. How old were you and most of your  
15 colleagues at the time of the furlough?

16 A. Well, I was one of the young ones. I'm one of  
17 the survivors. Most all of us were at least in  
18 our 40s. Some were 50, 60.

19 Q. When had most of the people started working?  
20 How old had they been when they started working  
21 on the railroad?

22 A. Most of them started in their late teens or  
23 twenties.

24 Q. So what kind of education did these people have?

25 A. Well, I didn't know too many scholars on the

1 railroad. Most of them were relatively  
2 uneducated, and in those days you could get a  
3 job. There were fairly decent jobs to be had  
4 and the railroad was considered a very good  
5 job. It was -- we had a 75-year -- my family  
6 had a 75-year connection with the New York  
7 Central Railroad until they denied that I was  
8 their employee.

9 Q. Your father had worked for them for years  
10 before?

11 A. He hired out in the First World War.

12 Q. Okay. So in light of the furlough notice and in  
13 light of the responses that you had gotten from  
14 the railroad indicating the carrier did not  
15 accept you as an employee, by the time of the  
16 furlough what was your conclusion as far as the  
17 railroad?

18 A. Well, I think -- I don't just think. They had  
19 put me in a no win situation. They were stating  
20 to report to the freightyard, which for 20 years  
21 I could never work there because I was not in  
22 that class or craft. They were demanding that I  
23 go there and accept the loss of at least 16  
24 years of my seniority or face the consequences,  
25 which was possible firing.

1           So there was no way I could win. I was not  
2 going to get merger benefits. I was told I was  
3 not an employee and I had no test period  
4 earnings.

5 Q. Because you were put in September '64 instead of  
6 prior to April of '64?

7 A. If they would have put me down on April 30, I  
8 would have had protection.

9 Q. In other words, if they had given you a  
10 seniority date during the test period, how would  
11 that have affected your conclusions in this  
12 case?

13 A. If they had just said that your seniority starts  
14 prior to the end of the test period, I would  
15 have had a lifetime job.

16 Q. Okay. And you would have felt protected?

17 A. Well, I would have -- under the seniority I  
18 would have been protected. They can't deny the  
19 seniority.

20 Q. Would that have changed your conclusion if you  
21 had been put before the test period in terms of  
22 your --

23 A. Well, I knew nothing but railroad. I would have  
24 been forced to accept their lifetime guarantee.

25 Q. But by putting you in September of 1964, your

1 understanding was that by definition took you  
2 outside of the merger?

3 A. Well, it was not my understanding. It was  
4 true. They've told me time and time again. I  
5 was outside the scope of the protection  
6 agreements.

7 Q. Because it was six months later than the test  
8 period or whatever it was?

9 A. Well, it was 70 days.

10 Q. Whatever it is.

11 A. Or no. About three, four months. From April 30  
12 to September 10th.

13 Q. What was Bulletin 1, Mr. Beedlow, that was put  
14 up in 1968?

15 A. It was the first bulletin of the newly merged  
16 carrier.

17 Q. What significance did Bulletin 1 have?

18 A. Well, it told all employees of the newly formed  
19 Penn Central of which I had a letter that I was  
20 included.

21 Q. The letter that we just showed?

22 A. That's --

23 Q. Not that you are included but they sent you that  
24 letter?

25 A. Well, they sent to me as a Penn Central

1           employee. I didn't know -- they didn't say  
2           C.U.T on there.

3   Q.   The letter that we just identified here a few  
4           minutes ago?

5   A.   Yes, ma'am. That and the Headlight that told me  
6           that I was an employee of the newly formed  
7           corporation.

8   Q.   So what did they do with Bulletin 1?

9   A.   Well, first of all, they put it up for the  
10           entire Cleveland Terminal District of which we  
11           were the focal point. That's where it got its  
12           name, from the Cleveland Terminal. And they  
13           said that all the newly assigned jobs under the  
14           carrier would be up for bid and to put down what  
15           jobs you wanted and put down your seniority  
16           date.

17   Q.   And what seniority date did you put down?

18   A.   Well, I only had one seniority date.

19   Q.   What seniority date was that?

20   A.   It was August 6, 1948, ma'am.

21   Q.   That's your original seniority date, is it not?

22   A.   That's the day I hired out.

23   Q.   Was that date ever listed on any roster you ever  
24           saw after the furlough?

25   A.   No. Not --

1 Q. Was your original hire date ever listed?

2 A. Not on District 4, not on the combined  
3 freightyard rosters. Not on any roster.

4 Q. It was completely obliterated?

5 A. Just as though we never existed.

6 Q. Prior to September 10, 1964?

7 A. That's the day the company said I became their  
8 employee.

9 Q. All right. I want to show you Plaintiff's  
10 Exhibit 38. I want to refer you to that.

11 A. Yes, ma'am.

12 Q. Can you identify this letter?

13 A. Yeah.

14 MR. KERSHNER: Pardon me?

15 Q. Can you identify this letter, I said,  
16 Plaintiffs' Exhibit 38.

17 A. Yeah, there is a letter here that's addressed to  
18 Mr. Knapik.

19 Q. And who was Mr. Knapik, Mr. Beedlow?

20 A. He was an employee that I worked with for many  
21 years.

22 Q. Did you know him?

23 A. Very well.

24 Q. Is he the named plaintiff in the original  
25 lawsuit in this case?

- 1 A. He was the name they put down, yeah, ma'am.
- 2 Q. Is he now deceased?
- 3 A. Yes. Most of them are.
- 4 Q. Okay. What was the point of this letter, Mr.
- 5 Beedlow?
- 6 A. Well, if you notice, it was signed by a new
- 7 general chairman who had been there about three
- 8 years then, and a carbon copy went to Mr.
- 9 Mahoney, who still --
- 10 Q. He was the lawyer for the ICC case, is that
- 11 right?
- 12 A. That's right.
- 13 Q. Now --
- 14 A. And he was still working on the case.
- 15 Q. Okay.
- 16 A. This was after merger.
- 17 Q. This was after the merger in 1968?
- 18 A. June the 25th, 1968.
- 19 Q. So if we divide them this way, the letters we've
- 20 talked about before were premerger. This is the
- 21 first letter we've talked about that's
- 22 post-merger?
- 23 A. Yes.
- 24 Q. Okay. Where you're continuing to determine your
- 25 status, is that correct?

1 A. It went on for years.

2 Q. Now, the third paragraph in this essentially is  
3 a question apparently that was asked by Mr.  
4 Knapik. Were you involved in these letters  
5 personally?

6 A. Yes.

7 Q. And how were you involved?

8 A. We wrote them together and used his typewriter  
9 and chipped in for the stamps.

10 Q. And the third paragraph indicates the question,  
11 and I believe the paragraph at the top of the  
12 next page indicates the answer. Can you explain  
13 to us, when you got this, what your  
14 interpretation of this response was?

15 A. Yeah. He's saying specifically he asked him if  
16 he would be included if he accepted employment  
17 at the present time in the present Penn Central  
18 Cleveland freightyard under rights granted to  
19 you by the top and bottom agreement.

20 Q. In other words, if he went back to work --

21 A. Exactly.

22 Q. -- what would happen to him, and --

23 A. Well, the answer, and he says it's his  
24 understanding that he has not performed service  
25 whereby he used that top and bottom seniority of

1           September 10, '64. Therefore, the carrier would  
2           say that you were no doubt considered as a Penn  
3           Central employee who was not protected, not  
4           protected, under any of the existing protective  
5           agreements.

6   Q.   Okay. Now, so it's your understanding that  
7           unless you performed compensated service  
8           accepting the September 10, 1964 date, you could  
9           not become a New York Central employee?

10  A.   Well, actually you can't go on a roster until  
11           you perform compensated service. That's the day  
12           your seniority starts. That is why my seniority  
13           starts August the 6th, '48. And the company in  
14           their willingness, they give us three years of  
15           so-called seniority but it was meaningless  
16           because they put us outside of the scope of all  
17           protection agreements. In '68.

18  Q.   Okay. Now, Mr. Knapik wrote this letter some  
19           few months after the furlough, is that correct?

20  A.   No. This letter is written by Lyons in answer  
21           to Knapik's.

22  Q.   Well, in answer to Knapik. So Knapik was  
23           corresponding after the furlough?

24  A.   Knapik wrote him on June 21, '68.

25  Q.   Okay. A few months after the furlough?

1 A. Yeah, five months.

2 Q. And he was asking what would happen if he went.  
3 Now, from what you've read in the first  
4 paragraph on page 2, they're saying that if you  
5 went back, you would be a new employee. It was  
6 already too late?

7 A. They're saying that you're unprotected no matter  
8 what. If you mark up or if you don't mark up,  
9 you are still an unprotected employee.

10 Q. You had no choice?

11 A. Well, it doesn't matter what he does.

12 Q. Didn't matter what he did.

13 A. It did to him, but it didn't to the company. He  
14 was forever branded with a September 10, '64  
15 seniority. That was the company position.

16 Q. If he worked?

17 A. Whether he worked or whether he didn't, they  
18 said that was the day he started with the  
19 carrier.

20 Q. Now, what were your practical concerns if any  
21 about working in the freightyard?

22 A. Well, I had many concerns. I had been to their  
23 union meetings and I had spoken on the floor  
24 because they used to hold them at the Manger  
25 Hotel here, and I was very concerned about

1 safety because you work as a unit.

2 Q. Tell us about working as a unit. What do you  
3 mean by that?

4 A. Well, if you have -- in the terminal we had much  
5 fewer cars. It was passenger equipment and you  
6 would handle five or six cars generally at the  
7 most. In the freightyard you could handle 50 or  
8 150, depending. And you would be -- the hindman  
9 or the conductor would not be in sight of the  
10 engineer on a curve.

11 So if you got in between the cars, your  
12 life depended on the other two employees who  
13 were -- who had their lamps signalling the  
14 engineer. Oh, he can see you, he can't see  
15 three lamps. He might only be able to see one.  
16 There's times he can't see any. But so you're  
17 in between the cars on many occasions.

18 You're switching out there without air.  
19 There's no brakes except those you wind or the  
20 engine stops the cars, whereas at the terminal  
21 you switch with air.

22 Q. Yeah, explain the differences, the practical  
23 differences between the work that they wanted  
24 you to go to at the freightyard and the work --

25 A. There was a great amount of difference.

1 Passenger service equipment had air, steam,  
2 whistle, water. It had 110 pounds of applied  
3 air that you would put on when you wanted to  
4 stop.

5 Such an air brake with a truck, if you have  
6 you've ever heard, had air brakes, and that's  
7 how they can stop on a dime. But in the  
8 freightyard you switched without air in all  
9 points except on the main line when you were  
10 going to another point.

11 Q. Because you're dealing with freight and not  
12 passengers?

13 A. Completely different. Different animal. The  
14 company made it the different animal. We didn't  
15 make it the different animal. They put us in  
16 these classes and crafts in 1906.

17 Q. Okay. Now, you had touched on the fact that you  
18 had been to the freightyard union meetings. You  
19 were going to say something about what you had  
20 observed there?

21 A. Well, there was a great amount of animosity  
22 towards us by some people who had already went  
23 to the freightyard who had been staffed out  
24 before. We had 200 men and some of them had  
25 already taken appointments. And we were told

- 1 not to come out there.
- 2 Q. Did you know Mike Gratson?
- 3 A. Very well.
- 4 Q. What happened to Mike Gratson?
- 5 A. A tragedy. He lost an arm and a leg, I  
6 understand.
- 7 Q. Who was he?
- 8 A. He was a brakeman. He was a C.U.T passenger  
9 service employee or a New York Central passenger  
10 service --
- 11 Q. Where did he get hurt?
- 12 A. He got hurt in the freightyard.
- 13 Q. And he went to the freightyard?
- 14 A. There was others.
- 15 Q. Let me ask you this. You knew people who had  
16 been furloughed along with you who eventually  
17 went to work in the freightyard, fair statement?
- 18 A. Yes.
- 19 Q. Eventually.
- 20 A. Yeah, nobody went there at first until they were  
21 forced.
- 22 Q. You heard Mr. Ellert testify that they all got  
23 work, that there was work for all of them?
- 24 A. That's completely untrue. There was some people  
25 didn't get a day a month.

1 Q. Was there enough work in the freightyard for the  
2 C.U.T men who went there?

3 A. No, ma'am. Even after the August '69 agreement,  
4 so-called coordination agreement, we had a  
5 roster of 60 men. They had guaranteed us 2.46  
6 of the entire Cleveland Terminal District work  
7 according to the papers. I don't know what they  
8 guaranteed.

9 Q. 2.46 of the work?

10 A. Of the entire Cleveland Terminal District work.

11 Q. So how many men would that have worked out to be  
12 at its peak in 1969?

13 A. Well, at that time they still had full crews.  
14 There was nine.

15 Q. It would have been nine people?

16 A. That's exactly right. There was three jobs at  
17 that time.

18 Q. Now, if you weren't one of those -- and in order  
19 to be one of those nine people, you had to have  
20 enough seniority to mark up for that job, is  
21 that right?

22 A. Yes, of course.

23 Q. And if you weren't one of those people?

24 A. Well, you starved.

25 Q. Well, if you weren't one of those people,

1 according to the '69 agreement, you're supposed  
2 to have a wage guarantee, isn't that right?

3 A. No. In the first place when the '69 agreement  
4 come in, we were still all furloughed. They  
5 never called us back until December 15th.

6 Q. Well, let me just ask you this.

7 A. Yes.

8 Q. You've read the '69 agreement, have you not?

9 A. Yes.

10 Q. And under the '69 agreement -- well, first of  
11 all, Mr. Beedlow, is it fair to say you've read  
12 pretty much all of these documents, have you  
13 not?

14 A. Yeah, no doubt. Many, many times. I have got a  
15 25-year period here. It's hard to remember  
16 every comma.

17 Q. Right. Now, if you had gotten the merger  
18 protection benefits that you were entitled under  
19 the '64 agreement, would the '69 agreement have  
20 been necessary at all?

21 A. There was only one agreement that was necessary  
22 for 210,000 people who were protected and that  
23 was the January 1, 1964 merger protection  
24 agreement signed on November 11, 1963 by Mr.  
25 Swert.

- 1 Q. Can you tell me how your position on the roster  
2 changed when they gave you that September 10,  
3 1964 seniority date? Numerically, can you me  
4 how that affected your position on the roster?
- 5 A. Well --
- 6 Q. How many people on the total roster?
- 7 A. I think -- I'm not sure. I think -- which  
8 roster are you talking about? Are you talking  
9 about the freightyard roster or District 4  
10 roster?
- 11 Q. District 4.
- 12 A. Well, there was approximately 2,100 people and  
13 it was a combined roster of all former New York  
14 Central employees between Buffalo and Columbus,  
15 so it took in about 30 different rosters.
- 16 Q. All right. Now, with your true hire seniority  
17 date, your 1948 hire seniority date,  
18 approximately -- now I'm not going to hold you  
19 to the exact number -- approximately where would  
20 you have been on that 2,100 person roster?
- 21 A. I think between five and six hundred, not much  
22 above or much below.
- 23 Q. And with the September 10, 1964 seniority date,  
24 where would you have been on that 2,100 person  
25 roster approximately?

- 1 A. Two thousand or lower out of 2,100.
- 2 Q. And that's as of the 19 -- your understanding of  
3 the 2,000 position would have been as of what  
4 date?
- 5 A. With September 10 of '64 seniority, ma'am.
- 6 Q. And when would that have been?
- 7 A. It was implemented, I believe, January 1, '64.  
8 When they drew it up, I'm not sure.
- 9 Q. When you were asked to go to work in the  
10 freightyard, your position was approximately  
11 2,000 on that roster?
- 12 A. When I was asked on District 4 roster.
- 13 Q. Right.
- 14 A. On combined freightyard rosters?
- 15 Q. Right.
- 16 A. There was 496 positions, I'm pretty sure. I was  
17 495 unprotected.
- 18 Q. You were 495 of 496?
- 19 A. I think approximately.
- 20 Q. With the September 10, 1964 seniority date?
- 21 A. Yeah. I just missed being off the page. Am I  
22 wrong?
- 23 Q. No. That's approximately right. I want to  
24 refer you to Plaintiff's Exhibit 3 which  
25 indicates exactly or pretty close to what you

1       said.

2       A.   Yes, ma'am.

3       Q.   Find your number on there. I think it's 503 on  
4       this freightyard roster. What's the date of  
5       this roster?

6       A.   Oh, wait a minute. 3?

7       Q.   Plaintiff's Exhibit 3.

8                       MS. TRICHARICHI: Do you want us to  
9       stop, Mr. Blackwell?

10                      MR. BLACKWELL: No. Go ahead.

11       A.   First of all, I'd like to comment on this if I  
12       can. This is roster 2104B of the New York  
13       Central Railroad Company, New York Central and  
14       Big Four joint yard brakeman seniority roster,  
15       and for some strange reason -- well, in the  
16       first place, when they made a C.U.T roster it  
17       was roster 1106.

18                      Now, if the C.U.T stood alone, there  
19       wouldn't be any need except for one roster. Not  
20       2104. And in this roster it was printed  
21       according to the company, on February 16, '65  
22       and that was before they signed the top and  
23       bottom. So they've already got us down here  
24       when we haven't even been completely assimilated  
25       into the so-called territory. Now, I don't

- 1 know. They must have stayed up nights.
- 2 Q. And you were 503 on this roster, right?
- 3 A. Well, according to this I was 503 out of 509.
- 4 Q. Right. So almost at the very bottom of the  
5 roster which is essentially what you testified  
6 to?
- 7 A. Yes, ma'am.
- 8 Q. Almost at the very bottom of the freightyard  
9 roster?
- 10 A. All C.U.T people are gathered together there.
- 11 Q. So as a practical matter, as of the date of the  
12 furlough, how many freight jobs would have been  
13 available to you had you marked up at the  
14 freightyard?
- 15 A. I really don't know, but they had men furloughed  
16 in December '66, so --
- 17 Q. Men on their own roster?
- 18 A. That's exactly right. Some of them had to get  
19 other jobs.
- 20 Q. Now, let me ask you this. In terms of railroad  
21 practices and procedures, what effect did you  
22 think reporting for work in the freightyard  
23 would have had on the job rights you had earned  
24 prior to that time?
- 25 A. Well, I knew what it would have. I would have

1 to forfeit -- once I acquiesced to the  
2 September 10, '64 seniority, that's my seniority  
3 for the rest of my life.

4 Q. In other words, once you perform compensated  
5 service with that --

6 A. Yeah. Once I mark up and work, if I work five  
7 minutes and go home, that's my seniority.

8 Q. So it would have been a waiver of your original  
9 hire date?

10 A. Of course.

11 Q. That's your understanding?

12 A. It's not my understanding. I know. I'm  
13 accepting their seniority that is next to my  
14 name.

15 Q. And do you know that because you watched other  
16 people and that's what happened to them?

17 A. I know that through 20 years of experience,  
18 through union negotiations and so on and so  
19 forth.

20 Q. And watching the people that --

21 A. And also I was very aware of what the other --  
22 happened to the other plaintiffs. I was very  
23 aware of also -- I was in touch with many  
24 freightyard people at the same time. So I was  
25 on top of the situation.

1 Q. In addition to forfeiting your original hire  
2 date and accepting the September 10, 1964 date,  
3 accepting that date also meant what?

4 A. Well, it meant that I was going to be an  
5 unprotected employee with no job guarantee and  
6 once you go, it doesn't -- if you go and you are  
7 unprotected, there's no -- I don't care if  
8 you're making 50,000 a year. They could cut the  
9 board next week and you're furloughed. But if  
10 I'm protected, I have the lifetime guarantee.  
11 There's -- whether you --

12 Q. And they told you you wouldn't be protected?

13 A. They told me I was unprotected, not an employee  
14 of theirs until September 10, '64. Many, many  
15 times.

16 Q. Now, were you in communication with the other  
17 men who were in your similar position at this  
18 time?

19 A. Yeah, I just testified to that. Beside  
20 freightmen.

21 Q. No, but people that you had worked with at the  
22 Cleveland Union Terminal location?

23 A. Yes, of course.

24 Q. And do you know whether there was enough work  
25 for the other men who did report for work?

- 1 A. There was not.
- 2 Q. Were they called back to regular jobs?
- 3 A. They were called back to 30, 40 times out on a  
4 roster that had nine jobs.
- 5 Q. For example, you knew Mr. Day, did you not?
- 6 A. Yes, I did. Very well.
- 7 Q. And did Mr. Day go to work in the freightyard?
- 8 A. Mr. Day was so-called coordinated in August of  
9 '69, yes. That's when the coordination took  
10 effect.
- 11 Q. Okay. As far as you know, when did he go to  
12 work in the freightyard?
- 13 A. He didn't go until -- Mr. Day, as far as I know,  
14 worked on the so-called C.U.T roster after he  
15 was called back around April or May of 1968.
- 16 Q. He started working in 1968, is that about right?
- 17 A. He started working in '44.
- 18 Q. Well, he started working after the furlough in  
19 '68?
- 20 A. He was called back --
- 21 Q. At some point in 1968?
- 22 A. He was furloughed on February 25, '68 and within  
23 several months they had called him back.
- 24 Q. So when the railroad says that he went back  
25 February 21, 1968 that would be --

- 1 A. Very.
- 2 Q. -- somewhat incorrect?
- 3 A. Yes.
- 4 Q. By at least a few months?
- 5 A. That was the day he got the notice that he was  
6 shoved out.
- 7 Q. And that was the date that's listed again on  
8 this Defendant's Exhibit 10, which again is not  
9 supported by any documentation. In fact,  
10 knowing Mr. Day as you did --
- 11 A. Yeah, this whole thing --
- 12 Q. That's all right.
- 13 A. This whole thing is wrong.
- 14 Q. Well, that's their document. In fact, knowing  
15 Mr. Day as you did, did he have as much work in  
16 the years 1968, 1969, 1970, 1971, 1972, 1973,  
17 1974 as he had had before the furlough?
- 18 A. No.
- 19 Q. And that was true consistently for all those  
20 years?
- 21 A. Well, he was also much older than I was. He was  
22 20 or 30 men ahead of me.
- 23 Q. So he had a decent amount of seniority?
- 24 A. And he had hell of a lot -- he had 42 years with  
25 the railroad when he was furloughed.

1 Q. And he still wasn't getting a regular job in the  
2 freightyard?

3 A. No, ma'am. There was no work for him.

4 Q. And have you had occasion to review any records  
5 of his?

6 A. Yes, I have.

7 Q. How did you happen to review Mr. Day's records?

8 A. Because I made all the plaintiffs write to the  
9 railroad retirement board to get their records  
10 from the employer on when they're going -- what  
11 railroad they were affiliated with, how many  
12 weeks of vacation they were entitled to.

13 Q. It's fair to say that you were one of the  
14 organizers of the group of plaintiffs?

15 A. Well, yeah, ma'am.

16 Q. Did you review his earnings records?

17 A. Yes, I've seen them.

18 Q. And I refer specifically to --

19 MS. TRICHARICHI: Just a second. I  
20 want to find a document. This is going to be  
21 Plaintiff's Exhibit 74.

22 Q. This is for you.

23 A. Oh, thank you.

24 Q. Now, have you seen this W-2 before?

25 A. I don't recall it. But I've probably seen it.

- 1 Q. And this would have been his earnings in 1964,  
2 Day's, is that right?
- 3 A. With the New York Central Railroad, yes.
- 4 Q. Right. Let me ask you this question. There was  
5 some testimony by Mr. Ellert, and you heard it,  
6 about marking up for work, and there was some  
7 allegation -- tell me what happens when a job is  
8 available to you at your seniority and you don't  
9 mark up for it for some reason and you're  
10 absent. What would happen to the employee?
- 11 A. You mean somebody who was an active employee?
- 12 Q. Yes.
- 13 A. And he would not accept work?
- 14 Q. Right.
- 15 A. Well, sometimes they fire you. They discipline  
16 you. They call you in for investigation.
- 17 Q. How many times could that happen? So you  
18 couldn't just opt not to take a job?
- 19 A. Well -- oh, no. You're supposed to be ready,  
20 willing and available for work on all shifts and  
21 it doesn't matter whether it's nights, weekends,  
22 Christmas or anything else.
- 23 Q. So when Mr. Ellert implied that he wasn't sure  
24 where Mr. Tomczak or Mr. Benko or Day had been  
25 working at this time, it wasn't because they

1       didn't choose to work during that period, was  
2       it?

3   A.   Well, they were two of the hungriest guys down  
4       there as far as working for money.

5   Q.   And if those are their earnings, those are the  
6       only jobs that were available to them during  
7       that period for them to mark into, isn't that  
8       correct?

9   A.   I guarantee they made as much as they possibly  
10      could.

11  Q.   You had ongoing contact with Mr. Day, is that a  
12      fair statement?

13  A.   Just up until he died.

14  Q.   And did Mr. Day ever receive the wage guarantee  
15      from the railroad despite the fact that he  
16      didn't earn his guarantee?

17  A.   No, ma'am.

18  Q.   And how do you know that?

19  A.   Well, I know because I was told, and the  
20      railroad won't give you a guarantee when you  
21      come outside the scope of the protection  
22      agreement. It's black and white.

23  Q.   In other words, because he had the 9-10-64  
24      seniority date --

25  A.   They couldn't give it to him if they wanted to.

1 Q. They told him he couldn't get the guarantee?

2 A. They did. He had put in for it and so did  
3 several other people.

4 Q. He had put in for it?

5 A. Yeah, he had. You simply don't qualify --

6 Q. There's no question before you. Did you know at  
7 the time you received return to work letters in  
8 1969 that Day and some of the other men had  
9 returned to work?

10 A. Yeah, Day, as I testified, was called back in  
11 April or May of '68, and he was senior to me by  
12 many men.

13 Q. So you knew when you received recall letters in  
14 1969 that Mr. Day had gone back to work, is that  
15 a fair statement, Mr. Day among others had gone  
16 back to work?

17 A. Yes.

18 Q. And you had ongoing contact with Mr. Day and the  
19 others --

20 A. Many and all of them.

21 Q. -- who returned to work?

22 A. Yes, ma'am.

23 Q. And you knew at that time that they weren't  
24 receiving their wage guarantee?

25 A. That's very true.

1 Q. And did that affect your decision?

2 A. Of course.

3 Q. How did that affect your decision, Mr. Beedlow?

4 A. Because if there's no guarantee that I'm going  
5 to get a wage guarantee, I've got -- I'm  
6 going -- unless I accept their seniority, and  
7 work -- decide to work one day a month, which is  
8 what some of the people were getting --

9 Q. That's all they could mark up for?

10 A. Even after December '69 some of them only got  
11 one day a month, and when they worked, that  
12 meant -- we had a strict seniority board. That  
13 means the oldest man works every day and the  
14 youngest man sits, waits for the call the next  
15 day. They don't rotate that board. So the  
16 oldest person could work 250 days a year and you  
17 could possibly work none.

18 Q. If you will check, Plaintiff's Exhibit 10 in  
19 front of you, I think.

20 A. Yes, ma'am.

21 Q. And I refer you to the second to last line on  
22 that page. This is a document which has been  
23 previously testified to by Mr. Ellert. He  
24 doesn't know who prepared it or for what purpose  
25 it was prepared. But reading the secondlast

1 line, Those men who accepted employment earned  
2 more than their guarantee. Based on the  
3 testimony that you've just given, is that a fair  
4 statement?

5 A. It's completely false.

6 Q. Did those who returned to work have regular  
7 jobs?

8 A. No, not those that returned.

9 Q. What kind jobs did they have?

10 A. They had -- they were all on the extra board.  
11 Some eventually may have -- over the years were  
12 lucky enough to catch a job, but the majority of  
13 the people were on the extra board because we  
14 had -- we had men working who were never  
15 furloughed. We had 25, 30 men who were never  
16 furloughed. And they held those nine positions.

17 Q. They were the oldest men?

18 A. Well, of course, and so they were doing the  
19 work. The 29 men that were furloughed were  
20 called back to nonexistent jobs.

21 Q. Now, we've touched on this a little bit. After  
22 the furlough did you continue to make attempts  
23 to have communication with the railroad about  
24 your status?

25 A. Yes, I did.

1 Q. I'm going to refer you to Plaintiffs' Exhibit  
2 50.

3 A. Yes.

4 Q. Was this an example? This is a letter authored  
5 by you, is it not?

6 A. Yeah. Myself and Mr. Knapik.

7 Q. Was it an example of one of the efforts that you  
8 made?

9 A. Yes.

10 Q. Okay. And who were you writing to to help your  
11 condition?

12 A. One of the Congressmen who I had met many  
13 times.

14 Q. Just quickly. I don't want to belabor this  
15 point, but I'm going to refer you just to  
16 introduce the panel and the parties to these  
17 documents.

18 Document 31, is it fair to say that's  
19 another example of your efforts post-merger to  
20 determine your status?

21 A. Yeah.

22 Q. Okay.

23 A. No, I didn't write this.

24 Q. No, but that was an effort --

25 MR. SKULINA: 31. There's

- 1 something wrong.
- 2 A. This is a letter from general Chairman Lyons.
- 3 Yeah, Lyons to local chairman Anderson.
- 4 Q. Is that a letter on your behalf that was written
- 5 with regard to your status?
- 6 A. Yes.
- 7 Q. Okay.
- 8 A. I had demanded from Anderson to find out what
- 9 happened to the deleted jobs.
- 10 Q. Okay. Plaintiffs' Exhibit 32, is that a letter
- 11 that you personally wrote with regard to
- 12 determining your status?
- 13 A. Yes, ma'am.
- 14 Q. And Plaintiffs' Exhibit 33, another one of your
- 15 letters, is that a correct statement?
- 16 A. Yes, ma'am.
- 17 Q. Again --
- 18 A. On May the 20th, '68.
- 19 Q. Beseeching the company to give you protection?
- 20 A. We were desperate.
- 21 Q. Plaintiffs' Exhibit 37, is that another one of
- 22 your letters?
- 23 MR. KERSHNER: Excuse me a minute.
- 24 I think you said your Exhibit 33 was a letter to
- 25 the company beseeching the company --

1 MS. TRICHARICHI: Right. I didn't  
2 say it was the company. I said it was another  
3 one of your letters beseeching --

4 MR. KERSHNER: The company, you  
5 said, to determine status.

6 MS. TRICHARICHI: To determine your  
7 status.

8 MR. KERSHNER: Beseeching Mr.  
9 Lyons.

10 MS. TRICHARICHI: Through the  
11 union, to determine from the carrier the  
12 status.

13 Q. Exhibit 37, I refer you specifically to the  
14 first full paragraph, the first sentence in the  
15 full paragraph, this is in 1968, you are  
16 referring to a grievance there; specifically,  
17 the members of lodge 927 would appreciate the  
18 handling of this grievance in the earliest  
19 manner if possible. It's another example of  
20 your pursuit of your --

21 MR. BLACKWELL: Where was that  
22 passage you just read?

23 MS. TRICHARICHI: That passage was  
24 on page 2 of Exhibit 37, the first full  
25 sentence, not the section that says No. 5, but

1 right below it. The members of lodge 927 would  
2 appreciate.

3 MR. BLACKWELL: Okay. I got it.

4 Q. I would refer you to Plaintiff's Exhibit 39,  
5 which was a letter to you from the Travelers.

6 A. Yes.

7 Q. Can you explain this correspondence from the  
8 Travelers, Mr. Beedlow?

9 A. Well, the company's position was that we were  
10 C.U.T employees only, and so I kept writing and  
11 calling Mr. Robert St. Leger who was the head of  
12 Travelers Insurance.

13 Q. And what was purpose of that? Explain it to  
14 me.

15 A. I wanted to find out who paid for our group  
16 policy.

17 Q. Who paid for the policy of the employees who  
18 worked at the C.U.T location?

19 A. Who paid for the group policy of the plaintiffs  
20 here, and all the C.U.T, so-called C.U.T.  
21 employees.

22 Q. And this was back in 1968?

23 A. Yes.

24 Q. And what was the response?

25 A. He said that he wouldn't answer. And finally I

- 1 registered the letters. And I had written him  
2 several times. And he said that the letter is  
3 going to confirm our recent telephone  
4 conversation -- I asked him to put it in  
5 writing -- which I informed you that the Penn  
6 Central Transportation pays the premium on that  
7 policy and that eligible employees would include  
8 the former employees of the now merged New York  
9 Central Railroad Company.
- 10 Q. Plaintiffs' Exhibit 42, did you send that  
11 letter, Mr. Beedlow?
- 12 A. Give me a chance to find it, please. Yes, I  
13 did.
- 14 Q. You sent that directly to the company, did you  
15 not?
- 16 A. Yes, I did. This is six months after furlough.
- 17 Q. Six months after. You sent it to the company  
18 asking for confirmation of your status?
- 19 A. To the man who furloughed me.
- 20 Q. And this is directly to the company. What were  
21 you asking here again?
- 22 A. I was asking them to clarify my status as to who  
23 the hell I am and what company do I work for.
- 24 Q. Did you receive a response to this letter?
- 25 A. No.

1 Q. Did they ever respond to this letter?

2 A. They don't respond to very many letters.

3 Q. These were all attempts on your part or on your  
4 behalf to determine your status, is it fair to  
5 say that, after furlough?

6 A. Yes.

7 Q. And you continued for years?

8 A. For years.

9 Q. Did Mr. Knapik return to work after furlough?

10 A. No, ma'am. He was not called back. He was  
11 furloughed. He was never called back.

12 Q. Plaintiffs' Exhibit 47, were you involved in the  
13 drafting of that letter?

14 A. Yes, ma'am.

15 Q. Why did you write that letter or why did you  
16 help compose that letter, Mr. Beedlow?

17 A. Well, the company was threatening us and trying  
18 to force us to accept September 10, '64 and so I  
19 was hoping against hope that they would take it  
20 into consideration.

21 Q. Could you be certain sending a letter of this  
22 type would protect you?

23 A. Not at all. No, there's no way I could be  
24 certain. Their position was well established  
25 and they haven't changed it in 1990.

1 Q. That's my next question. Do you know whether  
2 the railroad has changed its position in this  
3 dispute over the years? What's your  
4 understanding of their position?

5 A. They're still treating us as a subsidiary and  
6 never employees.

7 Q. And people who went back after the promulgation  
8 of the 1969 agreement did not get the protection  
9 of benefits to which the railroad says they were  
10 entitled, is that correct?

11 A. Nobody has ever got the merger protection  
12 benefits, not of these plaintiffs.

13 Q. So the 1969 agreement which you've read and of  
14 which you are well aware was not the cure-all to  
15 this problem, was it?

16 A. Not at all. There was no cure-all to this  
17 problem.

18 Q. In fact it should never have been necessary, the  
19 1969 agreement, had you been originally  
20 protected under the 1964 merger protection  
21 agreement as you should have been, isn't that a  
22 fair statement?

23 A. The statement is that they protected all former  
24 New York Central and Pennsylvania employees as  
25 of January 1, '64. And none of them ever had a

1 top and bottom or an August '69 coordination  
2 because they were superfluous. It was after the  
3 fact.

4 Q. Should have been unnecessary?

5 A. Well, it was completely unnecessary. They  
6 weren't giving us anything. They were taking it  
7 away.

8 Q. I'd like to ask you some questions briefly about  
9 your life after the furlough. Did you receive  
10 unemployment benefits?

11 A. Not for many months. We filed for them, but we  
12 couldn't get them.

13 Q. And ultimately did you receive them?

14 A. Yeah. I think around July or August of that  
15 year.

16 Q. I refer you to Plaintiff's Exhibit 60. Can you  
17 identify that document?

18 A. Yes.

19 Q. What is that?

20 A. That's Referee Brainard of the railroad  
21 retirement board who held the hearings.

22 Q. And did you participate in that unemployment  
23 hearing?

24 A. Yes, ma'am, I testified.

25 Q. And I refer you specifically to page 5 of that

1 decision, the last page, the first full  
2 paragraph.

3 A. Yes, ma'am.

4 Q. Did you testify in that hearing?

5 A. I just stated I did.

6 Q. About the working conditions?

7 A. Did I testify about the working conditions?

8 Q. Did you and your co-workers testify about the  
9 working conditions that were --

10 A. Well, we testified to whatever was brought up at  
11 that hearing. I don't know if it was a one- or  
12 a two-day hearing. It was a long hearing.

13 Q. Without reading it and boring the panel, what's  
14 your understanding of the import of the Brainard  
15 ruling?

16 A. Well, he said that we faced uncertain  
17 conditions, that we would have no seniority in a  
18 new railroad, or in a new territory, and that  
19 due to our advanced age and the fact that we had  
20 been railroad employees for a minimum of over  
21 twenty years, that he was -- that we were all  
22 ready, willing and available for work, contrary  
23 to what the railroad stated when they took our  
24 benefits away. Therefore, he said that he  
25 deemed it necessary that we were ready, willing

1 and available, and therefore, we were entitled  
2 to the unemployment benefits.

3 Q. Did you find work outside the railroad after  
4 February 25, 1968?

5 A. Not for quite a while.

6 Q. And when you did, was it at the same wage level  
7 that you had received when you worked for the  
8 New York Central?

9 A. No, no, ma'am.

10 Q. Was it lower?

11 A. Yes.

12 Q. Did you ever receive merger protection benefits?

13 A. No, ma'am.

14 Q. Did you ever receive any severance pay?

15 A. No, ma'am.

16 Q. Did you ever receive the cash value of the  
17 insurance policy?

18 A. Not at all.

19 Q. What effect, if any, was there on your pension?

20 A. Well, I filed last year because I was desperate,  
21 and I'm getting about 25 percent of what I  
22 should get and that's a combined Social Security  
23 and railroad retirement.

24 Q. If you had been able to work?

25 A. Exactly.

1 Q. What impact, if any, has this whole situation  
2 had on your personal life subsequent to the  
3 furlough.

4 A. Considerable. And it's all negative. It broke  
5 up a marriage, it caused undue hardship on many  
6 innocent parties.

7 Q. Primarily the financial hardship?

8 A. Financial and otherwise. The ex-wife filed.  
9 She said go to work, that you have to provide,  
10 and I was fighting a battle.

11 Q. And is that the reason why most of the people  
12 who went back to work in fact went back to work?

13 A. Well, they were starved. There was no work for  
14 -- we were furloughed from February of '68 till  
15 December 15th of '69 for two years. Our  
16 unemployment benefits had run out long before  
17 December 15, '69. There was no work, no  
18 unemployment, no job guarantee and they were  
19 calling us back to nonexistent jobs.

20 Q. Contractual disputes aside, would you be willing  
21 to work for the railroad today?

22 A. In spite of what I said, I'm a passenger service  
23 employee. I would be glad to go back tomorrow  
24 morning.

25 Q. Will you tell us what your thoughts were when

1           you initially took the job with the railroad?

2   A.   It was a lifetime job, considered a lifetime job  
3       in those days. It had been passed on through  
4       generations. In fact 90 percent of railroad  
5       workers had fathers or uncles or brothers or  
6       whatever and some involved relatives. It was  
7       sort of a family career, more or less, for  
8       relatively unschooled, uneducated people.

9   Q.   And what's your view of the railroad now?

10  A.   Well, I'm very disappointed and bitter in a lot  
11       of respects. I was told something that was just  
12       a complete lie. I was their employee and their  
13       loyal employee for many years. And in order to  
14       save money, they shoved me out the door and said  
15       I never worked for them.

16                   MS. TRICHARICHI: I have no further  
17       questions.

18                   MR. KERSHNER: I have an extensive  
19       series of questions, obviously. Do you want to  
20       continue into the evening or what's your  
21       pleasure?

22                   MR. BLACKWELL: Well, let's have a  
23       little side-bar.

24

25

                  - - - -  
(Thereupon, a discussion was had off

1 Hotel, Cleveland, Ohio, Willey Room on Friday,  
2 May 4, called to begin at nine a.m. and actually  
3 commencing at 9:10 a.m. Mr. Beedlow is on the  
4 stand and we will resume the hearing today with  
5 the commencement of the cross-examination of Mr.  
6 Beedlow by Mr. Kershner. Proceed.

7 MS. TRICHARICHI: May I be heard  
8 for one brief moment? There was one exhibit  
9 that was not identified. I can speak to it in  
10 redirect if you would prefer or I can just  
11 finish it up now. Which would you prefer?

12 MR. BLACKWELL: Oh, that you need  
13 testimony to identify?

14 MS. TRICHARICHI: There was one  
15 exhibit omitted yesterday.

16 MR. BLACKWELL: Well, I think we  
17 might as well get his direct complete.

18 MS. TRICHARICHI: It will just be  
19 one question.

20 - - - -  
21 CONTINUED DIRECT EXAMINATION OF RAYMOND BEEDLOW

22 BY MS. TRICHARICHI:

23 Q. Mr. Beedlow, you're still on direct  
24 examination. I'm going to hand you what's been  
25 marked Plaintiff's Exhibit 19. Can you identify

- 1           that document for the panel?
- 2    A.   Yes, ma'am.
- 3    Q.   And could you tell us what that is, Mr. Beedlow?
- 4    A.   Yeah.  That's a payroll deduction that every
- 5           month I had to write to the New York Central
- 6           payroll office in Detroit and -- to take out
- 7           union dues and insurance and costs, and it
- 8           changed monthly because sometimes they were on
- 9           another payroll, as was testified to yesterday.
- 10          But every month -- the district payroll office
- 11          was in Detroit for both the C.U.T and the New
- 12          York Central.
- 13    Q.   And that was the same office in Detroit?
- 14    A.   The same office, the same district auditor of
- 15          expenditures.  The man's name at first was Rish,
- 16          Frank Rish, and then it was Frank Milano,
- 17          M I L A N O.
- 18    Q.   And as part of your duties as
- 19          secretary-treasurer of the lodge, you submitted
- 20          those deductions?
- 21    A.   Yes, they were changing.
- 22    Q.   For both, is that correct?
- 23    A.   And we had to correspond at least twice a month.
- 24    Q.   And this is a copy of one of those such
- 25          deductions?

1 A. And then even after I was furloughed. I had to  
2 continue with Penn Central until late '69 when  
3 United Transportation Union took over the  
4 Brotherhood.

5 MR. TRICHARICHI: I have no further  
6 questions. I thank you.

7 - - - -  
8 CROSS-EXAMINATION OF RAYMOND BEEDLOW

9 BY MR. KERSHNER:

10 Q. Mr. Beedlow, you testified yesterday that  
11 passenger service was declining quite a bit.

12 A. I don't think I did. I said that --

13 Q. What was the state of the passenger service in  
14 Cleveland? Was it on the increase or the  
15 decrease?

16 A. Well, they were taking trains off.

17 Q. They were taking trains off?

18 A. The company was taking trains off, yes.

19 Q. What about the roster of passenger service  
20 employees? Were there more employees or less  
21 employees?

22 A. Well, it was shrinking over a period of years.  
23 It was a company policy.

24 Q. Could you describe how much it was shrinking?

25 A. We went from -- when we went on five days a

1 week. In December '55 we had to hire about 20  
2 or 30 men to cover that extra two days because  
3 we were working seven days. Seven days a week  
4 up until December '55. And so there was an  
5 additional 20 or 30 men and I would say we were  
6 pretty close to 200.

7 Q. This is in 1955?

8 A. December '55, yes, sir.

9 Q. Now, what about contrasting that December '55  
10 with 1968?

11 A. '68 we still had 60 or 70 employees.

12 Q. So it went from 200 --

13 A. Oh, yes.

14 Q. -- down to 60 or 70 employees. During that same  
15 period of time what was your experience with  
16 respect to the freightyard employees? Was that  
17 going up or down or was that staying the same?

18 A. Oh, they were going down also, I believe.

19 Q. Do you have any idea of how much decline they  
20 had?

21 MS. TRICHARICHI: If you know.

22 A. Yeah, at one time they had well over 600 and I  
23 see when they put the C.U.T in the bottom on  
24 that February 16, '65 roster, that I would have  
25 been -- and I was at the bottom of the C.U.T. I

1 think I testified I was around 475 and that was  
2 with an additional 60 people, so they were  
3 around 400 people.

4 Q. So they declined from about 600 to 400?

5 A. I'd say yes, approximately.

6 Q. At the same time as the C.U.T people went from  
7 200 to 60 or so?

8 A. Around 60, 60, 70.

9 Q. Now, let's direct our attention to the  
10 February 16, 1965 agreement, the top to bottom  
11 agreement we've all called.

12 A. Yes, sir.

13 Q. You've indicated in your testimony yesterday  
14 that you were not aware that that agreement was  
15 negotiated?

16 A. No, sir, not for a long time after that.

17 Q. Even though you were the union official at the  
18 time it was negotiated?

19 A. Well, it was kept from the men. It was kept  
20 from the union locally.

21 Q. So it wasn't negotiated in Cleveland. It was  
22 negotiated someplace else?

23 A. No. It was negotiated evidently -- I don't know  
24 that it was negotiated. I don't know when it  
25 was drawn up. But as a secretary of the lodge I

1 had to know.

2 Q. Sure, I would think you would.

3 A. And I would have to also be in touch with the  
4 secretary of the local 875 in the freightyard.  
5 And I was actually much more active in union  
6 matters than our griever because he had other  
7 fish to fry. He would only show up two or three  
8 times a year at union meetings and I had to  
9 conduct them monthly and run lodge matters. So  
10 we had no idea that anything like that was going  
11 to be done, and the way it was done, of course.

12 Q. When did you first have knowledge that the '65  
13 agreement had in fact been negotiated? When did  
14 you first see the document?

15 A. I would have to say -- I'm not sure -- but I  
16 would think that I never got my hands on it  
17 until maybe March or April of 1968.

18 Q. March or April of 1968?

19 A. Yeah. That's an educated guess.

20 Q. So a good three years passed before you even saw  
21 this document?

22 A. As far as I know, yes, sir.

23 Q. Now, you had said, I believe earlier yesterday,  
24 that this 1965 agreement was not an implementing  
25 agreement, it was necessary to the merger

1 protection agreement?

2 A. It had nothing to do with the merger protection  
3 agreement at all.

4 Q. Nothing whatsoever to do with it?

5 A. Nothing at all. That's the company's position.

6 Q. Now, we talked about yesterday the seniority  
7 date of September 10th of 1964.

8 A. Yes, we did.

9 Q. As established by the '65 agreement?

10 A. Yes.

11 Q. And I believe it was your testimony that if that  
12 seniority date had fallen within the test period  
13 under the merger protection agreement, that's  
14 the 1963 to '64 time period, that you would have  
15 been protected under the merger protection  
16 agreement, is that your recollection?

17 A. Yeah, that's my understanding, that the cutoff  
18 date was April 30th, '64.

19 Q. Okay. Now, that's your reflection as to what  
20 might have happened, but at the time because you  
21 didn't know about the '65 agreement, you didn't  
22 know about its provisions, did you?

23 A. You're talking about two separate agreements  
24 here.

25 Q. No. I'm talking about your knowledge of the '65

1 agreement. You say you didn't know about it  
2 until, I believe you mentioned March of '68, is  
3 that right?

4 A. That's true.

5 Q. So if you didn't know about it until March of  
6 1968 -- I'm looking now how you thought back  
7 then -- how would you know that it had anything  
8 to do with the September date for the merger  
9 protection agreement's provisions?

10 A. Because the merger protection agreement was a  
11 completely separate agreement, sir. It was  
12 entered into in November 11th of 1963 and it was  
13 signed and made effective January 1, '64, and  
14 you had a test period in order to come  
15 underneath this, the ambit of this agreement,  
16 the scope of the agreement, and anybody after  
17 the test period was considered an unprotected  
18 employee.

19 Q. That was your position, your thought at the  
20 time?

21 A. That was the company's position, sir.

22 Q. What I'm trying to do is get into your thoughts  
23 at the time, what you thought back on February  
24 21 of 1968 when you got the furlough notice.

25 That's what I'm after.

1 A. Yes, sir.

2 Q. Okay. At that point in time you didn't know  
3 about this February '65 agreement?

4 A. No. All I knew was they were telling me to go  
5 someplace, that I had no rights.

6 Q. Didn't you think when you got that February 21  
7 notice of furlough to mark up in the  
8 freightyard, that it was unusual that you had a  
9 September 10th of 1964 seniority date?

10 A. Highly unusual, sir.

11 Q. Because by your testimony, you didn't know about  
12 this 1965 agreement until a month later?

13 A. I said that when they sent me that, when I got  
14 that notice on February the 21st, I had to  
15 scurry to find copies of the agreement that  
16 should have been given to me many years before.

17 Q. So it took you a month --

18 A. I don't know. Approximately.

19 Q. About a month?

20 A. You know, it might have taken a week, but I  
21 didn't have it at that time, no, sir.

22 Q. Okay.

23 A. And they were telling me to go under a provision  
24 that I was not aware that there was any  
25 provision.

1 Q. So you had no idea what the February 20, 1964  
2 seniority date was all about when you got your  
3 furlough --

4 A. No. Your dates are a little wrong.

5 Q. The September '64 date.

6 A. September 10, '64 date.

7 Q. Yeah. You had no idea what that date was all  
8 about?

9 A. I knew that that's what they were telling me, I  
10 was an employee in the freightyard.

11 Q. So you had to find out what this --

12 A. But there was many things that entered into it.  
13 I can't get September 10, '64 seniority in the  
14 freightyard when I've never performed  
15 compensated service there. That's the first  
16 rule of the railroad.

17 Q. So you wondered why this September 10th, '64  
18 date appeared on your furlough notice, is that  
19 correct?

20 A. I was quite suspicious, yes, sir.

21 MS. TRICHARICHI: Objection. If  
22 you look at the furlough notice, there's nothing  
23 about September 10, 1964 on the furlough notice,  
24 nothing.

25 MR. KERSHNER: He indicated when I

1 asked him that --

2 MS. TRICHARICHI: The face of the  
3 document, the furlough notice, does not have any  
4 seniority dates.

5 MR. BLACKWELL: What is that  
6 exhibit you're referring to, Miss Tricharichi?

7 MS. TRICHARICHI: 30, Plaintiff's  
8 Exhibit 30 which is the furlough notice.

9 MR. BLACKWELL: Is that notice in  
10 the carrier's notebook or do you know?

11 MS. TRICHARICHI: I don't know if  
12 it's in the carrier's notebook. It's in our  
13 notebook.

14 MR. BLACKWELL: What's yours?

15 MS. TRICHARICHI: Plaintiff's  
16 Exhibit 30. Nowhere on this document is there  
17 any reference to the September 10, 1964  
18 seniority date and that's what you asked him.

19 MR. KERSHNER: Okay.

20 MS. TRICHARICHI: It is not on the  
21 face of the document.

22 MR. KERSHNER: Okay. Very good  
23 point.

24 Q. Now, at the time that you got the furlough  
25 notice, there being no reference at all to the

1           September '64 seniority date, why didn't you  
2           mark up?

3   A.   Well, I wasn't going anyplace unless I knew -- I  
4           knew who I was dealing with, sir. And as I  
5           testified yesterday, there were many efforts  
6           being made on our behalf. Let me see that,  
7           please.

8                   MS. TRICHARICHI: It's at your  
9           feet. Isn't that your copy?

10                   MR. BLACKWELL: You can use mine.

11   A.   Where was I?

12                   MR. STEFFEN: Mr. Beedlow, do you  
13           want to --

14                   MS. TRICHARICHI: Didn't I just  
15           hand you a copy before?

16                   THE WITNESS: No. You didn't hand  
17           me anything.

18                   MS. TRICHARICHI: Oh, here. I'm  
19           sorry. Here's yours.

20   Q.   Counsel has quite properly pointed out that  
21           there wasn't even a date for seniority purposes  
22           on the furlough notice. She is correct. Now --

23   A.   I haven't looked at this. This is 22 years old.

24   Q.   But you testified at length yesterday.

25   A.   Yes, but I had it in front of me.

1 Q. Getting back to the date you received the  
2 furlough notice --

3 MR. BLACKWELL: Well, you're  
4 talking about the furlough notice. He's  
5 entitled to look at it. It's Exhibit 30.

6 A. Not my exhibit.

7 MR. BLACKWELL: Yes, it is, right  
8 there.

9 A. Okay. Thank you.

10 Q. If as counsel points out, there was no seniority  
11 date of September 10 of 1964 referenced --

12 A. Yes.

13 Q. -- and secondly, if you had no knowledge of the  
14 February 16, '65 agreement until a month  
15 later --

16 A. About a month later.

17 Q. -- why didn't you then mark up as requested?

18 A. Because in the first place they're telling me  
19 for three years that I am not a party to the  
20 merger, I am not an employee of the New York  
21 Central and that I'm not going to be covered,  
22 and I'm not going to -- I'm not going anyplace  
23 until I find out exactly where I'm going.

24 Q. So you want to find out --

25 A. I'm a passenger service employee and for 20

1 years they wouldn't allow me to go in the  
2 freightyard or the freightyard to come into the  
3 passenger area. It was separate. This was  
4 separate crafts that the railroad  
5 distinguished. The railroad made these separate  
6 crafts and we couldn't cross craft lines just  
7 like I couldn't go up and run the engine. I  
8 couldn't go in the freightyard and switch  
9 freightyard equipment and they couldn't come in  
10 our terminal or our passenger service jobs down  
11 at the Lakefront area.

12 Q. Didn't the union and the company negotiate these  
13 restrictions?

14 A. In all probability, that's the general practice,  
15 sir.

16 MS. TRICHARICHI: What --

17 MR. KERSHNER: All of these craft  
18 restrictions.

19 MS. TRICHARICHI: What  
20 restrictions, the craft restrictions?

21 MR. KERSHNER: The ones he just  
22 described.

23 A. I'm talking about the separation of class and  
24 craft, yes, sir.

25 Q. They were negotiated with the union, weren't

1       they?

2       A.   They were negotiated -- it started in 1906 when  
3       the passenger service was established because at  
4       that time they were all freight people, and they  
5       all come out of the freightyard, but the company  
6       brought the point that you were handling freight  
7       trains one day and the next day you were  
8       handling diners and people that have forks in  
9       their mouth, so they separated these crafts and  
10      classes because it was the heyday of the  
11      passenger service.  So that happened long before  
12      I was born.

13     Q.   So it's your testimony you were prohibited  
14     somehow from working over at the freightyard?

15     A.   Of course.  Whenever I went to the freightyard  
16     on an emergency basis and performed work, there  
17     was a time slip violation put in and the company  
18     had to compensate us for doing separate classes  
19     and crafts.

20     Q.   So it's your position, even though the company  
21     indicated that you should stand for work in the  
22     freightyard, that you couldn't because of class  
23     and craft restrictions, is that your testimony?

24     A.   I'm saying that until I knew exactly what the  
25     company was up to, and I had already been at

1           this time over four years knowing about the  
2           merger protection agreement and the stance that  
3           the company had taken that I was not an employee  
4           of the New York Central, and I was not going  
5           anyplace until I knew that my seniority would be  
6           protected, my August 6, 1948 seniority.

7   Q.   Well, at this point when you got the furlough  
8       notice you had no knowledge of the September 10,  
9       '64 seniority date, did you?

10  A.   But it says at the bottom, sir, as you pointed  
11       out before, you have rights in the Cleveland  
12       freightyard territory by virtue of the agreement  
13       effective February 16, '65. And you may stand  
14       for employment in the freightyard territory.  
15       You should immediately contact general  
16       yardmaster D. J Weisbarth.

17  Q.   So you wanted to find out what this February 16,  
18       '65 agreement was all about, is that your  
19       testimony? You looked around for it?

20  A.   There was testimony questions here, sir. This  
21       was on New York Central stationery and signed by  
22       a New York Central transportation superintendent  
23       who are stating time and time again for years  
24       that we are not employees.

25               Now all of a sudden they're saying on New

1 York Central stationery go to the freightyard.  
2 How can they tell a so-called C.U.T only  
3 employee to report anyplace except the C.U.T?  
4 That was the company's position.

5 Q. How did you find out about the February 16, '65  
6 agreement a week or month later?

7 A. Right there.

8 Q. That's the first time you had an inkling that  
9 this agreement existed?

10 A. I didn't know about this agreement and it was  
11 never enforced. It was selectively enforced.  
12 And it was only enforced when they furloughed  
13 these 29 people.

14 Q. Who gave you a copy of the this agreement?

15 MR. BLACKWELL: Excuse me. That's  
16 not responsive to the question. The question is  
17 is this furlough notice the first time you saw  
18 reference to the February 16, '65 agreement.

19 THE WITNESS: I believe so, sir.

20 MR. BLACKWELL: Okay. Go ahead.

21 Q. Who gave you a copy of this February 16, '65  
22 agreement?

23 A. I have no idea.

24 Q. But did you get a copy at some point in time?

25 A. Yes. I've testified to that three or four

1 times.

2 Q. And you read it?

3 A. I didn't get it through the normal channels. I  
4 should have got copies of these agreements long  
5 before when they were being drawn up.

6 Q. From whom?

7 A. From either the lodge or the railroad or both.  
8 That was my job as the secretary --

9 Q. As a union official you would have expected to  
10 see that from another union official?

11 A. I had to receive that, and also the  
12 communications -- it would take years to enter  
13 into these agreements.

14 Q. So you did receive at some point in time the '65  
15 agreement?

16 A. Yes. I have testified to that sir.

17 Q. And you've read it thoroughly? You understand  
18 it?

19 A. As far as I know, you know. I'm not -- I'm sure  
20 not qualified as you are.

21 Q. What's your main objection to the February 16,  
22 '65 agreement?

23 MS. TRICHARICHI: Can we let him  
24 look at it while you're examining him? What is  
25 it, D?

1 MR. BLACKWELL: It's your D. It's  
2 the carrier's D.

3 A. Are you familiar with the agreement, Mr.  
4 Beedlow?

5 MR. GLASSMAN: Could we not proceed  
6 until Miss Tricharichi is seated at the table?

7 MR. KERSHNER: Oh, I'm sorry.

8 - - - - -  
9 (Thereupon, a discussion was had off  
10 the record.)

11 - - - - -  
12 Q. Are you familiar with the agreement?

13 A. Yes, sir. I'm becoming more familiar as we go  
14 along here, sir.

15 Q. What is your main objection to the provisions of  
16 the agreement?

17 A. Well, I could start with the heading of it,  
18 sir. It says it's a memorandum of agreement  
19 between the New York Central Railroad Western  
20 District, of which I was a part, and the  
21 Cleveland Union Terminals Company, and they're  
22 separating the two companies here.

23 Q. Then didn't you get separate paychecks?

24 A. Yes. I got -- of course, I got separate and so  
25 did the engineers and the firemen and so did

1           everybody else.

2   Q.   Right.

3   A.   There was well over a thousand employees at the  
4       Cleveland Union Terminal, and there was only a  
5       few that weren't protected.

6           Anyhow, it says there's a separation of two  
7       carriers here and I'm a New York Central and  
8       always come under Lines West agreements contrary  
9       to what I'm being led to believe here.

10  Q.   Let me ask you a more pointed question.  If this  
11       agreement did not exist, would you have any  
12       seniority to bid on jobs in the freightyard?

13  A.   Yeah -- under the merger agreement, of course.

14  Q.   I'm talking about in 1968.

15  A.   Oh, in '68?

16  Q.   I'm talking about the day, around the time that  
17       you received furlough notice after you found out  
18       about this 1965 agreement for the first time.

19  A.   Did I have any seniority?  The company said I  
20       had none whatsoever, sir.

21  Q.   Did you before this 1968 agreement was executed  
22       have any opportunity to bid on work in the  
23       freightyard?

24  A.   Oh, no, sir.  It was a separation of class and  
25       craft.

1 Q. In fact didn't people quit their employment with  
2 the C.U.T and go to work for the freightyard?

3 A. People -- you're term may be quit. My term is  
4 starved up. There was a reduction from 200  
5 employees down to 60 or 70.

6 Q. Okay. They saw a lack of work there. They got  
7 laid off and they went to work in the  
8 freightyard?

9 A. They had to feed their families. They done what  
10 they could.

11 Q. Work opportunities were in the freightyard, not  
12 passenger, correct?

13 A. All those people transferred to the freightyard,  
14 sir, without a physical and just marked up and  
15 kept their vacation and kept their pension  
16 rights and everything else. That wasn't brought  
17 out until later. We didn't know about all these  
18 things until much later.

19 But all they done was call a crew  
20 dispatcher at Collinwood or at Toledo or  
21 wherever they happened to go on the New York  
22 Central Railroad. And it was just one system.  
23 It was just like riding the bus system here and  
24 getting off at the Square and going to the west  
25 side. They maintained their New York Central

1 rights at all times. They became new employees  
2 where they started in that department, sir.

3 Q. Became new employees of New York Central in the  
4 freightyard?

5 A. No, you didn't hear me evidently. They became  
6 new employees of that department, sir, and their  
7 seniority started in that department.

8 Q. But they didn't retain their seniority in the  
9 C.U.T, did they?

10 A. They retained their seniority on the New York  
11 Central Railroad, sir.

12 Q. But not in the C.U.T?

13 MS. TRICHARICHI: What do you  
14 mean?

15 A. Well, there is no C.U.T, sir.

16 MS. TRICHARICHI: You are talking  
17 about freightyard and then retained in C.U.T.

18 MR. BLACKWELL: Excuse me. Let's  
19 not interrupt Mr. Kershner until he signals he  
20 needs some help and I don't think he has yet.  
21 What is your question now?

22 Q. The question is prior to the '65 agreement we've  
23 been discussing, did you have any rights to bid  
24 on jobs in the freightyard?

25 A. No, sir.

1 Q. That's all I want to know. This agreement gave  
2 you the right to bid on freightyard jobs, did it  
3 not?

4 A. According to what it says, it gave a little, it  
5 took a lot.

6 Q. But it gave you the right to bid on freightyard  
7 jobs, did it not?

8 A. It gave me the right to go over there as a new  
9 employee, sir.

10 Q. With the date of September 10, '64?

11 A. As a new employee with the carrier, the New York  
12 Central.

13 Q. Okay. Wasn't your seniority date to be  
14 September 10, '64?

15 A. According to this agreement, sir.

16 Q. Yes. So you would not have been a new employee  
17 because had you been a new employee, your hire  
18 date would have been '68 at that time, isn't  
19 that correct? I'm talking now about February of  
20 1968.

21 A. If I would have went over there as of all the  
22 Penn people and all the New York Central, I  
23 would have had February 1, '68 seniority as the  
24 day the merger started. That's what I was  
25 entitled to.

1 MR. BLACKWELL: Mr. Kershner, let  
2 me ask you to define here what you mean by new  
3 employee because we've got a three-year spread.  
4 He may think you mean one thing and you may mean  
5 another. So have at it again, if you will.

6 Q. If you had marked up for work in February of  
7 1968 in the freightyard as the furlough notice  
8 indicated, what would have been your seniority  
9 date in the freightyard?

10 A. September 10, 1964.

11 Q. So you would have been credited at that point  
12 with four years seniority?

13 A. Yeah. And unduly credited. Undeservedly  
14 credited, sir. You should not do me those  
15 favors.

16 Q. Now, you mentioned yesterday that the only thing  
17 that prevented you from getting coverage under  
18 the merger protection agreement was the  
19 September 10, '64 date, seniority date, correct?

20 A. No. I didn't say that was the only thing.

21 Q. What else prevents you from getting merger  
22 protection agreement?

23 A. Until the company will admit that I was -- I  
24 only had one seniority date, sir, and that was  
25 the day I hired out, August 6, 1948. That's the

1           only seniority I ever had. And until the  
2           company will comply with my seniority and admit  
3           that I signed the New York Central application  
4           and worked for them for 20 some odd years before  
5           I was furloughed, or close to 20, that is my  
6           seniority. And not anything -- not one minute  
7           after that, sir.

8   Q.   I direct your attention to the second page of  
9           the February 16, '65 agreement, paragraph 9.

10  A.   Yes, sir.

11  Q.   Which states, This agreement is for the sole and  
12           specific purpose of combining the present  
13           separate seniority rosters and will not change  
14           the application of any joint or separate  
15           agreements now in effect between any or all of  
16           the parties and will not be construed to change  
17           the respective seniority districts or  
18           territories in any way.

19           What was your interpretation of the meaning  
20           of that paragraph.

21                   MS. TRICHARICHI: At what time?

22  Q.   Again, I'm in February of 1968 after you found  
23           out about this agreement.

24  A.   Well, as I testified, I probably got a copy in  
25           March or April. But you're taking it out of

1 context. I'd have to read the entire agreement  
2 to see what the section meant after reading the  
3 first eight sections.

4 Q. Again, going back to '68 when you're declining  
5 to mark up for work, I want to know what your  
6 thoughts were after you read this agreement.

7 A. It said -- the agreement is -- you asked me to  
8 testify to before, it's between two separate  
9 carriers the way I define it, and No. 1, it says  
10 it is agreed effective February 16, '65 --

11 Q. No. I'm asking you particularly what your  
12 opinion was back in March, whenever you got this  
13 document, as to whether you would lose anything  
14 with respect to merger protection agreement  
15 provisions by virtue of paragraph 9.

16 A. You're asking me to go to paragraph 9 without  
17 going to the first eight and you asked me before  
18 to go to the first eight, and also the heading  
19 of the -- I cannot take this out of context,  
20 sir.

21 Paragraph 9 states that this agreement is  
22 for the sole and specific purpose of combining  
23 the present separate seniority rosters, and as  
24 long as they're doing that, they're giving me a  
25 September 10, '64 seniority date, and my

1 seniority date is August 6, 1948, sir.

2 And there already has been a merger  
3 agreement signed over four years prior to this  
4 that's been talked about since the late '40s,  
5 early '50s when they started the talks with the  
6 Pennsylvania Railroad. These talks went on for  
7 15, 20 years.

8 Q. In your view did the provisions of paragraph 9  
9 affect your rights under merger protection  
10 agreement or did it state it's for the purpose  
11 of consolidating rosters only? That's my  
12 point.

13 A. Well, I had an overview, sir. I can't take -- I  
14 can't take paragraph 9 out of context.

15 Q. So back in March or so of 1968 is it your  
16 testimony you thought you would lose all of your  
17 seniority if you marked up for work?

18 A. I was told that by the carrier, sir, for many  
19 years.

20 Q. What kind of assurances did you need in order to  
21 mark up for work? What did you want to hear  
22 from the carrier?

23 A. I wanted the carrier to admit that I was an  
24 employee as of August 6, 1948 and was to be  
25 treated no differently than the 210,000 people

1 who got protection on January 1, '64 who were  
2 never to be placed in a worse position.

3 I was a New York Central employee. I had  
4 been with the company for 20 years. My father  
5 had been with it for 34, and I knew exactly who  
6 I was, sir.

7 Q. So the key issue in your mind was the seniority  
8 date of September 10, 1964?

9 A. No. There was many key issues, but the company  
10 had written me letter after letter through my  
11 process and through the union's process and we  
12 had also been with the National Mediation Board,  
13 Interstate Commerce Commission four or five  
14 Congressmen, two senators, newspapers. We had  
15 been through this game for over three years, and  
16 we were being told time and time again by the  
17 carrier that we were not employees of the New  
18 York Central Railroad, and I sure as hell knew  
19 who I was. I didn't know much else. I knew who  
20 I worked for.

21 And until they tell me who I work for, sir,  
22 and admit my seniority as of August 6, 1948, I'm  
23 afraid I can't accept September 10, '64 because  
24 the carrier said it's outside the ambit and the  
25 scope of the protective agreements, that it

1 protected the other 210,000 main line employees.

2 Q. Let me direct your attention to Carrier's  
3 Exhibit J.

4 MS. TRICHARICHI: Just turn to it.  
5 I don't have a copy of it. You are using my  
6 copy, but that's okay.

7 MR. STEFFEN: Carla, do you want to  
8 use mine?

9 MS. TRICHARICHI: Thank you, Mr.  
10 Steffen.

11 Q. Do you recall receiving a copy of that?

12 A. Yes, sir.

13 Q. That's a notice indicating that you were being  
14 recalled to duty, is that correct?

15 A. According to the top and bottom agreement, sir.

16 Q. The so-called 1965 agreement?

17 A. That's the top and bottom. That's the only one.

18 Q. And you failed to report to work as this  
19 requested, is that correct?

20 A. I had been furloughed 16 months at that time,  
21 sir, and as a New York Central employee I should  
22 never have been furloughed for one minute.

23 Q. The question was did you refuse to comply with  
24 the request to report to work?

25 A. I made efforts to get in touch with the company

1 after this. I wrote letters about this. I  
2 demanded hearings from the railroad, many  
3 letters of which we have copies here.

4 Q. In fact you testified as to a letter that you  
5 had written about your concern of waiving your  
6 rights and so forth. Didn't you receive a  
7 letter from the carrier as well -- I'll refer  
8 you to Carrier Exhibit J2 -- do you recall  
9 receiving a copy of that letter dated May 16,  
10 '69?

11 A. The first paragraph he's returning my answer to  
12 the May 2 letter if you notice.

13 Q. That's correct.

14 A. And he's telling me to report -- evidently he's  
15 saying that I was a Cleveland Terminal service  
16 employee, and that's all I was in the top and  
17 bottom. He's not admitting I'm a New York  
18 Central employee. He's still calling me back to  
19 a nonexistent job in the freightyard for a  
20 company that said I never worked for them.

21 Q. Let's look to paragraph 1. He says, Your  
22 marking up for service in the freight will not  
23 affect your work seniority date on the Cleveland  
24 Terminal yard service employees' roster. What  
25 does work seniority date mean to you? What date

- 1 is that?
- 2 A. Well, what date is it on the Cleveland yard?
- 3 Q. That's right.
- 4 A. It was August 6, 1948.
- 5 Q. And it says your marking up will not affect that
- 6 date, doesn't it?
- 7 A. It doesn't say as a New York Central employee,
- 8 sir, and I know who I'm dealing with. You know,
- 9 it's taken 25 years to get to this position.
- 10 Q. Referring your attention to paragraph 2, your
- 11 marking up for service in the freightyard with a
- 12 seniority date of September 10, '64 will not
- 13 affect any rights presently held by you, if
- 14 any --
- 15 A. If any.
- 16 Q. Well, he doesn't know because he's sending this
- 17 to a number of people, isn't he?
- 18 A. No. He is not admitting that I have any rights
- 19 and he's saying that I have any rights, if any.
- 20 So he's still not admitting I have any rights.
- 21 Q. Direct your attention to paragraph 3. Your
- 22 marking up in the freightyard will continue to
- 23 protect your seniority on the Cleveland Terminal
- 24 yard service employees roster and your prior
- 25 right roster.

1 A. I have no prior rights roster, because the  
2 company said I had no prior right roster because  
3 I was not an employee of the New York Central  
4 railroad. He is still calling me a Cleveland  
5 Terminal employee and I was a New York Central  
6 employee. They made up the heading of those  
7 rosters, and they -- for years they used C.U.T  
8 interchangeable with New York Central until they  
9 finally blended it all into C.U.T for purposes  
10 of giving us the shaft.

11 Q. Weren't the C.U.T employees represented by a  
12 separate union?

13 A. Oh, no, sir.

14 Q. Separate local?

15 A. It was a New York Central local, sir.

16 Q. But you had a separate local for C.U.T  
17 employees, didn't you?

18 A. Not for many years, not for many years. At the  
19 time -- in the time span you are talking about?

20 Q. Yes.

21 A. Yes. We used to belong to the freightyard  
22 local.

23 Q. Well, the time span we're talking about back in  
24 '68, '69?

25 A. Yes, sir.

1 Q. You had your own separate local?

2 A. We had our own local. Had to have since, I  
3 think the '40s.

4 Q. All the C.U.T employees in one local, the  
5 freightyard employees in another?

6 A. Not all the C.U.T employees. The car inspectors  
7 belonged to the same local at Collinwood as the  
8 so-called freight people, so they were also  
9 so-called C.U.T employees who were left out of  
10 the merger.

11 Q. Another concern you have is retaining your prior  
12 rights, you said?

13 A. I'm concerned with getting prior rights, sir.

14 Q. I direct your attention to paragraph 4 of the  
15 letter of May 16 which states, Memorandum of  
16 agreement dated February 1, '65 provides for the  
17 top and bottom of the New York Central Cleveland  
18 Terminal District freight roster and the C.U.T  
19 yard service employees roster. Although only  
20 one roster is published, your status is  
21 well-defined by this agreement.

22 A. I knew what our status was, sir. I'm very aware  
23 of our status.

24 Q. Your status was you had prior rights in the  
25 C.U.T, is that correct?

- 1 A. No, not at all, sir. The C.U.T was not a party  
2 to the merger. Therefore, there were no prior  
3 rights, sir. The C.U.T stood alone as  
4 subsidiary in the company's position.
- 5 Q. So it's your position that you had no prior  
6 rights, you had this artificial September 10,  
7 '64 seniority date which in your view prevented  
8 you from getting merger protection, is that  
9 correct?
- 10 A. Not in my view. It was the company's view, sir.
- 11 Q. No, your interpretation of the company's  
12 position --
- 13 A. No, sir. No, sir. The company had told me on  
14 at least probably ten, fifteen exhibits that you  
15 have here that were put into evidence that it  
16 was the company's view that I had no New York  
17 Central rights and was unprotected.
- 18 Q. You mentioned there was a National Mediation  
19 Board complaint filed.
- 20 A. Yes, sir.
- 21 Q. And that was withdrawn subsequently, wasn't it,  
22 after the August 1, '69 agreement was  
23 negotiated?
- 24 A. Not that I'm aware of, sir.
- 25 Q. You testified yesterday that it was withdrawn.

- 1 A. I testified yesterday, and I might have  
2 misspoke. I might have been wrong. But after  
3 October '69 I was forced -- I was completely  
4 without funds and they had taken -- they had  
5 even taken my right to write letters away  
6 because I was no longer a -- they had  
7 amalgamated the unions. So I was forced through  
8 circumstances to get a job. There were no jobs  
9 in the railroad for me, sir.
- 10 Q. The fact remains you did not report to work  
11 pursuant to the May 2 or the May 16 request to  
12 return to work, is that correct?
- 13 A. I wrote the railroad and union.
- 14 Q. Well, the question is did you report to work?
- 15 A. Of course not, sir.
- 16 Q. I direct your attention to Carrier's Exhibit J3  
17 which is a letter dated May 19 that you wrote to  
18 Mr. Weisbarth?
- 19 A. Is that after the May 2 letter, sir?
- 20 Q. That's correct. It's dated May 19th.
- 21 A. Yes, sir.
- 22 Q. And you did draft this letter, didn't you?
- 23 A. I helped draft it, sir.
- 24 Q. And that is your signature at the bottom of the  
25 letter, isn't it?

1 A. Combined with, I'm pretty sure, others. Let me  
2 see.

3 Q. In fact there's 12 claimants who signed with  
4 you, isn't that correct?

5 A. Yes, sir. I imagine 12. 12.

6 Q. Now, you state in this letter, With a full  
7 reservation of all of my employment and  
8 seniority rights and without waiving any of  
9 them, I'm reporting for service as you have  
10 commanded in order that I may not necessarily  
11 jeopardize my employment and seniority rights.  
12 Did you after having sent this letter report to  
13 work as you said you were?

14 A. No, I didn't report. I wasn't going to accept  
15 their seniority, sir. I was playing for time at  
16 this stage of the game. They were calling me to  
17 the freightyard with September 10, '64  
18 seniority, and I was not going to accept that.

19 Q. Are you familiar with the concept of self help?

20 A. Beg your pardon?

21 Q. Are you familiar with the term, self help?

22 A. I try to live my life that way, but you'll have  
23 to get into detail, sir.

24 Q. You mentioned yesterday in your testimony that  
25 employees of the railroad are given due

1 process. You testified that's the case.

2 A. Yes, sir.

3 Q. That if you feel --

4 A. Supposedly.

5 Q. Well, that's what you testified, that due  
6 process is given.

7 A. I testified that we were supposed to be given  
8 due process.

9 Q. Well, the record will speak for itself.

10 A. And I requested in July of '69, which is over  
11 two months after this letter, for due process  
12 and demanded a hearing with the carrier.

13 Q. Do you have a letter that demands a hearing?

14 A. Yes, I do.

15 Q. Has that been introduced?

16 A. I don't think so. And I got two --

17 Q. Do you have a copy of that with you?

18 A. Yeah. I have a copy, and I got two responses  
19 from the carrier in late July.

20 Q. Demanding a hearing?

21 A. Acknowledging my letters, and holding the  
22 investigations in abeyance, which is after these  
23 so-called recalls, sir.

24 MR. KERSHNER: May I see those?

25 MS. TRICHARICHI: I don't know.

1           What letters are you referring to?

2                   THE WITNESS:   It was a July 5th  
3           letter I gave to your father.

4                   MS. TRICHARICHI:   If you want me to  
5           search for them, I can do that, but I can't put  
6           my fingers on it right now.

7                   MR. BLACKWELL:   I think you should  
8           invest at least a limited time because you're  
9           going to talk about it. I think we ought to  
10          have the documents here, I mean if you're going  
11          to get any more interrogation.

12                   MS. TRICHARICHI:   You want me to do  
13          discovery on these letters right now?

14                   MR. BLACKWELL:   Well, Mr. Beedlow  
15          seems to think they are close at hand. Is that  
16          correct, sir?

17                   THE WITNESS:   I give them to her  
18          father yesterday.

19                   MR. BLACKWELL:   Do you recall  
20          that? Was it big bundle or a small bundle.

21                   THE WITNESS:   Two-page letter.

22                   MR. TRICHARICHI:   Two or three  
23          pages, I think.

24                   MR. BLACKWELL:   Let's just recess  
25          here for five minutes.

1

- - - -

2

(Thereupon, a discussion was had off  
the record.)

3

4

(Thereupon, a recess was had.)

5

- - - -

6

MR. BLACKWELL: All right. We're  
back on record. There's been received in  
evidence at this point Carrier Exhibit 14A and  
14B. Do you have 14B, Mr. Kershner?

7

8

9

10

MR. KERSHNER: No, I do not.

11

12

MR. BLACKWELL: All right. I'll  
leave it to you to identify.

13

14

15

16

17

18

MR. KERSHNER: B, which we will be  
provided copies of later in the day, is dated  
July 23, '69. It's an acknowledgment letter to  
Mr. Beedlow signed by Mr. Brinkworth stating or  
acknowledging receipt of a July 5, '69 letter  
which is Carrier Exhibit 14A.

19

Q. All right. This has been identified, Mr.

20

Beedlow, as the correspondence you referred to  
before we took this recess?

21

22

A. Yes, sir.

23

24

MR. BLACKWELL: All right.  
Proceed. You've got your papers, Mr. Kershner?

25

MR. KERSHNER: Yes, I do.

1 MS. TRICHARICHI: Here's a copy of  
2 that letter so you can look at it while they  
3 examine you. And here's the response, Mr.  
4 Beedlow.

5 Q. I direct your attention to the second page of  
6 the letter that we've marked as Carrier's  
7 Exhibit 14. You list in the second paragraph a  
8 number of the claimants and opposite their names  
9 you indicate action that had been taken.  
10 Weren't a number of these complainants, hadn't  
11 they marked up for work?

12 A. You have to go on the first page. It says the  
13 above seven yardmen recalled according to  
14 article 8.

15 Q. Where are you reading from? Down at the bottom,  
16 The above seven yardmen recalled in accord to  
17 the article 8 of the February 16, '65 agreement  
18 and in accord to the recall furlough agreement  
19 of August --

20 A. October.

21 Q. Pardon me. October. So the seven listed had  
22 returned to work, is that correct?

23 A. They had returned -- they had been recalled to  
24 the Cleveland passenger yard.

25 Q. And did they return to work to your knowledge?

- 1 A. All but Hahn. They give him a political leave  
2 evidently.
- 3 Q. For union service?
- 4 A. Well, they give him that, too. But he entered  
5 the political arena or something. He's, I think  
6 he's working at city hall right now.
- 7 Q. The next paragraph indicates, Confirmation of  
8 records. The following C.U.T yardmen have taken  
9 assignments of service in the freightyard  
10 Cleveland Terminal District. And they're listed  
11 there, eight claimants, is that correct?
- 12 A. No, sir. Not all plaintiffs. Some of these  
13 people -- there was 29 people furloughed and  
14 only 17 became plaintiffs.
- 15 Q. So Mr. Acree and Mr. Benko are the only two  
16 plaintiffs?
- 17 A. No. Mr. Gastone is a plaintiff, and the other  
18 five are not. Acree, Benko and Gastone.
- 19 Q. So there are three claimants listed out of the  
20 group?
- 21 A. Yes. And the preceding group there's three  
22 plaintiffs who had been recalled. That was  
23 Kenny Day, George Norris and Frank Uher.
- 24 Q. Right. Now, turning to the next page, is Mr.  
25 Semsik a plaintiff?

1 A. No, sir. I'm just -- I'm going down the list of  
2 29 people.

3 Q. Is Mr. Prohoska?

4 A. Because they had served notices for  
5 investigations on all these 29 and as usual, the  
6 company didn't know what they were talking  
7 about.

8 Q. Was Mr. Prohasko a complaint?

9 A. Prochaska.

10 Q. Prochaska?

11 A. No, sir.

12 Q. Down in the next paragraph where it talks about  
13 the status of the number of people, Mr. Steimle  
14 is a complainant, isn't he?

15 A. Yes, he is.

16 Q. He had visited the company doctor as did Mr.  
17 McLaughlin?

18 A. That's true as of July 5, '69.

19 Q. Mr. Beedlow, you're mentioned as well?

20 A. Yes, sir. I went through all 29, sir.

21 Q. And Mr. Doran?

22 A. Yes, sir.

23 Q. Now, it states that Mr. Mischler assigned to  
24 C.U.T employees. After several attempts they  
25 were told to wait until the doctor gets the

1           company forms and then will give them  
2           appointments. As yet no physical.

3   A.   Yes, sir.

4   Q.   Does that include you?

5   A.   That's what I put down, Beedlow and Doran, yes.

6   Q.   Right. So you did report to a company doctor?  
7           Did you ever go back and get a physical?

8   A.   No. There was no -- Dr. Mischler never  
9           contacted us. When we tried to contact him for  
10          a physical, he said he was too busy.

11   Q.   So you made no effort to go back again to  
12          contact him and say you wanted a physical?

13   A.   Well, it states several attempts were made,  
14          sir. It seems to me that it was up to them then  
15          at that time. We were getting the runaround.

16   Q.   Potosky, it says he passed the physical, so  
17          apparently he was able to get a physical?

18   A.   He was being forced by the company's physician,  
19          and they went to Collinwood and there's letters  
20          written on that, too, and --

21   Q.   Now, all three of these, Potosky, Gentili and  
22          Tomczak passed the physical, correct?

23   A.   They went to Collinwood.

24   Q.   Just answer the question. They passed the  
25          physical, didn't they?

1 A. Yes, sir.

2 Q. And Tannenbaum, Grady and Gustus, it says had  
3 taken a position that their furlough status quo  
4 as appears in a letter to Mr. Stalder from  
5 Lyons, Letter dated February 29, '68, was never  
6 resolved in the contrary. What's your position  
7 on those three people?

8 A. Well, I have to see the February 29, '68 letter,  
9 sir, at this stage of the game.

10 Q. Now, did you view this as a grievance on behalf  
11 of all the claimants?

12 A. Yes, sir. I was a local committee member of  
13 adjustments and I was entitled to be at all  
14 investigations.

15 Q. I direct your attention to Carrier's Exhibit K.  
16 One question on the people who went back to the  
17 C.U.T.

18 MS. TRICHARICHI: Are you still  
19 referring to this letter?

20 MR. KERSHNER: Still referring to  
21 Exhibit 14, the letter we just discussed.

22 A. Oh, 14A? Yes, sir.

23 Q. Do you know what seniority date the people who  
24 went back to the C.U.T had?

25 A. What seniority -- yeah, they had their original

- 1           seniority date.
- 2   Q.   Whatever date they were hired?
- 3   A.   Their only seniority date.
- 4   Q.   Right, not the September 10 date?
- 5   A.   That's exactly right.
- 6   Q.   Do you know what date the people who went to the  
7       freightyard got?
- 8   A.   They got the shaft.
- 9   Q.   They got the September 10, '64 date?
- 10  A.   That's exactly right, sir.
- 11  Q.   Directing your attention to Carrier Exhibit K,  
12       are you familiar with this letter to Mr. Lyons?
- 13  A.   I don't know if I am or not. I never got a copy  
14       as far as I know.
- 15  Q.   Did Mr. Lyons ever have any discussions with you  
16       about the disposition of the claimants discussed  
17       in the letter?
- 18  A.   I don't even know who wrote this letter, sir.  
19       It's unsigned.
- 20  Q.   It's from the superintendent of labor relations  
21       and personnel.
- 22  A.   Well, that doesn't mean a thing. He would have  
23       to be identified.
- 24  Q.   Did you know at the time that Mr. Stalder was  
25       the superintendent of labor relations and

- 1 personnel?
- 2 A. He was assistant superintendent at that time.  
3 He might have been superintendent by then.
- 4 Q. Doesn't the letter discuss a number of the  
5 claimants who were discussed in your letter that  
6 we've marked as Carrier's Exhibit 14?
- 7 A. Yeah. And he's talking about a conference on  
8 August 21.
- 9 Q. At which time the claimants were discussed,  
10 isn't that correct?
- 11 A. According to this letter, sir.
- 12 Q. I direct your attention to the fourth  
13 paragraph. It states, It's also a fact that  
14 Messrs. R. Beedlow and H.E. Doran did contact  
15 Mr. Mischler's office for an appointment for  
16 return to service physical examination, but when  
17 they were unable to get an appointment at that  
18 time, they have subsequently made no further  
19 effort do to so. Didn't Mr. Doran return to  
20 work subsequently?
- 21 A. Yes, when he was recalled to the 2.46. This  
22 was -- this was freightyard, so-called  
23 freightyard work.
- 24 Q. He was able to get a physical, wasn't he?
- 25 A. After December 15, sir, when he was recalled.

1 Q. But he was able to get a physical and you  
2 weren't. Why weren't you able to get a  
3 physical?

4 A. He went back to work because he had no  
5 employment.

6 Q. Why weren't you able to get a physical if he  
7 was?

8 A. Why wasn't I able to?

9 Q. Right. You said you weren't able to get a  
10 physical.

11 A. Well, I had tried several times and it was up to  
12 Mischler to get me, but as far as -- I wasn't  
13 going to accept the September 10, '64 seniority,  
14 sir.

15 Q. So I understand your position, it's up to the  
16 company to contact you for a physical repeatedly  
17 and not your obligation to go to the company for  
18 a physical, company doctor, is that your  
19 position?

20 A. My position is that at this time I had been  
21 furloughed a year and a half with no  
22 compensation and I was told repeatedly that I  
23 was an unprotected employee. I had no income of  
24 any kind and the company at that time had no  
25 right to tell me to do anything when they didn't

1 protect me as of January 1, '64 as a protected  
2 employee.

3 Q. I direct your attention to paragraph 5, the last  
4 paragraph of that page.

5 A. On first page?

6 Q. Yes, first page, still the first page.

7 A. Okay.

8 Q. It says, Because of extenuating facts, the  
9 carrier is willing, as you were advised during  
10 the August 21 conference, to restore the  
11 seniority of Messrs. Gentili, Tomczak, Potosky,  
12 Beedlow and Doran provided they return to active  
13 service on or before September 15. Did you  
14 return to active service on or before September  
15 15?

16 A. I never returned, sir.

17 Q. If you had been able to get a physical  
18 examination, if Dr. Mischler had called you and  
19 finally reached you and said come in for a  
20 physical and you had passed, would you have  
21 returned to work?

22 A. No, sir.

23 Q. During this period of time between 1968 and in  
24 February when you decline the initial recall --

25 A. No, that's not true.

1 Q. You're saying you did go back to work?

2 A. No. You said '68 when I declined the initial  
3 recall. That was when I was furloughed.

4 Q. But also told to mark up in the freightyard?

5 A. Oh, well, that wasn't a recall. I was still an  
6 active employee at that time.

7 Q. You refused to mark up in the freightyard.

8 Between that February 1968 date and August 1 of  
9 1969 did you have discussions with the union  
10 leadership about an agreement that was  
11 consummated on August 1?

12 A. Oh, I didn't know anything about that either.

13 Q. You had no knowledge about that agreement?

14 A. I wrote them letters in late July and they never  
15 acknowledged that the agreement had already been  
16 signed.

17 Q. Wrote who letters?

18 A. I wrote the carrier and I wrote the union. They  
19 never told me about any agreement that was being  
20 concocted. In fact we were still furloughed  
21 until after December 15 of that year. If there  
22 was 2.46 of the work, why were we laid off for a  
23 two-year period and five months after the  
24 so-called August 1, '69 agreement that was  
25 supposed to give us everything and gave us

1 nothing. Five months later I was still  
2 furloughed.

3 Q. When did you first become aware of the August 1,  
4 1969 agreement?

5 A. I really don't have any idea, but it may have  
6 been some time in '70, '71. I don't know. I  
7 really don't.

8 Q. '70 or '71?

9 A. In all probability.

10 Q. Direct your attention to Carrier's Exhibit H,  
11 which is a copy of the August 1, '69 agreement.

12 A. Yes.

13 Q. So it's your testimony you had no knowledge of  
14 this agreement until years after it was  
15 executed?

16 A. I don't -- it wasn't executed until December 15,  
17 as I testified, for the people in my seniority.  
18 We were laid off on February 25, '68 through  
19 December 15th of '69, nearly two years. On  
20 December 15 the company sent out letters that  
21 were not registered, and they're supposed to  
22 register those letters, they were unregistered,  
23 four or five or six people at that time or how  
24 many ever there were.

25 I think it started around with Tomczak.

1 Tomczak was still laid off. Tomczak, Doran, I  
2 think, Potosky, McLaughlin and so on. All the  
3 way down the line. And that was the first that  
4 we knew. And we also knew that there were no  
5 jobs. They were recalling us to nonexistent  
6 jobs.

7 Q. If you were recalled to a nonexistent job --

8 A. Yes, sir.

9 Q. -- as you state, and you stood for work, you  
10 could be entitled to payment of the guarantee,  
11 couldn't you?

12 A. Not at all. Not at all, sir.

13 Q. Let's look to this --

14 A. There was no guarantee.

15 Q. Let's look to Exhibit H, second page. I direct  
16 your attention to paragraph 7 on the second  
17 page.

18 A. Yes, sir.

19 Q. Where it says, In consideration of the facts and  
20 circumstances present in this case and without  
21 prejudice to the position of any of the parties  
22 in any other case of a like or similar nature,  
23 it's understood and agreed that Cleveland Union  
24 Terminal Company yard service employees affected  
25 by this merger of the Cleveland Terminal will

1 effective on the date this agreement is  
2 consummated become subject to all the terms and  
3 conditions of the merger protective agreement  
4 between the former New York Central, the former  
5 Pennsylvania and the former Brotherhood of  
6 Railroad Trainmen. It's further understood that  
7 the Cleveland Union Terminals Company and former  
8 New York Central earnings during the test period  
9 established by Appendix E of the merger  
10 protective agreement will be combined for the  
11 purpose of computing the earnings guarantee.  
12 The Cleveland Union Terminal employees are  
13 entitled to such guarantees under the provisions  
14 of this agreement subject to the qualifying  
15 conditions of the November 16, '64 merger  
16 protective agreement and appendices thereto.

17 Now, when you were informed of that, isn't  
18 it true that that states that you would be  
19 entitled to merger protection agreement  
20 guarantees?

21 A. It was never implemented, sir. And I did not --

22 Q. What do you mean, it was never implemented?

23 A. It was -- this agreement was never lived up to,  
24 and the people who went to the freightyard, as I  
25 testified yesterday, were 30 times out on a

1 board that had eight jobs.

2 Q. Were grievances filed by these employees  
3 claiming payments for guarantees?

4 A. Some. Some grievances were put in. Not  
5 grievances. They put in for the job guarantee  
6 or tried to get a job guarantee.

7 Q. Who specifically?

8 A. Well, I know Tomczak put it in. Norris put it  
9 in. Kenny Day put it in. Steimle put it in.

10 Q. The three people whose earnings were exhibited  
11 yesterday put them in. Is that what your  
12 testimony is?

13 A. Yes.

14 Q. Plus Mr. Steimle who is here today?

15 A. Yes.

16 MS. TRICHARICHI: Just as a point  
17 of clarification, that's not correct. Norris  
18 was not one of those people yesterday.

19 A. No. Norris was not on the board yesterday.

20 MS. TRICHARICHI: So they were not  
21 the same three people that he just mentioned.

22 A. No. It was Benko.

23 Q. But you don't know whether their earnings were  
24 above the guarantee or not, do you?

25 A. They were well below any guarantee of a five-day

1 week.

2 Q. You don't know why the earnings may have been  
3 lower. They may have laid off themselves?

4 A. You can't layoff -- if you lay off, you are  
5 called in for investigations and you are fired.

6 Q. They may have been ill, that's a possibility?

7 A. I was talking to just -- I kept in touch with  
8 all 17 plaintiffs until they went to their maker  
9 for years and years. Maybe a month would go by  
10 at the most, but I kept constantly in touch with  
11 these people and they kept in touch with me.  
12 And these people had worked for the railroad for  
13 over 20 years. They didn't suddenly become  
14 ill. They became ill because of these  
15 agreements.

16 Q. Direct your attention to Carrier's Exhibit L.

17 A. Yes, sir.

18 Q. Did you receive this?

19 A. I don't remember receiving it, sir.

20 Q. It's a recall notice that states, Without  
21 prejudice to either party, your seniority would  
22 be restored provided you accept return to work.  
23 At that time you would have known about the 1969  
24 agreement?

25 A. Not at all. Not at all. I had been laid off.

- 1 Q. You didn't keep in touch with any of the other  
2 union officials during your layoff?
- 3 A. They didn't -- the union officials and the  
4 company did not give me as a secretary of that  
5 lodge any inkling of what was going on at any  
6 time. As I testified before, I had no idea  
7 there was an August '69 so-called coordination  
8 agreement taking place.
- 9 Q. Did you report for a physical examination or try  
10 to as the letter requests?
- 11 A. Well, it says that there's work presently  
12 available in the Cleveland Union Terminal.  
13 That's not true. The whole letter is a farce.
- 14 Q. Did you report to work --
- 15 A. Oh, I did not, sir, no. I was trying to make a  
16 living.
- 17 Q. So you were employed otherwise?
- 18 A. Yes, sir. I testified to that. I had to get  
19 work.
- 20 Q. Where were you employed?
- 21 A. There was no work with 1964 seniority, sir.
- 22 Q. Where were you employed?
- 23 A. I was employed at U.S. Steel.
- 24 Q. When did you obtain employment at U.S. Steel?
- 25 A. I think it was October or November of '69, 4th

1 or the 5th. Very fortunate to get the job.

2 Q. I direct your attention to Carrier's Exhibit  
3 No. 13.

4 MS. TRICHARICHI: Is this what we  
5 talked about yesterday?

6 MR. KERSHNER: That's correct.

7 MS. TRICHARICHI: Thank you. It  
8 was that roster from yesterday.

9 A. I'm still at the bottom.

10 MR. KERSHNER: Let the record show  
11 this is a July 1, '68 Penn Central Lake Region,  
12 Lake Division Central District seniority  
13 roster.

14 Q. And I direct your attention to the second to  
15 last page.

16 A. Yes, I know where it's at. I'm looking at the  
17 heading here. Yes.

18 Q. Isn't it true that there are some 22 employees  
19 who have seniority less than September 10, 1964  
20 on this combined seniority roster?

21 A. Yeah, they evidently were even hungrier than we  
22 were.

23 Q. So you could have, had you so chosen --

24 A. No, no, that don't mean a thing.

25 Q. You could have bumped any one of these people

1 with less seniority, couldn't you?

2 A. They may have been laid off, sir.

3 Q. But the question was couldn't you?

4 A. You can't bump them if they're laid off.

5 Q. Couldn't you, assuming they were working,  
6 couldn't you have exercised your seniority for  
7 one of those 22 jobs?

8 A. If they had been working, yes, sir.

9 MR. KERSHNER: Do you have the  
10 exhibit that you had yesterday?

11 MS. TRICHARICHI: Can I put this on  
12 the record? I think what Mr. Steffen is  
13 concerned about is I want the record to reflect  
14 that during the cross-examination of Mr.  
15 Beedlow, there's been consultation between  
16 counsel for the carrier and the carrier's  
17 representative on the panel.

18 My understanding is that, you know, the  
19 carrier's attorney is the carrier's attorney and  
20 the carrier's representative on the panel is on  
21 panel and is not conducting the examination, so  
22 just for the record I --

23 MR. BLACKWELL: Well, you've --

24 MS. TRICHARICHI: I didn't have any  
25 consultation --

1 MR. BLACKWELL: You have it on the  
2 record. What you described is not unusual or  
3 inappropriate. If it goes to the extent that it  
4 is participating in the cross, then that will go  
5 over the line, but they're both partisan. Mr.  
6 Burton is on that side, Mr. Steffen is on this  
7 side, and they have names of board members but  
8 that doesn't mislead me into thinking they're  
9 impartial.

10 Q. Mr. Beedlow, again looking at the combined  
11 seniority roster --

12 A. This exhibit, sir?

13 Q. Correct. It's clear that the seniority date for  
14 the C.U.T people would have exercised for  
15 freightyard jobs is September 10, '64. But  
16 isn't it true that for C.U.T jobs they would  
17 have had their seniority date of hire in the  
18 C.U.T?

19 A. Well, it's a little misleading, sir. What you  
20 are saying is would they have seniority of  
21 September 10, '64 on a New York Central?

22 Q. In the C.U.T.

23 A. The C.U.T was a location, sir.

24 Q. Yes. This is a combined seniority roster.

25 A. Yes, sir.

- 1 Q. Correct?
- 2 A. Yes, sir.
- 3 Q. For purposes of obtaining -- let me finish. For  
4 purposes of obtaining freightyard jobs, all the  
5 C.U.T employees had September 10, '64 seniority  
6 dates, isn't that correct?
- 7 A. As hiring out dates on the New York Central  
8 Railroad, sir.
- 9 Q. For purposes of bidding on freightyard jobs,  
10 correct?
- 11 A. For purposes of employment on the New York  
12 Central Railroad.
- 13 Q. In the freightyard?
- 14 A. On the New York Central.
- 15 Q. Just answer question. At the time this roster  
16 was prepared --
- 17 A. At the time this roster was prepared on  
18 evidently July the 1st of '68 it shows the  
19 hiring <sup>out</sup> of date of all so-called C.U.T employees  
20 as September 10, '64 seniority.
- 21 Q. What did you want to have this roster reflect?  
22 Did you have to have dovetail seniority?
- 23 A. Not at all. I wanted -- not on this roster.  
24 This roster is really not important. We had a  
25 master roster of 2,100 people.

- 1 Q. What did you want the union to negotiate for  
2 you, Mr. Beedlow?
- 3 A. I wanted the same coverage that all former New  
4 York Central and Pennsylvania employees got,  
5 exactly the same, nothing less.
- 6 Q. So you wanted to have your date of 1948 be  
7 applicable to freightyard jobs, is that correct?
- 8 A. Not at all. Not at all.
- 9 Q. No?
- 10 A. There was an overall view of this, sir. I'm not  
11 sure. They made a District 4 between Buffalo  
12 and Columbus and they put all these so-called  
13 employees on there, 2,100 of them. And if my  
14 seniority had went into where it was proper, I  
15 would have been 400. Instead I was 2,000. And  
16 that's where I would have worked. I would have  
17 been entitled to work on any part of this entire  
18 railroad from Buffalo to Columbus under the  
19 District 4 merger protection agreement.
- 20 Q. So you in fact wanted to have your 1948  
21 seniority date recognized, is that true?
- 22 A. Well, I wanted my prior rights, which would have  
23 been August 6, '48 on that master roster, yes,  
24 sir.
- 25 Q. And didn't you also retain prior rights in the

1 C.U.T?

2 A. As the C.U.T it's really not important. It was  
3 the master roster.

4 Q. The question is didn't you retain prior rights  
5 in the C.U.T?

6 A. I retained prior rights -- there was no prior  
7 rights for the C.U.T.

8 Q. Just -- there were no prior rights in the C.U.T?

9 A. Not for the C.U.T. The C.U.T was not part of  
10 the mergers, therefore, there's no prior  
11 rights. If it stands alone there is no prior  
12 rights.

13 Q. But the August 1, '69 agreement grants C.U.T  
14 prior rights in C.U.T?

15 A. Not at all. Not at all.

16 Q. It will speak for itself.

17 A. Yes, it will.

18 Q. Direct your attention to the exhibit that was  
19 offered yesterday regarding the earnings of the  
20 three deceased claimants.

21 A. Yeah. I don't have that.

22 Q. I'm just going to ask you some questions because  
23 you said you're knowledgeable about the  
24 situation.

25 MR. BLACKWELL: Wait. Let's get

1 this material. It's 72A and B.

2 MS. TRICHARICHI: Can you refer  
3 specifically to the number, Mr. Kershner, that  
4 you're examining him on?

5 MR. KERSHNER: Right behind you,  
6 the one right behind you.

7 MS. TRICHARICHI: You are talking  
8 about the chart?

9 MR. KERSHNER: Plus the W-2s which  
10 are 70, 71 and 72.

11 MR. BLACKWELL: What number did you  
12 give the chart, 73?

13 MS. TRICHARICHI: The chart had  
14 73.

15 MR. KERSHNER: Right.

16 Q. Isn't it true that the senior person on a  
17 seniority roster has access to the available  
18 work before junior people?

19 A. Of course.

20 Q. That's why you have seniority, isn't that  
21 correct?

22 A. That's exactly right.

23 Q. So that the senior person should have greater  
24 earnings opportunities than junior people?

25 A. Oh, it goes without saying. That's what this

1 whole case is about, sir.

2 Q. And maybe you can help me out about something  
3 that the exhibit brought to mind. If we look to  
4 the seniority roster, and I think you know the  
5 seniority of these people as well as anyone,  
6 isn't it true that Mr. Day was the more senior  
7 of the three claimants?

8 A. Yes, sir.

9 Q. And Mr. Tomczak was second in seniority?

10 A. To those three claimants, I believe Tomczak as  
11 second, yes, sir.

12 Q. And Mr. Benko was third in order of seniority?

13 A. Yes, sir.

14 Q. Now, when I look to the W-2 forms, I found that  
15 Mr. Benko, who was the least senior of the  
16 three, made more than Mr. Tomczak in 1969.

17 A. Yes, sir.

18 MS. TRICHARICHI: Wait a minute.

19 Did you say that Mr. Benko made more than Mr.  
20 Tomczak?

21 A. That's what he said.

22 Q. In the year 1969. In 1969 my copy, if I'm  
23 reading it right -- it's kind of faded --  
24 indicates wages paid to Tomczak at \$135.16, and  
25 during the same year Mr. Benko made \$3,157.26.

1 A. Yes, sir.

2 Q. Even though Mr. Tomczak was more senior than Mr.  
3 Benko?

4 A. What you say is correct, sir, but there's a  
5 reason for it.

6 Q. What's that reason? That's what I was after.

7 A. Well, if you look at my July 5th letter of '69,  
8 you'll see at the bottom of the first page --  
9 that's Exhibit 14, I believe, 14A -- you'll see  
10 at the bottom of the first page that the  
11 railroad's records will indicate the following  
12 C.U.T yardmen have taken assignments of service  
13 on the freightyard side.

14 Benko went to the freightyard. Tomczak was  
15 furloughed for the entire year of '69, and he  
16 didn't go back until after the recall of  
17 December 15, '69. Benko's position was that he  
18 was more desperate. Each person was an  
19 individual. His kids were a little hungrier  
20 than maybe Tomczak's. So he went with September  
21 10, '64 seniority to the freightyard and Tomczak  
22 wouldn't go until he was recalled at 2.46 of the  
23 work. So Tomczak didn't work in '69.

24 Q. Also I notice that Mr. Tomczak earned more than  
25 Mr. Day who was more senior in 1970 and in 1971?

1 A. Yes, sir.

2 Q. Is there an explanation for that as well?

3 A. Well, of course. That's -- in the first place,  
4 that's a matter of personal choice. Tomczak's  
5 job was being given overtime by the company  
6 without working for it. The company was loading  
7 up on Mr. Tomczak.

8 Q. Even though he was junior to Mr. Day?

9 A. They were loading his job and he was putting in  
10 the overtime with a pencil and was going home an  
11 hour, hour and a half early. The entire crew  
12 was being paid until three in the morning were  
13 going home at 9:30.

14 Q. So you are saying --

15 MR. BLACKWELL: 9:30 p.m.?

16 THE WITNESS: Yes, sir.

17 Q. So you're saying that Mr. Tomczak was falsifying  
18 records?

19 A. No. I'm saying that the company told him to put  
20 the overtime in. The company was very aware.  
21 And Mr. Day has a personal preference to work  
22 any job he desires, whether it's overtime or  
23 whether it's days or afternoons, whatever his  
24 seniority entitles him to. That's his personal  
25 preference.

1 Q. With respect to that overtime job that Tomczak  
2 had, Day could have bumped into it, couldn't he,  
3 if he wanted it?

4 A. Oh, of course.

5 MR. BLACKWELL: We'll have a break  
6 at this point.

7 - - - -

8 (Thereupon, a recess was had.)

9 - - - -

10 Q. Mr. Beedlow, you indicated that the reason why  
11 some of the claimants returned to work was, I  
12 believe it was your words, that they were  
13 desperate?

14 A. Well, they needed an income. It was quite  
15 obvious we all do.

16 Q. Were you less desperate than them?

17 A. I didn't have any kids at home saying, Daddy,  
18 I'm hungry.

19 Q. You had income?

20 A. Oh, no. I had very little income.

21 Q. You didn't have an income from U.S. Steel at  
22 all?

23 A. I didn't get a job there until nearly two years  
24 after the furlough, sir. I testified to that.

25 Q. In the '70s?

1 A. No. October, November '69.

2 Q. October of '69 you got a job with U.S. Steel?

3 A. Yes.

4 Q. I direct your attention to Carrier Exhibit 1,  
5 that's the roster, seniority roster.

6 A. Oh, okay. I got it. Yes, sir.

7 Q. If this seniority roster had listed you with  
8 your 1948 seniority date, would you have  
9 accepted a recall to work?

10 A. If they would have told me I was a New York  
11 Central employee, yes, sir.

12 Q. My question is if you had had your 1948 date,  
13 would you return to work?

14 A. On there? On this particular roster?

15 Q. On this roster.

16 A. Then I would have --

17 MS. TRICHARICHI: I think that's a  
18 hypothetical question.

19 MR. BLACKWELL: Well, if that's an  
20 objection. I won't sustain it. Proceed.

21 Q. You can answer the question.

22 MS. TRICHARICHI: No. It's  
23 sustained.

24 MR. BLACKWELL: I said I will not  
25 sustain it.

- 1 A. If I would have had it on this roster, I would  
2 have had it on the master roster.
- 3 Q. On this roster. If you had had the 1948  
4 seniority date, would you have returned to work  
5 is the question?
- 6 A. I was scared to go to the freightyard.
- 7 Q. You were scared to go to the freightyard?
- 8 A. Yes, sir. Now, I may have been forced to go due  
9 to financial circumstances.
- 10 Q. Let's explore the freightyard. You were  
11 scared. I think you testified earlier that you  
12 had worked in the freightyard?
- 13 A. I had worked around the freightyards, yes, sir,  
14 I had been there. Generally been there.
- 15 Q. Your father had worked in the freightyard?
- 16 A. Oh, of course, yes. He was an engineer. He  
17 worked in both yards.
- 18 Q. Right. I believe you testified yesterday that  
19 the same book of rules applies to both the  
20 freightyard as well as the terminal?
- 21 A. Yeah. Everything is New York Central.
- 22 Q. So the rules are the same?
- 23 A. Yes.
- 24 Q. Did you have safety meetings?
- 25 A. Not really, not really. You had a book of rules

1 class generally once a year, sometimes only once  
2 every two years.

3 Q. Did you attend those?

4 A. Had to.

5 Q. So the same situation existed in the  
6 freightyard, isn't that correct?

7 A. If you didn't, you were pulled out of service.  
8 You were disciplined, investigated.

9 Q. Now, when you worked in the C.U.T, you worked  
10 right adjacent to the freightyard, did you not?

11 A. Not really. The freightyard was a few miles  
12 away. I worked in the Lakefront, yes.

13 Q. All right. The Lakefront is how far away from  
14 the terminal?

15 A. Well, several miles. Maybe a couple -- walking  
16 maybe a mile and a half, two miles. By rail  
17 eight, ten, fifteen miles. You had to go up  
18 past Clark Avenue to get down there.

19 Q. And that's where the mail hall is located?

20 A. Mail hall express, yes. Old depot. Which was  
21 the terminal before the terminal.

22 Q. Now, is that where you worked when you got your  
23 New York Central paycheck? You were talking --

24 A. Anything outside the confines of the so-called  
25 Cleveland Union Terminal.

1 Q. And when you were in the terminal you got  
2 Cleveland Union Terminal paychecks?

3 A. Everybody in the crew, yes, sir.

4 Q. Over the course of your employment just give me  
5 an estimate of how the work split. Was it 50/50  
6 Lakefront/terminal or 60/40? Just a ballpark.

7 A. I would say up until I was really hurt badly,  
8 75, 80 percent of my work or maybe more would  
9 have been in the Lakefront area.

10 Q. Before you were hurt badly, you mean by the  
11 seniority issue?

12 A. Yes, sir.

13 Q. And when you worked that 75 to 80 percent of the  
14 time in the Lakefront, that was adjacent to the  
15 freightyard on either side of the area, is that  
16 true?

17 A. Yes. We used the same main tracks and the  
18 freightyard at 26th Street was just on the other  
19 side and we had to go over there at times.

20 Q. Isn't it a true also that particularly during  
21 the Christmas season when there was a lot of  
22 mail, that you worked more up in the mail hall  
23 in that area in the freight area?

24 A. Not particularly. I would say after the mid  
25 '50s we -- it was all in our passenger yards.

1 Up until that time there would be a few mail and  
2 express trains that would have to come in the  
3 freightyard because we were simply plugged up.  
4 There was no room.

5 MR. KERSHNER: That's all the  
6 questions we have of this witness.

7 MS. TRICHARICHI: Have we  
8 established our schedule for today? Do you want  
9 me to start with the redirect or what are we  
10 going to do?

11 MR. BLACKWELL: Yes, we are going  
12 to break at 12:30. Wasn't the schedule to break  
13 at 12:30? So we keep going till 12:30.

14 - - - -  
15 (Thereupon, a discussion was had off  
16 the record.)

17 - - - -  
18 MR. BLACKWELL: Do you want a  
19 caucus or are you ready to go?

20 MS. TRICHARICHI: No. I think I'm  
21 ready to go.

22 - - - -

23 REDIRECT-EXAMINATION OF RAYMOND BEEDLOW BY

24 MS. TRICHARICHI:

25 Q. Mr. Beedlow, you heard Mr. Kershner ask you at

1 the beginning of your examination today, the  
2 cross-examination, questions about your  
3 knowledge of the 1965 top and bottom agreement  
4 and when you knew what you knew. Do you  
5 remember those questions?

6 A. Yeah.

7 Q. The line of questioning?

8 A. Yes. Yes, ma'am, pretty much.

9 Q. Isn't it a fair statement that the reason you  
10 didn't report at the time you received the  
11 furlough on February 28, 1968 was because  
12 you were --

13 MR. KERSHNER: I'm going to object  
14 to the really blatant leading nature.

15 MR. BLACKWELL: Well, this is  
16 leading so reformulate it so we don't have it.  
17 But I will say for the record, Mr. Kershner, you  
18 don't have a jury here. You have professional  
19 fact finders, I like to think.

20 Q. Was the fact that you had been corresponding for  
21 almost three years with the railroad prior to  
22 the furlough notice, did that have an impact on  
23 your decision or nondecision to report to the  
24 freightyard in 1968?

25 A. I've testified to that, yes.

1 Q. And how did it affect your decision?

2 A. Well, I stated that the railroad was taking the  
3 position that I was an unprotected employee, not  
4 entitled to any merger benefits, and until they  
5 changed that position and admitted my hiring out  
6 date, I wasn't going anyplace.

7 Q. Since Mr. Kershner engaged in hypothetical  
8 questions, I'll ask you a hypothetical  
9 question. If you had been told prior to the  
10 furlough that you had seniority that would have  
11 made you eligible for merger protection benefits  
12 under the 1964 merger protection agreement and  
13 you had been told you were a New York Central  
14 employee, acknowledged to be a New York Central  
15 employee, would you have reported for work?

16 A. That was my life. Yes, sure, I would have.

17 Q. And why was there a difference there?

18 A. Because if you're an unprotected employee,  
19 mergers are not made, despite what the company  
20 says, to benefit the employees. Mergers are  
21 made to benefit the companies. And I've never  
22 known a merger yet that didn't cut employees.

23 Q. And that's the purpose of merger protection  
24 agreements, is it not?

25 A. There was 210,000 employees that were given

1 protection on January 1, '64. Today there's  
2 under 30,000. So there's 180,000 jobs that are  
3 gone one way other another.

4 And if I was unprotected, I could have been  
5 laid off any second and I would have just hit  
6 the streets. But being protected, I was  
7 entitled to a wage guarantee and never placed in  
8 a worse position. It was a critical point.

9 Q. It was critical to your decision?

10 A. Well, of course.

11 Q. And your decision then was further affected by  
12 your observance --

13 MR. KERSHNER: I've got to renew my  
14 objection to this obvious testimony by counsel.

15 MR. BLACKWELL: This is sustained.

16 Q. How was your decision affected by the actions of  
17 the people who did go to the freightyard?

18 A. Well, as I testified before, I was in touch  
19 sometimes constantly with many of the plaintiffs  
20 and periodically with the rest. I knew what was  
21 going on at all times.

22 Q. Did they ever receive any wage guarantees, any  
23 of them?

24 A. Nobody ever received merger protection benefits  
25 whether you went or you didn't go.

1 Q. Did they receive merger protection benefits in  
2 1968?

3 A. Nobody.

4 Q. Did they receive merger protection benefits  
5 subsequent to the 1969 coordination agreement?

6 A. Nobody has ever received a penny.

7 Q. Now, at the end of your cross-examination we  
8 talked a little bit about availability of jobs.  
9 If you had the requisite seniority to mark up  
10 for a job, could you choose not to go to work?

11 A. Oh, no.

12 Q. And what would happen to you if you did choose  
13 not to go to work?

14 A. Well, if it happened two or three times, they  
15 called an investigation for missing calls, for  
16 missing work.

17 Q. So you couldn't just opt not to exercise your  
18 seniority, is that a fair statement?

19 A. You had a job. When you were called to perform,  
20 you performed.

21 Q. And there were ramifications if you didn't?

22 A. Yes. Yes, ma'am.

23 Q. And what were the possible ramifications if you  
24 did not mark up for a job to which your  
25 seniority entitled you?

1 A. Well, whatever the discipline -- whatever the  
2 hearing officer metes out is generally upheld,  
3 although you are entitled to appeal processes  
4 and so on which sometimes can delay these things  
5 for years. But eventually if the company wants  
6 you bad enough, you're discharged.

7 Q. So the implication that some of these men who  
8 returned to work chose on a whim, which is  
9 clearly the implication that Mr. Kershner was  
10 trying to make in his cross-examination, chose  
11 on a whim not to mark up for jobs, that their  
12 seniority entitled them to is not a fair  
13 reflection of what happened?

14 A. Well --

15 Q. Could they have done that for years on end?

16 A. What, not mark up?

17 Q. Yes.

18 A. No, ma'am.

19 Q. What would have happened to them if they had  
20 done that for years on end?

21 A. I've just testified, they would have been hauled  
22 in for investigation.

23 Q. And the final point, if you're determined to  
24 have been in violation, you could be terminated,  
25 that a fair statement?

1 A. I've testified to that, ma'am, yes.

2 Q. And you testified a little bit about overtime  
3 employment. Was overtime determined by the  
4 yardmaster on a daily basis?

5 A. Yes, ma'am.

6 Q. In what time period did you mark into jobs? Did  
7 you mark in on a daily basis?

8 A. You reported to work when you were assigned to  
9 work.

10 Q. But did you mark in for jobs on a daily basis, a  
11 weekly basis, a monthly basis?

12 A. Every day it was different.

13 Q. And when you marked in, did you --

14 A. But your starting time was assigned.

15 Q. Did you know when you marked in that day whether  
16 you were going to get overtime necessarily?

17 A. Not particularly.

18 Q. So that happened based on the yardmaster's  
19 decision on that particular day, is that  
20 correct?

21 A. It was up to the yardmaster's discretion.

22 Q. So you didn't know when you marked in for a job  
23 that day whether you were going to get overtime,  
24 is that correct?

25 A. Exactly.

1 Q. Mr. Kershner examined you with regard to what  
2 local you belong to. Was the local you belonged  
3 to a New York Central local?

4 A. Yes, I've testified to that. It was lodge 927  
5 which was a New York Central local.

6 Q. Now, do you have the roster?

7 A. Yes, I do.

8 Q. I'm handing you what has previously been marked  
9 as Carrier's Exhibit 13.

10 A. Yes, ma'am.

11 Q. If you look at the first page of that roster.

12 A. Yes.

13 Q. What is the number on that roster, Mr. Beedlow?

14 A. Number on this roster is 2104.

15 Q. What's the significance of that number, if you  
16 know?

17 A. I definitely know. It's a roster which is  
18 numbered. They come out with these numbers  
19 several years before the merger. When they came  
20 out with six-digit numbers, six-digit employment  
21 numbers, they were getting ready for the merger.

22 Q. And what is the significance of 2104 versus  
23 2106?

24 A. This was a number of the -- that was going to be  
25 known as roster 2104 of the combined Penn

1 Central Railroad when the merger took effect.

2 Q. If you look at Carrier's Exhibit 13, if you had  
3 been given your true seniority date, Mr.  
4 Beedlow, approximately what number would you  
5 have been on this roster?

6 A. On this particular roster?

7 Q. Yes.

8 A. 129.

9 Q. And what was --

10 A. 130.

11 Q. And how were you listed though on this?

12 A. No. 436, that's right.

13 Q. You've already testified that seniority was  
14 critical to availability of jobs, fair  
15 statement?

16 A. Seniority is everything, ma'am.

17 Q. From having known these men who returned to the  
18 freightyard, those who marked up, did they all  
19 get jobs?

20 A. Not at all.

21 Q. And isn't it fair to say that even after the  
22 1969 agreement, out of the 2.46 percent jobs  
23 that were supposedly reserved for C.U.T men, how  
24 many jobs did that translate into, 2.46, in  
25 1969 --

- 1 A. When the men were called --
- 2 Q. -- or thereabouts?
- 3 A. When the men were called back, they had three
- 4 engines which was a total of nine jobs at that
- 5 time.
- 6 Q. Total of nine jobs. And your testimony was
- 7 there were at least 30 people on the --
- 8 approximately 30 people on the roster -- off on
- 9 furlough in your position? 29, 30, whatever it
- 10 is?
- 11 A. I don't think I testified to that.
- 12 Q. Well, nine jobs would not have covered all the
- 13 people who were off on furlough, is that a fair
- 14 statement?
- 15 A. There was about 70 people on the roster, 60 or
- 16 70 people. And if the oldest person works, that
- 17 takes care of nine and if I'm number 60, that
- 18 leaves me 51 times out for working that day.
- 19 Q. Now, Mr. Beedlow, what I was trying to talk to
- 20 you about with regard to the numbering, wasn't
- 21 there a sequence of numbering of these rosters?
- 22 A. Yes, ma'am.
- 23 Q. And what was the sequence? What was the
- 24 sequence for the C.U.T roster? Was it C.U.T
- 25 roster No. 1?

1 A. No, ma'am.

2 Q. Well, what was it?

3 A. It was Penn Central roster No. 2106.

4 Q. The C.U.T people, 2106?

5 A. Yeah, but it was a Penn Central roster and it  
6 said C.U.T on it, but it was a Penn Central  
7 roster.

8 Q. And in 1968 the company was telling you you  
9 weren't covered under the merger protection  
10 agreement and you were not their employee, isn't  
11 that a fair statement, even though it was on the  
12 Penn Central roster?

13 A. Yes. I've testified to that. I wrote many  
14 letters on that.

15 Q. Because the date of this roster is 7-1-68.

16 A. What roster?

17 Q. This one, this Carrier Exhibit 13?

18 MR. BLACKWELL: Company 13.

19 A. Yes. Well, our roster would be out at the same  
20 time.

21 Q. In all probability how soon did the furlough in  
22 '68 occur after the merger was consummated?

23 A. We were notified three weeks to the day, I  
24 believe.

25 Q. Three weeks after -- your furlough came three

- 1 weeks after the merger?
- 2 A. No. Three and a half weeks.
- 3 Q. Three and a half weeks. And that was a mass  
4 furlough of all the people that were on the  
5 exhibit that we looked at?
- 6 A. 29 people.
- 7 Q. Again, Mr. Kershner examined you on Carrier's  
8 Exhibit J2.
- 9 A. Yeah, I think so.
- 10 Q. Paragraph 2. Will you read that, the first  
11 sentence in paragraph 2?
- 12 A. First sentence says, your marking up for service  
13 in the freightyard with a seniority date of  
14 September 10, 1964 will not affect any rights  
15 presently held by you, if any.
- 16 Q. If any. You didn't know what was meant by if  
17 any, did you, Mr. Beedlow?
- 18 A. I had a pretty good idea what it meant.
- 19 Q. Was there any verification that you even had any  
20 rights according to the company?
- 21 A. This is four years after we've been fighting for  
22 our rights and were told constantly that we are  
23 unprotected, not New York Central employees, and  
24 the position hadn't changed one iota.
- 25 Q. As a matter of fact, you were present at the

1 1976 trial of this matter, were you not?

2 A. Yes, I was.

3 Q. And wasn't that still the position of the  
4 carrier in 1976?

5 A. Yes, ma'am.

6 Q. Seven years after the implementation of the  
7 coordination agreement, is that correct?

8 A. That's exactly correct.

9 Q. Regardless of what it said on its face, that was  
10 still the position of the carrier at that time,  
11 was it not?

12 MR. KERSHNER: I object to counsel  
13 testifying and asking the witness to agree.

14 MR. BLACKWELL: That is leading so  
15 I'll admonish you again, please.

16 Q. What was the position of the carrier in 1976  
17 when you heard the testimony at trial?

18 A. The head of labor relations, Mr. Stalder,  
19 testified that we were not employees of the New  
20 York Central Railroad on the day he signed the  
21 top and bottom agreement and with his magic  
22 marker, he incorporated two separate  
23 corporations, and he could have saved Penn  
24 Central some money.

25 Q. Mr. Kershner also examined you about the top and

1 bottom agreement, specifically paragraph 9.

2 A. What's the exhibit?

3 Q. D.

4 A. Yes, ma'am.

5 Q. Do you know what seniority was referred to, what  
6 seniority they're talking about in paragraph 9  
7 as you read this?

8 MR. BLACKWELL: Which exhibit are  
9 you on now?

10 MS. TRICHARICHI: D, Carrier's  
11 Exhibit D.

12 Q. Did you know when you read this in 1968 three  
13 years after it was signed, what seniority the  
14 carrier was talking about in paragraph 9?

15 A. Yes, that it doesn't say, but they're inferring  
16 that we are employees of a separate carrier.  
17 That's what the entire document starts and ends  
18 up with.

19 Q. And was there a recognition on the face of this  
20 document that you were a New York Central  
21 employee, Mr. Beedlow, or that the people who  
22 worked at C.U.T locations were New York Central  
23 employees?

24 A. It says on the heading that it's a memorandum of  
25 an agreement between two separate carriers.

1           They separate the two carriers by name, and No.  
2           1 and 2 are very important. You have to read  
3           the entire agreement, ma'am.

4   Q.   And the carrier introduced Carrier's Exhibit 14A  
5           and 14B. 14B was not addressed. I want to  
6           direct your attention to 14B. It's a letter  
7           from Mr. Brinkworth. Who was Mr. Brinkworth,  
8           Mr. Beedlow?

9   A.   He was a division superintendent of the New York  
10           Central Railroad, Lake Division.

11   Q.   He worked for the New York Central?

12   A.   He was the superintendent, ma'am. The head  
13           cheese.

14   Q.   Okay. In response to your letter of July 5,  
15           1969 what did his letter of July 23, 1969  
16           indicate?

17   A.   Well, he addresses me and he acknowledges  
18           receipt of my letter.

19   Q.   What does he say is going to be done about your  
20           request?

21   A.   Well, it's very -- two little sentences. He  
22           said, This matter has been referred to the  
23           superintendent of labor relations and personnel  
24           for handling.

25   Q.   For the carrier?

- 1 A. Well, that's who it is.
- 2 Q. For the carrier. And that was addressed  
3 directly to the carrier, your letter was, and  
4 the response was from the carrier?
- 5 A. I wrote to Mr. Brinkworth.
- 6 Q. All right. Now, on page 2 of Carrier's Exhibit  
7 14A, I direct your attention to the last  
8 paragraph. What are you requesting in the last  
9 paragraph there or the second to last paragraph  
10 there?
- 11 A. Do you want me to read it?
- 12 Q. No. Just tell us in your own words what type of  
13 proceeding were you --
- 14 A. I'm demanding an investigation. I'm telling  
15 them that I must be there because I'm a member  
16 of the local committee of adjustment, and  
17 instead of so-called 29 people being called on  
18 the carpet, I've already explained what happened  
19 to 18. So I'm demanding an investigation for  
20 the remaining 11.
- 21 Q. Investigation as to the protection?
- 22 A. No. I'm demanding an investigation on the  
23 so-called charges on the recall of May the 2nd,  
24 I believe.
- 25 Q. Was any such hearing ever had?

1 A. They never replied after this July 23, '69  
2 letter. It's still referred to handling  
3 evidently.

4 MS. TRICHARICHI: I don't have any  
5 further questions of this witness.

6 MR. BLACKWELL: Mr. Kershner.

7

8 RE-CROSS-EXAMINATION OF RAYMOND BEEDLOW

9 BY MR. KERSHNER:

10 Q. In response to questions of counsel you had said  
11 that one of the reasons in addition to the  
12 seniority date problem that you didn't return to  
13 work was because there wasn't work there, is  
14 that correct?

15 A. I think I testified to that several times, yes.

16 Q. In fact you said that there were only nine jobs  
17 available in the C.U.T, is that correct?

18 A. I said that after that so-called implementing  
19 agreement --

20 Q. Right.

21 A. -- of August '69 we were given 2.46 of the work.

22 Q. Which resulted in nine jobs?

23 A. That's exactly right. Nine jobs for the  
24 so-called C.U.T employees.

25 Q. C.U.T. And that's one of the reasons why you

1 refused to report to work?

2 A. By that time I would have been 50 times out of  
3 the board, as I have testified, and I had no way  
4 of standing for any of those nine positions. I  
5 was not going to work with strangers. As I  
6 testified it was not above the realm of  
7 possibilities that I could be injured or killed.

8 Q. Well, this is going back to C.U.T jobs. So the  
9 nine jobs avail --

10 A. They were not C.U.T jobs per se then. By that  
11 time they had just about eliminated everything.  
12 It was just before Amtrack.

13 Q. Didn't you also have rights given the September  
14 10, '64 seniority date to 65 percent of  
15 freightyard jobs?

16 A. In the first place I wasn't going to accept  
17 September 10, '64. The recall that would have  
18 protected my so-called C.U.T rights if any, and  
19 I would have went to the 2.46 of the work with  
20 people that I worked with all my life, but there  
21 was no work.

22 Q. You're telling me you would have gone had one of  
23 the nine jobs in the C.U.T been available to  
24 you?

25 A. It wasn't C.U.T. By that time it was just about

1 all freightyard. I think maybe one or two of  
2 the jobs at the Lakefront.

3 Q. Even though you were laid off, you mentioned  
4 that you kept in contact with all of the  
5 claimants, is that correct?

6 A. I did very much until I went to U.S. Steel. I  
7 was working round the clock there. So it was  
8 quite difficult, but I maintained contact  
9 through the years up until today.

10 Q. In fact in '69 you were a union official?

11 A. No. Some time in '69 they merged the unions and  
12 they took my right to write letters away because  
13 as a furloughed member, you're a non-dues-paying  
14 member, you're not entitled to write to anybody.

15 Q. At least as of July 5th of '69 when you wrote  
16 the letter we've identified as Carrier's Exhibit  
17 14A, you were a union official?

18 A. No. Not then. I was just a member, a local  
19 committee of adjustment member, what they called  
20 under the newly formed unions. They said that  
21 we were going to be entitled to a three-man  
22 committee but we were in the freightyard lodge.  
23 They put us into lodge 875.

24 Q. So when did they take away your right to write  
25 letters?

- 1 A. Right after that.
- 2 Q. How soon after?
- 3 A. Evidently at the next election. I'm not aware  
4 of anything. By that time we were assimilated  
5 in the freightyard lodge and we had no way to  
6 talk on the floor. It was a freightyard lodge.  
7 We are just a small segment of it, and there  
8 were hundreds and we were several.
- 9 Q. When was this again now?
- 10 A. In '69 when the merger came about --
- 11 Q. '68?
- 12 A. No, no. When the United Transportation Union  
13 merger. There was all kinds of mergers going  
14 on.
- 15 Q. This is the August 1969 agreement we're talking  
16 about, consolidation agreement?
- 17 A. No, no, not at all. You were talking about --  
18 I'm talking a merger of unions, sir.
- 19 Q. Separate and apart from the company the unions  
20 merged?
- 21 A. That's what I said, yes.
- 22 Q. So you lost your union position as of some time  
23 in --
- 24 A. When they merged. The day they merged, I was no  
25 longer a secretary-treasurer. The duties were

1 given to the freightyard man to collect the  
2 dues, to keep the minutes. And there was  
3 several of them. One was a secretary, one was a  
4 treasurer. I turned over the books to Mr. Evans  
5 who I'm sure Mr. Ellert knows, and his brother  
6 was a pretty high official, too.

7 Q. This occurred when?

8 A. In '69.

9 Q. After July of 5?

10 A. No. Prior to July 5th.

11 Q. So you were a minister without portfolio when  
12 you wrote this letter of July 5?

13 A. I wrote it as a member of the local committee of  
14 adjustment which is entitled to be at all  
15 hearings and investigations.

16 Q. Did you continue in this role after July the  
17 5th?

18 MS. TRICHARICHI: What role?

19 A. Well, I never got another --

20 Q. This role as a member of the adjustment  
21 committee.

22 A. As I testified to before, I never heard from the  
23 carrier again after that time until there was  
24 another recall, so-called recall sent out, I  
25 think August 2, but the carrier never responded

1 to my demand for an investigation.

2 Q. Yet we know of a letter of August that was  
3 discussed with respect to all the claimants?

4 A. That was a recall letter. No. I don't think  
5 so.

6 Q. We'll let the record note that that's the case.

7 A. I'm not sure. What are you referring to, sir?  
8 What exhibit?

9 Q. How long did you continue your role as a member  
10 of the adjustment committee?

11 A. I think --

12 MR. BLACKWELL: It's not an  
13 adjustment board, it's a committee?

14 A. Committee. A legal committee of adjustment.

15 Q. Right.

16 A. I wrote that letter demanding an investigation.

17 Q. All I want to know is how long --

18 A. I don't think I wrote another letter after that.  
19 I don't believe I wrote -- except those letters  
20 for other people I wrote.

21 Q. And how long did you keep in contact with the  
22 people who were actively employed at work?

23 A. Up till this day.

24 Q. So I think your words were you knew what was  
25 going on at all times?

- 1 A. Pretty much, sure.
- 2 Q. But you tell us here that you didn't know about  
3 the August 1, '69 agreement until two years  
4 afterwards?
- 5 A. No, I didn't say that. I said some time --
- 6 Q. '71, I believe you said?
- 7 A. I said maybe '70, '71. I think that's my  
8 precise words.
- 9 Q. Is it 1970 instead of '71?
- 10 A. I have no way of knowing, sir. It was after the  
11 agreement and after the so-called callback of  
12 December 15, '69. I've stated --
- 13 Q. And you said you never received notice of the  
14 December 15 callback?
- 15 A. I said that I don't remember receiving notice of  
16 it.
- 17 Q. You may have received it?
- 18 A. It's possible. It's possible.
- 19 Q. Assuming you did receive it, why didn't you  
20 report to work?
- 21 MS. TRICHARICHI: At what time?
- 22 MR. KERSHNER: December 15.
- 23 MS. TRICHARICHI: December 15, why  
24 he didn't report to work? Is that your  
25 question?

1 MR. KERSHNER: Yes.

2 A. Why didn't I report to work?

3 Q. Yes.

4 A. There was no jobs. I was supposed to have been  
5 guaranteed.

6 Q. At that point, Mr. Beedlow, did you make any  
7 inquiry at all about any agreements like the  
8 1969 agreement? Did you keep in touch with  
9 these people and find out about these  
10 agreements?

11 A. Every time an agreement was made after the --

12 Q. I'm asking you if you kept in touch.

13 A. I'm answering as well as I can, sir. Maybe not  
14 to your satisfaction.

15 However, every time they made an agreement  
16 after the merger protection agreement of '64, I  
17 was one step closer to the door. Every time  
18 they made an agreement I was hurt worse and  
19 worse. With the '65 top and bottom it was not  
20 necessary.

21 The only agreement that was necessary was  
22 the merger protection agreement that protected  
23 210,000 people. Nobody else got this top and  
24 bottom. The freightyard never implemented.  
25 They were protected with their original

1 seniority. Nobody else got this so-called  
2 coordination of August '69. They all come under  
3 the merger protection agreement. They were all  
4 main line employees. I was one also.

5 Q. You're telling me that there was some sort of  
6 conspiracy between the company and the union to  
7 steal your seniority?

8 MS. TRICHARICHI: Objection. He  
9 did not say --

10 A. That's your supposition, sir. I didn't say  
11 that.

12 MR. BLACKWELL: Well, Mr. Kershner  
13 has him on cross-examination. Conspiracy is not  
14 too strong a word.

15 Q. Is that your position, there is some sort of  
16 conspiracy to get you out the door?

17 MR. BLACKWELL: I think he  
18 answered.

19 A. I said that that's your supposition. And it's  
20 not up to me. I'm not a soothsayer, sir. I  
21 knew what the affect was. The effect was that  
22 they were shoving me out the door and telling me  
23 I was not a New York Central employee, and that  
24 position had been going on for many years, and  
25 as far as I'm concerned, I read your brief, it

1           hasn't changed. I'm still being treated as a  
2           member of the subsidiary.

3   Q.   Who is the they you refer to were trying to get  
4           you out the door? Was it the union?

5   A.   I would have to say that the keepers of the  
6           record, sir, which is by law the company, the  
7           Penn Central.

8   Q.   So the union wasn't involved in all of this at  
9           all?

10  A.   Whether they were or not, I went through all the  
11           processes that were available to me and many  
12           that shouldn't have been available. I traveled  
13           down every road possible and I fought this fight  
14           for many, many years. I went through the union  
15           processes, I went through the mediation board, I  
16           went through the Interstate Commerce Commission  
17           as I have testified, I went through four  
18           Congressmen, two senators and newspapers.

19  Q.   The one thing didn't do, however, was to mark up  
20           for work and if you didn't get your guarantees,  
21           you were supposed to file a grievance and take  
22           it all the way up to arbitration. That's the  
23           one thing you didn't do, is that right?

24  A.   That is not true.

25  Q.   When did you report to work? When did you

1 report, mark up?

2 A. Wait. You said did I file a grievance.

3 MS. TRICHARICHI: That's a multiple  
4 question. Let him answer the question bit by  
5 bit.

6 MR. BLACKWELL: You've got two  
7 questions.

8 Q. Isn't it true that you could have marked up for  
9 work? You were physically capable of marking up  
10 for work, correct?

11 A. I thought so, yes.

12 Q. Okay.

13 A. I would have had to take a physical, but --

14 Q. And you did in fact report to Dr. Mischler to  
15 get such a physical, correct?

16 A. I called his office. That's what I was  
17 instructed to do.

18 Q. And he didn't call you back so you didn't  
19 reschedule a physical?

20 A. I called his office three or four times. As  
21 I've stated before, I was never going to accept  
22 any less seniority than what my August 6, '48  
23 seniority was.

24 Q. So you didn't mark up for work because you  
25 didn't have the seniority you wanted, is that

1 correct?

2 A. No, no. I didn't mark up for work because the  
3 company's position was that I was an unprotected  
4 employee and not entitled to the merger  
5 benefits. Now, I've said this about 30 or 40  
6 times.

7 Q. But that wasn't the case when you received the  
8 May 2 letter that we referred to earlier.

9 A. I don't know what you mean, it wasn't the case.

10 MS. TRICHARICHI: What's the  
11 exhibit number?.

12 MR. KERSHNER: Just a minute. It's  
13 the May 16 letter, it's Carrier's Exhibit J2.

14 A. Just one second here. That's May 16, '69, sir.

15 Q. That's correct.

16 MS. TRICHARICHI: I thought you  
17 said May 2. Did you say May 2?

18 MR. KERSHNER: I misspoke. It's  
19 May 16.

20 Q. So as of that date, you were assured, were you  
21 not, that you would get benefits under the  
22 merger protective agreement, isn't that correct?

23 A. Not all.

24 Q. You still doubted whether you were entitled to  
25 them?

1 A. Read the letter, sir.

2 Q. I'm reading the letter and have read it. I'm  
3 trying to determine how a reasonable person  
4 could read that letter and believe they weren't  
5 entitled to the merger protection agreement.

6 A. Can I refer you paragraph 2 or can I read it?

7 Q. Speaks for itself. I haven't asked you a  
8 question.

9 A. Well, okay, sir.

10 MR. BLACKWELL: Well, excuse me.  
11 Let me interrupt here. Don't put to this  
12 witness the construction of a reasonable person,  
13 Mr. Kershner. He is himself. Put to him what  
14 he took it to mean because he's already  
15 testified on it back and forth.

16 MR. KERSHNER: I'll withdraw the  
17 question.

18 MR. BLACKWELL: Excuse me. Mr.  
19 Kershner, let me clarify that last comment from  
20 the Chair. Put to him first what he -- you can  
21 withdraw it. I'm not saying you need to bring  
22 it back. But I would expect you to put to him  
23 what his opinion was, then you follow it up  
24 with, you know, whatever further definitional  
25 questions about reasonable you might want to

1 do.

2 MR. KERSHNER: I think your first  
3 observation was correct. I have no further  
4 questions.

5 MS. TRICHARICHI: I have a couple  
6 questions.

7 MR. BLACKWELL: This is not  
8 directed any more to you than to Mr. Kershner,  
9 but we're going to have to exercise some self  
10 discipline at some point. We can't have direct  
11 and recross and redirect ad infinitum.

12 MS. TRICHARICHI: Two questions  
13 which are directly related to what he said.

14

15 REDIRECT-EXAMINATION OF RAYMOND BEEDLOW

16 BY MS. TRICHARICHI:

17 Q. Carrier Exhibit J2 to which he just referred  
18 you, does that document refer to you as a New  
19 York Central employee, Mr. Beedlow?

20 A. That document refers to me with September 10,  
21 '64 seniority.

22 Q. Does it refer to you as a New York Central  
23 employee?

24 A. No, it doesn't.

25 Q. Does it give you any verification that the

1           company's position has changed in 1969 from what  
2           it had been the prior four years in saying that  
3           you weren't?

4   A.   Their position as far as I'm concerned has never  
5        changed.

6   Q.   And there was some confusion, I believe, in the  
7        questioning about the 2.46 percent of the jobs.  
8        Those were not C.U.T jobs, were they?

9   A.   That was the entire Cleveland Terminal District.

10  Q.   It was 2.46 percent of the jobs that were  
11       reserved for people who worked at the C.U.T.  
12       They were not C.U.T jobs, is that a fair  
13       statement?

14  A.   They were 2.46 of the entire Cleveland Terminal  
15       District jobs, which is two and a half percent.  
16       So if there was a hundred jobs we were entitled  
17       to two and a half jobs.

18  Q.   And they weren't necessarily passenger yard  
19       jobs, that a fair statement?

20  A.   By that time I don't think there were any  
21       passenger yard jobs. It was just not too long  
22       before Amtrack. There were no more passenger  
23       trains. We might have had a mail hall job left,  
24       but that's it.

25  Q.   So they were freightyard jobs?

1 A. Oh, yes.

2 MS. TRICHARICHI: I have no further  
3 questions.

4 MR. KERSHNER: I have no further  
5 questions.

6 MR. BLACKWELL: All right. We have  
7 30 more minutes so we'll see if we can conclude  
8 the board members' interrogation.

9 THE WITNESS: Thank you.

10 MR. BLACKWELL: Excuse me. You're  
11 not released unless you need a comfort break.

12 THE WITNESS: Oh, no, I'm sorry. I  
13 thought I was done.

14 MR. BLACKWELL: Mr. Steffen.

15 MR. STEFFEN: I just have a short  
16 series of questions to clarify my thinking on  
17 this.

18 - - - -

19 EXAMINATION OF RAYMOND BEEDLOW

20 BY MR. STEFFEN:

21 Q. You state that you were a New York Central  
22 employee since the date of first hire, is that  
23 correct?

24 A. That's correct.

25 Q. And you feel that as a New York Central employee

1           that you were entitled to protection under the  
2           merger protection agreement, is that correct?

3   A.   I felt I should not be treated any differently  
4           than anybody else, sir.

5   Q.   And under the merger protection agreement you  
6           felt that you were entitled to be -- I believe  
7           it's the Ohio District 4 seniority roster?

8   A.   I don't know whether it's Ohio.  But it's  
9           District 4.  I know that.

10  Q.   District 4.  And you recall that under the  
11           merger protection agreement that you are  
12           entitled to your date of first hire on that  
13           roster, is that correct?

14  A.   It's a consolidated roster, yes.

15  Q.   And up to 1976 you feel you weren't put on that  
16           roster because the railroad told you that you  
17           were not a New York Central employee, you are on  
18           the roster but not given your date of first hire  
19           seniority?

20  A.   No.  I was given the top and bottom seniority  
21           date when the railroad said I became a New York  
22           Central employee.

23  Q.   And that went right up until 1976, is that  
24           correct?

25  A.   It's still that way, sir.

1 Q. And still that way. In 1976 you attended a  
2 trial before Judge Lambros?

3 A. Yes, sir.

4 Q. And as a result of that trial he determined that  
5 you were in fact a New York Central employee  
6 right from the date of your first hire, is that  
7 correct?

8 A. That's correct.

9 Q. After that date did the railroad then change  
10 your seniority on the District 4 seniority  
11 roster to show your date of first hire on that  
12 roster?

13 A. They've never changed anything.

14 MR. BLACKWELL: Excuse me. After  
15 what date? Clarify it for the record.

16 MR. STEFFEN: After 1976 up to the  
17 present time.

18 MR. BLACKWELL: After the date of  
19 the court ruling?

20 A. I was probably removed. I don't know. I was  
21 not privy to that information at that time, sir.

22 MR. BLACKWELL: The answer is you  
23 were not put on it?

24 A. No, I was never given my seniority date.

25 MR. BLACKWELL: Excuse me. Go

1 ahead.

2 MR. STEFFEN: I have no further  
3 questions.

4 - - - -

5 EXAMINATION OF RAYMOND BEEDLOW

6 BY MR. BURTON:

7 Q. Just a couple of brief questions. Mr. Beedlow,  
8 what parties negotiate seniority agreements?  
9 Who negotiates seniority agreements?

10 A. Generally the carrier and the representative  
11 unions.

12 Q. Are you asking this board to change your  
13 seniority date?

14 A. I think it's -- am I asking them to change it  
15 today?

16 Q. Yes. Is that part of your claim?

17 A. I'm asking to be made whole, sir.

18 Q. No. Answer my question about the seniority  
19 date. Are you asking this board to change your  
20 seniority date, give you a new seniority date?

21 A. I think --

22 MS. TRICHARICHI: Give him a new  
23 seniority date? Is that what you said?

24 MR. BURTON: That's the question.

25 A. You mean -- what do you mean, change it? To put

1           it to my original hire out date?

2   Q.   Yes.

3   A.   I'm not asking this board to give me -- we can't  
4       turn back the clock 22 years but I'd sure like  
5       to.  If you'll give me my seniority and protect  
6       me in my class and craft, I'll go back to work  
7       tomorrow morning.

8                   MR. BURTON:  That's all I have.

9

10                           EXAMINATION OF RAYMOND BEEDLOW

11           BY MR. BLACKWELL:

12   Q.   Mr. Beedlow, I won't characterize my questions  
13       as brief as my colleagues have.  I will make  
14       this observation though.  I will put my  
15       questions, which are primarily for clarification  
16       and for my understanding, and I will attempt to  
17       put them in rather precise terms without  
18       diplomatic innuendoes and covering adjectives  
19       because I want to get information and I want to  
20       meet our 12:30 recess schedule.

21   A.   Yes, sir.

22   Q.   So the point is don't, please don't take my  
23       questions as any indication of prejudgment for  
24       or against your claim in this proceeding.

25   A.   I understand.

1 Q. Or as hostile or prejudgment in any way, shape  
2 or form. All right. Now, these are all, Mr.  
3 Beedlow, if-you-know questions.

4 A. Yes, sir.

5 Q. And it doesn't have to be based on your direct  
6 knowledge that you were there when it happened  
7 or anything like that. But if you know from  
8 your general knowledge. And if you don't know,  
9 don't think that because I put the question to  
10 you, I expect you to know.

11 A. I understand.

12 Q. If you don't know, just say so and we'll save  
13 time here and go ahead forward.

14 Now, February 16, '65 agreement and the  
15 August '69 agreement, of course, they've been  
16 involved in much of the testimony here. Now,  
17 first question. This is an if-you-know. Now,  
18 I'm not talking about when you learned of this  
19 yet. That will come in later. Right now I'm  
20 just talking about do you know it now, you know,  
21 you've read texts just like everybody else.

22 Now, do you know now, the date, the  
23 seniority date that was put in here for the men  
24 in your position, the Cleveland Union Terminal  
25 employees as characterized by these officials --

1           that's not my characterization -- and the union  
2           authors of this document agreed on a date of  
3           September 10, 1964, which you've testified,  
4           which according to your perception of your  
5           rights, was a mismatch with what you needed  
6           under the merger, the test period dates of  
7           merger.

8    A.   Yes.

9    Q.   And that if that date had fitted in, then you've  
10       indicated that you may well have accepted  
11       whatever is here and taken a recall, subject, of  
12       course, to your testimony about freightyard work  
13       not being comparable.

14               Now, the September 10, '64, do you know why  
15       that date was selected rather than January 1,  
16       '64 or January 1, '63?

17   A.   Well, the company put out a letter that was  
18       never received, an exhibit that has been entered  
19       into evidence, on September 9, 1965 and Stalder  
20       put the letter out asking us to be canvassed.

21   Q.   Okay.

22   A.   And how many if any would be desirous of working  
23       in the freightyard.

24   Q.   At Collinwood yard?

25   A.   Yeah, in the freightyard, okay. And they had a

1 meeting. It is my understanding that there was  
2 a meeting a two-day meeting went on September 9  
3 and September 10 of 1964. And they made this  
4 date -- supposedly we were supposed to have been  
5 canvassed and they put down the following date  
6 of this day which was outside the scope of the  
7 merger agreements.

8 Q. Okay. All right. I understand that. You're  
9 saying that they sent out a letter a certain  
10 date and that occurred to somebody as the date  
11 to use on this. Now, here is what I noticed.

12 A. Yes. But it wasn't sent.

13 Q. Well, it's an exhibit?

14 A. Well, it's an exhibit.

15 Q. Well, you're saying it wasn't sent. Didn't it  
16 go to a union official who was asked to do a  
17 canvas?

18 A. I think it was addressed to two union officials.

19 Q. Well, do you know they did not receive it?

20 A. I don't know that -- I don't know that --

21 Q. Are you basing the fact that you were not  
22 solicited in the canvas, is that the reason you  
23 say the letter didn't go out?

24 A. I'm saying that nobody in the Cleveland Terminal  
25 District was solicited.

1 Q. So the letter may have been received by those  
2 two addressees?

3 A. Very possible.

4 Q. Now, I've noticed in this Exhibit 13 that the  
5 men were going on this roster on page 13 in  
6 January of '64, in January, one, two, three,  
7 four, five, six, seven, right -- well, at least  
8 ten or twelve men?

9 MS. TRICHARICHI: What page are you  
10 on?

11 MR. BLACKWELL: Carrier Exhibit 13,  
12 page 13. It's paginated 13.

13 A. Yes, sir.

14 Q. All right. Well, that falls clear of the men in  
15 freight service, if I'm reading this correctly.  
16 This man hired on January 1, '64, Mr. Iosu,  
17 I O S U, he's hired at the freightyard, is he  
18 not?

19 A. Well, I believe what this was at this time was  
20 an attempt by the company to give all  
21 employees -- there were separate crafts  
22 involved. Brakemen were one craft, passenger  
23 service people were another craft and switch  
24 tenders were a third craft. And switch tenders  
25 are not allowed to ride engines, make up

1       trains. Some of these people only had one leg,  
2       one arm. But they promoted them all to the  
3       footboard, sir, even though they couldn't --

4   Q.   Oh, that's these January '64?

5   A.   Yeah, because they didn't hire all these people  
6       specifically. I think these were promoted  
7       people.

8   Q.   Okay. Now, let me ask you this then. These are  
9       promoted people, these January '64 people. Now,  
10      you said that almost all of the people over at  
11      the Cleveland Terminal were treated as being  
12      under the merger protective agreement, and that  
13      the smaller number were treated as outside your  
14      group, and car men, you said.

15  A.   Yes, sir.

16  Q.   Now, are any car men in this January '64 group  
17      to your knowledge?

18  A.   Oh, there couldn't be.

19  Q.   Okay. Now, these car men that were excluded,  
20      were there any over at the Cleveland Union  
21      Terminal or were they all at the freightyard or  
22      were they all at the Cleveland Union Terminal?

23  A.   Well, the car men all belonged to one local but  
24      they were separated in class and craft. They  
25      all belonged to the same local at Collinwood.

1 Q. But they were all in the car men craft?

2 A. Yes, sir, but there was a separation of the  
3 freight service from the passenger service.  
4 There's much difference.

5 Q. Okay. So did the freight service car men get  
6 MPA protection?

7 A. Yes, sir.

8 Q. And the C.U.T men over at the passenger terminal  
9 got in your category?

10 A. Exactly.

11 Q. All right. Okay. Now, let me ask you this.  
12 This is Carrier Exhibit D1. This is still what  
13 we're on. Maybe you ought to get this  
14 agreement. It's the February 16, '65  
15 agreement.

16 A. I think you're going to have to excuse me for a  
17 minute.

18 - - - -  
19 (Thereupon, a discussion was had off  
20 the record.)

21 - - - -  
22 (Thereupon, a recess was had.)

23 - - - -  
24 MR. BLACKWELL: All right. We're  
25 resuming. For the record and for the

- 1           representatives' and my colleagues' benefit,  
2           it's 12:22. We're not likely to finish the  
3           questioning of the board and then back to the  
4           representatives before 12:30. Nonetheless I'm  
5           going to recess at 12:30. We will stick to the  
6           schedule and we'll resume when we return.
- 7   Q.   All right. Look at page 2 of the February 16,  
8           '65 agreement.
- 9   A.   Yes, sir.
- 10   Q.   Paragraph 10 there references that revised  
11           seniority roster that as of the effective date  
12           here will be appended to this agreement. When  
13           did you or to your knowledge did you know when  
14           that revised seniority was published and made  
15           available?
- 16   A.   You have to explain what they mean exactly. I'm  
17           not sure what that means.
- 18   Q.   Well, when you got a copy of this, you did get a  
19           copy at some point?
- 20   A.   Eventually, yes, sir.
- 21   Q.   Was there a revised seniority roster appended to  
22           it or did you just get this two-page --
- 23   A.   I never got a revised seniority list.
- 24   Q.   All right. Have you ever heard a representation  
25           from anybody, union or company, that this

1 Exhibit 13 is the revised seniority roster that  
2 is -- that is, I won't say created -- that's  
3 associated, to be associated with the  
4 February 16, '65 agreement?

5 A. I don't believe I have ever seen it up until  
6 maybe a day or two ago, this revised,  
7 so-called --

8 MR. BLACKWELL: Okay. Is there  
9 other seniority rosters in evidence?

10 MS. TRICHARICHI: Yes.

11 MR. BLACKWELL: Whose is exhibit  
12 that?

13 MR. KERSHNER: There's one that's  
14 marked as Carrier's Exhibit D1.

15 MR. KERSHNER: Okay. What about  
16 this Carrier's Exhibit D1? Isn't this more or  
17 less a replay of the 13, Mr. Kershner?

18 MS. TRICHARICHI: It's a different  
19 date. January 1, 1965 is the date of this.

20 MR. BLACKWELL: Well, you're going  
21 to wind up --

22 A. It's a different code also.

23 MS. TRICHARICHI: It's a completely  
24 different date and code roster.

25 MR. BLACKWELL: -- with

1 approximately the same number of people?

2 A. No doubt. 2103.

3 Q. All right. Did you see this associated with the  
4 February 16, '65 agreement or any roster?

5 A. I saw rosters --

6 MS. TRICHARICHI: This is before,  
7 this is February 1, 1965. It's before the 1965  
8 agreement.

9 MR. BLACKWELL: Oh, okay. Okay.  
10 All right.

11 A. No. Wait a minute. It's not --

12 MS. TRICHARICHI: Well, the first  
13 part of it is February 1.

14 MR. BLACKWELL: But if it's in  
15 existence --

16 MS. TRICHARICHI: January 1, 1965  
17 is the date.

18 A. I'd like to make a point here, sir.

19 Q. All right.

20 A. They've got this marked down January 1, '65.

21 Q. Okay. I understand.

22 A. And they didn't sign the top and bottom until  
23 February 16, '65.

24 Q. I understand that.

25 A. So how could they possibly have us down here

1 with September 10, '64 seniority when the  
2 agreement was --

3 Q. Somebody is efficient in their paperwork. It  
4 happens all the time.

5 A. You know, it seems to happen quite often.

6 Q. Well, I mean, you know, this --

7 A. We were --

8 Q. Well, I'm just asking you now, you didn't -- I  
9 just want to summarize it. I gather that you  
10 never saw any seniority roster on a, you know,  
11 surface reading that matches what is described  
12 in paragraph 10?

13 A. And paragraph 10 was a so-called appended  
14 roster?

15 Q. Yeah. It says revised seniority rosters which,  
16 you know, this could possibly be such. Do you  
17 know that?

18 A. Yes, I'm sure I've seen rosters.

19 Q. To conform to the terms of this agreement will  
20 be appended to this agreement. And you say you  
21 saw this agreement a couple of --

22 A. '68.

23 Q. '68. And you've just said you didn't see a  
24 roster though until much later, is that correct?

25 A. The first roster I'm aware of was, I think

1           around September or October of '69 and it was a  
2           District 4 roster.

3 Q.   Okay. So you got this and then later on you saw  
4           a roster that could be said to go with it?

5 A.   Yes.

6 Q.   I'm not saying did. I'm saying could be.

7                       MR. KERSHNER: As a point of  
8           clarification, Mr. Blackwell, Carrier's Exhibit  
9           D1 is two separate rosters.

10                      MS. TRICHARICHI: Yes, it is  
11           combined. Carrier's Exhibit D1 --

12                      MR. KERSHNER: Let me finish,  
13           please.

14                      MS. TRICHARICHI: -- is the same as  
15           Plaintiff's Exhibit --

16                      MR. KERSHNER: Is New York Central  
17           and Big Four joint seniority roster switch  
18           tenders, and that's dated 1-1-65. The next  
19           roster is 2104B, which is dated February 16,  
20           '65.

21                      MS. TRICHARICHI: Which is  
22           identical to Claimants' Exhibit 3 which is the  
23           second part of that, which is February 16, 1965,  
24           if you notice. 2104B. My Exhibit 3 is the  
25           second half of your Exhibit D1.

1 MR. KERSHNER: That's correct.

2 Q. Now, I'm not backing you in the corner on this,  
3 Mr. Beedlow, but I'm reminding you, your  
4 attorney does have 2-16-65. Well, you are  
5 looking at it now, right?

6 A. Yes, sir.

7 Q. That would arguably be associated with the  
8 12-16-65 agreement, paragraph 10, correct?

9 A. You mean an amended -- a roster and I'm number  
10 503 on this roster?

11 Q. Well, I'm just matching the dates right now.  
12 Let me see.

13 A. I just want to be sure I understand the  
14 question.

15 Q. Well, that's certainly your prerogative. Where  
16 are you on this?

17 A. On page 17.

18 Q. Okay. So you're 503. Okay. My quick scan is  
19 that, yes, this could fulfill the reference of  
20 paragraph 10 in the agreement.

21 A. I have to agree with you.

22 MS. TRICHARICHI: If you know.

23 Q. With that your testimony still is you don't know  
24 when you got this and your recall is you didn't  
25 get it when you got the two-page agreement?

- 1 A. Well, this agreement is dated February 16, '65.
- 2 Q. Right. And this is --
- 3 A. And they didn't sign the agreement until that
- 4 date.
- 5 Q. Well, this roster is 2-16 also.
- 6 A. Yes, I know. But that's the date they signed
- 7 the top and bottom.
- 8 Q. Yes. Okay. Well, the top and bottom agreement
- 9 is the 2-16-65 agreement, isn't it?
- 10 A. Yes.
- 11 Q. All right. Now, let me ask you this. Well,
- 12 first of all, keep in mind that this roster we
- 13 just looked at, your Exhibit 3, Claimants'
- 14 Exhibit 3, has all the freightmen, you know, at
- 15 the top side and then your group bottom side.
- 16 A. Yes, sir.
- 17 Q. Now, then I'm going to ask you again your
- 18 construction of it or your understanding of it
- 19 when you received it. I'm looking at D1,
- 20 Carrier's Exhibit D1, which is the --
- 21 A. Top and bottom?
- 22 Q. Yes.
- 23 A. Okay.
- 24 Q. And as I'm reading 4, paragraph 4, as I read
- 25 this roster and this agreement, one of the

1 things this agreement says is that we're  
2 combining two rosters?

3 A. That's exactly right.

4 Q. And under that roster, the senior men, of  
5 course, they got the jobs. And then the way  
6 these things go, that means that they would  
7 stand ahead of you for the Cleveland Terminal  
8 passenger work under that roster?

9 MS. TRICHARICHI: If you know.

10 Q. Would it or not?

11 A. I'm not sure. You're going to have to rephrase  
12 that for me to understand it.

13 Q. Well, I'm trying to understand what you thought  
14 this meant, because as I'm reading 4, this is  
15 saying that assignments, including the extra  
16 list, in the Cleveland Union Terminals Company  
17 territory -- and from what's been said here, I  
18 take that to mean the old former passenger  
19 station right across the street here and the  
20 Lakefront passenger facility. Whatever it was,  
21 that's territory not bid in by Cleveland Union  
22 Terminals Company yardmen, that's your group?

23 A. Yes, sir.

24 Q. -- will effective February 16, '65 be open for  
25 bid to all NYC freightyard men with the

1 seniority date prior to January 2, '64 and in  
2 the order of their seniority on the N.Y.C.  
3 freightyard rosters prior to that date?

4 A. I understand.

5 Q. Now, I'm curious. What did that mean to you?

6 A. According to this, what I get out of this is  
7 that any yardman on the freightyard which would  
8 be senior to me of September 10, '64 would be  
9 allowed to come into the terminal and bump me.

10 Q. Well, that's what I'm getting at. When you  
11 combine crafts and rosters, that's one of the --

12 A. That's exactly what it says, sir.

13 Q. But I'm gathering from what you're saying that  
14 you never got far enough along to get that  
15 construction out of it because you never really  
16 got past the September 10, '64 seniority date  
17 and not --

18 A. Yeah. This agreement was never implemented,  
19 sir, until after '68 when they said go.

20 Q. Okay. Well, that's the next thing. That this  
21 has got an effective date of February 16, '65  
22 and according to you, it was not revealed to you  
23 until a couple of years later?

24 A. '68.

25 Q. So if this February 16, '65, if this paragraph 4

1 had the meaning that you just attributed to  
2 it --

3 A. Yes, sir.

4 Q. -- it would all be over and done if this could  
5 be legally implemented after the fact?

6 MS. TRICHARICHI: What do you mean,  
7 it would all be over and done? I don't  
8 understand.

9 MR. BLACKWELL: Well, he just said  
10 that the freightyard men were given seniority to  
11 the Cleveland --

12 A. Well, my understanding of 4 here, trying to read  
13 it, it says in effect that regardless of my  
14 position, anybody on the joint seniority roster  
15 which is the freightyard rosters, for all  
16 intents -- it says that they're entitled to my  
17 job in the Cleveland Union Terminal.

18 Q. Okay. Now, then by the time this came to your  
19 attention were there any passenger service jobs  
20 left in Cleveland either at the downtown --

21 A. Oh, yes.

22 Q. How many approximately?

23 A. When we were furloughed.

24 Q. This is in '68.

25 A. February 21 -- effective February 25th, we had

1 approximately 20, 25 men working and it was all  
2 passenger service employees.

3 Q. Okay. All right. Now, let me ask you this.  
4 Well, I'll ask this other specific first. Now,  
5 there came a time when you got -- and I'm not  
6 sure I have it, but I've seen the letter here.  
7 There came a time when you got a letter from a  
8 carrier official telling you and your group that  
9 if you did not report, you were subject to  
10 seniority forfeiture. I think that was a May  
11 '69 letter.

12 A. May 2, I believe.

13 Q. May 2, okay. And then in a general way you've  
14 talked about an investigative hearing in that  
15 connection. Under the schedule agreement were  
16 you entitled to a hearing on a seniority  
17 forfeiture declaration by the company --

18 A. I was entitled --

19 Q. -- in your opinion?

20 A. Of course. I was entitled to have charges, what  
21 rules violated --

22 Q. Well, let me put it to you this way. This  
23 varies, so is it your belief that the carrier  
24 officials agreed with you that an employee  
25 requesting or wanting a hearing could get it

1 before the seniority forfeiture for failure to  
2 report for a recall?

3 A. They must give me the hearing, sir.

4 Q. Well, I'm asking you -- I understand that's your  
5 opinion. Are you of the opinion that the  
6 carrier agreed with you that you were entitled  
7 to a hearing?

8 A. They agreed to --

9 Q. Under your collective bargaining agreement, did  
10 you know of seniority forfeiture problems going  
11 to hearings before?

12 A. Yes, sir.

13 Q. Okay. So then you're of the opinion that the  
14 carrier recognized your right to that hearing  
15 and that you're saying that this July 5, 6  
16 correspondence phased out without that hearing  
17 occurring and you seem not to know why it didn't  
18 occur?

19 A. I'm saying that they answered me on July 23rd  
20 and they stated that --

21 Q. Well, they said that, you know, they were  
22 passing it on for handling?

23 A. That's exactly right.

24 Q. Well, okay. But no hearing?

25 A. No hearing was ever held, sir. No charges were

1 ever drawn.

2 Q. Now, on this '69 agreement that we have just  
3 been looking at, that is --

4 A. H.

5 Q. -- H. Okay. On that one which has some text in  
6 paragraph 7, which we've heard testimony on and  
7 which I expect to hear more on later, now, you  
8 say that this agreement also was not known to  
9 you of your own direct knowledge until some time  
10 in '76 or '77?

11 A. No. No. Until '70 or '71.

12 Q. Okay. Well, '70 would have been the earliest?

13 A. Yes, sir.

14 Q. Now, then during this time and before the UTU  
15 merger, was there a switchmen's union here?

16 A. Oh, yes, sir.

17 Q. And you were in the switchmen's union?

18 A. No. I was in the Brotherhood of Railroad  
19 Trainmen.

20 Q. So you were in the Trainmen all along?

21 A. Which held the contract.

22 Q. So you were in the Trainmen even when you had a  
23 switchmen's union?

24 A. Yes, there was two unions, at least two.

25 Q. And were your coclaimants in the Trainmen also?

- 1 A. Not all of them. But by far the majority.
- 2 Q. Well, do you know whether they had dual  
3 membership?
- 4 A. Oh, no. I don't believe anybody doubleheaded,  
5 what they called doubleheaded.
- 6 Q. Okay. Now, then come '68 you're working in a  
7 union position as secretary at an office around  
8 here somewhere, right?
- 9 A. Yes, sir.
- 10 Q. That's your work. Were your coclaimants at work  
11 on passenger service work when that furlough  
12 came out?
- 13 A. Yes.
- 14 Q. Okay. So they were all working until they got  
15 that furlough notice?
- 16 A. And many were working after the furlough notice.
- 17 Q. Okay. And I suppose you were named in that  
18 furlough notice even though you were in a union  
19 job?
- 20 A. Oh, of course.
- 21 Q. And then your union job folded up --
- 22 A. No, not at that time, sir.
- 23 Q. Well, that's why I was asking you about  
24 switchmen. You said that your job ceased to  
25 exist when there was a merger of the unions.

1 A. Yes. There was amalgamation of the union.

2 Q. Oh, trainmen and conductors amalgamation?

3 A. And firemen.

4 Q. And the firemen. All right.

5 A. And switchmen. The four unions merged into one  
6 in '69.

7 Q. So then you had your union coordination?

8 A. Exactly, right.

9 Q. Now, then you were talking about this mix of the  
10 engine crew -- of there being two paychecks, an  
11 N.Y.C. check and a Cleveland Union Terminal  
12 check, and you got the Cleveland Union Terminal  
13 for work done in the terminal and then if you  
14 were out at Lakeside passenger, you got a New  
15 York Central check, is that it?

16 A. Lakefront. Anything outside the confines.

17 Q. Do you know whether that dual check procedure  
18 applied to engine crews also?

19 A. Yes, it did.

20 Q. They were the same.

21 A. I testified to that, sir.

22 Q. Now then, you've testified I believe this was in  
23 your --

24 MR. BLACKWELL: All right. I'm  
25 fifteen minutes overdue. And although I'm

1 almost finished, since I've caught myself, I'm  
2 going to recess. If I had caught it earlier, I  
3 would have done it early enough. All right.  
4 We're going to take one hour. No more.

5 And I have just -- I won't say brief  
6 questions, but I will complete my interrogation  
7 upon the return. Then the witness will be back  
8 to Miss Tricharichi and then Mr. Kershner and  
9 we'll conclude with this witness when we return  
10 from lunch break.

11 All right. We will be back in one hour.

12

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(Thereupon, a luncheon recess was had.)

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1                    FRIDAY AFTERNOON SESSION, MAY 4, 1990

2                    -   -   -   -  
3                    MR. BLACKWELL: All right. We're  
4 resuming at 1:52 p.m. The Chair will complete  
5 his questions of Mr. Beedlow.

6                    -   -   -   -  
7                    CONTINUED EXAMINATION OF RAYMOND BEEDLOW

8                    BY MR. BLACKWELL:

9 Q. Mr. Beedlow, you've already been interrogated on  
10 this subject that I wish to retrace now. You've  
11 been interrogated on direct and cross about the  
12 May 16, '69 letter from Mr. Stalder to you. It's  
13 in Carrier's Exhibit J2.

14 A. Yes, sir.

15 Q. And now, with that as the springboard, you  
16 notice paragraph 2 tells you that -- well, it  
17 states what it states. Now, with that reminder  
18 before you, and you've already testified on  
19 this, and I want to get it again and see if I  
20 need to get you to elaborate. Then you were  
21 interrogated on direct on that same subject  
22 matter in respect to what Mr. Stalder said in  
23 the his testimony in that litigation. Would you  
24 state that again?

25 A. Yes, sir.

1 Q. Would you state again your recall of your  
2 testimony about what you heard Mr. Stalder say  
3 on that occasion?

4 A. My testimony on what Mr. Stalder said in court?

5 Q. Yes. Just this one narrow point.

6 A. Yes. He stated on the record that on the date  
7 of the agreement -- he's talking about the top  
8 and bottom of February 16, '65 -- he said that  
9 we were Cleveland Union Terminal employees and  
10 not a party to the merger.

11 Q. And if you're not a party to the merger, you  
12 were not covered by merger protective  
13 agreements?

14 A. That's exactly right.

15 Q. Did he speak on the time frame of 1969, this --  
16 just a minute.

17 A. H, I think it is.

18 Q. Yes. You've just spoken now on the '65 top and  
19 bottom. Now, did the testimony address this  
20 here, August of '69 or July or thereafter? I  
21 don't want to confuse you, Mr. Beedlow. Let me  
22 ask you this. Was his testimony in the current  
23 sense, in the current time frame of the 1970  
24 litigation?

25 A. '76.

1 Q. That's when he was testifying?

2 A. Yes, sir.

3 Q. And was he speaking as of that period in time?

4 A. Yes. He said that was his position on July 14,  
5 1976 or July 12.

6 Q. Okay. When he testified in the litigation -- it  
7 will be in the transcript somewhere, I know  
8 that, but I'm trying to get it from you -- now,  
9 your recall is that he said that your group,  
10 Cleveland Union passenger groundmen, were not  
11 New York Central employees at the critical  
12 period, the definition of period under the  
13 merger protective agreement, and you therefore,  
14 were not covered by the merger, you were not  
15 entitled to the merger protective agreement  
16 benefits?

17 A. Yes. He said that he had construed and  
18 constructed the top and bottom agreement. He  
19 also stated that on the day of the signing of  
20 the top and bottom, February 16, '65, that we  
21 were Cleveland Union Terminal going into that  
22 top and bottom agreement and became New York  
23 Central coming out of it.

24 Q. Did he have any testimony about when the  
25 Cleveland Union Terminal people had knowledge of

1           that '65 agreement?

2   A.   I don't think he testified on that at all.

3   Q.   You say you didn't know about it?

4   A.   No, no, I didn't know anything about it.

5   Q.   Let me ask you this now.  Now, I'm not going to  
6       use a heavy-handed adjective.  I'm just going to  
7       ask you in simple terms of now.  You've  
8       testified here today before the board, before  
9       the arbitration committee, that an agreement was  
10      struck on February 16 or made effective and  
11      signed that day, February 16, '65, that on its  
12      face had an impact on your employment rights,  
13      and an agreement was struck on July 11, '69 that  
14      had an impact on your employment rights, and  
15      that in respect to each of these agreements, on  
16      the first one you did not know about its content  
17      or the agreement until about two years later?

18  A.   Over that.

19  Q.   Okay.  Well, when the '68 furlough was --

20  A.   Yeah.  I didn't know about it until --

21  Q.   And you didn't know about the '69 agreement  
22      until '70 or '71?

23  A.   That would be six months or more.  At least.

24  Q.   All right.  Without characterizing your status  
25      of nonknowledge of those two agreements, and

- 1 with the predicate that man's experience in  
2 industrial environments tells us that there's  
3 scuttlebutt, leaks, information gets around, you  
4 know, what paperwork in the office is, even  
5 though you're not there, in these two incidents  
6 though those normal means of communication seem  
7 not to have been operative in giving you any  
8 information about these agreements, is that  
9 correct? That's just my predicate. That you  
10 didn't --
- 11 A. As a union official I should have had knowledge  
12 and I was not given knowledge.
- 13 Q. All right. That's the second thing. And as  
14 emphasis, you were the secretary and you were  
15 the secretary in '69?
- 16 A. Yes.
- 17 Q. And '68?
- 18 A. Yes.
- 19 Q. When the second agreement was signed, too?
- 20 A. Yes.
- 21 Q. And then you are further saying that you were  
22 the union official who should have received  
23 copies of these for filing purposes at a minimum  
24 and perhaps for recording or distribution or  
25 other purposes, is that correct?

1 A. And many other purposes.

2 Q. And many other purposes. And you never received  
3 them?

4 A. I had no knowledge of them at that point.

5 Q. All right. So that's it. Well, let me ask you  
6 this. Is that an unusual state of knowledge for  
7 a union official?

8 A. I've never heard of it before. I had to get --  
9 anything pertaining to lodge local 927, I had to  
10 have a copy of it because it was lodge  
11 business. As the secretary, a recording  
12 secretary and the secretary. Anything financial  
13 also. But as the secretary I had to have copies  
14 of everything to file.

15 Q. Okay. Now, let me ask you this. And this is an  
16 if you consider it appropriate to answer  
17 question because I realize you may be under some  
18 strictures that apply to what you say outside  
19 this hearing that do not bear upon your  
20 testimony in the case.

21 Are you in a position to know or infer the  
22 reason why you did not get any knowledge about  
23 either one of these agreements, about the reason  
24 you did not get any knowledge about these two  
25 agreements?

1 A. I'm sure it was the usual reason under these  
2 circumstances and that's money, but that if we  
3 were put outside the scope of the protection  
4 agreements and were -- we had over a thousand  
5 employees, and like our department in its heyday  
6 had over a thousand people, and if you can  
7 eliminate them from job protection, you're  
8 saving many millions of dollars, and if you can  
9 eliminate 200 switchmen, even though there was  
10 only 60 or 70 at the time of these agreements  
11 who were being shoved out bit by bit over the  
12 years when they should have been protected.

13 Q. Okay. Money is in the picture, which is not  
14 uncommon in the way our society works.

15 A. Not at all.

16 Q. But here in this case you had union officials,  
17 different union officials, on the two different  
18 agreements who signed them, and I think we must  
19 presume they had knowledge of what was the  
20 content?

21 A. That's correct.

22 Q. Do you have a way of knowing or inferring the  
23 reason why those union officials did not convey  
24 information to you?

25 A. Well, yes, I do. I had --

1 Q. And this is an area where if you consider it --  
2 if you consider yourself under strictures, I'm  
3 not --

4 A. No, I'm not under strictures.

5 Q. All right. If you're not --

6 A. I had letters that were not submitted here that  
7 Mr. Stalder had wrote Mr. Swert on June the  
8 25th, 1963, and Mr. Swert was not our  
9 representative. He was a representative of the  
10 Lines West and we didn't belong to pay his  
11 salary. We come under all Lines West  
12 agreements, but we didn't pay the general  
13 committeeman. And Mr. Stalder says in that  
14 letter -- Mr. Swert does. He's answering  
15 Stalder's query. And he said, In regards to our  
16 recent conversations that you've asked me to put  
17 on the record, what is my position in the  
18 Cleveland Union Terminal.

19 And of course, he's telling the company man  
20 what his position is. And he's stating, he said  
21 for the record, and he said unequivocally that  
22 no Cleveland Union Terminal employee has ever  
23 had any rights under the New York Central  
24 Railroad. And the question that brought this up  
25 was that we had a 1920 seniority employee who

1 hired out ten years before they built this  
2 building we're in, and he had seniority under  
3 New York Central, of course, from 1920. He was  
4 on our seniority roster with 1920 seniority.  
5 And his name as Wilbur Thoering.

6 Q. Let me try to expedite this. Did that statement  
7 about that individual in fact having no rights  
8 on New York Central, that could be said in one  
9 context to have nothing to do with merger  
10 protection agreements. So that's my question.  
11 Did it have anything --

12 A. I think it was -- they were getting it on  
13 record. Mr. Stalder had asked Mr. Swert to go  
14 on the record if any Cleveland Union Terminal,  
15 so-called Cleveland Union Terminal employees had  
16 any rights on the New York Central Railroad.

17 Q. Meaning in that context rights to merger  
18 protection or benefits?

19 A. Or rights on any agreements at that time because  
20 it was only a month or so later that the merger  
21 protection agreement was signed. This was June  
22 the 25th of '63.

23 Q. All right. I take it you're saying that in your  
24 opinion at least one union official decided that  
25 it was a proper position for him to conclude

1           that your group should not be advanced for  
2           merger protection agreement benefits, is that  
3           what you are saying?

4    A.   I'm saying that.  I'm saying that this man did  
5           not represent us.  He had no right to say  
6           anything.

7    Q.   Okay.  All right.  I'm saying for whatever  
8           reason --

9    A.   Yeah.  It's up to the company to hold the  
10           position of whether we're employees, not to ask  
11           the union official who has no knowledge of our  
12           history.  And he went on the record that we were  
13           not, and that's -- and he signed that agreement,  
14           Mr. Swert signed the merger protection  
15           agreement.

16   Q.   Okay.  Did you ever get any information on where  
17           this '65 or this '69 agreement was located,  
18           where its home base was between the time it was  
19           signed and the time you learned about it?

20   A.   Well, Mr. Swert also signed the '65 top and  
21           bottom agreement --

22   Q.   Yeah.

23   A.   -- taking the position that we were not New York  
24           Central employees.  He also signed the August 1,  
25           '69 agreement, and he signed that one right

1 after he signed the top and bottom. Within 30,  
2 40 days he was in New York as head of labor  
3 relations for the New York Central.

4 Q. '65 was the top and bottom, wasn't it?

5 A. Yes. He signed it and within a period of --  
6 officially I think about 70 days, he took over  
7 as head of labor relations.

8 Q. And he signed which one then?

9 A. He signed the top and bottom for the union.

10 Q. Oh, all right.

11 A. And in '69 he signed the so-called coordination  
12 for the company.

13 Q. Yeah. Okay. Well, I hear you saying without  
14 putting a reason on it that you came to a point  
15 that there was a deliberate reason for your not  
16 having information about these two agreements?

17 A. I would say so, yes.

18 Q. Or that it was a deliberate act?

19 A. Yes.

20 Q. All right. Now, let me ask you this. One other  
21 detail here. You gave me the number of  
22 passenger jobs in '68. How much passenger work  
23 was there in '65 when this top and bottom  
24 agreement was signed?

25 A. We probably had eight or ten engines, which

1 would be about 30 positions.

2 Q. We had 30 in '65 and 25 three years --

3 A. Well, about that. We had yardmasters and  
4 flagmen and so on, and some switch tender jobs,  
5 so we had eight engines and there would be 32 to  
6 35 men on a five-day week performing service on  
7 those eight engines.

8 Q. Okay. And I believe this is my last question.  
9 This is a hypothetical but I think you can  
10 answer it. You're familiar with all these  
11 documents now.

12 If in the beginning of the consummation of  
13 the merger protection agreement, which was late  
14 '64 --

15 MS. TRICHARICHI: The consummation  
16 of the agreement?

17 MR. BLACKWELL: Yes.

18 MS. TRICHARICHI: Was to come into  
19 effect January 1, 1964, signed in November of  
20 1963.

21 Q. Okay. January 1, 1964. If in '64, the local  
22 carrier people, the local union and the  
23 international union people all sent out clear  
24 messages that you're covered, Mr. Beedlow, and  
25 all of your associates at Cleveland Union

1 Terminal are covered by the merger protection  
2 agreement and entitled to merger protection  
3 benefits, what scenario would have unfolded from  
4 that point forward? Now, let me give you one  
5 further fact. You were in passenger service at  
6 the time.

7 A. Yes, sir.

8 Q. And that was the separate craft?

9 A. Yes, sir.

10 Q. And the work was declining?

11 A. Yes.

12 Q. And I presume from that that unless the crafts  
13 were combined that you could reasonably  
14 anticipate in the not too distant future a lot  
15 of passenger servicemen being furloughed and  
16 being entitled to merger protection benefits, is  
17 that a correct assessment?

18 A. According to the agreement, yes, sir.

19 Q. All right. What would be the full unfolding of  
20 that in your opinion if all of your claimants  
21 would have gone on merger protection benefits  
22 within a year or two.

23 A. Well, there's no question they were entitled to  
24 them.

25 Q. Well, I'm working with a hypothetical.

- 1 A. Yes. I'm saying if they would have -- I for  
2 one, and there was several other claimants  
3 here. We were very desperate for work. The  
4 dispatchers of the New York Central Railroad who  
5 I bowled with and knew for many years, they  
6 would call me, you know, and they would -- they  
7 had me take trains all over the country as a New  
8 York Central employee and I took these trains to  
9 Ashtabula, Painesville, Bell Fountain.
- 10 Q. You're talking about passenger trains?
- 11 A. And I also took freight. In any emergency. I  
12 even worked as a baggage man to get a day's pay  
13 and knew nothing whatsoever about baggage, but  
14 there was only 30 or 40 pieces of baggage on and  
15 when we got to this station, I shoved it out.
- 16 Q. Now, my question is if you had had merger  
17 protection benefits, would you have had to  
18 protect just work here in Cleveland or would you  
19 have had to protect work on a much wider  
20 geographical basis?
- 21 A. I would only have to protect the Cleveland  
22 passenger yards of the New York Central  
23 Railroad.
- 24 Q. Unless the crafts were merged by agreement?
- 25 A. Yes, of course. And also, our people would have

1 taken most anything. If they would have given  
2 me the work on District 4, which is the 2,100  
3 man roster that I testified to, I would have --  
4 I never would have had to go to the  
5 freightyard. I would have just went on District  
6 4 with my '48 seniority and performed any job at  
7 all. It was all brakemen, but it would have --  
8 surely, we surely should have been protected  
9 when Amtrack came in in '71. We were passenger  
10 service people but they give all those jobs to  
11 freightyard people.

12 Q. You had '48 seniority, right?

13 A. Yes, I did, sir.

14 Q. All right. If you had been given that seniority  
15 date, that would have put you ahead of -- I  
16 think you've said where you would have been.

17 A. 130 on that roster.

18 Q. 130. So then only if the passenger and freight  
19 crafts were not merged into a single craft or  
20 combined, only if you remained separate crafts  
21 would --

22 A. Yes, sir.

23 Q. -- you have been likely to receive merger  
24 protection benefits?

25 A. If they were --

1 Q. If they were kept separate, the passenger work  
2 is shrinking?

3 A. Yes.

4 Q. And if that's the only work you stand for, then  
5 you're going to get the merger -- you're going  
6 to get laid off earlier. But if the crafts were  
7 combined and you stood for both work, you would  
8 have very high seniority and you would be there  
9 a long period of time?

10 A. Yes, sir. That's -- yes. Like I -- I went back  
11 1,600 positions on District 4.

12 MR. BLACKWELL: All right. That  
13 concludes my questions. Now, as I've indicated  
14 the procedure before, Miss Tricharichi, if you  
15 have any, you would go first and then Mr.  
16 Kershner and then after that I guess we're ready  
17 for the next witness.

18 MS. TRICHARICHI: In light of the  
19 questions you just asked, Mr. Blackwell, you  
20 asked Mr. Beedlow about his recollection of what  
21 Mr. Stalder said at the trial in 1976 with  
22 regard to what Mr. Stalder's position was in  
23 1976 as to what the New York Central -- who the  
24 C.U.T people were. Now, I don't know how else  
25 to ask this except asking him if he remembers

1           this question being asked and this question  
2           being answered in response to those questions.  
3           It may be a little bit unorthodox but you've  
4           asked him --

5                         MR. BLACKWELL:   Yes.

6                         MS. TRICHARICHI:   And this is  
7           specifically --

8                         MR. BLACKWELL:   Well, does what you  
9           are looking at match his recall?

10                        MS. TRICHARICHI:   Yes, but it's  
11           very specific.

12                        MR. KERSHNER:   I believe that's  
13           already on the record.   You asked it in  
14           testimony.

15                        MS. TRICHARICHI:   No.   This is not  
16           on the record.

17                        MR. BLACKWELL:   No.   That's what  
18           didn't get in yesterday.   As long as it  
19           matches.   If you just want to bring out full  
20           testimony, you can do that by another exhibit.  
21           I don't think you need to do it with this  
22           witness.   Do you have any objection to that?

23                        MR. KERSHNER:   No objection.

24                        MS. TRICHARICHI:   It's pertinent to  
25           -- your specific question was whether at the

1 present time sitting there in 1976.

2 MR. BLACKWELL: Okay. Is that  
3 extract going to show that?

4 MS. TRICHARICHI: Yes, it is.

5 MR. BLACKWELL: Well, just describe  
6 your extract.

7 MS. TRICHARICHI: It's very brief.

8 MR. KERSHNER: May I see it?

9 MS. TRICHARICHI: Certainly you may  
10 see it.

11 MR. BLACKWELL: Give him what lines  
12 we're --

13 MS. TRICHARICHI: Well, he doesn't  
14 have it. The part that is marked at the bottom  
15 of that page.

16 MR. BLACKWELL: What's the  
17 transcript date?

18 MS. TRICHARICHI: 1976, July 14th,  
19 I believe.

20 MR. BLACKWELL: July 14.

21 MS. TRICHARICHI: Or thereabouts.  
22 It went on for a few days. It was in July of  
23 '76.

24 THE WITNESS: Five days.

25 MR. KERSHNER: You are offering

1 this for the purpose of demonstrating that Mr.  
2 Stalder's position --

3 MS. TRICHARICHI: In 1976 which was  
4 Mr. Blackwell's question.

5 MR. KERSHNER: -- that the C.U.T  
6 people --

7 MS. TRICHARICHI: Top of the next  
8 page, Mr. Kershner.

9 MR. KERSHNER: -- were employees of  
10 a subsidiary company and not employees of New  
11 York Central.

12 MS. TRICHARICHI: Top of the next  
13 page, Mr. Kershner, and still is our position to  
14 this day.

15 MR. KERSHNER: Yes. That's right.

16 MS. TRICHARICHI: Well, I'd like to  
17 read it.

18 MR. KERSHNER: No problem.

19 MR. BLACKWELL: Well, I don't think  
20 you need to interrogate. This is an official  
21 transcript, is it?

22 MS. TRICHARICHI: That was our  
23 position and still is.

24 MR. BLACKWELL: Open the quote.  
25 Give us the page number.

1 MS. TRICHARICHI: Page number is 43  
2 of the transcript of the 1976 hearing, the date  
3 of which -- apparently it began on July 8,  
4 1976. I can't tell you the exact date of this  
5 particular examination.

6 MR. BLACKWELL: Well, you've got a  
7 page number. That's okay.

8 - - - -

9 CONTINUED REDIRECT-EXAMINATION

10 OF RAYMOND BEEDLOW

11 BY MS. TRICHARICHI:

12 Q. This is the question. Now, I want to ask you,  
13 Mr. Stalder -- who had previously identified  
14 himself as general manager of labor relations  
15 for the New York Central Railroad and later for  
16 the Penn Central Railroad. Now, I want to ask  
17 you, Mr. Stalder, if in fact that assumption is  
18 correct that in fact when Mr. George Norris went  
19 to work at the Cleveland Union Terminal yards in  
20 1954, he was a New York Central employee and  
21 then his name should appear on that consolidated  
22 seniority roster with the 1954 seniority date,  
23 should it not?

24 Answer. From Mr. Stalder. If he had been  
25 a bona fide employee of the New York Central

1           rather than a subsidiary company, yes. But he  
2           was an employee of a subsidiary company.

3           Question. That was the railroad's  
4           position?

5           Answer. That was our position.

6           Question. And it still is?

7           Answer. Well, it is before the Interstate  
8           Commerce Commission.

9           This is in 1976, is it not, Mr. Beedlow?

10          A. Yes.

11          Q. And this is two years after the 1974 Interstate  
12           Commerce Commission ruling that the Cleveland  
13           Union Terminal employees were in fact New York  
14           Central employees?

15          A. Yes.

16          Q. And the head of labor relations continues to  
17           maintain the position?

18                   MR. KERSHNER: May I see the rest  
19           of what you just read? The ICC determination --  
20           read the rest of the sentence.

21                   MS. TRICHARICHI: Well, it is  
22           before the Interstate Commerce Commission signs  
23           it.

24                   MR. KERSHNER: Okay.

25                   MS. TRICHARICHI: Okay?

1 MR. KERSHNER: I'd like the  
2 complete sentence.

3 MS. TRICHARICHI: Well, you could  
4 have had the complete transcript if you had  
5 ordered it.

6 Q. Mr. Blackwell referred to the, for lack of a  
7 better word -- and I don't know what a better  
8 word is -- kind of basically the scuttlebutt  
9 around with regard to what agreements were in  
10 existence. You recall him asking you about  
11 that?

12 A. I recall it, yes.

13 Q. Do you recall that Mr. Stalder testified, again  
14 in the 1976 trial, when asked about the  
15 existence of the merger protection agreement,  
16 the 1964 merger protection agreement, when asked  
17 to identify this agreement, his answer was, To  
18 the best of my recollection I never saw the  
19 document prior to the consummation of the merger  
20 which was February 1, 1968. As assistant  
21 general manager of labor relations of the  
22 railroad, his testimony was he never saw the  
23 1964 merger protection agreement until 1968.  
24 You recall that testimony?

25 A. Yeah. I recall similar testimony here

1           yesterday.

2       Q.   He also testified, As an assistant general  
3           manager of labor relations disputes concerning  
4           job rights and time claims would that be within  
5           your -- that would be within your province,  
6           would it not, Mr. Stalder? And the answer was,  
7           That is correct. He did not see the document  
8           until four years after it was signed?

9                       MR. KERSHNER: I have a suggestion  
10           to make. Since we have the transcript that  
11           she's been reading from, I suggest that should  
12           be made an exhibit in its entirety so that we  
13           can read it and note which portions of it might  
14           be read out of context --

15                      MS. TRICHARICHI: I suggest that's  
16           part of your position as an advocate to --

17                      MR. KERSHNER: You are reading out  
18           of it. It's your exhibit.

19                      MS. TRICHARICHI: It's not my  
20           exhibit. The parts that I'm reading are already  
21           part --

22                      MR. BLACKWELL: Let's not get into  
23           a hassle on this. I'll give you a ruling. The  
24           pages that you extracted from, duplicate those,  
25           put them in as an exhibit and then if you want

1 to know more, you can take it from there and go  
2 about getting the whole transcript, but it is  
3 appropriate to put in at least the whole page  
4 that you're referring to there.

5 MS. TRICHARICHI: I'll be happy to  
6 do that, Mr. Blackwell.

7 MR. BLACKWELL: Now, do you want  
8 those this afternoon, Mr. Kershner?

9 MS. TRICHARICHI: Mr. Kershner,  
10 they are already in. Everything I read to you  
11 is part of this document production which you  
12 already have in front of you.

13 MR. KERSHNER: All of those pages?

14 MS. TRICHARICHI: That's exactly  
15 right. Exactly.

16 MR. KERSHNER: So it is what you  
17 put in yesterday.

18 MS. TRICHARICHI: No. I didn't  
19 read off this yesterday. All right.

20 MR. KERSHNER: Let me have what you  
21 did read.

22 MS. TRICHARICHI: I read what is in  
23 Exhibit 58 in your packet.

24 MR. STEFFEN: She is not referring  
25 to pages, so what's the difference.

1 MR. BLACKWELL: She's saying now  
2 that they've already been furnished.

3 MS. TRICHARICHI: But I didn't  
4 refer to them in the testimony yesterday.

5 MR. BLACKWELL: Well, that is not  
6 the point. You've referred to them today and  
7 now the work is to get those pages. You say  
8 they're in here as 58?

9 MS. TRICHARICHI: Right. The  
10 exhibit is 58. I read from page 5, I read from  
11 page 43 and 44.

12 MR. BLACKWELL: All right. Wait a  
13 minute. You read from the pages in your Exhibit  
14 58. Are those the pages you just made extracts  
15 from?

16 MS. TRICHARICHI: That's right.

17 MR. BLACKWELL: All right. If you  
18 don't want to accept that, we will voir dire  
19 what she's working with, but if you accept it,  
20 we'll go ahead, Mr. Kershner.

21 MS. TRICHARICHI: One of the  
22 questions might have started on page 4 as  
23 opposed to page 5 but that was essentially what  
24 I read. There was one page that I read  
25 yesterday that is not part of the document

1 production. That is page 28 and I will  
2 reproduce that.

3 This was the quote, The top and bottom  
4 agreement was not one of those implementing  
5 agreements. It had nothing to do with the  
6 merger, did it? Answer. None whatsoever. That  
7 was the quote that I used to cross-examine Mr.  
8 Ellert with. That is page 28 and it's not part  
9 of this record and I'll reproduce it for  
10 everyone.

11 MR. BLACKWELL: All right.  
12 Proceed. Are you ready to proceed, Mr.  
13 Kershner?

14 MR. KERSHNER: You're going to  
15 furnish the page?

16 MR. BLACKWELL: Page 28.

17 MR. KERSHNER: That's fine.

18 MS. TRICHARICHI: Yes.

19 Q. Now, Mr. Beedlow, Mr. Blackwell asked you about  
20 interpretation of union officials of the  
21 documents. I want to refer you to Plaintiffs'  
22 Exhibit 24.

23 MR. BLACKWELL: Excuse me. What's  
24 that predicate?

25 MS. TRICHARICHI: You asked him

1 about what the union officials' interpretation  
2 was.

3 MR. BLACKWELL: Asked him his  
4 interpretation?

5 MS. TRICHARICHI: And what he was  
6 told by the --

7 MR. BLACKWELL: He is a union  
8 official.

9 MS. TRICHARICHI: What he was  
10 told. I believe you didn't ask him what he was  
11 told or what his union officials indicated to  
12 him was the case.

13 MR. BLACKWELL: Okay.

14 MS. TRICHARICHI: That was my  
15 understanding of the subject matter.

16 Q. I want to refer you to Plaintiffs' Exhibit 24  
17 which we touched on yesterday. Who was Mr.  
18 Hahn, Mr. Beedlow?

19 A. He was our local chairman.

20 Q. And he was a signatory to the 1965 top and  
21 bottom agreement, was he not?

22 A. Yes, he was.

23 Q. And you've seen this letter before, Exhibit 24?

24 A. Yes, I have.

25 Q. And what's your understanding of what Mr. Hahn

1 was asking about in -- wasn't he a signatory to  
2 the 1965 agreement asking for clarification, he  
3 himself asking for clarification, almost six  
4 months after the agreement was signed, more than  
5 six months?

6 A. Yes.

7 Q. About whether it covered you?

8 A. Yeah, about eight months. He was asking here in  
9 essence, he said this could possibly be our last  
10 chance. I think -- I haven't looked at it. He  
11 said once merger plans are finalized, that it  
12 could be too late, and that this could possibly  
13 be our last chance, and he's saying that he  
14 wants copies of letters sent to the president of  
15 the union and he's asking for clarification.

16 Q. He is asking for clarification from the company,  
17 is that right, about a document to which he was  
18 a signatory because it was unclear as to whether  
19 you would be protected, is that a fair  
20 statement?

21 A. He's asking for his superior in the union to get  
22 clarification.

23 Q. To get clarification from the carrier?

24 A. From the company. You got to go through the  
25 process.

1 MR. BLACKWELL: While you are on  
2 that, let's get clear on this. This gentleman's  
3 title changed from general chairman to local  
4 chairman. Is that a de facto change that you  
5 know about or was he wearing two hats all the  
6 time?

7 THE WITNESS: I know exactly what  
8 it was.

9 MR. BLACKWELL: Different hats at  
10 different times?

11 THE WITNESS: From 1930 to 1942 --  
12 I have to go into explanation. I'm sorry.

13 MR. BLACKWELL: Well, I don't want  
14 to interrupt the interrogation then.

15 THE WITNESS: He is asking the  
16 question. I don't know. What do you want me to  
17 do?

18 MR. BLACKWELL: Well, I just want  
19 to know are both of these titles accurate?

20 THE WITNESS: No, sir, it wasn't.

21 MR. BLACKWELL: Is one inaccurate  
22 and the other accurate?

23 THE WITNESS: That's right.

24 MR. BLACKWELL: Well, let him tell  
25 us which one is inaccurate.

1 THE WITNESS: He was not a general  
2 chairman, sir. He was only a local chairman.

3 MR. BLACKWELL: And that was at all  
4 times pertinent here.

5 THE WITNESS: That's at all times.

6 MR. BLACKWELL: Okay. Go ahead.

7 Excuse me.

8 Q. Before we broke for lunch, Mr. Blackwell asked  
9 you about a roster that is referred to in the  
10 body of the 1965 agreement. I think it was  
11 referred to in paragraph 10 of the 1965  
12 agreement, which I believe is Carrier's Exhibit  
13 D.

14 Assuming, let's assume for purposes of  
15 argument that the roster that we previously  
16 looked at, which is Plaintiff's Exhibit 3, which  
17 is the roster dated February 16, 1965, was in  
18 fact that revised roster.

19 A. In fact it was a revised roster.

20 Q. That was the same date as this agreement, is  
21 that correct?

22 A. Yes.

23 Q. That roster? And on that roster --

24 A. Was the date the agreement was signed.

25 Q. And on that roster you were in fact given a

1           September 10, 1964 seniority date, is that  
2           correct?

3   A.   That's exactly right.

4   Q.   So then that would have been the date that you  
5           would have been given in conjunction with this  
6           when you saw it in 1965 or when you saw it in  
7           1968? That was the date you were given?

8   A.   The date that was given to me was September 10,  
9           '64 and nothing else.

10   Q.   Regardless of when you saw that roster?

11   A.   I beg your pardon?

12   Q.   Regardless of when you saw the roster, that was  
13           the date that was listed on that roster?

14   A.   Yeah. The dates have never changed from the  
15           company's viewpoint.

16   Q.   Right. Mr. Beedlow, this was touched on by the  
17           questions Mr. Blackwell asked you, but if you  
18           had been assured by the carrier through the  
19           multiple correspondence that we've already  
20           identified here that you were covered by the  
21           merger protection agreement and that for  
22           purposes of computing wage guarantees, your New  
23           York Central wages and your C.U.T wages would be  
24           combined as was subsequently ordered by Judge  
25           Lambros in his ruling, but you had been assured

1 of that years earlier before you knew Judge  
2 Lambros was going to rule that, and that you  
3 were a New York Central employee, would you have  
4 returned to work?

5 A. I've testified yes, of course.

6 Q. Of course, you would have?

7 A. Even regardless of class or craft, I would have  
8 given up that argument for the job and the  
9 lifetime protection. That was not the company's  
10 position.

11 Q. Okay. Thank you. Now, there's been some  
12 testimony about that 1969 agreement. The  
13 carrier's position is on the face of the  
14 agreement you're a New York Central employee  
15 covered by the merger protection agreement. Can  
16 you tell us based on your experience why you  
17 didn't return to work after you became aware of  
18 that agreement?

19 MR. BLACKWELL: Well, now excuse  
20 me. You've covered that in your direct. I did  
21 not touch on that in my questioning and I don't  
22 believe any of the board members did.

23 MS. TRICHARICHI: That's fair.

24 MR. BLACKWELL: Proceed.

25 MS. TRICHARICHI: I don't have any

1 further questions.

2 MR. BLACKWELL: Mr. Kershner?

3 - - - -

4 FURTHER CROSS-EXAMINATION OF RAYMOND BEEDLOW

5 BY MR. KERSHNER:

6 Q. Mr. Hahn who signed the 1965 agreement, wasn't  
7 he also a C.U.T employee?

8 A. Yes. He was a New York Central employee who  
9 worked out of the C.U.T location.

10 Q. Isn't he listed on the roster that's been marked  
11 as Carrier Exhibit 13?

12 A. Yeah, no doubt. 2104. I'm sure he's there.

13 Q. I direct your attention to page 14 of that  
14 roster.

15 A. Yeah, I'm looking at it. Trying to find it.  
16 Yeah, he is there. No. 413.

17 Q. And he also has a September 10, 1964 seniority  
18 date, doesn't he?

19 A. Yes. We all do.

20 Q. Yet he never shared that information with you  
21 until three years after he executed the  
22 agreement?

23 A. He never worked another day after we signed the  
24 agreement.

25 Q. He left after he signed this agreement?

1 A. He signed that agreement and was gone.

2 Q. Furloughed?

3 A. No. Working for the Brotherhood of Railroad  
4 Trainmen.

5 Q. So he switched unions?

6 A. No.

7 MS. TRICHARICHI: No.

8 A. He never switched cars again. He signed the  
9 agreement and went with the Brotherhood.

10 Q. With respect to the '69 agreement, the August 1,  
11 '69 agreement, now, you've indicated you didn't  
12 know about it until about 1970?

13 A. '70, '71, whatever.

14 Q. You didn't know until '70 or '71 about the  
15 existence of that agreement?

16 A. That's true.

17 Q. I direct your attention to Carrier's Exhibit  
18 12.

19 A. Yes, sir.

20 Q. This is a letter, is it not, from Chairman Lyons  
21 to Mr. Henry Anderson dated August 25, '69?

22 A. Yes, sir.

23 Q. Did you receive a copy of this?

24 A. My name's on the back. I don't know if I did or  
25 not.

- 1 Q. It appears as though you and certain other  
2 claimants were copied in.
- 3 A. Some claimants and some were not.
- 4 Q. But you were?
- 5 A. My name is on there.
- 6 Q. Do you recall reading this letter?
- 7 A. No, I don't. I'd have to go over it. I don't  
8 recall.
- 9 Q. So take your time and read it. See if you  
10 recall having received it.
- 11 A. Yeah, I've read it. This is the first time I've  
12 read it.
- 13 Q. So you never received this letter and you've  
14 never seen it till today?
- 15 A. I may have received it. I've never read it  
16 until just now.
- 17 Q. This is the first time you've read it?
- 18 A. Yes, yes.
- 19 Q. Now, a number of the other claimants were copied  
20 in, correct?
- 21 A. Some claimants and some not, yes.
- 22 Q. In fact some claimants who are present here  
23 today, Mr. Steimle, I believe, was copied in,  
24 was he not?
- 25 A. Yeah.

1 MS. TRICHARICHI: The document  
2 speaks for itself.

3 Q. Mr. Potosky?

4 A. I don't remember receiving this and there's no  
5 address on here.

6 Q. Was there any discussion about this letter with  
7 either of the claimants who might have received  
8 it assuming you didn't receive it? You never  
9 discussed it?

10 A. I've never seen this letter until just now.

11 Q. And none of the other claimants who apparently  
12 received copies ever discussed it with you?

13 MS. TRICHARICHI: Objection.

14 Q. Is that your testimony?

15 A. I never saw it. I never knew it existed.

16 Q. So you never knew that existed until today?

17 A. And I see nothing in there that is detrimental  
18 to my stance here.

19 Q. Let's direct your attention to paragraph 3. It  
20 says, Due to circumstances involved, this  
21 committee, which is a general committee of  
22 adjustment, prevailed on the company to waive  
23 all the agreements involved until such time as  
24 we were able to resolve our dispute involving  
25 protective agreements for the C.U.T yardmen.

1           Such an agreement was recently made.

2                   Now, what agreement do you think this is  
3 referring to?

4 A. I have no idea. In the first place it isn't a  
5 general committee of adjustments you're talking  
6 about.

7 Q. It says at the top. General committee of  
8 adjustment.

9 A. Well, Mr. Anderson was a member of the general  
10 committee of adjustment. Why would they be  
11 making that available to him if he had made this  
12 agreement?

13 Q. You'll recall, Mr. Beedlow, earlier you had said  
14 you had filed a grievance, what's now Carrier's  
15 Exhibit 14A. Do you recall that?

16 A. That's not a grievance.

17 Q. This letter that you had registered protests on?

18 A. The grievance was filed on May 13th of 1965.

19 Q. What do you characterize this as?

20 A. That's not a grievance.

21 Q. What is it, a complaint, gripe?

22 A. I'm demanding an investigation.

23 Q. Okay. This is in response to that, isn't it?

24 A. Oh, not at all.

25 Q. How do you know?

1 A. Because the letter that was put in evidence here  
2 states that they were forwarding my letter to  
3 the proper authorities and there was never  
4 anything ever done about it after July the 23rd.

5 Q. This letter also refers to an August 22, 1969  
6 letter from Mr. Stalder, does it not, and  
7 encloses a copy?

8 A. I don't see -- I don't know what you're talking  
9 about.

10 Q. We discussed earlier the August 22 letter --

11 MR. BLACKWELL: Let's see if that's  
12 the two-sentence letter that was not  
13 duplicated.

14 THE WITNESS: July 23, that letter  
15 is.

16 MS. TRICHARICHI: The two-sentence  
17 letter?

18 MR. BLACKWELL: Well, I think  
19 that's what -- you believe it refers to that, do  
20 you not?

21 THE WITNESS: That's a letter from  
22 Brinkworth.

23 MS. TRICHARICHI: I don't know  
24 where it is right now.

25 THE WITNESS: That's the one you

1 were going to get copies of.

2 MS. TRICHARICHI: I know what it  
3 is. I just don't see it right now.

4 MR. KERSHNER: Let me withdraw the  
5 question and make it easy on you.

6 MS. TRICHARICHI: Thank you.

7 Q. Again, directing your attention to this letter  
8 that was copied to you but you didn't see until  
9 today, do you have any idea today for the first  
10 time reading this, what protective agreement for  
11 the C.U.T yardmen recently made may have been  
12 referred to on August 25, '69 by Mr. Anderson?

13 A. Mr. Anderson didn't write this letter.

14 Q. I'm sorry. By Mr. Lyons to Mr. Anderson.

15 A. Yes. I have no idea. He doesn't refer to a  
16 coordination agreement in here.

17 Q. He just refers to a recent agreement to protect  
18 the C.U.T employees.

19 A. There was implementing agreements of the merger  
20 protection signed for years after the original  
21 date, so-called implementing agreements. If I  
22 had seen this, it could be any agreement. As I  
23 stated before, every time they made an  
24 agreement, I went out further. I don't know  
25 what you're getting at here, but --

1 MS. TRICHARICHI: Wait until there  
2 is a question before you.

3 A. But there's no way I know of what agreement they  
4 would be referring to, and like I said --

5 Q. Okay. Fine. You don't know anything about it.  
6 The letter goes on to say that each of the  
7 yardmen mentioned in Mr. Stalder's August 22  
8 letter are being furnished a copy of his letter  
9 so they're made aware of their present status.

10 And you're saying you never received a copy  
11 of Mr. Stalder's letter which was enclosed in  
12 this?

13 A. I have no idea what letter you are talking  
14 about.

15 Q. We discussed it earlier today.

16 A. What exhibit is it?

17 Q. It's Carrier's Exhibit K.

18 A. If you notice, it says 3,000 people on District  
19 4 there. I was hurt worse than I knew.

20 Q. Do you have K in front of you?

21 A. I'm trying to go through it now.

22 Q. Do you recall discussing that this morning?

23 A. No, I don't. I received no copy of this. It's  
24 unsigned. Yes, I do recall because it's  
25 unsigned. That's why I recall.

1 Q. This was the letter that was enclosed with the  
2 copy of the letter from Mr. Lyons to you that  
3 you never received right till today?

4 A. I have no reference to these letters.

5 MS. TRICHARICHI: I beg your  
6 pardon? What did you say, Mr. Kershner? I  
7 didn't hear your question.

8 MR. KERSHNER: I said the August  
9 22, '69 letter that he's just reviewed was  
10 enclosed, according to Lyons' letter that we  
11 just reviewed, which he's never seen until  
12 today, never read until today.

13 A. It never changed the company's position, sir.

14 Q. Didn't your counsel show you this letter before  
15 today?

16 A. I just -- there's no -- we have probably.

17 Q. You never discussed this before today?

18 A. Not at all. We probably could have put four or  
19 five thousand exhibits in, sir. You could back  
20 a moving van up over there and not clear out  
21 half that office and that's all our case. I  
22 wrote hundreds of letters.

23 MS. TRICHARICHI: He's right. It  
24 is.

25 A. Hundreds of letters.

1 MR. KERSHNER: I can believe it.  
2 Off the record.

3 - - - -  
4 (Thereupon, a discussion was had off  
5 the record.)

6 - - - -  
7 MR. BLACKWELL: The answer is no,  
8 you didn't discuss it?

9 A. No. No. There were 68 exhibits, we didn't go  
10 over 20 of them.

11 Q. Turning to the 1965 agreement which is D11 --

12 A. Yes, sir.

13 Q. -- is it your position that as of the effective  
14 date of this agreement, which was February 16 of  
15 '65 that pursuant to paragraph 4, that the  
16 freight people could bump you out of your job by  
17 exercising their seniority against you? Is that  
18 your position?

19 A. I see what it says. There were no more C.U.T  
20 rosters printed. There was only joint Big Four  
21 New York Central rosters. Therefore, there  
22 would be no C.U.T employees. So on the face of  
23 this, yes, you could construe it as ambiguous.  
24 However, on the face of this it says that  
25 anybody on that joint roster with more seniority

1 than September 10, '64 is entitled to my  
2 position.

3 Q. Also says not bid in by Cleveland Union Terminal  
4 Company yardmen, does it not?

5 A. Yes, but it doesn't say what a bid-in is because  
6 there is no more Cleveland Union Terminal. All  
7 we are is on the joint roster. I said on the  
8 face of it it's ambiguous. You could interpret  
9 it one way or another.

10 Q. But you earlier had said, and the record will  
11 show --

12 A. Yes.

13 Q. -- that you could have exercised your C.U.T  
14 seniority to stay in the C.U.T but you still  
15 retained your 1948 date for C.U.T work only?

16 A. Yes.

17 Q. Okay.

18 A. On the C.U.T rosters that -- my understanding is  
19 they stopped printing them around '68 or '69.  
20 The only thing that was printed after that was a  
21 joint seniority roster. They never top and  
22 bottomed these agreements.

23 Q. So you are saying unless you appear on a roster  
24 your seniority, the '48 date doesn't exist, it's  
25 wiped out?

1 A. I'm saying that they wiped it out when they  
2 wiped out the C.U.T roster, yes, sir. Where  
3 does it show a C.U.T roster with my seniority  
4 date after that?

5 MR. KERSHNER: Could we take a  
6 short recess?

7 MR. BLACKWELL: Yes. Recess.

8 - - - -

9 (Thereupon, a recess was had.)

10 - - - -

11 MR. BLACKWELL: All right.

12 Proceed.

13 Q. Mr. Beedlow.

14 A. Yes, sir.

15 Q. Directing your attention to Claimants' Exhibit  
16 No. 2 --

17 MS. TRICHARICHI: No. At the  
18 outset I was precluded in asking on redirect  
19 examination anything that wasn't directly  
20 related to Mr. Blackwell's questions.

21 MR. KERSHNER: This is related.

22 MS. TRICHARICHI: And I would  
23 request that the carrier have the same  
24 prohibition.

25 MR. BLACKWELL: Well, state the

1 connection.

2 MR. KERSHNER: There's a series of  
3 questions that was asked by the arbitrator  
4 respecting retention of seniority rights and  
5 rosters, and some rosters were looked at, and I  
6 have a roster that was submitted by the  
7 complainants as their Exhibit 2 that I'd like to  
8 question Mr. Beedlow on the process by which  
9 people assigned the C.U.T would exercise bidding  
10 rights.

11 MS. TRICHARICHI: I think that's  
12 not part --

13 MR. BLACKWELL: Now, that, you have  
14 to narrow it more than that. I was questioning  
15 under the December 16, '65 combo.

16 MR. KERSHNER: Exactly. I'm doing  
17 that, too.

18 MR. BLACKWELL: All right. As long  
19 as it's under that. Do you understand?

20 A. No. This is the 1965 seniority roster, right?

21 Q. This is the 1965 seniority roster. Now, I  
22 direct your attention --

23 A. January '65.

24 Q. That's correct. I direct your attention to the  
25 1965 agreement which is Carrier's Exhibit D,

1 third paragraph, which states, Subsequent to the  
2 effective date of this agreement, no names will  
3 be added to the present Cleveland Union Terminal  
4 Company yardmen's seniority roster, is that  
5 correct?

6 A. That's what it says.

7 Q. So that means this roster then we just  
8 referenced as Claimants' Exhibit 2, does it not?

9 A. Yes. I think it speaks for itself.

10 Q. Now, let me ask you a hypothetical on this  
11 retention of rights. After the 1965 top to  
12 bottom agreement, let's say that two C.U.T  
13 employees bid on the same job. Who would get  
14 the job?

15 A. The senior employee, of course.

16 Q. Now, what seniority list would they use to  
17 determine who was the senior employee for the  
18 job?

19 A. You are talking about two Cleveland passenger  
20 yard people?

21 MS. TRICHARICHI: At what time, Mr.  
22 Kershner?

23 MR. KERSHNER: I said 1968 after  
24 the effective date of the agreement.

25 MS. TRICHARICHI: Effective date of

1           what agreement?

2                   MR. KERSHNER:   The 1965 agreement  
3           as well as the merger of the seniority roster.

4                   MS. TRICHARICHI:   The effective  
5           date of the agreement was in 1965 and now you  
6           are asking about 1968?

7                   MR. KERSHNER:   I said as well as  
8           the effective date of the merger.   I'm asking  
9           him if after the effective date of the merger,  
10          '68, top to bottom list was drawn up, if you had  
11          a bid, two bids, one job, you said the senior  
12          man would get it.   What seniority list would you  
13          use to determine who the senior man was?

14                   MS. TRICHARICHI:   What job?

15                   MR. KERSHNER:   A job in the  
16          Cleveland Union Terminal.

17                   MS. TRICHARICHI:   What kind of job,  
18          extra board job?   What kind of job are you  
19          talking about?   It's a very vague question.

20                   MR. KERSHNER:   Switchman job.  
21          Brakeman job.

22                   MS. TRICHARICHI:   If you can answer  
23          that question.

24                   THE WITNESS:   I think I did  
25          answer.   I think I know what he's talking about.

- 1 Q. So the senior man would get the job, correct?
- 2 A. If in fact there was a roster covering the  
3 senior man at the Cleveland Union Terminals  
4 Company --
- 5 Q. Let's assume that the senior man is on this  
6 list, this roster that you've submitted as  
7 Exhibit 2.
- 8 A. This list is no longer valid, not in 1968.
- 9 Q. Because in 1968 we have the top to bottom?
- 10 A. No.
- 11 Q. Don't we have the top to bottom in '68?
- 12 A. You have a joint seniority roster --
- 13 Q. Right.
- 14 A. -- of the New York Central.
- 15 Q. Exactly. Now, my question is in 1968 with the  
16 top to bottom, the joint seniority roster,  
17 you've got in the Cleveland Terminal two people  
18 who bid on the same switchman brakeman's job.  
19 You say the senior man gets it. How do you find  
20 out who the senior man is? 1968 with the top to  
21 bottom combined roster.
- 22 A. I imagine, because I've never seen anything like  
23 this before, that you would go for the first  
24 September 10 as opposed to the number  
25 underneath.

1 Q. Oh, so you just take it in order of the  
2 September 10s?

3 A. It was a company agreement, sir. I had nothing  
4 to do with it.

5 Q. Well, let's carry that one step further. The  
6 September 10s, all the same seniority, were they  
7 transposed from this list or one comparable to  
8 it in the same order as they appear?

9 MS. TRICHARICHI: If you know.

10 Q. If you know.

11 A. As far as I know, yes, sir.

12 Q. So in essence, since everybody does have the  
13 same September 10, '64 seniority date, they  
14 still are in the same seniority orders they  
15 were --

16 A. They should be in the same sequence, yes, sir.

17 MR. KERSHNER: I have no further  
18 questions.

19 MR. STEFFEN: Nothing.

20 MR. BLACKWELL: Mr. Burton?

21 MR. BURTON: Nothing.

22 MR. BLACKWELL: Are you ready to  
23 call your next witness?

24 MS. TRICHARICHI: Yes. The  
25 claimants will call Christ Steimle to the

1 stand.

2 CHRIST STEIMLE, of lawful age, called for  
3 the purpose of examination, being by me first  
4 duly sworn, as hereinafter certified, was  
5 examined and testified as follows:

6 EXAMINATION OF CHRIST STEIMLE

7 BY MS. TRICHARICHI:

8 MR. BLACKWELL: Name, please?

9 A. Chris Steimle.

10 Q. Would you spell your name for the record, Mr.  
11 Steimle?

12 A. C H R I S T, S T E I M L E.

13 Q. What's your address, Mr. Steimle?

14 A. 12224 Lorain Avenue, Cleveland, Ohio 44111.

15 Q. Are you married, Mr. Steimle?

16 A. Yes, I am.

17 Q. Are you presently employed?

18 A. No. I'm retired.

19 Q. When did you first begin working full-time for  
20 the railroad?

21 A. August 1, 1951.

22 Q. What railroad did you begin working for when you  
23 signed on for work in 1951?

24 A. New York Central Railroad.

25 Q. Were you required by that railroad to have a

1 physical?

2 A. Yes, I was.

3 Q. And I'm handing you -- this is the exhibit  
4 book -- Plaintiff's Exhibit 5. Could you  
5 identify what that is, Mr. Steimle, whether  
6 that's your signature on that document?

7 A. That's a physical examination.

8 Q. And is that a record of your original physical  
9 when you joined the New York Central Railroad?

10 A. Yes, it is.

11 Q. What's the date of that document?

12 A. 7-31-51.

13 Q. What's the name of the railroad at the top of  
14 the document?

15 A. New York Central System.

16 Q. Fair to say it's on a New York Central form?

17 A. Yes, it is.

18 Q. I refer you to Plaintiff's Exhibit 11. Can you  
19 identify that document for the panel?

20 A. It's a wage tax statement, New York Central  
21 Railroad Company. It has my Social Security  
22 number on it and my name.

23 Q. And you received that, right?

24 A. Yes.

25 Q. And the name of the railroad is New York

1 Central, is that a fair statement?

2 A. Yes.

3 Q. That's for the year 1967?

4 A. Yes.

5 Q. And I want to direct your attention to  
6 Plaintiff's Exhibit 13. Can you identify that  
7 for us?

8 A. Well, it's a New York Central System pass for  
9 the years 1963 and '64 and it's issued to me, my  
10 son and my wife.

11 Q. And to whom were those passes issued, Mr.  
12 Steimle?

13 A. To the employees of the New York Central  
14 Systems.

15 Q. I want to direct your attention to Plaintiff's  
16 Exhibit 17. Can you identify that document?

17 A. It's a New York Central Railroad Company  
18 paycheck stub and it has my number, Social  
19 Security number on it.

20 Q. Would that have been one of your paychecks?

21 A. Yes, it was.

22 Q. Okay. And you know that because of the Social  
23 Security number on it?

24 A. Yes.

25 Q. And the railroad identified on that is?

1 A. New York Central System Railroad Company.

2 Q. And what year is that?

3 A. 1965.

4 Q. And you previously identified that rail pass  
5 that we talked about? I think that was  
6 Plaintiff's Exhibit 13. Did you receive a  
7 similar rail pass from the Cleveland Union  
8 Terminals?

9 A. No.

10 Q. This was the only rail pass you ever had?

11 A. Yes.

12 Q. Were you required to do anything to maintain  
13 your employee status as far as continuing  
14 education with the railroad?

15 A. Book of rules every two years.

16 Q. And who conducted the book of rules classes?

17 A. A New York Central examiner.

18 Q. Did you have occasion to work at Cleveland Union  
19 Terminal locations as a New York Central  
20 employee?

21 A. Yes, I did.

22 Q. Did you take a separate physical when you went  
23 to work at the Cleveland Union Terminal  
24 location?

25 A. No, I didn't.

1 Q. Did you complete a separate job application form  
2 to work at the Cleveland Terminal location?

3 A. No, I didn't.

4 Q. When you worked at the Cleveland Union Terminal  
5 location did you have a separate Cleveland Union  
6 Terminal switch key?

7 A. Yes, I did -- no. We had just the New York  
8 Central switch key stamped right on it New York  
9 Central.

10 Q. There were no C.U.T switch keys?

11 A. Not that I ever seen.

12 Q. Okay. And when you worked at a C.U.T location  
13 who else was on your crew, Mr. Steimle?

14 A. It was two brakemen, a conductor, a fireman and  
15 an engineer.

16 Q. And by whom were the other crew members in  
17 addition to the brakemen employed?

18 A. New York Central.

19 MS. TRICHARICHI: This is the 1976  
20 order that we talked about reproducing yesterday  
21 which my office has reproduced copies of for  
22 everyone which were previously distributed. So  
23 here they are. We can deal with that  
24 housekeeping matter. That's Judge Lambros'  
25 ruling from 1976.

1 MR. BLACKWELL: Just leave them  
2 stacked and we'll pick them up later.

3 MS. TRICHARICHI: I don't know if  
4 you want this on or off the record. Can this  
5 Plaintiffs' Exhibit 73 be reduced and reproduced  
6 for everyone? Do you want us to take it now and  
7 do that? We have made arrangements to have it  
8 reduced or would you prefer it be done at a  
9 different time? And I can't guarantee --

10 MR. BLACKWELL: Well, are you going  
11 to interrogate --

12 MS. TRICHARICHI: I think I need it  
13 for his interrogation which would mean that I  
14 would have to send it to you or else do it  
15 tonight or something.

16 MR. BLACKWELL: I have no problem  
17 with getting it later. Do you?

18 MR. KERSHNER: I have no problem.

19 Q. Were you aware of any disciplinary procedures  
20 for railroad workers, Mr. Steimle?

21 A. Yes, there were.

22 Q. And if there were disciplinary procedures, by  
23 whom were the disciplinary procedures  
24 administered?

25 A. New York Central trainmaster.

1 Q. And who employed the trainmaster at the  
2 Cleveland Union Terminal?

3 A. New York Central.

4 Q. And that was the disciplinarian for the  
5 Cleveland Terminal passenger brakemen, is that a  
6 fair statement?

7 A. Yes.

8 Q. Now, you heard Mr. Beedlow testify about some of  
9 the reasons the people are disciplined, didn't  
10 you?

11 A. Yes.

12 Q. When you stand for a job in the sense that  
13 you're seniority allows you to, if there is an  
14 available job with your particular seniority, do  
15 you have the option to choose or not choose to  
16 bid on the job?

17 A. Maybe --

18 Q. You don't understand my question?

19 MR. BLACKWELL: Restate your  
20 question.

21 Q. If your seniority will allow you to bid for an  
22 available job, do you have an obligation to bid  
23 for that job?

24 A. If you didn't bid, you were placed on it, if you  
25 were the junior man.

1 Q. If you didn't bid. And if you didn't bid  
2 repeatedly, would there be any penalty for just  
3 failing to mark up for whatever reason?

4 A. Oh, yes. You would be called in for a rule P  
5 which could --

6 Q. What does that mean?

7 A. It was a rule that they had that was an  
8 investigation for failing to either answer calls  
9 or work, and it could go as far as the  
10 investigation and fire you if they found that --

11 Q. If you fail to bid for jobs, your seniority  
12 would allow you on a repeated basis --

13 A. If you failed to fill work that was --

14 MR. BLACKWELL: Just to keep our  
15 record clear, the word, bid, is really not  
16 necessary in that question. It's if you stand  
17 for work, you've got to come.

18 THE WITNESS: Right, yes.

19 MR. BLACKWELL: And if you don't,  
20 there are consequences, correct?

21 THE WITNESS: Yes.

22 Q. Let's go back to my previous line of questions.  
23 I was asking you about your New York Central  
24 employment. From what you told me, would you  
25 say that Cleveland Union Terminals was a

1 separate railroad?

2 A. No. It was -- we switched Nickel Plate, Erie  
3 and New York Central trains that come in there,  
4 but it was a subsidiary, I guess, and it was New  
5 York Central. It handled the New York Central  
6 trains.

7 Q. Are you aware of the corporate structure of the  
8 Cleveland Union Terminal?

9 A. Yes, it was owned 93 percent by the New York  
10 Central.

11 Q. Mr. Steimle, what was the name of the union you  
12 belonged to while working for the New York  
13 Central?

14 A. Brotherhood of Railroad Trainmen.

15 Q. What was the name of the union you belonged to  
16 when you worked at the Cleveland Union Terminal  
17 location?

18 A. Brotherhood of Railroad Trainmen.

19 Q. And what was the number of your union lodge?

20 A. 927.

21 Q. Was that a New York Central lodge?

22 A. Yes, it was.

23 Q. In an effort to be a little more brief than we  
24 were with Mr. Beedlow, you heard his testimony  
25 regarding the efforts and attempts made by

1 employees who worked at the Cleveland Union  
2 Terminals to get confirmation of their New York  
3 Central status?

4 A. Many efforts was made.

5 Q. And you were aware of those efforts?

6 A. Yes, I was.

7 Q. And you heard us identify a number of documents  
8 in this packet of documents, those letters and  
9 so forth?

10 A. They all existed.

11 Q. And you were aware of those letters?

12 A. Yes.

13 Q. And what's your understanding of what the  
14 employees were trying to determine by those  
15 letters and by those actions that they took?

16 A. Well, that's job protection.

17 Q. Job protection under the merger protection  
18 agreement?

19 A. Included in the merger protection.

20 Q. Now, let's talk about the merger for a minute.

21 When did the merger occur, Mr. Steimle?

22 A. In 1968.

23 Q. And I want to direct your attention to  
24 Plaintiff's Exhibit 30 which is part of your  
25 packet. Do you recognize this document?

- 1 A. This was a furlough notice.
- 2 Q. And is your name on that notice, Mr. Steimle?
- 3 A. Yes, it was.
- 4 Q. Did you receive that notice?
- 5 A. Yes, I did.
- 6 Q. And that's on New York Central stationery, is it  
7 not?
- 8 A. Yes, it is.
- 9 Q. What was your understanding before 1968 of what  
10 the carrier thought you were in terms of who  
11 were you employed by? What was your  
12 understanding of what the carrier believed you  
13 to be?
- 14 A. Well, they believed that I was a C.U.T employee  
15 whereas I always was a New York Central  
16 employee.
- 17 Q. After the furlough you eventually returned to  
18 work, is that a fair statement?
- 19 A. Yes.
- 20 Q. And can you tell me what concerns you had if any  
21 about returning to work after the furlough?
- 22 A. Well, I had no choice but to go back to work  
23 because I had minor children, and I wasn't happy  
24 about going back because I was going back as a  
25 new man with '64 seniority.

1 Q. And that would have meant a loss of  
2 approximately how much seniority for you?

3 A. About 13 or 14 years.

4 Q. What impact did that loss of seniority have on  
5 your ability to get work?

6 A. I started railroading over again.

7 Q. Pardon me?

8 A. I started all over railroading again.

9 Q. And when you reported, I believe in 1969, what  
10 kind of jobs were available to you when you  
11 reported?

12 A. Well, I would get as many as seven phone calls a  
13 day telling me I was displaced, to pick another  
14 job or back on the extra board, and there was  
15 days that I would go four, five, six days at a  
16 time without working. I'd pick a job on first  
17 trick and by the time I got to first trick the  
18 next day to fill the job, I would be bumped  
19 during the night, displaced.

20 Q. What kind of jobs were you doing during this  
21 period then? What kind of jobs did you end up  
22 working, what shift?

23 A. Nights or jobs that nobody else wanted.

24 Q. The night shift?

25 A. Yes.

1 MR. BLACKWELL: This period, Miss  
2 Tricharichi, what period?

3 Q. What period?

4 A. After I went back to work in '69.

5 MR. BLACKWELL: From then till  
6 when?

7 Q. And for how long did that job pattern continue?

8 A. Until 1985 about.

9 Q. So you didn't have regular employment in the  
10 freightyard or anywhere else on the New York  
11 Central Railroad until approximately 1985?

12 A. Yes, because of the fact that then I come on --  
13 there was only two men left that were older than  
14 me, and I come under the 2.5 percent of the work  
15 which was already down to just one job with two  
16 men.

17 Q. So it wasn't until 1985 that your seniority --  
18 correct me if I'm wrong. My understanding of  
19 your statement was it wasn't until 1985 that  
20 your seniority date of September 10, 1964  
21 allowed you to bid or to be able to be eligible  
22 for a job that was part of the 2.46 percent  
23 allocated to the former Cleveland Union Terminal  
24 passenger yard employees. It's a long  
25 statement, but do you understand what I said?

1 A. Yes.

2 Q. Is that a correct statement of what you just  
3 testified?

4 A. That's a correct answer.

5 Q. And before that with the 9-10-64 seniority, you  
6 were not eligible for those 2.46 --

7 A. I never had so many phone calls in my life.

8 MR. KERSHNER: I've got to object  
9 at this point to the really leading nature of --

10 MR. BLACKWELL: It is leading, Miss  
11 Tricharichi.

12 MS. TRICHARICHI: Pardon me?

13 MR. BLACKWELL: It is leading, so  
14 please.

15 Q. Had all the furloughed men, men who were  
16 furloughed by this notice that we have in front  
17 of you, Exhibit 30, had they all reported for  
18 work in the freightyard --

19 A. Well, if you --

20 Q. -- would there have been enough work for them?

21 A. If you look on there, and I could tell you just  
22 about all of them that did report, but you  
23 notice I was the youngest man -- third youngest  
24 man that was on there. So all these men were  
25 ahead of me actually for any job that would have

1       been in the freightyard.

2       Q.   They were all ahead of you?

3       A.   They were all ahead of me.  I was being bumped  
4       by my own -- what you call it, C.U.T list of  
5       men.  These men that were furloughed, I mean  
6       when they come back, they were senior to me  
7       seniority-wise.

8       Q.   You were talking before about one percent of the  
9       job -- how many jobs translated into 2.46  
10      percent.  How many --

11                   MS. TRICHARICHI:  I'm sorry.  I  
12      didn't hear.

13                   MR. BURTON:  I wasn't talking to  
14      you.

15      Q.   How many jobs did the 2.46 percent of the jobs  
16      represent in 1969?

17      A.   It was nine working men.

18      Q.   Nine men?

19      A.   Yes.

20      Q.   Nine men out of this approximately 29 that were  
21      on this list?

22      A.   That was 2.5 percent of the work.  It was a  
23      hundred jobs.  Now, over the years as they went  
24      down, we lost jobs.  This was 2.5 percent of a  
25      hundred jobs, and when it ended up, we had just

1           one job with two men on it.

2   Q.   Just as an aside, Mr. Steimle, are you the only  
3       living plaintiff who returned to work  
4       presently? Are you presently the only living  
5       plaintiff who returned to work?

6   A.   Well, I'm retired, but I was the only present  
7       living, yeah, employee up until December here,  
8       last December.

9   Q.   Well, up until December when you retired?

10  A.   Yes.

11  Q.   Are you the only person who is part of the  
12       plaintiffs who returned to work who is presently  
13       living and could testify today?

14  A.   Yes.

15  Q.   Now, tell us about what it was like when you  
16       went to the freightyard. How were you treated?

17  A.   Well, Mr. Beedlow explained it. My  
18       father-in-law was a railroader. And when we  
19       went out there --

20  Q.   I'm sorry. Your father-in-law was a railroader?

21  A.   Yes, all his life. And when we went out there,  
22       it was fathers that had sons that hired out  
23       after 1964. So they weren't too happy about us  
24       coming out there taking their sons' jobs or  
25       there was men that come back from the Viet Nam

1 War that hired out after us when we got our '64  
2 seniority. They weren't happy about it.

3 And we were known as the dumb C.U.T every  
4 name you can think of out there, no matter  
5 what. And we were abused. I mean I went  
6 through a lot of years of abuse.

7 Q. Are you doing okay? Just take your time. How  
8 did that abuse affect your ability to work, Mr.  
9 Steimle, out there?

10 A. I was very nervous all the time. Whenever I  
11 would take a job and didn't know where I was  
12 going to go to work out of, when I got out  
13 there, I couldn't find the jobs. The crew  
14 dispatcher, he didn't tell you about where they  
15 were. If you tried to find out from anybody,  
16 they said why don't -- if you don't know where  
17 the job's at or you don't know nothing about it,  
18 why did you take it?

19 Q. But these are the jobs that they told you to go  
20 to in this furlough notice, isn't that correct?

21 A. Yes.

22 Q. You were doing what the railroad told you to do,  
23 isn't that correct?

24 A. Yes.

25 Q. Were there any differences in the freightyard

1 jobs from the jobs you had previously done since  
2 1951 in the passenger yard, passenger service  
3 jobs you've done?

4 A. Well, working at night in places that you had  
5 never been before, close clearances, nobody to  
6 explain any of these to you, which nobody was  
7 going to help you. If you took the job, you  
8 were supposed to be qualified for it without  
9 being trained or anything. Just go out there.

10 And there's a hundred tracks or 80 tracks  
11 here. This is No. 124, and you're a dumb C.U.T  
12 employee if you don't know the work.

13 Q. Was the work with the freight cars different  
14 than the work with the passenger cars?

15 A. Definitely different.

16 Q. And how was it different?

17 A. You were handling coal, steel, scrap. This  
18 stuff fell off of the cars. I was hurt a  
19 couple, a few different times.

20 Q. Did you ever get hurt in the passenger yard?

21 A. No.

22 Q. Continue. Go ahead.

23 A. You had to ride cars that they would drop off  
24 hills and things like that, operate hand brakes  
25 that you never had in the terminal. You had to

1 spot these cars in certain locations, which you  
2 didn't know and nobody would tell you. There  
3 was no schooling or training whatsoever. You  
4 just went out there and, here, you got the  
5 seniority, you picked the job and you take care  
6 of it.

7 Q. Did you work on a crew?

8 A. With two other men that weren't going to help  
9 you because of the fact that you were taking  
10 either their jobs or their overtime jobs or  
11 things like that by being there.

12 I would be called for a job that had a man  
13 that was younger than me and he wasn't about to  
14 teach you nothing if he was on a job there. The  
15 older people that were called for any job could  
16 force you to be conductor by taking the two  
17 brakeman's job if the job -- if three men were  
18 called out for the job, and you were left to run  
19 the job. And they weren't about to help you.

20 Q. Mr. Steimle, after you returned to work in 1969,  
21 for example, in 1970, did you have regular  
22 employment in the freightyard?

23 A. I never had regular employment in the  
24 freightyard. If I had it, I'd have it for two  
25 days maybe on a regular job and be displaced, go

1 back on the extra board, not get out. And by  
2 the time I was ready to get out, maybe I'd pick  
3 a job that was open. By the time it was -- the  
4 job come around to work it, I would be displaced  
5 again.

6 Q. Did you have regular employment in 1971?

7 A. I never had regular employment, I don't believe,  
8 until 1985.

9 Q. 1985 is the first time you had regular  
10 employment?

11 A. Yes.

12 Q. After the furlough. Who is Mike Gratson, Mr.  
13 Steimle?

14 A. He was another employee that was out in the  
15 freightyard.

16 Q. Had he always been a freightyard employee?

17 A. No. He was a Cleveland Union Terminal man.

18 Q. What happened to Mr. Gratson?

19 A. He was unfamiliar with the yards there, too.  
20 And he rode in on a car on the side at night in  
21 the dark and he lost a leg and an arm in a close  
22 clearance point.

23 Q. Mr. Steimle, you've heard the testimony  
24 yesterday about merger protection benefits using  
25 this chart. Let me ask you this question. Did

1           you ever receive the benefits provided for in  
2           the 1974 merger protection agreement?

3                           MR. BLACKWELL: Excuse me. Take  
4           that from the top. I didn't hear you.

5 Q. Did you ever receive the benefits provided for  
6           in the 1964 merger protection agreement?

7 A. You're referring to merger protection money?

8 Q. Benefits.

9 A. Yes, no, I didn't.

10 Q. Did you, for example, ever receive a wage  
11           guarantee?

12 A. No, I didn't.

13 Q. Did you apply for a wage guarantee during this  
14           period when you said you didn't have regular  
15           employment?

16 A. I did. I turned it in with the same employees  
17           that had the protection and never got no reply  
18           back.

19 Q. Now, employees who had the protection, you mean  
20           the other crew members?

21 A. Other crew members that applied for it at the  
22           same time that had merger protection.

23 Q. You turned your guarantee in at the same time?

24 A. Right.

25 Q. Did you ever receive a wage supplement or a wage

1           guarantee from the railroad?

2   A.   No, I didn't.

3   Q.   Did you turn a wage guarantee form in on more  
4       than one occasion?

5   A.   About three, four times. I was told by other  
6       employees that I'd never get anything anyhow  
7       because I wasn't guaranteed a wage. The  
8       railroad has a point whereas if they get stuff  
9       like this and it doesn't pertain to you, I guess  
10      they just throw it away.

11  Q.   Did you ever inquire subsequently about the wage  
12      guarantee?

13  A.   I did and I was told that I wasn't protected.

14  Q.   Did you believe you were entitled to wage  
15      guarantee benefits?

16  A.   Being a New York Central man in 1951, I should  
17      have been.

18  Q.   I want to direct your attention to a chart. Did  
19      you know Mr. Day? Did you know Kenny Day?

20  A.   Yes, I did.

21  Q.   And did you have an ongoing friendship -- did  
22      you know him on an ongoing basis?

23  A.   Yes, I did.

24  Q.   For years did you know him?

25  A.   Years.

1 Q. And did you ever discuss with him wages that you  
2 each received?

3 A. Yes.

4 Q. Do you know if he ever got a wage guarantee?

5 A. No.

6 Q. No, you don't know, or no, he didn't get it?

7 A. No, he didn't ever get a wage guarantee.

8 Q. And did you discuss this matter with him?

9 A. Yes. I was asking him, and he had turned in, I  
10 guess the same papers, you know, for his  
11 earnings that I'd guess he never got answered  
12 either.

13 Q. Okay. Mr. Benko. Did you discuss this problem  
14 you were having with Mr. Benko with regard to  
15 the wage guarantee?

16 A. Not Mr. Benko. Mr. Tomczak, I did.

17 Q. You discussed it with Mr. Tomczak?

18 A. Yes. He was a Rockport employee and he was in  
19 the locality that I was.

20 Q. And to your knowledge did Mr. Tomczak receive  
21 any wage guarantee benefits --

22 A. No, he didn't.

23 Q. -- after the merger. And these men all went  
24 back to work, is that correct?

25 A. Yes.

- 1 Q. And they all worked in the freightyard?
- 2 A. Yes.
- 3 Q. And is that where the railroad told them they
- 4 should report for work?
- 5 A. Yes.
- 6 Q. Just like they told you?
- 7 A. Yes.
- 8 Q. I'm going to direct your attention, Mr. Steimle,
- 9 to Plaintiff's Exhibit No. 47. Would you please
- 10 look at the letter and tell us what that letter
- 11 was. Is that your signature on the second page
- 12 of the letter?
- 13 A. Yes, it is. Well, it was that I wouldn't be
- 14 releasing my rights.
- 15 Q. Is it fair to say that you were reporting to
- 16 work under protest?
- 17 A. Yes.
- 18 Q. Were you concerned about that?
- 19 A. Yes, I was. I didn't believe it. And to this
- 20 day it never come about.
- 21 Q. What never came about?
- 22 A. Well, protecting our rights.
- 23 Q. You've still never gotten the protection under
- 24 the merger protection agreement, is that what
- 25 you are saying?

1 A. No, I didn't. Right, yes.

2 Q. Are you aware whether after the furlough, even  
3 after the furlough, you and the other people in  
4 your position, the other men, continued their  
5 efforts even after the furlough to get  
6 confirmation of their status?

7 A. Yes.

8 Q. Did that go on?

9 A. It went on and on and on with no results  
10 actually..

11 Q. You heard Mr. Beedlow testify to the efforts  
12 that were made after the furlough.

13 A. All these efforts were made with --

14 Q. Are you aware of these efforts?

15 A. -- with no results, yes. Me and Mr. Beedlow  
16 were in close contact always about all of the  
17 efforts that were being made.

18 Q. Can you tell me how, if you know, how your  
19 pension was affected by the fact that you didn't  
20 have regular employment during the period of  
21 time you testified that you didn't have regular  
22 employment?

23 A. I find today that it's quite lower than what it  
24 should have been.

25 Q. The percentage is based on how much you worked

1 when you worked?

2 A. How much time, and the furloughed time, seems  
3 like that didn't help, and if I didn't get one  
4 day a month in, you lost a month. Then over  
5 that period of 39 years, I think I lost about  
6 four years, five years.

7 Q. Mr. Steimle, can you tell us why you decided to  
8 join in the filing of this lawsuit in 1969?

9 A. Well, I had intentions in my life to take and  
10 send my children to college and none made it,  
11 not with the income that I had.

12 Q. What were your expectations when you went to  
13 work at the railroad originally of what a  
14 railroad job was?

15 A. Lifetime job with a good income like my  
16 father-in-law had had.

17 Q. I'm going to direct your attention to  
18 Plaintiffs' Exhibit 22. Can you identify that?

19 A. Yeah. It was a Headlight.

20 Q. Can you tell us what the Headlight is?

21 A. It was a news bulletin more or less that they  
22 had it where you picked up your paycheck, that  
23 you could pick one of them up. Put out by the  
24 New York Central with a lot of news.

25 Q. Was that distributed to you, or did you have

1 occasion to have access to these documents?

2 A. When I picked up my paycheck, yes.

3 Q. Is it fair to say you relied on the information  
4 that is printed in that document?

5 A. Totally.

6 Q. You relied on the document?

7 A. Yes.

8 Q. And who printed the Headlight?

9 A. New York Central System.

10 MS. TRICHARICHI: I don't have any  
11 other questions of this witness.

12 MR. BLACKWELL: Before Mr. Kershner  
13 takes him, I infer that your overall  
14 interrogation, well, to me it reflected an  
15 effort to expedite and not cover everything that  
16 you've covered with Mr. Beedlow.

17 MS. TRICHARICHI: That's correct.

18 MR. BLACKWELL: And I appreciate  
19 that and I'm sure everybody here appreciates  
20 it. However, before the cross, I think there  
21 are two documents that if you didn't mention  
22 them -- I mean if you did, excuse me. I just  
23 want to get them flushed out here and make sure  
24 it's covered by Mr. Kershner's cross.

25 And I'll pass it back to you. It's the

1 knowledge about the February 16, '65 top and  
2 bottom agreement and the July 11, 1969 whatever  
3 that one was called. Was his knowledge  
4 vis-a-vis those agreements the same or different  
5 than we've heard before.

6 Q. You heard Mr. Beedlow testify about the top and  
7 bottom agreement, did you not, Mr. Steimle?

8 A. Yes, I did.

9 Q. He testified that he didn't know about that  
10 agreement until he saw that reference to it in  
11 the furlough notice in 1968.

12 A. Yes.

13 Q. Does your experience differ from Mr.  
14 Beedlow's --

15 A. No.

16 Q. -- with regard to when he knew about the 1965  
17 agreement?

18 A. That's the first I knew about it, when I was  
19 furloughed.

20 Q. You also heard him testify about his  
21 understanding of the interpretation that he  
22 thought the railroad had about your status. I  
23 think you testified about your interpretation of  
24 the railroad's feeling about your status. Is  
25 your interpretation different from Mr. Beedlow's

1 interpretation with regard to who the railroad  
2 contended that you were?

3 A. No.

4 Q. And again, the 1969 agreement, do you recall  
5 when you became aware of the 1969 coordination  
6 agreement?

7 A. It was in the '70s, I would say.

8 Q. And at this point Mr. Beedlow's experience is  
9 different from yours. Did you disagree in any  
10 way with Mr. Beedlow's interpretation of the  
11 1969 coordination agreement?

12 A. No.

13 Q. Was to your mind and to your experience  
14 personally or with the other people similarly  
15 situated, was the 1969 coordination agreement  
16 ever implemented with regard to merger  
17 protection benefits?

18 A. No.

19 MR. BLACKWELL: Thank you.

20 Proceed, Mr. Kershner.

21 MR. KERSHNER: Thank you.

22 - - - -

23 CROSS-EXAMINATION OF CHRIST STEIMLE

24 BY MR. KERSHNER:

25 Q. Mr. Steimle, you mentioned that you got no rail

1 pass from the C.U.T. Is that because the C.U.T  
2 didn't operate any passenger trains from one  
3 city to the next?

4 A. It was just only issued by the New York Central  
5 Railroad.

6 Q. So there was no C.U.T passes to get?

7 A. No.

8 Q. You mentioned there's continuing education, that  
9 you have book of rules classes. Did you attend  
10 those both in the freightyard as well in the  
11 C.U.T?

12 A. No. Just in the freightyard.

13 Q. So they only had --

14 A. In the C.U.T I attended them, too, but they were  
15 given to you by a New York Central examiner.

16 Q. So you attended --

17 A. No matter where the location was at, I mean it  
18 was --

19 Q. So you are saying you attended classes in both  
20 locations is your response, is that right?

21 A. Well, later on in -- when I went -- marked back  
22 up with '64 seniority, I attended it completely  
23 only in the freightyard.

24 Q. Did the same book of rules apply to both the  
25 freightyard and the C.U.T?

1 A. Yes, it did.

2 Q. Let me direct your attention to Carrier Exhibit  
3 1J.

4 MS. TRICHARICHI: It's in this  
5 book. J1, you mean? You said 1J but you mean  
6 J1?

7 MR. KERSHNER: Yes.

8 Q. Turn back to J, please. I'm sorry. Did you  
9 receive this recall notice?

10 A. Yes, I did.

11 Q. And it stated, Unless you reported to active  
12 service within 15 days you could lose your  
13 seniority, didn't it?

14 A. Yes, it did.

15 Q. But you did not report, did you?

16 A. I was under doctor's care with a broken foot at  
17 that time.

18 Q. So you were incapacitated?

19 A. Yes. I couldn't work and the company was  
20 notified with a letter from the doctor, and they  
21 notified me back when my foot was okay, that I  
22 would take and -- which was in latter '69, end  
23 of '69, I think, that I was okay to go back by  
24 my doctor, my family doctor. Had an operation  
25 on my foot.

1 Q. When was the exact date that you reported to  
2 work in '69?

3 A. It was at the end of the year. I couldn't say  
4 the exact date. I have no records of it. I  
5 can't remember.

6 Q. Was it after December 15?

7 A. No. It wasn't that late neither in the year.

8 Q. Let me direct your attention to Carrier Exhibit  
9 No. 12. It's at the very end of the book.

10 A. Thank you.

11 Q. Did you receive a copy of that letter?

12 A. No.

13 Q. The second page indicates you were copied but  
14 you did not receive a copy is your testimony?

15 A. No. Never received it.

16 Q. When you applied for guarantee payments was  
17 there a form that you used?

18 A. Yes, there was.

19 Q. What information did you have to put down on  
20 that form, do you recall?

21 A. What your income was for the pay periods and  
22 turned it in. They all turned them in as groups  
23 there to the company.

24 Q. What other information, just your income for the  
25 pay periods?

1 A. Yes.

2 Q. To whom would you turn in the request for the --

3 A. I don't recall. We just turned it in as a unit,  
4 you know, just like time slips you would turn  
5 in.

6 Q. A unit?

7 A. All the men that were turning in guarantee slips  
8 turned them in.

9 Q. And who had charge of receiving those guarantee  
10 slips for you?

11 A. The company mail.

12 Q. Do you remember who that company was?

13 A. No, I don't.

14 MS. TRICHARICHI: At what time, Mr.  
15 Kershner?

16 MR. KERSHNER: When he turned in  
17 his guarantee.

18 MS. TRICHARICHI: When, from 1969  
19 till when?

20 Q. You turned in your first request for guarantee  
21 when?

22 A. In 1969 when I turned them in when I went back  
23 to work.

24 Q. To whom did you turn them in?

25 A. I can't remember.

1 MR. BLACKWELL: Did you say you  
2 placed this in the company mail?

3 THE WITNESS: In the company mail  
4 with the other group that had placed theirs.

5 Q. And your testimony is that others in your group  
6 received guarantee payments but you did not?

7 A. New York Central men.

8 Q. New York Central men received guarantee  
9 payments?

10 A. Not C.U.T. men. Mine disappeared. I never --  
11 and they even said, Well, you'll never get it  
12 because you're not a protected employees.

13 Q. They meaning who?

14 A. The other employees that were putting in for the  
15 guarantee themselves.

16 Q. So your fellow employees told you, Don't bother,  
17 you're not qualified?

18 A. Fellow New York Central employees.

19 Q. So are these the same people in the  
20 freightyard --

21 A. Freightyard.

22 Q. -- who were giving you a hard time?

23 A. Yes, freightyard people.

24 Q. Same people who called you names?

25 A. Same people.

- 1 Q. Told you, Don't bother, because you won't get  
2 it?
- 3 A. Same people.
- 4 Q. Did you ever go to a company person and say, Why  
5 didn't I get it?
- 6 A. No, I didn't. I just kept turning them in.
- 7 Q. You kept turning them in and you got no  
8 payments?
- 9 A. No answer, no rejection, no denial, nothing.
- 10 Q. No action taken whatsoever?
- 11 A. Nothing whatsoever.
- 12 Q. Did you protest, file a grievances?
- 13 A. No, I didn't.
- 14 Q. Who is your father-in-law?
- 15 A. My wife's father, Parker Grove.
- 16 Q. Parker Grove?
- 17 A. Parker Grove, yes.
- 18 Q. And he had been in the union for quite a bit of  
19 time, I assume?
- 20 A. Oh, he was a gateman operator, and when he  
21 retired, he was a lever man in the Cleveland  
22 Union Terminal.
- 23 Q. Did he --
- 24 A. He worked way before Social Security, even back  
25 that many years.

1 Q. Was he working during the time that you were  
2 working there?

3 A. No. He was dead. He died, I would say about  
4 three years, four years after. He retired and  
5 then he died.

6 Q. Now, you've mentioned that one of the  
7 disadvantages of working in the freightyard was,  
8 I believe you said that they forced you to be a  
9 conductor. Isn't it true that the conductor job  
10 pays more?

11 A. If the junior man of a three-man crew was called  
12 out, he could be forced to be the conductor.  
13 The difference in money was a pittance  
14 actually. I mean here you maybe right today you  
15 would make \$35 or something or at that time you  
16 would make \$35 and you would get \$36 if you were  
17 a conductor or \$36.50. A dollar and quarter or  
18 something. The money wasn't the involvement in  
19 it. The men just didn't want the  
20 responsibilities.

21 Q. So you would voluntarily take a job that paid  
22 less?

23 A. Pardon?

24 Q. Would you voluntarily take a job that paid less?

25 A. No. You would take any job you could get.

1 MR. BLACKWELL: Let me interrupt.  
2 Keep our record straight. This witness just  
3 said he was forced, meaning by senior men who  
4 had their choice?

5 THE WITNESS: The two senior men --

6 MR. BLACKWELL: They could take the  
7 trainmen jobs and force you to be the  
8 conductor. So it's not voluntary. He is saying  
9 he's being forced by senior men.

10 A. The junior men had to take what was left when  
11 they called out a three-man crew.

12 Q. The senior men could choose to take lower paying  
13 jobs?

14 A. If they want to. That goes on today. There is  
15 men that don't want the responsibility that take  
16 lower paying jobs just not to have the  
17 responsibility.

18 Q. When you put in these applications for guarantee  
19 and received no response, did you ask any  
20 assistance from the union to process a  
21 grievance?

22 A. No, I didn't.

23 Q. You didn't push any complaint at all?

24 A. No, because I assumed by then that I wasn't  
25 entitled to it if they wouldn't give it to me

1           when I put it in five, six times more.

2   Q.   Only because of what the New York freight people  
3       told you?

4   A.   Even as far as the yardmaster telling me that.

5   Q.   Who was he?

6   A.   At that time you had -- at Rockport is where we  
7       were doing it. My mind's gone blank. My mind  
8       has gone blank.

9                   MR. BLACKWELL: Well, just take  
10       your time. You are talking about a yardmaster  
11       now?

12                   THE WITNESS: Yes.

13                   MR. BLACKWELL: Is he an agreement  
14       man or a management?

15                   THE WITNESS: Pardon? No. He  
16       would just be a supervisor over the jobs.

17                   MR. BLACKWELL: Well, I see a  
18       yardmaster on this roster. Do you want to offer  
19       him that and see if he can find it?

20                   THE WITNESS: No. You are talking  
21       about probably calendar or something?

22                   MR. BLACKWELL: Here.

23                   THE WITNESS: I believe Eddie Kurtz  
24       was one of the guys that told me that.

25                   MR. BLACKWELL: Eddie. You've got

1 to spell that.

2 THE WITNESS: K U R T Z.

3 MR. BLACKWELL: A yardmaster?

4 THE WITNESS: Yes. And Charlie  
5 Martin.

6 Q. Well, I'm looking for the one that you  
7 recalled.

8 MS. TRICHARICHI: Wait until there  
9 is a question.

10 Q. Here is a C R. Martin, Jr.

11 A. Yes.

12 Q. Is he designated as a yardmaster?

13 A. Yes. Yes, that would be one.

14 Q. So it was the yardmaster on the list designated  
15 C R. Martin that you had a conversation with?

16 A. Yes.

17 Q. And he is covered by the agreement?

18 MR. BLACKWELL: He just said no.

19 A. No. He was a freightyard man, a original  
20 freightyard man.

21 Q. Is he a member of the union?

22 A. The freightyard union, yes.

23 Q. And you discussed with him why you didn't get  
24 your guarantee payments?

25 A. I asked him and he even said that we weren't

1 entitled to it. We would never get it.

2 Q. But you didn't file any grievance beyond it.

3 You never went to the union and filed a  
4 grievance?

5 A. I didn't, no.

6 Q. Did you keep on filing these guarantee requests?

7 A. After about the sixth one, I didn't file them  
8 anymore.

9 Q. You filed about six?

10 A. Yes.

11 Q. Did you get any answer --

12 A. No decline or nothing.

13 Q. Just stopped --

14 A. Absolutely nothing. They just disappeared like  
15 everything does that they don't want, time slips  
16 or anything, they used to decline them when they  
17 got them. They just disappeared.

18 MR. BLACKWELL: Excuse me. Mr.  
19 Kershner? Is that yardmaster on there to  
20 protect his trainmen seniority and he's being  
21 listed as a yardmaster for information because  
22 this gentleman seems to think the yardmaster is  
23 not an agreement covered man.

24 THE WITNESS: No, he isn't. Well,  
25 these yardmasters are maintaining their

1 trainmen's seniority on this roster and there is  
2 a separate yardmasters seniority list and they  
3 are union employees.

4 MR. BLACKWELL: Under a different  
5 agreement?

6 MR. ELLERT: Under a different  
7 union.

8 MR. TRICHARICHI: Just as a  
9 clarification for my own edification, they are  
10 union employees, they are not management; is  
11 that what that means?

12 MR. BLACKWELL: They are union  
13 under a different agreement. It's a different  
14 craft called yardmasters?

15 THE WITNESS: Yardmaster union.

16 Q. Now, did you file these requests for payment of  
17 the guarantee under the August 1 consolidation  
18 agreement?

19 A. What year in August?

20 Q. 1969.

21 A. '69, yes.

22 Q. So you knew then when you filed for these  
23 guarantees of the existence of that agreement?

24 A. I should get them automatically, I thought.

25 Q. You thought. Right. Because you thought that

1           that August 1969 agreement entitled you to  
2           guarantee, correct?

3   A.   Entitled me to it, yes.

4   Q.   And yet you never discussed the existence of the  
5           August 1, '69 agreement with Mr. Beedlow? Or  
6           did you?

7   A.   No, I didn't.

8   Q.   You didn't?

9   A.   No.

10  Q.   You were in touch, however, with Mr. Beedlow,  
11           weren't you?

12  A.   Yes.

13  Q.   When you filed under the August 1, '69 agreement  
14           for payment of guarantees, did you retain a copy  
15           of the form that you submitted to the company?

16  A.   No, I didn't.

17                   MR. BLACKWELL:   Excuse me, Mr.  
18           Kershner.   To keep our record clear, I don't  
19           think this witness has said he filed it under a  
20           particular agreement.   He just said he filed for  
21           protection of benefits, did he not, with the  
22           other group?

23                   MR. KERSHNER:   Yes.   And I asked  
24           him if he knew -- backtracking the record will  
25           show that I asked him if he knew of the August

1 1969 agreement.

2 A. Yes.

3 MR. BLACKWELL: And had he  
4 discussed that?

5 MR. KERSHNER: And whether in his  
6 judgment he was entitled to payment of guarantee  
7 pursuant to that agreement. And now I've asked  
8 him if he retained any guarantee applications.

9 MR. BLACKWELL: Okay. But I  
10 misunderstood then your last question. You said  
11 when you filed under the '69 agreement, did you  
12 retain a copy.

13 MR. KERSHNER: I just want to know  
14 whatever rationale he employed, to retain a  
15 copy.

16 MR. BLACKWELL: No. He does not  
17 have a copy.

18 THE WITNESS: This would have been  
19 copies --

20 MR. BLACKWELL: There is no  
21 question before you.

22 MS. TRICHARICHI: Wait until  
23 there's a question. Okay?

24 Q. You took a back to work physical, didn't you?

25 A. Yes, I did.

- 1 Q. After you recovered from the foot problem?
- 2 A. Yes, I did.
- 3 Q. Did you have any trouble getting a physical,  
4 scheduling a physical?
- 5 A. Quite a few appointments before I got it.
- 6 Q. You finally got it. Did you have to call the  
7 doctor a couple times to get it?
- 8 A. I used quite a bit of the telephone before I got  
9 it.
- 10 Q. So it took a little determination on your part  
11 to return to work?
- 12 A. Yes.
- 13 Q. Now, you had signed the letter I'm going to find  
14 in just a minute. I direct your attention to  
15 Carrier's Exhibit J3. Is that your signature on  
16 this letter?
- 17 A. It sure is.
- 18 Q. So that as of May the 19th when you signed this  
19 letter, it was your intention to report to work,  
20 is that correct?
- 21 A. Yes.
- 22 Q. When did the foot injury prevent you from  
23 returning to work, do you recall that?
- 24 A. I don't recall that. I believe we do have a  
25 letter or something on that.

1 Q. Between the time that you signed the letter on  
2 May 19 and the time that you injured your foot,  
3 what made you change your mind about returning  
4 to work?

5 A. Well, when you got four hungry mouths in a  
6 family, and you just bought a new home, and you  
7 have no income except an unemployment check,  
8 it's pretty hard to refuse to go to work.

9 Q. No. My question was why didn't you report to  
10 work right after you signed this May 19 letter.

11 A. I couldn't because my leg was in a cast.

12 Q. I thought you had said your leg was injured  
13 later after they sent this letter, at some point  
14 after?

15 MS. TRICHARICHI: I think what he  
16 said was he didn't know what the dates were. I  
17 think that's what the testimony will show. We  
18 can have the court reporter read it back.

19 MR. BLACKWELL: Well, he's just now  
20 said rather firmly that his foot was in a cast  
21 when he signed off on Carrier Exhibit J3.

22 Q. Is that correct, Mr. Steimle?

23 A. Yes.

24 MS. TRICHARICHI: If you refer to  
25 carrier's own Exhibit K, the second paragraph,

1           it says that they found Mr. Steimle has been  
2           found to be physically incapacitated -- this is  
3           in August -- for return to service at this time.

4           MR. KERSHNER:   Yes.

5           MS. TRICHARICHI:  That's right.

6           MR. KERSHNER:  I was wondering when  
7           he had his injury.

8           MS. TRICHARICHI:  He testified he  
9           was in a cast in May.

10          Q.   Our records indicate that you were --

11           MS. TRICHARICHI:  Would you tell us  
12           what you're referring to in terms of records?

13           MR. KERSHNER:  Yes.

14           MS. TRICHARICHI:  This is not part  
15           of your documents?

16           MR. KERSHNER:  No.

17           MS. TRICHARICHI:  I don't know  
18           whether this is going to be marked.  I would  
19           just note that it was not part of the document  
20           production.

21           MR. KERSHNER:  We've got lots of  
22           exhibits without having been provided in  
23           advance.

24           MS. TRICHARICHI:  Only those that  
25           we could not get in discovery and that's why

1 they have to be submitted.

2 MR. KERSHNER: This is under  
3 discovery --

4 MS. TRICHARICHI: Because it's your  
5 document. You couldn't have gotten it from me  
6 in discovery.

7 MR. KERSHNER: Our records  
8 indicate -- and I'm not going to offer it as an  
9 exhibit. Doesn't have to be entered into  
10 evidence. He can confirm it.

11 Q. Our records indicate that you had a physical  
12 examination and were capable to return to work  
13 on 6-11-69. Does that fit your recollection?

14 MS. TRICHARICHI: Will you show him  
15 the document so he knows what you are talking  
16 about? Wait until he asks you a question about  
17 the document. I don't know what the question  
18 is.

19 A. This was for return to service from furlough off  
20 duty over 30 days.

21 MS. TRICHARICHI: Why don't you ask  
22 if Mr. Kershner has a question before you ask  
23 about this document.

24 MR. BLACKWELL: Well, he's trying  
25 to understand what the document says. Mr.

1 Steimle, do you understand what the document  
2 says?

3 A. Yes. It was a return to work furlough off over  
4 30 days. Now, any time that you were off over  
5 30 days --

6 MR. BLACKWELL: Well, hold just a  
7 minute.

8 A. I believe I can explain it. You have to have a  
9 physical to come back. You could have one every  
10 35 days that you take a physical, come back,  
11 work one day, and be off 30 days again, and  
12 could demand another physical. It's more or  
13 less a return to work physical.

14 MR. BLACKWELL: Okay. Did you see  
15 this part down here at the bottom, Mr. Steimle?  
16 Right in there.

17 Q. Over doctor's signature?

18 A. But I'm trying to explain that if you lost 30  
19 days work, they do demand a physical before they  
20 let you come back to protect themselves each  
21 time, whereas you could have almost maybe ten or  
22 eleven or twelve of them a year.

23 MR. BLACKWELL: Mr. Kershner's  
24 point -- state it again, Mr. Kershner.

25 Q. I think your earlier testimony was that you were

1 in a cast because of a leg injury on or about  
2 May '69?

3 A. No. I didn't say May.

4 Q. Not May?

5 A. I just said the latter part of the year,  
6 somewhere there. At the time when they were  
7 ordering us to come back to work.

8 Q. Okay.

9 A. We have a letter here in our evidence here  
10 that --

11 Q. It was my recollection -- let me finish. It was  
12 my recollection, and the record will show  
13 whether I was right or wrong, that you had said  
14 you were in a cast in May when the May back to  
15 work request was made by the company.

16 A. Thirty years ago I couldn't tell you the exact  
17 time.

18 Q. I know it's a long time.

19 MR. BLACKWELL: Well, let me just  
20 state for the record here. This was in  
21 reference to a May 1969 letter which you, among  
22 other claimants, signed. And Mr. Kershner asked  
23 you did you return to work as your signature  
24 indicated you intended to do. And your answer  
25 was no, your leg was in a cast. And now he's

1           telling you that in June, on June 11, there is a  
2           medical signature that says you were okay to  
3           work indicating without more that your cast is  
4           off, or not yet on for all I know.

5                           MS. TRICHARICHI: And there's --

6   Q.   So I'd like to know exactly -- not exactly. I  
7       know it's a long time, but about when you would  
8       have had your leg in a cast preventing you from  
9       returning to work.

10  A.   All I can say is when they ordered me back to  
11       work in '69, that I was under doctor's care.  
12       What month exactly or what, I can't tell you,  
13       but a letter was sent to the company and Mr.  
14       Weisbarth excused me until my foot was out of  
15       the cast and then I could take the physical and  
16       mark up and come back.

17  Q.   So you did in fact take the physical on 6-11-69,  
18       is that correct?

19  A.   I can't tell you actually. All I know is I took  
20       the physical -- see, that physical there could  
21       have been a return to work physical. I might  
22       have worked a month and then went for an  
23       operation, and when my foot was healed up, I  
24       took another physical. That there could be  
25       another physical after that in the same year.

1 Q. So what you're telling me is your leg could have  
2 been in a cast, the cast removed, and you could  
3 have then taken this physical on that date and  
4 been available for work?

5 A. I'm telling you I could have took --

6 Q. Or you could have had this physical because you  
7 had been away from work for some other reason  
8 and had your leg in a cast later on in the year?

9 A. Correct.

10 Q. And you don't recall precisely when it was?

11 A. Thirty years ago I can't recall in my memory.

12 Q. Assuming that you had the leg in the cast at the  
13 time you signed this letter about intending to  
14 return to work, the one that you signed on May  
15 19, why did you sign it intending to return to  
16 work when you couldn't?

17 A. That might have been premature to the  
18 operation.

19 Q. So your recollection of having your leg in a  
20 cast --

21 A. I can't --

22 MS. TRICHARICHI: I would object.

23 He said he doesn't remember when he had his leg  
24 in cast --

25 A. This is 30 years ago.

1 MS. TRICHARICHI: -- or when he had  
2 his leg out of the cast and if you look at  
3 carrier's own Exhibit K, the carrier said, Found  
4 to be physically incapacitated to return to  
5 service at this time on August 22, 1969.  
6 Carrier's Exhibit K.

7 MR. KERSHNER: And that would  
8 indicate that in August he may have had his leg  
9 in cast but not in May.

10 MS. TRICHARICHI: You asked that he  
11 might have been able to in June and not able to  
12 in August and he said he can't remember.

13 MR. BLACKWELL: I won't sustain  
14 this objection because inadvertently or  
15 otherwise the witness said in respect to Carrier  
16 Exhibit 3 that his leg being in a cast is what  
17 prevented him from going to work after that.  
18 Now, if he's got -- on further thought on it,  
19 you are not sure what your statement was, that's  
20 certainly understandable. So you have a got a  
21 document here that says a doctor okayed you on  
22 June 11. The witness does not dispute that. He  
23 says there may have been another medical  
24 development after the June 1. He doesn't  
25 recall.

1 Is that what you said?

2 THE WITNESS: Thirty years ago I  
3 can't recall.

4 MR. BLACKWELL: Okay. Well, I  
5 think Mr. Kershner understands that.

6 Q. Now, with respect to your testimony about Mr.  
7 Day and Mr. Tomczak, your testimony with respect  
8 to Mr. Day was, and I'm paraphrasing what you  
9 said, he didn't get a wage guarantee, he turned  
10 in, I guess the same papers, I guess. He  
11 couldn't get an answer. You're just guessing  
12 about when he turned in the papers, aren't you?

13 A. He told me he turned them in.

14 Q. Did he tell you he didn't get an answer or are  
15 you just guessing about that?

16 A. No. He didn't get an answer. I know.

17 Q. Did he file a grievance, do you know?

18 A. No.

19 Q. Did he take it up with any union officials?

20 A. No.

21 Q. Why not? Why didn't you take it up with a union  
22 official?

23 A. I just didn't.

24 Q. You wish you had?

25 A. I wish I had. I mean if we were entitled to it,

1 we should have got it, but we didn't get it.

2 Q. And you didn't push it?

3 A. And I didn't push it. I just took it for  
4 granted that I wasn't entitled to it and I  
5 didn't push it.

6 Q. And Mr. Tomczak didn't push it?

7 A. Nope.

8 Q. Neither did Mr. Day?

9 A. I don't know about Mr. Day -- or Mr. Benko. Mr.  
10 Day, Mr. Day and Mr. Tomczak, I know turned them  
11 in.

12 Q. And didn't push it?

13 A. Didn't push it.

14 MR. KERSHNER: Can we take a  
15 five-minute recess?

16 - - - -

17 (Thereupon, a recess was had.)

18 - - - -

19 MR. BLACKWELL: Mr. Kershner, would  
20 you be willing to give us a time estimate on  
21 your remaining time with this witness?

22 MR. KERSHNER: Just a couple more  
23 questions, maybe ten or fifteen minutes at the  
24 most.

25 MR. BLACKWELL: Very well.

1 Q. Mr. Steimle, you testified that you applied for  
2 guarantee payments?

3 A. Yes.

4 Q. Approximately six times, I think your testimony  
5 was.

6 A. How did you know what the guarantee amount ought  
7 to be? Were you given some --

8 A. I didn't know.

9 Q. You didn't know?

10 A. No.

11 Q. So you just guessed that you were eligible for a  
12 guarantee?

13 A. Yes.

14 Q. So you didn't know whether your earnings were  
15 above or below the guarantee. You were just  
16 thinking maybe they were?

17 A. I knew they were.

18 Q. Well, how did you know that they were?

19 A. Because I was making so little money. My pay  
20 was, believe me, unbelievable. I was about 80  
21 percent of the time on unemployment.

22 Q. You indicated that in 1985, I believe it was,  
23 you took a job in the Cleveland Terminal, is  
24 that correct?

25

MS. TRICHARICHI: No.

1 A. '85, that was 2.5 percent of the work. That  
2 wasn't the Cleveland Union Terminal. No. It  
3 was in the freightyard.

4 MR. BLACKWELL: Was it out at the  
5 Lake?

6 A. All of the jobs -- those 2.5 percent of the work  
7 referred to the freightyard.

8 MR. BLACKWELL: That is right.  
9 That was your share of the freight work?

10 A. Right.

11 Q. Now, when you bid on that job, what seniority  
12 date were you under?

13 A. You didn't bid on those jobs. Actually those  
14 jobs all belonged Cleveland Union Terminal men.

15 Q. So when you exercised your seniority to get one  
16 of those jobs, what seniority date did you use?

17 A. I would say my 1951 seniority because -- because  
18 all -- you know, we were still going by that  
19 original C.U.T seniority roster.

20 Q. I understand.

21 A. See, we were placed on that there top -- well, I  
22 should say bottom of that list in our specific  
23 seniority dates that -- there was the oldest man  
24 and then it went on down the line, and I think I  
25 was the second youngest man at the bottom. So

1 all the rest either died or retired and I was  
2 entitled to that job.

3 Q. And then in 1985 you were able to take that job  
4 using your '51 seniority date?

5 A. Right.

6 MR. BLACKWELL: Excuse me, Mr.  
7 Kershner.

8 MS. TRICHARICHI: I don't think he  
9 said that.

10 MR. BLACKWELL: And I don't know  
11 whether this witness can clarify it. Maybe the  
12 attorneys can. As I'm understanding that 2.5  
13 percent, it left 97 and a half percent, say,  
14 that belonged to the old freightyard men. The  
15 C.U.T people were closed out. The C.U.T people  
16 had a first privilege status on two and a half  
17 percent. The freightyard men were closed out.  
18 Correct? Then they never reached that point.  
19 The C.U.T people only got jobs within that two  
20 and a half percent, but in theory, they were  
21 entitled to get work in that 75 percent if they  
22 ever stood for it.

23 MR. KERSHNER: Yes. They would  
24 exercise their September 10, 1964 seniority for  
25 the freight jobs and retain their C.U.T

1 seniority for the C.U.T jobs.

2 MR. BLACKWELL: They were just  
3 bidding against each other.

4 MR. SKULINA: The 65 percent group,  
5 they just signed up on the New York Central side  
6 with that '64.

7 MR. BLACKWELL: So they were just  
8 bidding against each other for that two and a  
9 half percent.

10 MR. KERSHNER: The senior person  
11 would get it.

12 THE WITNESS: Right.

13 MR. BLACKWELL: Proceed. I just  
14 wanted to get the record clear.

15 MS. TRICHARICHI: And you're right  
16 when you say if they were ever eligible for the  
17 other 97 odd percent with their '64 seniority,  
18 and I think what he's saying is he was never  
19 eligible for anything until '85 except for --

20 MR. BURTON: He would have been  
21 eligible with their '64 seniority throughout the  
22 seniority --

23 MS. TRICHARICHI: He was never  
24 eligible for a regular job until 1985.

25 MR. BLACKWELL: If ten men had gone

1 up in smoke on the freeway, there may have been  
2 some jobs.

3 MS. TRICHARICHI: Right.

4 MR. BLACKWELL: But you never  
5 reached that point?

6 THE WITNESS: Until 1985.

7 MR. BLACKWELL: And then you were  
8 in the two and a half percent?

9 A. Retirements and deaths.

10 Q. Where did you work when you marked up for work  
11 in the freight side?

12 A. Everywhere. All the way out to Chrysler Motors.

13 Q. And where did you work most every time,  
14 Rockport?

15 A. Rockport, Collinwood. If you were in the extra  
16 board, anywhere they called you for.

17 Q. Where do you live, in Rockport?

18 A. No. On the west side, Lorain Avenue. Close to  
19 Rockport.

20 Q. So you worked most of the time --

21 A. At Rockport. You didn't have a choice. If  
22 there was two jobs at Collinwood and they called  
23 you, you had to take one of them. Or Chrysler.  
24 I was called at six in morning to go to work out  
25 in Twinsburg and come back in the dark in the

1 evening.

2 MR. KERSHNER: I have nothing  
3 further.

4 MR. BLACKWELL: Miss Tricharichi.

5 - - - -

6 REDIRECT EXAMINATION OF CHRIST STEIMLE

7 BY MS. TRICHARICHI:

8 Q. Mr. Steimle, there was some testimony, you gave  
9 some testimony on cross-examination of pursuit  
10 of the job guarantee. I want to turn your  
11 attention to Plaintiffs' Exhibit 51.

12 MR. BLACKWELL: Claimant.

13 Q. I'm sorry. Claimants' Exhibit 51. Can you tell  
14 me who that letter was written by? Who was the  
15 author of that letter?

16 A. George I. Norris.

17 Q. And who is George Norris?

18 A. He was a brakeman.

19 Q. And he had also worked at the Cleveland Union  
20 Terminal location with you?

21 A. Yes.

22 Q. And is it your understanding that there wasn't  
23 in fact a grievance ongoing?

24 A. It continuously was a grievance ongoing so they  
25 can find out information.

- 1 Q. And you were not the lead person in that?
- 2 A. No.
- 3 Q. Fair to say?
- 4 A. No.
- 5 Q. Of the group of men that were similarly situated  
6 with you, who was pursuing the case?
- 7 A. Well, you had George Norris and Mr. Beedlow..
- 8 Q. Mr. Norris and Mr. --
- 9 A. Quite a few of the men actually.
- 10 Q. And were they just pursuing the case on behalf  
11 of them as individuals or on behalf of the  
12 people who were similarly situated as they?
- 13 A. The whole group as group.
- 14 Q. And that was your understanding, was it not?
- 15 A. Yes.
- 16 Q. And isn't it true that by becoming part of this  
17 lawsuit, which I think the carrier has included  
18 as part of its exhibit, which I can't put my  
19 finger on, which is a summons and complaint -- I  
20 think it's Carrier Exhibit 4. I refer you to  
21 that. Was that the complaint that someone in  
22 our office filed on your behalf? Carrier's  
23 Exhibit 4. Were you a plaintiff in that  
24 lawsuit, Mr. Steimle?
- 25 A. Yes, I was.

1 Q. And is it your understanding that lawsuit was  
2 being pursued -- and that was in 1969, is that  
3 correct?

4 A. Right.

5 Q. And that was being pursued to determine your  
6 merger protection benefits in part in addition  
7 to other things?

8 A. Yes.

9 Q. So you were in fact pursuing your status with  
10 regard to your entitlement to merger protection  
11 benefits, isn't that correct?

12 A. Yes.

13 Q. And one more question and that's all. There was  
14 some testimony about what a yardmaster was. Was  
15 a yardmaster a supervisor in either the  
16 Cleveland Union Terminal yard or else in the  
17 freightyard?

18 A. Well, he has the power to take and send you home  
19 if you don't perform proper work. He's an  
20 official in my opinion.

21 Q. Okay. Did he have to do with safety codes? Did  
22 he have any --

23 A. Well, he could sure write you up if he thinks  
24 you violate any of the safety rules.

25 Q. So he has to do with discipline?

1 A. Yes.

2 Q. Did he review your pay slips?

3 A. Pardon?

4 Q. Did he review your time slips or your time  
5 cards?

6 A. He handled all of that.

7 Q. Yes..

8 A. Signed them himself.

9 Q. And you testified that he had the position of  
10 the person who told you that it was fruitless  
11 for you to file wage guarantees, is that  
12 correct?

13 A. Yes.

14 Q. Mr. Steimle, even to the present day, or I  
15 believe you testified you retired last year,  
16 what kind of jobs can be gotten for people with  
17 a 1964 seniority date in the freightyard even  
18 today?

19 A. Would you run that by again?

20 Q. People with a 1964, September 10, 1964 seniority  
21 date, what kind of jobs are they eligible for  
22 now?

23 A. Well, with reduction in freight service, I don't  
24 know. Those are cutoff. I believe they are at  
25 this point.

1 MS. TRICHARICHI: I don't have any  
2 further questions.

3 A. I can't recall what --

4 MS. TRICHARICHI: There is no  
5 question before you.

6 - - - -

7 RE-CROSS-EXAMINATION OF CHRIST STEIMLE

8 BY MR. KERSHNER:

9 Q. Mr. Steimle, isn't it true that there are no  
10 railroad jobs at all? As of today there are no  
11 railroad jobs at all where you formerly worked,  
12 is that true?

13 MS. TRICHARICHI: Where? What  
14 place? He formerly worked in a lot of places.

15 MR. KERSHNER: Where he formerly  
16 worked in the Cleveland Union Terminal. My  
17 question was in the freightyard. I withdraw the  
18 question. No further questions.

19 MR. BLACKWELL: Mr. Steffen?

20 - - - -

21 EXAMINATION OF CHRIST STEIMLE

22 BY MR. STEFFEN:

23 Q. You indicated that you first obtained knowledge  
24 of the 1965 agreement three years after it was  
25 signed, is that correct? Did I understand your

1 testimony correct?

2 A. Yes.

3 Q. And your position when you learned of the 1965  
4 agreement, three years later after its signing,  
5 was that you were a New York Central employee  
6 and as such you were entitled to merger  
7 protection benefits, is that a fair statement of  
8 your position?

9 A. Yes, yes.

10 Q. Now, if you had known about the agreement, the  
11 1965 agreement, on the very date it was signed,  
12 would your position be any different than what  
13 it was three years later?

14 A. No.

15 Q. Now, with respect to the 1969 agreement, you  
16 learned about that one year, about,  
17 approximately one year after it was signed. And  
18 at that time it's my understanding that your  
19 testimony is that you deemed yourself to be a  
20 New York Central employee and as such you were  
21 entitled to merger protection?

22 A. Yes.

23 Q. Now, if you had learned about this 1969  
24 agreement on the very date it was signed, would  
25 that have changed your position any? Would you

1 still have felt that you were a New York Central  
2 employee entitled to the merger protection  
3 agreement?

4 A. Yes.

5 Q. Now, to whom did you send your claim forms for  
6 your guarantee?

7 A. I believe they went to the payroll department  
8 with the time slips actually, the working time  
9 slips.

10 Q. And the payroll department is located where?

11 A. It was -- at that time it was downtown, I  
12 think.

13 MR. STEFFEN: I have no further  
14 questions.

15 A. Then they moved it to Detroit.

16 Q. And that's the same place that your fellow  
17 employees sent their claim forms?

18 A. Yes.

19 Q. And they received a response by obtaining their  
20 protection?

21 A. Yes.

22 Q. And you received no response whatsoever, is that  
23 correct?

24 A. I received no response.

25 MR. STEFFEN: I have no further